

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
September 4, 2014

The Chairman Peter McNamara called the meeting to order at approximately 7:00pm.

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau (arrived after the meeting commenced), Paul Dadak, Tim Doherty, Paddy Culbert, Alternate Mike Sherman, Planning Director Jeff Gowan

ABSENT: Jason Croteau, Selectmen Representative Robert Haverty, Alternate Joseph Passamonte

Mr. McNamara appointed Mr. Sherman to vote in Mr. Croteau's absence.

OLD BUSINESS

PB Case #PL2014-00019

Map 32 Lot 1-146-24

SKYVIEW ESTATES, LLC - Skyview Estates Phase II - Majestic Avenue – Proposed Conservation Subdivision (19 Residential Lots & 2 Open Space Lots)

Mr. Peter Zohdi of Herbert Associates and Attorney Andrew Prolman of Prunier & Prolman, representing the applicant, came forward to discuss the proposal. Mr. Zohdi said since the last meeting with the Board he received a report from Steve Keach of Keach Nordstrom (Board's engineering review firm), which they were in agreement with. In the review letter, Mr. Keach asked Mr. Zohdi to show a driveway to the Burton property. The Board was provided with a topographical map and illustration profile of the horizontal and vertical alignment for the potential street connection of Majestic Avenue to Marie Avenue. The plan showed that the grade and other requirements for a connection could be met. Mr. Zohdi said they would be requesting an additional waiver for the first 100ft. of Majestic Avenue to allow a 3% slope for the length of 87ft. where 100ft. is required. He told the Board that they had no problems with the remainder of Mr. Keach's report.

Mr. Montbleau arrived. During previous hearings he recused himself; therefore, for the present meeting he remained seated in the audience until the case concluded.

Mr. Zohdi said they submitted an application to the State for an Alteration of Terrain ('AOT') permit, which was expected to take approximately five weeks to receive back. After the AOT permit is approved, they will apply for a subdivision approval.

Attorney Prolman told the Board he submitted a copy of an email he forwarded to Mr. Gowan earlier in the day that referenced the insurance report and update on the McGlynn claim with respect to their well and blasting. An expert report was prepared July 24, 2014 and submitted for the record. Copies

of the e-mail and blast report were provided to the Board for review. He said the legal documents for Phase II would be prepared and noted they would be (just about) identical to what was submitted and approved by Town Counsel (John Rattigan) and Mr. Gowan for Phase I.

MOTION: (Culbert/Dadak) To accept for consideration the waiver to Appendix I, BB,21 specifying maximum roadway slope of 3-percent be provided for a length of not less than 100ft. from a proposed intersection.

VOTE: (5-0-0) The motion carried.

Mr. Prolman expected after the hearing to work with Attorney Rattigan to submit the necessary legal documents. He said they empathized with the neighbor's issues with their well; however, the facts contained in the well expert reports don't add up.

Mr. Keach came forward to discuss the project. He told the Board he did an initial review on July 18th of the application submitted to the Planning Department. On August 12th Mr. Zohdi's office provided a follow up submittal to which Mr. Keach responded with his report of August 28th. Mr. Keach summarized the August 28th report for the Board and the remaining items that needed consideration, such as 1) three State permits (Subdivision, AOT, community water system design), 2) with an approval – recommendation to have a performance guarantee, and 3) confirmation from Town Counsel is satisfied with documents pertaining to future ownership, governance of open space and other related documents.

In addition, Mr. Keach told the Board that the recommendation to demonstrate the horizontal and vertical alignment of the platted 'paper street' extending from Majestic Avenue to abutting lot (Burton property) had been satisfied. He noted that there was actual survey grade at the end of Marie Avenue which showed that a road could tie in, even if there are micro-topographies between the 10ft. contours. He said the submitted profile (combination of the horizontal and vertical) was better than he anticipated because of the grades. He saw there would be a significant fill within the Phase I portion, but slope easements were provided to make the road viable.

Mr. Keach referenced the displayed plan. He pointed out there was a storm water management basin constructed during Phase I in the southwest corner at the intersection of Aspen Drive and Majestic Avenue. He explained how the basin functioned; after water was treated and detained, it re-entered the storm system on Majestic and ultimately ended at a second storm water management basin situated at Spaulding Hill Road. The water shed within Phase II will contribute additional water to the detention basins. The plan shows the Aspen/Majestic basin increasing in size by nearly 50%, which caused Mr. Keach concern because it would receive storm water while it was being expanded. He requested additional detail as to how the basin would be built and continue to function during construction. The plan included a narrative outlined by Mike Gospodarek of Herbert Associates (design engineer) to address Mr. Keach's concern that required a contractor to submit a construction sequencing plan showing how the active detention and flow would perform. Mr. Keach felt the contractor's input and timing was important, but he wanted Mr. Gospodarek to create the design since he had done the calculations and analysis. He said although it was a detail, it was an incredibly important detail and asked that the Board attach a condition of approval to ask that the final engineering be done as part of any plan that was ultimately signed and recorded.

Mr. Keach then discussed the waiver for the road with regard to where the Phase II extension portion of Majestic Avenue intersects with Aspen Drive. He said the design plan measured at 100ft., but was measured from center line, not the edge of pavement, which created a delta of approximately 13ft. He had no problem with the waiver for 87ft., even with the potential road connections in the future. He reviewed the alternative of requiring the additional 13ft and saw no benefit to doing so.

Mr. Gowan asked if the feasibility of construction for the road connection would be shown through to Sherburne Road. Mr. Zohdi replied when he started the project a preliminary design was done showing that a connection could be done through to Sherburne Road. He said the aerial topography also showed that the connection could be done.

Mr. McNamara understood that most of Keach's questions were administrative and fairly minor. He said the Board needed to address the issue of blasting that came up during their previous meeting. Mr. Gowan said the only document he received from a resident was the letter from Ms. Cecilia McGlynn dated August 29, 2014. Mr. McNamara read the letter aloud. He then read aloud a letter submitted from Fire Chief James Midgley dated September 4, 2014. Mr. Gowan noted that blasts were administered by the Fire Department based on the Town's Blasting Ordinance.

Mr. Dadak questioned if someone from the Fire Department is on site during blasting. Mr. Gowan stated all blasts were monitored by Fire Inspector John Hodge. He said the ordinance was very specific in terms of survey range, location of seismographs and maximum blast loads. Mr. Doherty asked if any seismographs were placed in neighborhoods surrounding blast sites or if they were just placed within a certain distance of where blasting is done. Mr. Gowan said he wasn't an expert, but believed they were placed within a certain distance/range of blasting.

Mr. McNamara addressed the expert report done at the request of the insurance company. He asked that the Board have an independent evaluation of the report at the applicant's expense. He had concerns for the report and noted that it admits there was no monitoring on the McGlynn's house the day of blasting. The report goes through a list of things that supposedly can't happen and there were maximums that were not exceeded. It references compression blasting and air versus underground. He said there was no mention made of the particular susceptibility of the Scenic View Drive area, which for many years had difficulty with water and water pressure. The expert opinion comes after a listing many industry standards and indicates that the data do not support blasting as the most probable cause of loss of well yield, cracking of front foundation, excursion of drywall screws or formation of compression ridges. Mr. McNamara questioned what else could have caused those things given the close time involved between the blast and those things being observed. He reiterated his suggestion that the applicant obtain an independent appraisal.

Mr. Doherty discussed seismic meters and found it unusual that the blasting company didn't have meters in the Scenic View area. Mr. McNamara replied that the blasting company had satisfied the Fire Department and the Town's Ordinance (for blasting). He said they had followed the legal requirements, but felt because a situation occurred the Board should do everything they could to protect the neighbors. He said the damage couldn't be reversed and because of the insurance company's involvement, it was a civil matter. He commented it was the Board's responsibility to ensure, as best as they could, that no further damage occurred. Mr. McNamara said it may make sense for the Board to ask Mr. Zohdi to dig some test pits of ledge probes along the proposed roadway to try and quantify how much bedrock was present and how much blasting was going to occur. It was understood that precise figure may not be possible, however, any additional

information could assist in determining how the road may be modified. Mr. Keach agreed with Mr. McNamara. He said the road was designed per specification; however, if they found that raising the road (+/- one foot) may mitigate the need for blasting the Board may consider a waiver for the (vertical) geometric road standard. He noted the Phase II construction didn't involve the extent of land contained in Phase I. The earthwork was essentially limited to the roadway and utility construction because the drainage (requiring excavation) was within Phase I. The condition of the land upon which the houses would be built was reasonably sloped; he didn't envision any dramatic earthwork. With regard to having the insurance report vetted, he will pass along (to Mr. Gowan) a couple contacts.

Mr. Zohdi stated they could raise the road between station 500 and 800 where it had an 8% grade and the regulations allowed for 10%. However, in doing so he will need to work with Mr. Keach and the Board regarding the possible need for a waiver of the K Factor. Mr. McNamara said the first step would be to determine how much blasting may be required. Mr. Zohdi believed the highest point of blasting for the road (between station 500 and 800) was approximately 10ft. Given the circumstances, Mr. McNamara felt the Board would be flexible. Mr. Keach reviewed the plan set and discussed the adjustments that could be made to the road profile. He said if test pits were done approximately every 50ft. they would have a good indication of where bedrock was located. He said during Phase I they learned the area had 'cap' rock conditions that may be able to be moved without blasting.

Attorney Prolman addressed the letter submitted by Ms. McGlynn. He called out the sentence reading *"There seems to be no willingness to accept responsibility or recompense us for the damage that we suffered from this blast."* He told the Board to date there had been no evidence or proof, such that Skyview Estates or the blasting company was responsible for the failure of their well. He said if it turns out that there is satisfactory evidence of a mistake they would 'be on the hook' and pay for it. In reviewing the expert's report and the map showing the location of the blast, Attorney Prolman pointed out that the wells within the project were much closer than anyone else's well. He had no answer to what caused the failure of the well. He believed the insurance company's report would stand up given the distance and the expert information. Attorney Prolman requested that they stay out of the vetting process of the report. He asked that the Board choose who would review the report and asked if a cap could be put on the expense. He reiterated they were in favor of addressing the blasting issues.

Mr. McNamara replied that the process of vetting the report would be between Mr. Keach, Mr. Gowan and the Board; the applicant will be notified of the cost prior to review occurring. He said the content of the (McGlynn) letter and the report was a civil matter, the Board was concerned with the future and getting the project to a point that it was not causing further damage.

PUBLIC INPUT

Cecilia and Edward McGlynn of 9 Scenic View Drive came forward to discuss their concerns. She began by summarizing the contents of their letter (dated August 29, 2014) that had been submitted to the Board. She said when they instantly lost their water on June 24th and the well company come out and deemed in their best guess that it was due to blasting, they had a load of water delivered. At that point there were concerns because the well was only supposed to hold 1,100 gallons and they had to stop filling at 2,200 gallons. She was contacted immediately and told there was bubbling and gurgling

and it was the best guess at that time there may be a crack. She informed no one wanted to investigate anything further because of a possible insurance case due to the value of the equipment.

Ms. McGlynn updated the Board and stated that they currently had no water and a water delivery was scheduled. She said they were not able to be in their home during the summer months for more than three days at a time. The situation had destroyed the family's summer. She said they were now back home because school had begun, but were waiting for the next water delivery. The subject was very painful for her to discuss. In starting the process and speaking to the blaster, Ms. McGlynn said she was told there was absolutely no way she could ever prove the situation. In speaking to the blaster's insurance she was also told there was no way she could ever prove it. Hearing this she contacted her homeowner's insurance and was informed they cover a well pump but not damage to a well. Through the process Ms. McGlynn learned that a seismograph reading of .2 was the basis for everything. After they filed a claim, photographs were taken of the structural damage to the house, but the only examination of the well was visual to ensure it looked intact. The well cap was not lifted. Ms. McGlynn told the Board her questions to Mr. Gargas (owner) was what else could possibly cause the damage on her property during this time. She looked on line to see if there had been an earthquake and to the best of her knowledge found nothing. She said everything was based on the theory that nothing could happen with a .2 reading. Ms. McGlynn was unable to determine the validity of the numbers. When speaking with the Fire Inspector (John Hodge) she learned he was present for each blast; however, oversight to determine if blasts are set up properly were not in his job description. This leaves the assumption that the blasts were done accurately. After her initial contact with the Town regarding blasting, she was informed that an additional blast would be occurring. The Fire Inspector came to her home prior to this blast and conducted an initial review of the premises. The blast was a .5 and caused no damage. Ms. McGlynn didn't know how this was possible. She believed the facts should outweigh the theories. Many of the neighbors felt the initial blast and there was damage to show.

Ms. McGlynn asked the Board to have very serious monitoring of the blasts. She would like to know who provides the oversight to ensure blasts are set up and administered properly. Mr. McNamara noted once a plan was approved by the Board and a project required blasting, it fell completely under the purview of the Fire Department to monitor and set the standards (per Town Ordinance). He said they would have the report vetted and try to take some mitigating measures of the future construction to ensure a similar situation doesn't occur again.

Mr. McGlynn said it was mentioned that the placement of the devices was very specific, which was not the case. Devices are placed somewhere near the nearest structure. There is no indication as to how or where they are placed or what orientation it may have. He said the company with the financial interest was left to monitor themselves. He heard that blasting was done mainly for the roads. He noted that there were a significant number of foundations that were moving closer to Scenic View Drive. Mr. McGlynn said he had researched the theory that the .2 blast couldn't have damaged anything as far away as his home. He said obviously damage occurred and they were told by the well company that their well was 'caput'. He told the Board that the New Hampshire Department of Environmental Services ('DES') had done a draft report in 2009 that indicated the seismograph readings shouldn't be used to make any kind of judgment on the aquifer impact. With this he said the blasting may not be damaging the structures in the area, but it could very well be impacting the aquifer within the area.

Mr. McGlynn stated they understood the development was moving forward and they weren't trying to stop it. They were at the point that they wanted the base line and the assurance that nothing else was done incorrectly. He said if something was done incorrectly someone would be held accountable. He felt there were several things the Town and the Board had in the ability to make several requests, such as increasing the notification area, requesting additional geographic studies, condition surveys of additional homeowners, requiring additional measurement devices, and most important was to have a private consultant (at the blasting company's expense) verify blast data.

In response, Mr. McNamara asked Mr. Gowan to contact Town Counsel on behalf of the Board to determine the restrictions of the blasting ordinance and which portions could be expanded without Town Meeting vote.

Mr. Doherty commented he was very familiar with drilling and blasting and said sometimes unexpected things happen even when precautions are taken. Blasting is not an exact science. Ms. McGlynn said from what she was being told and from the information she's gathered it makes it appear that blasting is an exact science. Mr. McNamara said moving forward, the Board was doing the best they could under the authority they had. Mr. Gowan said he will forward information to Town Counsel and seek answers to the questions raised.

Ms. McGlynn said they had been focusing on the well, but wanted to make sure that people were clear on the fact that there was also damage to her home. Her insurance company had taken photographs of structure damage. She understood that part of the damage appeared to be from settling, which she felt was caused by the blasting. Mr. McNamara replied it was a civil matter. He said he shared their concerns and wished them the best of luck.

Mr. Jim Fisher, 19 Scenic View Drive suggested that the Town ask the developer to post a bond for blasting. Mr. McNamara said he had a similar thought, but from the Town's perspective it wasn't a good idea. He said the reason the Town requires insurance for blasting was for this exact situation. He said if the Town were to require a bond for blasting it would bring in its own liability for the Town. Mr. Fisher refreshed the Board on the water issues that he said had been spoken about for approximately seven years. He said there were two wells (within the project), which combined had a flow of forty gallons per minute (57,600 gallon per day). Originally, when the design criteria to build was estimated (by Bruce Lewis) the figure of 25,000-28,000 gallons of use per day was determined. Mr. Fisher said the original design was for a lot less houses. He understood the plan was for sixty-three houses, all of which were three bedrooms. There will be a total of 189 bedrooms and the average use per day (according to Bruce Lewis) was 271 gallons, which would bring the total daily use to 51,219 gallons per day. The biggest concern was irrigation (if allowed) would double the usage. Mr. Fisher understood there was to be no irrigation and notes had been added on the plan to indicate this fact. He was shocked when he saw that the model home had eight hoses attached to the outside spigot on the side of the home and believed the rear spigot had the same set up (for a total of eighteen sprinklers). The photographs were submitted to the Board for the record and displayed for review.

Mr. Gowan asked for a copy of the photograph. He told the Board that he consulted with Bruce Lewis, water system designer, and asked what the 'no irrigation' restriction meant. He said Mr. Lewis indicated that there were to be no subterranean systems. Mr. Gowan said the photograph submitted by Mr. Fisher was troubling because it would indicate the restriction was bypassed. However, he understood new lawns were being put in and they would want them to be green. Mr.

Gowan said the restriction was included in the homeowner's documents and therefore up to the homeowners to enforce.

Mr. Dadak recalled asking if there was adequate water in the area for the number homes being proposed. He assumed the State Regulation had reduced the requirements based on the fact that people wouldn't have sprinkler systems.

Mr. Zohdi told the Board he would speak with Attorney Prolman after the meeting. He said they agreed with the Board to have a consultant review the blasting. He said the water system and usage belonged to Pennichuck Water Company. He said Pennichuck wanted double the water usage in the system before they took it over. Anything involving the water usage was between the developer (John Gargasz) and Pennichuck Water.

Attorney Prolman told the Board he hadn't seen the photograph of the model home (with the water spigot connection) and had some questions about it. He said he wrote the homeowner's association and protective covenants which included very strict rules about no irrigation. He commented there were some neighbors (on Spaulding Hill Road) leading up to the Skyview project that asked to tap into the water supply system. They were told 'no' because the system didn't have the capacity. He told the Board that the water was to be closely monitored by Pennichuck and the homeowner's association.

Mr. McNamara suggested date specifying the plan to the first meeting in October. The plan was date specified to the October 6, 2014 meeting.

Mr. Montbleau joined the Board.

NEW BUSINESS

PB Case# PL2014-00027

Map 16 Lot 13-84

NEW ENGLAND PENTACOSTAL MINISTRIES - 955 Bridge Street - Site Plan review for construction of a proposed shed.

Mr. Dadak read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

There was no one in attendance to present the plan.

The case was date specified to the October 6, 2014 meeting.

DISCUSSION - Land Use Regulations Draft

Mr. Gowan provided the Board with the final draft of the Subdivision Regulations for review. Mr. McNamara asked that any changes/corrections be forwarded to Mr. Gowan. The Board will discuss the regulations during their October meeting.

ADMINISTRATIVE - Potential discussion and vote on Capital Improvement Plan – 7 year Project Schedule

The Board was provided with an updated Capital Improvement Plan ('CIP') for review. Mr. McNamara said the CIP committee had met and reviewed submissions and correspondence from the departments within the Town. The committee compiled the most recent report. He asked if anyone had questions/concerns regarding the project schedule. Once the Planning Board approves the CIP it will be forwarded to the Budget Committee.

Mr. Gowan discussed how the CIP was updated and summarized the upcoming projects and their ratings. The schedule portion of the CIP was ready for approval. The remaining CIP document was being reviewed/updated by the Nashua Regional Planning Commission and would be ready soon for Planning Board approval.

MOTION: (Culbert/Montbleau) To approve the Capital Improvement Plan and recommend the schedule to the Board of Selectmen and Budget Committee.

VOTE: (6-0-0) The motion carried.

DATE SPECIFIED PLAN(S)

October 6, 2014

PB Case #PL2014-00019 - Map 32 Lot 1-146-24 - SKYVIEW ESTATES, LLC - Skyview Estates Phase II - Majestic Avenue

PB Case# PL2014-00027 - Map 16 Lot 13-84 - NEW ENGLAND PENTACOSTAL MINISTRIES - 955 Bridge Street

MINUTES

MOTION: (Culbert/Doherty) To approve the August 18, 2014 meeting minutes as written.

VOTE: (6-0-0) The motion carried.

ADJOURNMENT

MOTION: (Culbert/Montbleau) To adjourn the meeting.

VOTE: (6-0-0) The motion carried.

The meeting was adjourned at approximately 8:42pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary

