

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
October 19, 2015**

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

The Secretary Paul Dadak called roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Paddy Culbert, Jason Croteau, Joseph Passamonte, Alternate Tim Doherty, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

ABSENT: Alternate Robert Molloy, Alternate Mike Sherman

Mr. Doherty was appointed to vote in Mr. Croteau's absence, or until he arrived.

OLD BUSINESS

PB Case #PL2015-00013

Maps 15 & 22 Lots 8-86, 88 & 89

BROOKWOOD REALTY GROUP, LLC - off Tina Avenue, 10 Tina Avenue and 15 Tina Avenue - Seeking a Site Plan review for a change of use to permit the temporary use of a property to store non-hazardous materials such as steel and other construction materials and to re-grade an area less than 2 acres. The closest of the stored materials is 500ft.+ from the end of Tina Avenue.

Mr. McNamara informed that Mr. Gowan had received a letter from the applicant's attorney withdrawing the matter from the Planning and Zoning Boards.

The case was withdrawn without prejudice.

PB Case #PL2015-00002

Map 41 Lot 10-245

PJ KEATING COMPANY - 2 Bridge Street - Proposed improvements to the site and stormwater management facilities and seeking a Special Permit

Mr. McNamara questioned if the Board had received comment from the Conservation Commission. Mr. Gowan understood that the applicant had met with the Conservation Commission during the last week. Although the commission didn't have the opportunity to draft a formal letter, the Chairman, Paul Gagnon wanted to relay to the Planning Board that the Conservation Commission unanimously voted to support the project. They requested the drainage structure be pulled further out of the Wetland Conservation District ('WCD') if possible, to reduce encroachment.

Mr. Stephen Benben of Triton Environmental, representing the applicant, came forward to discuss the proposed site improvements. He provided a status update of what had been done since their last meeting with the Board. He informed Lucas Environmental had been contracted to do the wetland delineation and found that the wetlands were encroaching further into the site than the National Inventory Wetland Map had shown. The areas were flagged and the site plan has been updated. There were two areas that had a conflict with the wetlands: 1) large paved area to be used for recycled asphalt, and 2) area of the storm water basin. Mr. Benben said the grading on the east side of the pad was encroaching in the WCD; they have now pulled the paved area and grading outside the WCD. The area of the storm water basin had a finger wetland that extended further into the WCD. They've pulled the basin and grading further to the south, but were still

partially in the WCD. He highlighted the areas referenced and noted the Conservation Commission had asked if there was any way to pull the basin area further south so all disturbance would be out of the WCD. He said they would look at the area and see if they could make additional adjustments.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward to offer his comments. He understood Mr. Benben would provide him with a copy of the updated plan. He noted his last review letter was dated April 29, 2015 (prior to site walk). He wanted to confirm that the proposal, as modified, complied with the requirements of the WCD Ordinance. He summarized the items in his April review letter and spoke about what he would be looking for in the revised plan. He was hopeful that the wetland delineation would bring the plan into compliance with Zoning. He suggested including the applicant's plan narrative in the Board's decision because it contained important details of the system and maintenance. Mr. Benben noted the current plan showed them within the WCD, but they were evaluating to see if they could adjust the plan and pull the disturbance out. Mr. McNamara commented that the Board couldn't act on the Special Permit unless the applicant was truly in need of it. Mr. Gowan suggested that Mr. Benben provide information to Mr. Keach as soon as possible so Mr. Keach could submit an additional review letter to the Board.

Mr. Doherty looked at the space between the sediment area and old retention basin and didn't see room on the plan to slide it away from the WCD. He asked if the applicant felt they could feasibly move out of the WCD. Mr. Benben replied the storm water basin was designed to handle a certain amount of water and there was room on the east side to possibly make adjustments to pick up volume in another area. Mr. Doherty wanted to know if the proposed system would be able to last long-term. Mr. Benben answered yes and went on to explain that the system was designed so a piece of large machinery could access the area and 'muck' out the basin as needed.

Mr. Culbert questioned if with the proposed changes the applicant could maintain the 30% slopes shown on the plan. Mr. Benben replied they would maintain the slopes as shown on the plan.

Mr. Gowan questioned if some of the existing visible infrastructure would be removed. Mr. Benben believed some of the crushers on the west side had been removed. Mr. Gowan asked for a brief description of the purpose for the reclaimed asphalt area. Mr. Benben explained that the asphalt was taken off existing roads and stockpiled in the designated area. The material could be used as a road base, or crushed and reused in asphalt. The material is crushed by an outside company that comes to the site a couple times per year with portable equipment. Currently the material sits on packed dirt. The proposal is to pave and curb the area to capture and treat rain water/runoff. Mr. Keach noted one advantage to having the paved area with curbing was any runoff would flow into the closed drainage system and treatment process.

Mr. McNamara opened the hearing to public input. No one came forward.

The case was date specified to November 2, 2015.

NEW BUSINESS

PB Case #2015-00019

Map 6 Lot 4-137-28

DREME BUILDERS - 37 Longview Circle - Seeking a Special Use Permit to convert an existing duplex into a condominium form of ownership

Mr. Dadak read the list of abutters aloud. Mr. John Riley, 37 Longview Circle told the Board he did not receive a letter. Mr. McNamara asked Mr. Riley if he had an objection to the Board hearing the case. Mr. Riley answered yes. He stated the neighborhood contained single family homes, there were no duplexes. Mr. McNamara told Mr. Riley he had a right to request a postponement, but

explained that the only matter in front of the Board was to change the form of ownership; the Board didn't have a lot of discretion in the matter. Mr. Riley understood and did not object to the Board proceeding.

Mr. Joseph Maynard of Benchmark Engineering, representing the applicant, came forward to discuss the requested Special Use Permit. He explained the property was almost four acres and contained 400ft+ in frontage. Under Town Zoning the owner could construct a duplex on the property. Currently the property is vacant; however, once the duplex was constructed, the applicant requested condominium ownership.

Given that the duplex was not yet constructed, Mr. McNamara asked Mr. Gowan if the Board would follow the same process for condo ownership as they would if there was an existing duplex. Mr. Gowan believed so. He stated the owner had a right to build the structure. Mr. Gowan couldn't recall the Board ever not allowing a Special Permit for type of ownership. He felt the fact that the building was not built was irrelevant. Mr. Maynard noted that his client had constructed a duplex on Route 38 and received Special Permit prior to construction within the last year.

Mr. Culbert wanted to know the land mass for the units because he saw there was limited common area for condo B. Mr. Maynard replied the total land mass was almost four acres in size. He had not yet delineated the area associated with each side. Mr. Culbert asked that he do so.

Mr. Gowan understood the units would share a common well and asked how it would function. Mr. Maynard replied there were typically two pumps (one for each side of the building). He noted there would be a common septic field on the property. Mr. Gowan confirmed there would be appropriate homeowner documents drafted. Mr. Maynard replied the documents were prepared by Attorney Peter Bronstein of Soule, Leslie, Kidder in Salem, NH and submitted with the application.

Mr. McNamara asked if the applicant had any representation or rendering of what would be built. Mr. Maynard answered no; he had no knowledge of the floor plan or layout of the structures. Mr. McNamara asked if the structure would keep with the general nature of the homes in the neighborhood. Mr. Maynard had not seen pictures of the structure. Mr. Doherty felt the Board should encourage the owner to construct buildings that kept with the nature of the neighborhood.

Mr. Doherty asked for more information regarding the drainage easement and what the 'horseshoe dotted line' indicated. Mr. Maynard replied the dotted line indicated where Longview Circle previously needed. He left the outline of the circle because when researching the property he didn't see a discontinuance of it. With regard to the drainage easement, it was done when Longview was constructed. He described its location. Mr. Doherty questioned if part of the old circle was part of the applicant's property or Town owned. Mr. Maynard believed it was part of the applicant's property by the extension of Longview Circle. He was unable to find documentation that the easement had been discontinued.

PUBLIC INPUT

Mr. Brian Woznik, 40 Longview Circle was concerned with a duplex not fitting with the existing neighborhood. He saw the duplex on Route 38 and commented it didn't look like the homes on Longview. He noted his concern about the duplex causing a decrease in property values. He didn't feel a duplex made sense. Mr. McNamara heard the concerns and explained that the applicant was in front of the Board simply for

ownership. The applicant had four acres and was allowed by law to construct a duplex. He noted it wouldn't make sense to construct something that didn't keep with the nature of the neighborhood; they would have a more marketable property if they did. Mr. Woznik hoped after construction that his property would be reassessed so his property taxes would go down. He asked if the land was zoned for residential or single-family. Mr. McNamara replied it was zoned residential. Mr. Woznik asked if a building permit had been issued. He commented they were already bringing fill to the site. Mr. Gowan replied if the fill was nowhere near the conservation district. Mr. Woznik stated there were no hay bales or silt fencing. Mr. Gowan suggested Mr. Maynard speak to his client. Mr. Maynard replied he had only been asked to permit the ownership, he wasn't aware of work being done on site. Mr. Woznik told the Board his name was announced, but he didn't receive a notification letter. He said there were two letters, the first was an incorrect notification. They didn't receive the second notification. Mr. Dadak reviewed the file. Mr. Maynard explained the first notification contained the wrong map/lot for the subject file. He sent out a re-notification for the present meeting; some people who received the first notification were not abutters when the map/lot was corrected.

Mr. McNamara stated abutters had a right to receive proper notification and the Board would meet again. He noted Mr. Woznik had the opportunity to comment and give the Board his views. He asked Mr. Woznik how he wanted to proceed. Mr. Woznik said he simply wanted to know what his rights were as a tax payer. Mr. Dadak didn't see a signed receipt for the most recent abutter notification. Mr. McNamara asked Mr. Woznik if he would like the Board to stop the proceedings for re-notification of abutters, or if he would allow the Board to proceed. Mr. Woznik questioned if the Board would wait to see what the proposed house would look like. Mr. McNamara answered no; the only matter in front of the Board was regarding the form of ownership. Mr. Gowan stated the Board didn't review individual houses. If someone complies with Zoning and Building Regulations they are allowed to proceed.

Mr. Culbert wanted to know if the dotted circle shown on the plan was Town owned or if it went with the lot. Mr. Gowan stated he would need to see evidence of how it was resolved before he would issue a building permit. Mr. Maynard replied it was shown as a temporary cul-de-sac. He said typically there's a release when a road is extended. He found that the plan showing the extension of the road were signed and recorded at the Registry of Deeds; that plan didn't reflect the cul-de-sac. Mr. Gowan stated he would make resolution of cul-de-sac a condition for a building permit to be issued.

MOTION: (Croteau/Passamonte) To approve Special Use Permit to allow a duplex that is to be constructed to be converted to a condominium form of ownership.

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

Discussion – Attorney Pat Panciocco

Seeking Planning Board opinion to go to the Board of Selectmen to resolve two land locked parcels

Mr. Gowan explained to the Board that Attorney Patricia Panciocco was trying to resolve a very complex land use issue that would ultimately go in front of the Board of Selectmen. He stated Town Counsel (Attorney John Ratigan) opinion was for Atty. Panciocco to seek recommendations from the Conservation Commission and the Planning Board, so both boards could advise the Board of Selectmen. He said the situation was a right-of-way that somehow became a lot onto its own.

Mr. McDevitt stated he would participate in the discussion, but would not vote.

Attorney Panciocco, representing J & S Investments owner of Map 16, Lot 13-86 and Lot 13-87, came in front of the Board to obtain the Board's opinion regarding the landlocked parcels.

Mr. Gowan provided notes to the Board that explained the request to either allow an access easement to the two landlocked parcels over Town owned right-of-way or alternatively for the right-of-way to be conveyed to the owners of the lots. RSA 41:14-a indicates the need for the Board of Selectmen to have both the Conservation Commission and Planning Board recommendations prior to taking the requested action. She provided the Board with a historical summary of the area and the specific lots in relation to Map 16 Lot 13-88 that was previously a 50ft right-of-way and is now a Town owned lot (by tax deed dated December 29, 2005). She displayed photographs of the right-of-way area facing all directions. She indicated that she met with the Conservation Commission in the last week who found there was no conservation value in the right-of-way.

Mr. Doherty asked for the status of Lot 13-89 (contained on Exhibit A). Atty. Panciocco replied her client didn't own that lot, it was currently a vacant lot of record. Mr. Doherty questioned if it needed to be tied in with the decision, or if it would remain landlocked. Mr. McNamara replied the Board was only making a recommendation to the Selectmen. The Selectmen will make a final determination. Mr. Doherty felt the Board should look out for the rights of Lot 13-89 in their recommendation since they weren't present to represent themselves. He felt the Selectmen should also take that lot into consideration. Atty. Panciocco recommended to her client that they reach out to the owner of Lot 13-89. She noted the owner would be notified when a public hearing was scheduled. Mr. Gowan asked if the same owner owned Lot 13-89 and Lot 13-90. Atty. Panciocco believed there were separate owners, but had not checked recently.

There was a brief discussion on the topic of if there would need to be something on the Town Meeting ballot. Mr. McDevitt explained during the last Town Meeting there were three properties listed (for auction) that had been taken by tax deed. Subsequently, they found an article was passed during the 1958 Town Meeting to allow the Selectmen directly to sell tax deeded properties by auction. He said this gives the option of selling properties taken by tax deed either by auction, or by placing them on the warrant with a request for it to be sold to a specific person. Further discussion continued regarding the history of the area and the lots as they were currently designated. Mr. Montbleau questioned if the surrounding lot owners had been contacted. Atty. Panciocco recommended that her client contact the owner of Lot 13-89 because they didn't have frontage. From what she understood, the owner of Lot 13-89 was not in a position at present to invest money into the property. She recommended her client be prepared to work with the owner because if they were allowed to gain access there would be a certain investment in improvements to comply with any Town imposed conditions, Fire Code or the land-use boards. She said the parties should be prepared for a cost sharing mechanism so both lots could benefit. She didn't feel there was any intent to shut out the owner of Lot 13-89; they would have to pay their fair share.

Mr. Montbleau questioned if Atty. Panciocco's client intended to use the right-of-way or pave the right-of-way. He wanted to know if they needed to create a road for development to work. Atty. Panciocco was unsure if they would need a full-blown road for possibly two houses. She felt they may look to create something similar to a common driveway while at the same time reserving the Town easement rights to access the area for turn-around purposes (snow plows and emergency vehicle access).

Mr. Gowan commented that 50ft was a lot of area and building a road to Town standards may be cost prohibitive. He said if the lot (right-of-way) were to be conveyed (25ft to the lots on either side) each lot would end up with frontage on a Town road. Separately, if easements made more sense, the Selectmen could be in a position two separate, or one for a common driveway. Mr. Gowan said although they were historical lots of record, he felt it was important to accommodate all the parties involved through an easement or by subdividing the parcel into two 25ft sections.

Mr. Doherty felt another option would be for Atty. Panciocco's client to create a cul-de-sac, with a portion of it 'clipping' the corner/front of Lot 13-89.

Mr. McNamara asked Atty. Panciocco if her client had a preference as to conveyance or dedication. Atty. Panciocco answered no. She's advised her client to remain open minded and work with the boards. She

would prefer to see a conveyance, but understood there were other factors and remained sensitive to not locking someone else out.

Mr. Steve Keach of Keach Nordstrom (Board's engineering review firm) came forward for the discussion. He referred to the 1974 plan, which he felt made it clear that someone platted a road; and in his opinion remained a road under New Hampshire Law of Dedication and Acceptance. In his opinion rights to the public would continue to exist over what is now identified as Lot 13-88-4. He didn't see an indication on the plan of an intent to make it a private way. He said the discussion became important was presumably Atty. Panciocco's client's purpose was to ultimately build on Lot 13-87. He cautioned the use of easements to gain access from St. Margaret's Drive because how comports with RSA 674:41 – Erection of buildings on streets; a section of which precludes the use of private easements to gain access (and have frontage) from a public way. It seemed to him that a lot line adjustment (under the terms set by the Selectmen) with 25ft to the left and right of center line would cause resolution to two problems and an outcome compatible with the provisions of the RSA's.

Mr. Doherty questioned how doing so would affect the frontage requirement of 200ft. Mr. Keach replied Lots 13-87 and 13-89 were pre-existing non-conforming lots that would have frontage on a Class V way. Mr. Doherty noted if Lot 13-88-4 was a Town right-of-way those lots would have 200ft. respectively. Mr. Keach replied it might require a variance; that decision would be left to Mr. Gowan as Zoning Administrator. There was nothing in the information provided to indicate the public way was ever un-dedicated. He felt it was clear that Lot 13-88-4 was a dedicated public way and the Town happened to own the fee simple interest in it.

Mr. McDevitt wanted to know if the lot was a dedicated public right-of-way, how it could be split in half and given to two separate lot owners. He asked if the public would continue to have the right of access. Mr. Keach said the Town could retain the right of passage. Mr. McDevitt said the Town would have to research how to undedicate a public right-of-way. Mr. Keach explained if the lot was created prior to 1969 the twenty-year rule would have come into the discussion; however, since it was created in 1974 to what appears to be a public dedication it remained as such until/unless there is an instrument that suggested otherwise. Based by the manner it was platted he felt its status was a dedicated, unaccepted public right-of-way. The question remaining was if the dedication remained. Assuming the Selectmen agreed (to dedicate 25ft to each lot), Mr. Gowan felt fresh variances for 25ft of frontage would help to resolve the situation and create a clear record. Mr. Keach said the lots could also have a shared driveway.

Mr. Passamonte asked if there were existing driveways within the right-of-way for Lots 13-86 and 13-90. Atty. Panciocco answered no; the driveways came off St. Margaret's Drive.

Mr. Dadak questioned if they should seek Town Counsel's opinion. Mr. Gowan replied Town Counsel had advised the Selectmen. Mr. McNamara felt the proposal for a 25ft. division was fair, equitable and would solve a number of questions and problems now and in the future. There was no objection to recommending the proposal; Mr. Gowan will draft a letter indicating such to the Board of Selectmen.

Mr. Montbleau questioned if the situation would set a prescient for other similar properties. Mr. McNamara felt it was a unique situation caused by the nature of the planning process dating back many years.

The discussion was concluded. Mr. Gowan will forward the Board's recommendation to the Selectmen.

ADMINISTRATIVE

Tony Franciosa, Silver Oaks Realty, LLC - Discussion of the timing of posting the Offsite Improvement Bond to Gumpas Hill Road

Mr. Gowan said the Highway Safety Committee strongly recommended, and the Planning Board saw fit that the applicant not only build their project, but also improve a section of Gumpas Hill Road. He explained there

was a surety for the project itself and a separate surety for the off-site improvement, both of which were calculated by Keach Nordstrom. Mr. Gowan believed the applicant would like to put the restoration bond in place, with a restriction on sale, for the project and come back in the Spring to post the other bond. He said there would be leverage with not issuing any building permits until such time as the off-site surety is provided.

Mr. Tony Franciosa told the Board that the restriction on sale has been signed and submitted to the Town. The recording fee had been paid and the restoration bond (of approximately \$41,000) has been paid. Also, the escrow account for Keach Nordstrom services has been put in place.

Mr. Gowan reviewed the timeline of work to be done. The Board had no objection to the proposal. Mr. McNamara told Mr. Franciosa he could move forward.

Review of revised Planning Board By-Laws

The Board reviewed the proposed amendments/updates to the By-Laws. There was a brief discussion as to whether the Board would take votes during site walks. There was a consensus to add under the section 'Rules of Order – Order of Proceedings' to specify the Planning Board would take no votes during site walks. The Board reviewed the suggested red-lined amendments.

MOTION: (Montbleau/Culbert) To approve the Planning Board By-Laws as amended.

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

Valley Hill Road Improvement Plan - Request for full bond release

Mr. Gowan explained the Board had held back \$14,231.88, which was the value of 'touch up' work that was previously not resolved. He informed that the work was now resolved and he received evidence from Keach Nordstrom of their satisfaction all work was completed. He felt it was now appropriate to release the bond. Mr. McNamara had in front of him the letter from Keach Nordstrom that recommended the release of the specified amount. The Board voiced no questions or concerns.

MOTION: (Montbleau/Dadak) To release \$14,231.88 representing the current remaining bond amount from the original bond of \$111,286.73. This approval is a full release; the total amount to be retained is zero dollars.

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

DISCUSSION

Discussion of Zoning Subcommittee priorities for new/revised zoning

Mr. Doherty reported he heard back from a few of the members regarding the draft minutes of the subcommittee, so they had not yet been approved. He stated the subcommittee had been discussing open space, recreation, trail systems, density and several other facets of zoning. Having limited time and knowing they couldn't put a long list of items on the ballot, they were looking to condense the items, such as review of the Mixed Use Zoning District ('MUZD') and Conservation Subdivisions including the work force housing section.

Mr. McNamara asked if they would address the density issue in the MUZD. Mr. Doherty replied they would like to, but wanted to know the Planning Board's priority. He noted the majority of the subcommittee members were concerned about the recreation trail system, open space with a tie-in to density. The Planning

Board felt focusing on having less density within the MUZD should be the top priority of the subcommittee. It was suggested they also review appropriate incentives for work force housing.

Mr. Doherty called attention and asked the Board to review the MUZD table of prohibited uses. Mr. Gowan noted it contained conflicting language.

DATE SPECIFIED PLAN – November 2, 2015

PB Case #PL2015-00002 - Map 41 Lot 10-245 - PJ KEATING COMPANY - 2 Bridge Street

MINUTES REVIEW

October 5, 2015

MOTION: (Montbleau/Passamonte) To approve the meeting minutes for October 5, 2015 as written.

VOTE: (6-0-1) The motion carried. Mr. Passamonte abstained.

ADJOURNMENT

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

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

The meeting was adjourned at approximately 9:05pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary