

APPROVED
TOWN OF PELHAM
PLANNING BOARD MEETING
October 17, 2016

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

He then called roll:

PRESENT: Peter McNamara, Paul Dadak, Joseph Passamonte, Tim Doherty, Alternate Robert Molloy, Selectmen Representative William McDevitt, Planning Director Jeff Gowan

ABSENT: Roger Montbleau, Jason Croteau, Alternate Paddy Culbert, Alternate Richard Olsen, Alternate Mike Sherman

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

PB Case# PL2015-00016
Map 22 Lot 8-130

52 WINDHAM ROAD, LLC – 52 Windham Road – Special Use Permit and Site Plan Review for proposed mixed use development consisting of a 1500SF retail building and 15 townhouse condominium units in the Mixed Use Overlay District

Mr. McNamara stated a request was received from the project manager, Dave Jordan to date specify the case for the Board's December 5, 2016 meeting. The applicant has met with the Highway Safety Committee and would be providing a revised site plan in mid-November.

The case was date specified to December 5, 2016.

PB Case# PL2016-00018

Map 39 Lots 1-54-2, 154-3, 1-54-4, 1-54-5 & 1-55

RJ McCarthy Development LLC – Sherburne Road – Special Permit Application to approve the Yield Plan for a proposed Conservation Subdivision of the above referenced lots. Full Application for Conservation Subdivision will follow once Special Permit and density is established

Mr. Peter Zohdi of Herbert Associates, representing the applicant, came forward to discuss the request for Special Permit. Mr. McNamara noted the reason the plan was previously date specified was to give the Board time to review information regarding the request for the three lot bonus density. Since the last meeting he noted they received further description (from Shayne Gendron of Herbert Associates) of the basis for requesting bonus lots. Mr. Zohdi told the Board he wasn't in attendance at the last meeting, but understood the Board was concerned about getting water to Sherburne Road. He referred to the plan set (behind lot 14 & 15) where they included a 25ft. water line easement for the Town's future use. He told the Board they were willing to deed lot 1-55 consisting of 17 acres to the Town. Mr. Zohdi told the Board were two well located on the lot that were drilled (by a former client) for a previous proposal; in the future the Town may want to consider them for water situations on Sherburne Road. He then spoke about a 20ft wide trail easement added to the northwesterly side of the plan that connected through to Pelham Veteran's Memorial Park ('PVMP'). He noted if the trail easement needed adjustments, they would discuss such and work with the Town. He said the easement width and type could be discussed and through preliminary discussion with Mr. Gowan, they applicant agreed in principal with Mr. Gowan and the Highway Safety Committee.

Mr. Gowan told the Board that the Highway Safety Committee ('HSC') met earlier in the day and discussed the plan. He said the Highway Road Agent, Police Chief and Fire Chief would like to see a paved road leading into the park that would be gated at the access (location to be determined). He noted that the Parks & Recreation Director wasn't available for the HSC meeting, so the trail/access would need to be refined. He shared with Mr. Zohdi the desire to have something more than a gated gravel access road. He said the HSC was enthused about working something out that would work for the applicant and be a benefit to the Town.

Mr. Doherty noted the plan showed an easement for the trail and felt it should be designated as a right-of-way. He said an easement was a right to use and believed a right-of-way would be a better designation in the event the Town needed to divert traffic (from Sherburne Road or Mammoth Road) in the event of an emergency. Mr. Zohdi discussed the timeline for how the plan progressed. He said at present the plan showed a 30ft. easement. He would work with the HSC and Mr. Gowan regarding the width (travel / paved road). He noted he hadn't heard about what the HSC was seeking until just prior to the meeting. Mr. Gowan agreed that the trail should be a right-of-way and would discuss the location and width with Mr. Zohdi.

Mr. McNamara commented that the Board's focus at this time should be the density. He opened the discussion to public input. No one came forward.

Mr. McDevitt believed there was considerable advantage to the Town for having the lot with the two wells in its possession. However, in his personal opinion he didn't think the Board should accept the land because of the two wells. He noted the well capacity, yield and protection area was unknown. He pointed out that a municipal water supply has a specific well head protection area and it may be larger than what the lots allowed. At the same time, he was still in favor of maintaining a right-of-way for possible future use.

Mr. McNamara asked Mr. Zohdi if he had any information regarding the wells. Mr. Zohdi recalled that the previous plan for the area was a 64-unit adult community. He understood that there was a capacity for over 100 gallons per minute for the two well. He believed the radius related to the amount of water taken out of the wells. He noted there was Town owned land on one side (Pelham Veteran's Park) and the lot on the other side contained wetlands; therefore the area could contain a well radius because the area wouldn't be developed.

Mr. Doherty spoke of the request for bonus density offset by pointing out that the applicant proposed to not build houses on the existing lots along Sherburne Road. He said when the ordinance was drafted that type of scenario of not putting houses on a main road was taken into consideration and felt it should carry the most weight with the Board for density offsets.

Mr. McNamara agreed with Mr. Doherty and further spoke about Mr. Gendron's letter dated October 3rd which listed additional items that he felt would allow the applicant to qualify for the additional bonus lots, such as: 1) conserve a considerable amount of wetland and upland area; 2) frontage lots will be eliminated; and 3) subdivision will incorporate an easement into PVMP.

MOTION: (Doherty/Molloy) To approve three additional lots for the proposed conservation subdivision.

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

MOTION: (Passamonte/Doherty) To approve the Special Permit for the project.

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

NEW BUSINESS

PB Case# PL2016-00020

Map 23 Lots 11-341, 11-342, 11-345 & 11-346

TEICHERT, Jane & POIRIER, Randall - Springdale Lane – Proposed lot line adjustment 12.5 vacant strip of land adjacent to Springdale Lane

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.

Attorney Matthew Caffrey representing the applicant came forward with the petitioner's son Eric Teichert. Also present was the second applicant Randall Poirier. Attorney Caffrey stated they had come before the Board with a lot line adjustment request. The property in question was near Springdale Lane on Little Island Pond. He referred the Board to color photographs (provided with the application), one of which was a depiction of the aerial view. He stated there were four existing adjacent lots that had a 12.5ft ancient way running between them. The goal was to essentially remove the ancient way by moving the lot lines on each side 6.25ft. to the center of the ancient way. He told the Board that the ancient way had never been used for access to Little Island Pond. The terrain is hilly and heavily forested with no signs of visible paths or evidence of other use. Attorney Caffrey stated the lot line adjustment would not result in a land-locked parcel to the rear given that the rear parcel was served by a road (for all residents of the pond) that led to the pond. Using the areal depiction, he showed the Board that lot 341, owned by Ms. Teichert extended to lot 346, which was vacant land owned by both Mr. Poirier and Ms. Teichert, and showed the location of an existing lot line separating the two parcels. Attorney Caffrey then reviewed a notated version of the existing lot line plan showing the removal of the ancient way. He told the Board there were no objections received from abutters. He felt the request was in the nature of 'housekeeping' to accurately reflect what was happening on the ground today.

Mr. McNamara asked for an explanation of the photographs submitted with the application. Attorney Caffrey reviewed the various photographs submitted with the application which showed: 1) the existing wooded condition, 2) the area between the lots facing the pond, 3) the area between the lots facing the rear of the property, and 4) through the wooded area, approximately 200ft away from the houses, facing toward the pond.

Mr. Doherty spoke about Town-owned rights-of-way and the process of abutters petitioning the Board of Selectmen for ownership. In this situation he believed the area was a privately owned right-of-way based on the original plan (dated in 1907) he obtained from the Registry of Deeds. He said since that time, it was unknown who had been given deeded use of the right-of-way. In his opinion Mr. Doherty felt the Board had no right to give the parcel of land to someone without documents showing legal ownership and showing no one had objected to the ownership. He reiterated his opinion that the Town should not be giving the applicant the right to take the right-of-way away from someone who may have that right.

Attorney Caffrey told the Board they had done a complete title search on the property and examined all surrounding parcels specifically for rights. He stated there was no abutting owner that had right to the ancient way. He would show the Board all the deeds for the owners around the lot. He indicated he would submit the information to the Board under oath. He understood Mr. Doherty's concern and commented they wouldn't be in front of the Board if there were issues with other people having rights over the land. Mr. Gowan added when he and the Zoning Administrator Jenn Hovey met with the applicant over a couple meetings he became convinced that the application in front of the Board was the appropriate path. He stated the matter would not go in front of the Selectmen because the Town didn't own the land; therefore in front of the Board.

Mr. McNamara said there could potentially be a prescriptive easement for someone to pass through; however, all the evidence showed there was no right of any abutter to access via the land. Mr. Doherty replied if all the

lots shown on the original plan had the right to use Gage Avenue (now known as Springdale Lane), he believed they also had the right to use the 12.5ft way. He stated it was all part of the original drawing at the Registry. He told the Board the applicant needed to prove their right in Superior Court. He pointed out there were no division lines on the plan and the four 'fingers' were part of Gage Avenue (now known as Springdale Lane) and the abutters all had the right to use those four fingers. Attorney Caffrey respectfully disagreed. He said the abutter's rights were specifically called out in each of the deeds. In their review they didn't see anyone given rights to the ancient way. He disagreed about having to go to court to establish that, since the documents themselves establish the abutter rights. With the rights not being established in the deeds, he didn't know how the abutters would get those rights. Attorney Caffrey told the Board if they got something wrong the burden would fall on them.

Mr. McDevitt assumed that the Planning Board's actions didn't have the effect of extinguishing a prescriptive easement. Mr. McNamara replied the Board couldn't. Mr. McDevitt questioned if a lot line adjustment could extinguish a person's deeded rights. Mr. McNamara answered no. Attorney Caffrey believed if they made a mistake with regard to their title search, no action of the Planning Board could extinguish another's rights granted in a deed. He reiterated if they made an error, the burden would fall on them. He emphasized they went through the process and from the standpoint of notification received no contact. He believed the request would establish the lot lines to reflect what was happening on the ground.

Mr. McNamara opened the discussion to public input. No one came forward. He asked Attorney Caffrey to submit in writing, under pains and penalties of perjury, what he laid out in testimony to the Board. Attorney Caffrey replied he would provide Mr. Gowan with an affidavit (certificate) of title that establishes they had reviewed title to the property. He affirmed under oath that no rights appear to the ancient way by virtue of any of the deeds on record. Mr. Gowan questioned if he felt comfortable including in the affidavit language indicating if rights were discovered the lot line would be nullified. Attorney Caffrey replied in his view no action of a planning board could nullify the existence of a deeded right to an ancient way. Mr. Gowan understood that deeds 'trumped' any recorded plan. Ultimately, he and the Zoning Administrator were satisfied that in terms of action taken by the Board the lot line adjustment was appropriate. He noted if the Board would like Town Counsel's opinion he would submit a request for such.

Mr. Passamonte questioned how the residents on the back side of Gage Avenue have access to the pond if the easements were taken away. Mr. Teichert spoke to access to the pond and explained both the Teichert and the Poirier property had deeded rights to Sandy Beach, even though they had lots on the water. He noted there was no language in either deed to show use of the ancient way. He felt it was fair to say that all other camps/parcels that had interest in the pond would also have deeded right to Sandy Beach. He told the Board that the 12.5ft strip of land was currently mutually owned, they were just re-drawing the lot. Mr. Passamonte asked for further clarification as to how lots on the opposite side of Springdale Lane accessed the pond without the fingers of land. Mr. Teichert believed they would all have rights to Sandy Beach by way of Springdale Lane, which would be reflected in the deed.

Mr. McNamara believed the testimony was correct, but felt the Board should seek Town Counsel's opinion.

Mr. Doherty referred to the existing lot line plan and noted there were iron pipes found at the corner of the lots. He said the strips of property didn't go through Springdale Lane, which had been Gage Avenue (on the original plan) they went down to the water in two spots. He said the strips didn't have additionally named avenues; it was all considered to be Gage Avenue. He felt if the lots were continuous from both sides of Springdale Lane they wouldn't have iron pipes. Attorney Caffrey noted the ancient way was not accessible for anyone using Springdale Lane; the access to that 12.5ft. way would have to be deeded. Mr. Doherty questioned who paid the taxes on the 12.5ft way. Attorney Caffrey replied his client paid taxes on the 12.5ft. way as it was considered part of their parcel and not a public right-of-way. Mr. Doherty noted Springdale Lane was a private road. Attorney Caffrey understood and said people didn't have the right to use the 12.5ft

way unless they had deeded rights. He stated the only people with deeded rights to it were Teichert Realty Trust and Randall Poirier, therefore closing it off wouldn't affect anyone else.

Mr. McNamara reiterated his suggestion to have Town Counsel provide opinion. Mr. Gowan had the information from the applicant and asked for a copy of the plan Mr. Doherty referenced along with any comments he'd like the attorney to weigh in on.

The plan was date specified to November 21, 2016.

PB Case# PL2016-00021

Map 31 Lot 11-355

DICUNZOLO, Joe - 44 South Shore Drive – Proposed residential solar array system

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.

Mr. Eric Shifflett, co-Owner Granite State Solar came forward with Mr. Joe Dicunzolo, the applicant to discuss the request to install a ground-mounted solar array. The array will have twenty-four solar panels on a single pole located in the rear of the applicant's property approximately 330ft. from the road. Mr. Shifflett told the Board to their best assessment, the array would not be visible from the road; however, there may be one abutter who would be able to see it. He displayed an aerial photograph of the lot depicting the proposed location for the array and requested a building permit to proceed with the project.

Mr. McNamara questioned the proximity of the nearest abutter. Mr. Dicunzolo replied the nearest abutter was approximately 400ft away with a wooded area in between the lots. Mr. McNamara noted a photographic depiction was submitted to the Board showing the type of system that would be installed. He wanted to know the maximum height. Mr. Shifflett replied it would be 19.5ft at maximum height, although it didn't go 100% vertical and remained at a 60 degree angle. The array is approximately 11ft. when flat. He explained the array tracked the sun from morning to sunset. Mr. McNamara asked if the array would be lit at night. Mr. Shifflett answered no. Mr. McNamara wanted to know what kind of noise it emitted. Mr. Shifflett replied there was minimal noise, possibly 5-6 decibels that would be imperceptible even to the applicant to hear it operating. He explained it was a hydraulic motor piston that did the pitch and yaw. Mr. McNamara inquired if there would be a separate generator. Mr. Shifflett answered no. The system itself was essentially a generator, from the utilities perspective, because it will be tied into the utility grid and have the potential to power neighboring homes.

Mr. McDevitt wanted to know if the array would reflect the sun across the pond to abutters and be an annoyance. Mr. Shifflett answered no; the panels were black cells/anti-glare and tracked the sun (pointing exactly to the sun).

Mr. Molloy inquired about the maintenance schedule. Mr. Shifflett stated nothing was done within the first ten years, there were no grease fittings. At ten years a pint of mineral oil (hydraulic fluid) is changed and five years after that the fluid is changed again. He noted it was designed to run for twenty-five years without maintenance. Mr. Molloy wanted to know if snow collected on the array. Mr. Shifflett explained snow wouldn't collect as it was programmed with a snow mode. If the temperature drops to freezing at night the array goes vertical and slowly rotates to shed and evenly disburse snow.

Mr. McNamara recalled having a solar array come before the Board in the past. He questioned the weight of the unit. Mr. Shifflett stated the base was buried in the ground and weighed 3,200 pounds, the tracker mast, pole, frame and panels was approximately 2,500-2,800 pounds. The system is rated to 120 mph winds; the highest wind load rating of any type of system. It has an anemometer, so if the wind blow 30mph or more the unit goes flat to protect itself.

Mr. Doherty questioned if the applicant had spoken to the neighbor who had the airplane to see if they had any thoughts about the array being a distraction. Mr. John Picard (was seated in the public) told the Board he no longer owned the airplane. With that, Mr. Doherty stated he was fine with the solar system.

Mr. McNamara asked Mr. Gowan how the Board should proceed. Mr. Gowan explained the way the Ordinance was set up if someone wanted solar panels on their roof they didn't have to come to the Board. He felt it was fair, while the Ordinance was being revised, that a free-standing unit have review/approval by the Board and go through the usual inspection process. He noted abutters were notified of the meeting. Mr. Doherty agreed with the proposed location as it was set back and not intrusive to the view of the people on the pond.

MOTION: (Molloy/Passamonte) To approve the residential solar array system as indicated in the documents presented to the Board.

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

DATE SPECIFIED PLAN(S)

November 21, 2016:

PB Case# PL2016-00020 - Map 23 Lots 11-341, 11-342, 11-345 & 11-346 - TEICHERT, Jane & POIRIER, Randall - Springdale Lane

December 5, 2016:

PB Case# PL2015-00016 - Map 22 Lot 8-130 - 52 WINDHAM ROAD, LLC – 52 Windham Road

MINUTES REVIEW

October 3, 2016

MOTION: (Doherty/Passamonte) To approve the October 3, 2016 meeting minutes as amended.

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

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:05pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary