

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING
April 3, 2017**

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, Tim Doherty, Joseph Passamonte, Jim Bergeron, Selectmen Representative Hal Lynde, Alternate Paddy Culbert, Alternate Mike Sherman, Alternate Richard Olsen, Planning Director Jeff Gowan

ABSENT: Alternate Robert Molloy

ELECTION OF OFFICERS

Mr. Dadak made a motion to elect Peter McNamara as Chairman. Mr. Montbleau seconded the motion and suggested maintaining the same slate (of officers). Mr. Dadak agreed with the amended motion.

MOTION: (Dadak/Montbleau) To maintain the same slate (of officers) – Peter McNamara-Chairman, Roger Montbleau-Vice Chairman, Paul Dadak-Secretary.

VOTE: (5-2-0) The motion carried. Mr. Doherty and Mr. Bergeron voted in opposition.

Mr. McNamara welcomed newly elected member Mr. Bergeron to the Board. He also welcomed Mr. Lynde as the ex-officio member (Selectmen's Representative), and noted he had been on the Board in the past. He then took a few minutes to thank Mr. William McDevitt for his service, devotion and professionalism to the Board for the last several years. Mr. McNamara thanked the voters for passing, in overwhelming margins, the Zoning changes put forward by the Board. He thanked Mr. Culbert, Mr. Sherman and Mr. Olsen for their attendance and professionalism during the last few meetings.

OLD BUSINESS

PB Case #PL2016-00026

Map 36 Lot 11-91

MAJOR REALTY TRUST - 101 Dutton Road - Proposed 2-Lot subdivision

Mr. McNamara informed that the applicant requested a continuance to the June 19, 2017 meeting due to a pending appeal from Zoning relief.

The Case was date specified to June 19, 2017.

PB Case #PL2017-00003

Map 41 Lots 6-125, 126, 127 & 128

P.J. KEATING COMPANY - 1 & 7 Bridge Street - Proposed Asphalt Plant

Mr. Doherty spoke about the meeting minutes and found it inappropriate for the Board to discuss a continued case without first reviewing and approving prior minutes of the same case. He noted they had minutes in front of them (for review) with regard to the case before them. He felt the Board had been acting inappropriately for years and in this case was extremely inappropriate to continue with the case until they dealt with the minutes.

Mr. McNamara replied Mr. Doherty's objection was noted and the Board could discuss it at a later date since they would probably not make a final determination on the matter at the current meeting. Mr. Culbert noted since he was on the Board in 1990 the Board had reviewed minutes in the same manner of reviewing/approving/disapproving minutes at the end of the meeting.

Representing the applicant was Mr. Jeffrey Brem of Meisner Brem Corporation. Also present was Mr. Kevin Younkin, P.J. Keating Operations Manager. Mr. Brem stated they had come in front of the Board twice and conducted a site walk. There was correspondence with Keach Nordstrom (Board's engineering review firm); most recent review letter dated March 28th. Mr. Brem stated they have submitted a request for three waivers that were discussed at the previous Board meeting. 1) not having a certified wetlands scientist review, since the area they'll be working is clearly not wetlands and had been regraded possibly hundreds of times in the past decades, 2) not require soil mapping, and 3) not require landscape architect stamp, as it is an industrial site and there is currently landscaping in the front of the site.

Mr. Steve Keach of Keach Nordstrom came forward to discuss his review letter of March 28th. He stated this was the third time the plan was in front of the Board and commented a lot of progress had been made. He understood a site walk was conducted and noted the most recent correspondence was his letter (March 28th) in response to Mr. Brem's updated plans of March 24th. He noted a majority of the technical matters previously commented on had been satisfactorily addressed to the extent they were now dealing with design and compliance related matters. 1) recommendation that the current four separate parcels (all owned by the applicant) be consolidated or voluntarily merged into a single parcel either prior to, or as a condition of any approval; 2) recommendation that State permits be received prior to, or as a condition of approval and noted on the final site plan; 3) recommendation that the Board hear any Fire Department comments. Mr. Gowan told the Board that Mr. Brem, Fire Chief James Midgley, Deputy Chief Paul Leischner and Fire Inspector John Hodge met, during which an artist rendering of a similar facility was presented and provided additional information. He understood they also conducted a later meeting. Mr. Brem summarized the meeting with the Fire Chief. Mr. Younkin told the Board he met with the Fire Chief and Fire Inspector earlier in the afternoon and went through the detailed plans for the operation, particularly the health and safety aspects. The Fire Chief requested that the applicant hire a fire protection engineer to review the facility and make recommendations. Mr. Younkin told the Board they would proceed on doing so directly. They will review the recommendations and provide feedback to the Board.

Mr. Keach spoke to the fourth 'General Comment' and recommended any approval be conditioned upon the applicant posting an appropriate surety. Under Planning and Design matters, he discussed the proposed waiver requests. With regard to wetland mapping by Certified Wetland Scientist and soil survey mapping by Certified Soil Scientist, given that the area was on broken ground for decades, any data gathered wouldn't be meaningful in properly assessing the site. Speaking to the requirement for a landscape design stamped by a Landscape Architect, Mr. Keach said the only landscape design with the application was on sheet 7. He was not opposed to the Board granting any of the requested waivers. Mr. Keach understood exterior lighting was being proposed; however, no detail had been submitted yet. Knowing that seasonally the facility could operate for extended hours in the evening, and given its relative proximity to the residential streets to the west, he felt they should know the lighting accommodations for the site.

Mr. Culbert questioned if the landscaping requirements from Section 302 would be adhered to. Mr. Keach replied the Section 302 requirements were generally perimeter oriented and believed they were being satisfied by the retention of the existing forest canopy and vegetated buffer that encapsulated the work area. He said the design adhered to Section 302; it wasn't prepared by a Landscape Architect. Mr. Culbert questioned if trees were planted in the Pelham area (of the site). Mr. Keach replied there was native/existing vegetation. Mr. Culbert asked if it was according to Section 302. Mr. Keach said it probably exceeded the planting requirements for density. He added that they didn't propose to cut or plant in the area. Mr. Culbert noted that the site was the first property when entering Pelham and if it wasn't 'dressed' up, the Board would be at fault. Mr. Keach said as part of 'dressing' it up could be the removal of the understory dead and dying areas. Mr. Culbert understood

that there was a planting requirement for every fifty feet. Mr. Keach replied there were existing trees currently on site.

Mr. Lynde understood there was existing berms and vegetation in the Pulpit Rock area and wanted to know if they would stay intact. Mr. Brem answered yes and using an aerial map showed the areas where work would be performed. Mr. Lynde questioned the soils. Mr. Keach replied that the soils had been churned for many years and would yield inconclusive results with regard to soils. Mr. Lynde wanted to know where the residential concern was coming from regarding lighting. Mr. Keach said some of the land was zoned residential, although undeveloped at present. Recognizing the site is located at the State line, he felt appropriate accommodations for lighting should be made and included in the site plan ultimately approved by the Board. Mr. Brem concurred and told the Board a lighting plan was in process. Mr. Lynde wanted to ensure that the residential area didn't have to look into the site at night (with lighting). Mr. Keach said until the lighting proposal was reviewed, they couldn't assess it. Mr. Doherty called attention to a rendering (showing an example of a similar site) that was submitted. Mr. Keach didn't consider the rendering a technical drawing. Mr. Gowan noted the rendering didn't show the site Keating intended to build.

Mr. Dadak recalled there had been talk about a possible berm to screen the whole process that would be located in the area where the old equipment would be removed. Mr. Brem said they were currently working on the Dracut area.

The discussion was open to public input. No one came forward.

Mr. McNamara read aloud the Administrative Decision submitted by Jennifer Hovey, Planner / Zoning Administrator, dated March 29, 2017.

Mr. Gowan asked Mr. Brem to discuss the artist rendering provided to the Board. Mr. Brem replied it was a facsimile of a plant with a similar size and scope. It showed the idea of what a drum plant resembled. Mr. Younkin noted the proposed plant was consistent with the two plants operated by Keating in Massachusetts. Mr. Gowan wanted to know how the number of trucks would vary from the current operation. Mr. Younkin said they supplied the Board with information regarding an increase in truck traffic, similar to the traffic from ten years ago.

Mr. Doherty stated the power company came in front of the Board with a proposal for an extensive site change of the transformer plant which has two means of access. Although he didn't have a concern about the operation of the plant once it was built, but asked if they would maintain a second means of egress during the construction phase located on the south side (at the location of the gravel pile). Mr. Younkin felt the request was reasonable and in line with their earlier discussion with the Fire Department.

Mr. Culbert asked if the Board would receive a rendering of the proposed plant. Mr. Brem replied a rendering is a facsimile of what a site is supposed to look like and he felt they had provided such. He said the actual location of the equipment wasn't as important as knowing what equipment and the size of that equipment, which was explained in the plans.

Mr. Brem commented during the last meeting the Board asked them to notify Dracut. He contacted the Dracut Planner personally and provided a copy of the plans (digital and hard copy).

Mr. Lynde wanted to know if there had been discussions regarding air quality, emissions etc. Mr. Younkin explained after Town approval, the next step would be to get proper State agencies involved. Mr. Lynde asked what the expected emission would be. Mr. Younkin replied they currently burned natural gas and pulled the air through a bag house that managed the particular matter. The emissions from the bag house are tested and regulated. Mr. Gowan asked if the proposed plant would be more efficient and/or cleaner. Mr. Younkin stated

it was a little bit of both. They plan on putting in a continuous drum plant process with newer and better technology.

Mr. McNamara read aloud the waiver requests. The Board took the following action:

MOTION: (Montbleau/Dadak) To accept for consideration the waiver to Section 302-3.E.3(a)(15) – requirement for mapping of the limits of jurisdictional wetland, prepared and stamped by a Certified Wetland Scientist.

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

MOTION: (Montbleau/Dadak) To accept for consideration the waiver to Section 302-3.E.3(a)(23) – requirement to submit a site specific soil survey mapping prepared and stamped by a Certified Soil Scientist.

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

MOTION: (Montbleau/Dadak) To accept for consideration the waiver to Section 303-3.A(1) – requires landscape design to be stamped by a Licensed Landscape Architect.

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

Mr. Keach called attention to sheet 5, which provided a representation of the proposed equipment and the approximately height and dimension.

There was a brief discussion regarding when the applicant would come back in front of the Board.

The plan was date specified to the May 15, 2017 meeting.

DATE SPECIFIED CASES

May 15, 2017

PB Case #PL2017-00003 - Map 41 Lots 6-125, 126, 127 & 128 - P.J. KEATING COMPANY - 1 & 7 Bridge Street

June 19, 2017:

PB Case #PL2016-00026 - Map 36 Lot 11-91 - MAJOR REALTY TRUST - 101 Dutton Road

MINUTES REVIEW

February 23, 2017

MOTION: (Montbleau/Dadak) To approve the February 3, 2017 meeting minutes as written.

VOTE: (4-0-3) The motion carried. Mr. Doherty, Mr. Bergeron and Mr. Lynde abstained.

March 6, 2017

MOTION: (Montbleau/Dadak) To approve the March 6, 2017 meeting minutes as written.

VOTE: (4-0-3) The motion carried. Mr. Doherty, Mr. Bergeron and Mr. Lynde abstained.

March 18, 2017

MOTION: (Passamonte/Bergeron) To approve the March 18, 2017 site walk minutes as written.

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

The agenda listed March 20, 2017 under Meeting Minutes; however there was no meeting as it had been canceled.

DISCUSSION

Mr. McNamara stated the Board had on-going committee work. The Master Plan committee was currently meeting. He said if anyone was interested in joining they should contact Mr. Gowan.

With regard to the Zoning, Mr. McNamara said they would try a new format that had been done in past years. Rather than having a sub-committee the Board would devote space during the second meeting of each month to have a general meeting of the Planning Board for potential Zoning changes to be put on the ballot next year. He said they would try that format, as long as it didn't interfere with their business. If they began to see long meetings, the Board could always go back to a sub-committee. He felt they should at the least try the proposed format, which might avoid some of the surprises they seem to run into every year with the sub-committee. The new format could begin in May or June.

Mr. Dadak questioned if an agenda would be posted for the meeting and if the public could comment. Mr. McNamara replied a meeting of the Board would be posted. He stated he didn't want to get bogged down to late night meetings if there were numerous items on an agenda. Mr. Gowan said as meetings were being date specified, they would need to remain cognizant of the schedule. He said they could figure out a way to make it work.

Mr. Doherty questioned if Mr. McNamara was asking the Board's opinion on the matter. Mr. McNamara said the Board would try it (new format). Mr. Doherty wanted to know if the Board was being asked to make a decision as to what the Board would like to do. Mr. McNamara stated the Chairman sets the agenda. He said he could ask if anyone was concerned about trying a new format. He asked if anyone had objections to trying a new format. Mr. Doherty stated he objected and left the meeting.

Mr. McNamara asked the Board again if they had any objection to having a part of the second meeting each month devoted to Zoning changes as the Board had done in the past. No one voiced an objection.

Mr. Lynde commented he had become aware of the problems in the State with having young people stay due to the lack of workforce housing. Mr. McNamara said the Board would discuss some form of workforce housing.

With regard to the 55+ housing (warrant article) Mr. McNamara told the Board there had been a court challenge and some sort of settlement; therefore they would be unable to enact the changes, despite the fact that there was an overwhelming voter support. He believed that subject would be revisited.

Mr. Bergeron raised the issue of the entire adoption process of the three Zoning articles/amendments. He said there was a first public hearing held; however, a second scheduled public hearing was missed. He understood there was an emergency meeting granted and at that emergency meeting the Zoning articles that had been changed (at the first public hearing) were reverted back to their original text coming out of sub-committee. Mr. McNamara stated on advice of Counsel the Board followed procedure that they could not make substantive

changes during the second emergency meeting. Mr. Bergeron asked the Board if through RSA 675 and 91:A that the other two Zoning articles stood in question because he felt the whole process was flawed date wise.

Mr. McNamara stated what the Board did was vetted by Counsel who said the Board had authority to proceed as they did and the articles were approved by the voters and now the law. Mr. Bergeron suggested before the Board proceeds with that assumption that the Board go into non-public session to discuss legal matters according to RSA 91:A(e) – legal. He very much differed with Mr. McNamara’s opinion. Mr. McNamara understood and noted the Board wouldn’t have to go into non-public because meeting with counsel is by definition not a public meeting. Mr. Gowan noted that the Board usually holds an annual meeting with Counsel and had already been in touch to possibly meet prior to the next meeting. Mr. Bergeron was concerned that the deal struck with the court (through the Plaintiff) was very limited in scope. He asked that all the legal correspondence (including injunction, court order etc) be available for every voting member. It was reiterated by Mr. McNamara that meeting with counsel wasn’t considered a public meeting. Mr. Bergeron asked if minutes were kept of the non-public meeting. Mr. McNamara answered yes, adding they were typically sealed. He said the Board could discuss further when meeting with Counsel. Mr. Culbert was interested in reviewing the attorney correspondence prior to the meeting. Mr. McNamara said it would be distributed during the meeting with Counsel.

Mr. Passamonte wanted to know if the Board would set the agenda for the Zoning discussions. Mr. McNamara said the Board would talk about it and hear from Mr. Gowan for recommendations. He said there were certain things they should be looking at.

Mr. Montbleau questioned if it would be prudent for the Board to meet with Counsel on a night that they didn’t have a meeting. Mr. Bergeron suggested getting information/advice from the New Hampshire Municipal Association. Mr. Lynde, who is on the Board of Directors agreed. After a brief discussion, the Board decided to meet with Counsel at 6pm on April 17, 2017.

Mr. Gowan will recommend the Zoning Board meet with Counsel on a different night. He said if the Board wanted to send questions prior to the meeting to send to Counsel there may be a benefit in doing so. Mr. Bergeron wasn’t comfortable sending legal questions prior to the meeting with Counsel due to potential legal fallout with the last election. Mr. McNamara explained the Board had to be very careful with attorney/client correspondence and submitting questions to the Board due to the open meeting law. He said if a Board member had questions they could be submitted to Mr. Gowan who in turn would submit them to Counsel. Counsel would provide answers in front of everyone during the Board’s meeting.

Mr. Montbleau inquired if there was a lawsuit. Mr. McNamara replied there was a lawsuit filed by a couple developers. The details of the suit would be discussed in the meeting with Counsel. He noted that the changes to the 55+ Zoning that were approved and passed by voters couldn’t be enforced. Mr. Montbleau stated he wasn’t aware that there was a lawsuit. Mr. McNamara said it was filed prior to the election.

ADJOURNMENT

Mr. Culbert asked to be appointed in Mr. Doherty’s absence.

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

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

The meeting was adjourned at approximately 8:11pm.

Respectfully submitted,
Charity A. Landry

Recording Secretary