

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
February 1, 2016**

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

Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Paddy Culbert, Jason Croteau (arrived after the meeting commenced), Joseph Passamonte, Alternate Tim Doherty, Alternate Mike Sherman, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

ABSENT: Alternate Robert Molloy

Mr. McNamara appointed Mr. Sherman to vote in Mr. Croteau's absence. (*Mr. Croteau arrived at 7:06*)

PUBLIC MEETING

The Pelham Planning Board to vote to approve the new High School Impact Fee. The public hearing took place on January 4, 2016 at 8:00 pm at the Pelham Municipal Center, 6 Village Green, Pelham, New Hampshire. Once the Planning Board approves the new High School Impact Fee it will be scheduled for a regular meeting of the Board of Selectmen and upon their approval the new impact fee shall become effective. (NOT A PUBLIC HEARING)

There were no questions or concerns raised.

MOTION: (Culbert/Montbleau) To approve the new High School Impact Fee.

VOTE: (6-1-0) The motion carried. Mr. Sherman voted in opposition.

ADMINISTRATIVE

Request for Bond Reduction - Map 16 Lot 13-85 - PETERSEN BUILT HOMES – Paradise Estates

Mr. Croteau arrived.

Mr. McNamara stated the Board heard the matter at a previous meeting. He and Mr. McDevitt walked the site January 2nd with a number of abutters, Mr. Petersen and his subcontractor. They all toured the affected areas and were provided with photographs of those areas without snow. Mr. McDevitt spoke about what was observed during the site walk. Subsequently, he reviewed the plans contained in the Planning Department files to see if erosion had been dealt with from an engineering perspective and if there was any specificity on those plans as to where grass would be planted. He came away with two impressions. First, Mr. McDevitt didn't believe it was possible to withhold the bond money because there was no specificity as to where grass starts and wood chips begin. He believed there was a perceived and/or alleged understanding between the residents and the developer about where grass would be, but he found no mention of such contained in the information presented to the Planning Board. With regard to erosion, Mr. McDevitt was concerned about what the Town's engineer signed off on. He stated the Town's engineer signed off completely on the development; road drainage had been inspected and re-inspected with no concerns. He said there may have been agreements between the developer and residents, but there was no evidence on record with the Town that would involve

the Planning Board. He felt the Town would be on 'thin ice' if they were to withhold the bond money on the basis that the agreement with the Planning Board had been violated. Mr. McDevitt favored releasing the bond money.

Mr. McNamara commented that parts of the area behind the homes were so steep that grass couldn't have been mowed if it was planted. He reiterated it was very steep and felt the area was done according to plans. He didn't feel they could hold the bond. Mr. McNamara felt the photographs (provided during the site walk) adequately showed that grass was planted to a certain extent in the back.

Mr. Gowan noted he had reviewed the plans and found specific information about landscaping in front of the buildings, which had been achieved. The only detail about loam and seeding was on the road plan (shoulders of the road). He said the one thing he witnessed when he reviewed the property was a piece of pipe. He was unsure if it was part of the project, but believed Mr. Petersen would be willing to remove it. (*Mr. Petersen was present in the audience and nodded his head in the affirmative to Mr. Gowan's request.*) He noted the removal of the pipe would need to be with permission of the Homeowner's Association.

Mr. McNamara asked Mr. Petersen if he had any objection to removing the pipe. From the audience, Mr. Petersen stated he had no objection.

Mr. McNamara opened the discussion to public input. There was one person seated in the audience (who did not identify themselves) that thanked the Board.

The original bond was \$85,250.

The current bond being held is \$14,244.

Town engineer and Planning Department recommends a full release of current bond.

MOTION: (Culbert/McDevitt) To release \$14,244, which represents the current bond being held for the Paradise Estates project.

VOTE: (7-0-0) The motion carried.

OLD BUSINESS

PB Case #PL2015-00021

Map 39 Lot 1-51-1

SESTON, Carolyn - Sherburne Road & Mammoth Road - Seeking a Special Permit to approve yield plan for proposed conservation subdivision (*Note: full application for Conservation Subdivision will follow once Special Permit and density is established*)

Mr. McNamara informed that the applicant's representative, Peter Zohdi of Herbert Associates, submitted a request to date specify the hearing to March 7, 2016. Mr. Zohdi indicated their traffic engineer was unable to attend the meeting. Mr. McNamara noted the case was unable to be heard during the January 21, 2016 meeting due to the Board's lack of quorum.

The plan was date specified to March 7, 2016.

NEW BUSINESS

PB Case #2016-00001

Map 22 Lot 7-36

DEXTER, Karen & PHILBRICK, Melanie - 18 Atwood Road – Proposed Site Review to operate an awning company in an existing garage

Mr. McNamara stated that the applicant was unable to attend the current meeting and unable to date specify to the February 18th meeting. They will contact the Planning Department/Board when they are able to reschedule. The applicant was informed they would need to re-notify abutters when they return to the Board.

DISCUSSION

Planning Director's early engagement with applicants

Mr. McNamara noted he requested Steve Keach of Keach Nordstrom (Board's engineering review firm) to provide an opinion letter. That letter was given to Board members for review.

Mr. Sherman began the discussion. He said if the Town was taken to court, there is a question of how far along the applicant was lead in the review process. He believed when Mr. Gowan and Mr. Keach worked on a plan for more than five months, prior to it coming in front of the Board, it could be said the applicant had been lead a long way 'down the path' with regard to expenses. Mr. Sherman said if Mr. Gowan was working with an applicant for a couple months, he would like the review 'clock' to begin. He wanted information to be given to the Board regarding projects that might be coming forward for the Board's review, and not waiting five months to provide information because it was unfair to do so after an applicant has spent money for engineering.

Mr. Culbert stated the process had been the same for the twenty-six years he'd been on the Board. Developers spend money at their own risk. He pointed out once a plan is accepted for consideration, there was a review time clock of 65 days. He said if an inadequate plan came in front of the Board, that review clock would begin.

Mr. Doherty understood there was a certain way the Board reviewed plans; however, new innovative land use control ordinance, such as the Mixed Use Zoning District ('MUZD') didn't fall under the Ordinance and administrative decision making process. He said the State RSA didn't allow the Planning Board to give away that administrative decision process; the new ordinance didn't contain language to address this. He noted the situation was only in connection with the two new zoning ordinances.

Mr. Dadak stated he had been involved with the Board (in one way or another) for approximately thirty years. He recalled there had been some instances where an applicant would bring a conceptual plan to the Board for non-binding comment. He believed if every plan came in for conceptual review, it would jam the review process.

Mr. Sherman wanted to know why the Board couldn't review a preliminary plan if Mr. Gowan and Mr. Keach had worked with an applicant for over five months. He wanted the opportunity to see preliminary plans to get an idea of what would be coming in front of the Board. Mr. McNamara replied the Board couldn't have a discussion about a plan until they took jurisdiction of it. Mr. Sherman asked if the Board could see a plan as conceptual if Mr. Keach had provided review. Mr. McNamara said an applicant decided at what point they wanted to bring a plan in front of the Board. He stated one of Mr. Gowan's responsibilities as Town Planner was to assist applicants when they request direction. If he sees obvious deficiencies or zoning matters he would need to point it out and make recommendations; however he was not allowed to mislead applicants. The Board makes the final decision and can go against the Planning Director if they felt he made a wrong decision.

Having been on the Board for many years, Mr. Montbleau spoke about the past, prior to the Town having a Planning Director and engineering firm. He said applicants would come to the Board with conceptual plans.

The Board would then discuss those plans for hours at a time and have prolonged meetings lasting until 1AM. Once the conceptual process was complete, a plan would be submitted to the Board and the review time clock would begin. There was a point at which the Town began to grow and usable land was in question because of wetlands, habitat etc. and the Board sought guidance from the Nashua Regional Planning Commission ('NRPC'). Mr. Montbleau said it was at that time the Town realized they needed a planning director. He pointed out the job of the planning director has increasingly become more sophisticated and they have taken on more responsibility. The planning director and engineering company reviews plans against the regulations and ordinances to ensure it conforms. Mr. Montbleau stated a lot of information was being filtered by Mr. Gowan who had a lot of skill. He believed the real issue involved the MUZD and the first plan submitted for such. At this point, he felt the Board should have confidence in Mr. Gowan along with Keach Nordstrom to filter submissions. He noted any discussion they had with applicants was understood to be non-binding and for guidance purposes only; the Board has the final say on plans. Mr. Montbleau didn't want the planning director to be constricted to the point that the Board had to go back to the time of reviewing conceptual plans for every application. He said the Board should let the planning director do their job.

With regard to the MUZD, Mr. Doherty reviewed what Windham used and found it to be similar. He said the Windham Planning Board had put together a subcommittee/commission (similar to Pelham's Conservation Commission) to oversee plans within their center of town district. He suggested Pelham could look into doing something similar by appointing an advisory board to meet with applicants.

Mr. Sherman spoke about a recent case in the MUZD and the chairman commenting about 'leading the applicant along a path' and 'the amount of engineering cost' that had been spent. Mr. McNamara recalled the meeting and explained that the matter was in front of the Board. He said the statement was in the context of the Board having taken jurisdiction, not mentioning something and later saying it was against zoning. Mr. Sherman replied all the engineering costs had been spent in the five months leading up to the hearing. Mr. McNamara stated the costs were at the developer's risk. He said prior to the plan coming in front of the Board costs are at the developer's own risk. An applicant can't use a voluntary expenditure against the Board. Often, engineering is done by owner's to determine what can be done with property in accordance with the Town's regulations and ordinances. Mr. McNamara reiterated Mr. Gowan's job was to filter and point out aspects of a plan to a developer that the Board may question. He said if the Board took conceptual plans without input from Mr. Gowan, the Board would become bogged down.

Mr. Montbleau felt anything done by an applicant, prior to the Board taking jurisdiction on a plan, was at their own risk. Mr. Passamonte questioned at what point the Board could indicate they didn't agree with a decision of the planning director. Mr. McNamara replied it would depend on the context it was brought up; certain circumstances would need to go to the Zoning Board for decision. Mr. Passamonte had a question about a recent case and a decision that was made. Mr. McNamara said the Board could discuss the question when the matter came back in front of the Board.

Mr. McDevitt appreciated the discussion. He referred to the Planning Board Procedures, under the section Accepting a Plan for Consideration, and read aloud the instructions. He then referred to the Municipal Law Lecture Series book that contains a section regarding planning board procedures in accordance with RSA 676:1, for plans to be reviewed through non-binding discussions. It also referred to a Supreme Court case and cautions boards when offering recommendations during preliminary review because the board may be bound to those recommendations later in the process. Mr. McDevitt believed the Board needed to change their procedures if they were supposed to be different. He recommended having applicants sign something that indicates they understand their discussion with Mr. Gowan is non-binding. With regard to the plan within the MUZD, he felt the Board should have had a preliminary discussion. As to Mr. Doherty's recommendation of having a MUZD panel (commission), conceptually he thought it wasn't a bad idea, but spoke to the difficulty of engaging volunteers and the concern that the panel would slow down the property owner's right to develop. He said it might not hurt to let the Board know who was contracting through the Town to work with Keach Nordstrom.

Mr. Gowan stated no one defended the Board's rights as he did. He constantly caveated his suggestions with informing that the Board would make the decision. He spoke to the MUZD project and his message/challenge to the applicant to bring in the best plan possible. He stated he had never made a decision on behalf of the Board. He discussed the engineering review conducted by Keach Nordstrom. Mr. Gowan noted he wasn't having in depth meetings with applicants; however, he felt the project was infinitely better than what it would have been had he not engaged with the applicant early on. He said it didn't mean the Board was committed to grant an approval. He stated the idea that he was manipulating things was not factual. He was happy to take whatever approach the Board preferred but felt it would be chaotic and counter-productive to establish another review board.

Mr. Dadak reviewed Mr. Keach's letter that offers a suggestion that Mr. Gowan provide the Board with a Planning Director update of discussions he had and applications that may occur.

In reference to the Conservation Subdivision Ordinance, Mr. Doherty said when plans came in front of the Board they had to make the decision whether to allow an applicant to build a conservation or conventional subdivision. He agreed there had to be a mechanism to ensure the Town is covered and the applicant understands any preliminary review/engineering is done at their own risk. He agreed that the Board needed to have something in their procedures and/or by-laws. Mr. McNamara agreed that applicants should sign something that indicates they understand discussions are non-binding and if they incur expenses it is at their own risk. The Board had no objection to creating a letter of understanding; Mr. Gowan will provide the Board with a draft document for review. The Board also asked Mr. Gowan to create a Planning Director briefing to be summarized at the end of Board meetings.

DATE SPECIFIED HEARING(S) / DISCUSSION(S) – March 7, 2016

PB Case #PL2015-00021 - Map 39 Lot 1-51-1 - SESTON, Carolyn - Sherburne Road & Mammoth Road

MINUTES REVIEW

January 4, 2016

MOTION: (Culbert/McDevitt) To approve the January 4, 2016 meeting minutes as written.

VOTE: (5-0-2) The motion carried. Mr. Croteau and Mr. Passamonte abstained.

January 21, 2016

MOTION: (McDevitt/Culbert) To approve the January 21, 2016 meeting minutes as amended.

VOTE: (4-0-3) The motion carried. Mr. Montbleau, Mr. Dadak and Mr. Passamonte abstained.

ADJOURNMENT

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

VOTE: (7-0-0) The motion carried.

The meeting was adjourned at approximately 8:04 pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary