

**APPROVED**

**TOWN OF PELHAM**  
**PLANNING BOARD MEETING**  
**September 18, 2017**

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

The acting Secretary Tim Doherty called roll:

**PRESENT:** Peter McNamara, Roger Montbleau, Tim Doherty, Jim Bergeron, Selectmen Representative Hal Lynde, Alternate Paddy Culbert, Alternate Samuel Thomas, Alternate Bruce Bilapka, Planning Director Jeff Gowan

**ABSENT:** Paul Dadak, Joseph Passamonte, Alternate Richard Olsen, Alternate Derek Steele

Mr. Culbert was appointed to vote in Mr. Dadak's place. Mr. Thomas was appointed to vote in Mr. Passamonte's place.

**PLEDGE OF ALLEGIANCE**

**MINUTES REVIEW**

**August 21, 2017**

**MOTION:** (Culbert/Montbleau) To approve the August 21, 2017 meeting minutes as amended.

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

**OLD BUSINESS**

**PB Case#PL2017-00012**

**Map 7 Lots 9-135 & 9135-1**

**MENDES, David – Katie Lane & Simpson Road – Proposed Special Permit Application to approve the Yield Plan for a proposed Conservation Subdivision of the above referenced lots. Full application for subdivision will follow once Special Permit has been approved and density is established.**

The applicant, Mr. David Mendes came forward with his representative, Mr. Peter Zohdi of Herbert Associates.

Mr. McNamara recalled during the previous meeting of August 21, 2017, after the case had been continued and the applicant had left, the Board had some discussion regarding the possible review of the Board's vote with read:

*"Motion: (Culbert/Montbleau) To go forward with a Special Permit the application as a conservation subdivision and defer holding the additional density bonuses for a later time until they hear from the Conservation Commission."*

*Vote: (6-0-1), Mr. Doherty abstained.*

Mr. McNamara noted within thirty (30) days the Board had a right to revisit a decision. He understood Mr. Lynde would like the Board to reconsider their decision. Mr. Lynde stated when he looked back at the submitted plan, he didn't feel the Board would have approved the plan. He didn't feel it represented a subdivision plan that

met the requirements for open space, connectivity, etc. The Town has a requirement to connect roads and not just have cul-de-sacs. He noted that the plan had two cul-de-sacs and he felt it maximized the lots. From his perspective, he would demand a through road because he felt it was required by the Town's provisions. Mr. McNamara confirmed Mr. Lynde was referencing the conventional layout. Mr. Lynde said that was correct. He noted in the winter cul-de-sacs created a big problem for the Town when clearing the roads. He said the plan had no open space provision. He felt the submitted plan should be one that could be approved and not a hypothetical plan. He believed the applicant should redo the plan.

Mr. Doherty wasn't sure if he followed Mr. Lynde's comments exactly. In looking at the conventional layout with two cul-de-sacs, he asked if Mr. Lynde was suggesting that the cul-de-sacs be shifted to the south (closer to River Bend Lane) and avoid the wetlands crossing. Mr. Lynde replied he didn't know the details, but felt the plan shouldn't be approved; it should have a through road and not two separate cul-de-sacs. Mr. Doherty recalled the original conventional layout showed a lot of wetland crossings and questioned if the yield plan (number of lots) would change if the road connected further south. He approached the displayed plan and pointed to where he was referring. Mr. Zohdi approached the plan and showed the wetland area. Mr. Doherty questioned if the cul-de-sac could be shifted to a location below the wetland impacts. Mr. Zohdi noted they would still need to cross wetlands for a connection. Mr. Doherty questioned if they would still be able to obtain the same amount of lots. Mr. Zohdi believed so, but hadn't tried that configuration. Mr. Lynde didn't know how many lots the plan would end up with, but felt it should be based on a plan that could pass muster. He didn't feel that the submitted plan should be used as a basis for the yield plan, because he didn't believe it was a plan the Board would approve.

Mr. Zohdi stated that the Subdivision Regulations describe cul-de-sac lengths and in his thirty year experience with the Town hadn't seen the Board deny a plan based on that. He noted that the plan showed two separate parcels of land. They were proposing to put 5.9 acres in the second parcel into open space. He pointed out that both cul-de-sacs complied with the Regulations pertaining to length. He said there was no law or regulation requiring the cul-de-sacs to be connected. Mr. McNamara understood that Mr. Zohdi was stating that the submitted yield plan complied with the Town's Subdivision Regulations. Mr. Zohdi answered in the affirmative.

Mr. Thomas believed there were examples within the Town where there are two cul-de-sacs essentially back-to-back which made it difficult for emergency responders. He believed there had been subdivisions not allowed to be built without having one cul-de-sac. From a safety standpoint, he questioned if the plan would be better with one cul-de-sac. Mr. Zohdi said in general, police departments don't always want through roads because they can control safety better with a cul-de-sac. He spoke about new subdivisions and the fact they would have fire cisterns for safety. Mr. Thomas disagreed and stated there were examples in Town where existing cul-de-sacs were required to be connected through to a new road because of fire safety. He questioned why that same requirement wouldn't apply to the proposed plan from a safety standpoint. Mr. Lynde stated he didn't want to debate how the plan should be done, but felt it should be done to be more in compliance with what the Town says it wants and needs. He noted cul-de-sacs add more burden to the Town in maintaining them. He reiterated that connected roads were beneficial for the Town to have connectivity and for its emergency services. Mr. Lynde stated that the Regulations speak to abutting lands and pointed out that the proposal shows two lots. Even if the plan showed one lot, the Board should consider the surrounding area. He said he would argue that there should be one road going through the parcel and not two cul-de-sac because he hoped the Board would never approve that type of plan.

Mr. Montbleau questioned the discussion. He saw that the plan contained two parcels of land, and if developed individually, would comply as legal subdivisions (with two cul-de-sacs abutting each other). He understood that there was no intention to build the plan being discussed. Mr. McNamara said that was correct, the applicant would like to build a conservation subdivision. He said the plan was submitted to show a conventional development. Mr. Montbleau said ultimately the proposed conservation subdivision would keep open land, connective trails, and minimize the impact Town infrastructure and maintenance. He believed Mr. Lynde's only question was why the plan didn't show connectivity, when in fact it didn't need to because it wouldn't be the

plan that was actually built. Mr. Montbleau wanted to know why the plan couldn't be considered for a conservation subdivision if the (yield) plan fit all the Town's Regulations. Mr. Lynde reviewed a provision in the Regulation that read proper consideration of future development shall be given to adjoining undeveloped properties. He noted in this case the Board knew it was going to happen, and felt it should be considered when reviewing the yield plan. Knowing that the applicant owned surrounding property should be taken into consideration when reviewing the plan designs. From the Town's perspective, Mr. Lynde pointed out there would be more cost to the Town to maintain the proposal (of two cul-de-sacs), versus maintaining a proper through road. He felt a plan should be submitted (for the yield plan) that represented a plan the Board would approve. Mr. Montbleau understood the point of the plan was to see if it qualified with the Town's regulations to give the Board a yield plan that would make a conservation subdivision possible. Mr. Lynde said it should be a real plan, and felt the applicant was maximizing lots for the yield plan. Mr. Montbleau said if a plan met all the Regulations it should be considered a 'real' plan. Mr. Lynde didn't feel it met the intent. He said the yield plan was being done on two parcels of land that would be joined together and felt the plan should be designed in that manner. Even if they weren't to be joined, he said he would argue that the Board needed to take future development into consideration.

Mr. Gowan believed it was an interesting conversation. To Mr. Lynde's point, he said while it might not be specified in the Regulations that all roads must connect, he felt it was good planning to have connectivity when possible. He said when the Regulations were written, the Planning Board has very wide discretion with what it does with a conservation subdivision. He believed it was important for the Board to resolve the situation so the applicant knew which direction to plan.

Mr. Doherty asked for the lot lines of the two lots that would be combined. He recalled that the proposal may be a hybrid development. Using the displayed plan, Mr. Zohdi showed the lot line between the two lots and open space area. Mr. Doherty understood the intention was to merge the two lots, then carve out two conventional lots along with a conservation subdivision. Mr. Zohdi said that was correct. Mr. Doherty asked if he felt it was a stretch of the Zoning law. Mr. Zohdi replied he could withdraw the application and come back with two conventional lots or he could do a conservation / open space development. Mr. Lynde replied if the lots were brought in separately, he would demand that the Board have a cul-de-sac aimed at the second lot, so when the second lot came in they could have connectivity.

Mr. Lynde stated he intended to make a motion for the Board to reconsider its motion (from the August 21<sup>st</sup> meeting) and ask the applicant to come back with a connected street. He then pointed out that there was a provision for open space. Mr. Culbert believed if a through road wasn't put in, the plan would end up with two cul-de-sacs anyway because a conventional development would do it. He questioned if the Conservation Commission was becoming a pseudo-Planning Board. Mr. McNamara answered no; the Board requested their comment. Mr. Gowan noted the Board needed comment from the Conservation Commission when considering a special permit for Wetland Conservation District ('WCD') crossings. In this case, he believed the commission was interested in conservation subdivisions and pointed out they were advisory only. Mr. Culbert wanted time to read through the commission's opinion given that it was lengthy and complicated. Mr. McNamara questioned if Mr. Culbert wanted to continue the matter. Mr. Culbert answered yes. Mr. McNamara stated the Board should be focusing on Mr. Lynde's motion to reconsider the decision to go forward with the conservation subdivision. He then read aloud the letter submitted by the Conservation Commission dated September 13, 2017.

Mr. Lynde reiterated his comments and stated through roads should be the direction the Board goes with, and any plan should be prepared for such. He felt the Board's job was to look toward the future and develop in concert with everything in the area; specifically when an applicant owns all the (surrounding) lots.

Mr. Doherty approached the displayed conservation development and offered an alternative layout, speaking specifically to the two conventional lots and the open space configuration.

Mr. Lynde made a motion to reconsider the Board's vote on the plan – Case #PL2017-00012 to go forward based on the yield plan. Mr. Doherty seconded for discussion. Mr. Bergeron wanted to know the result of the motion, should it be voted in the affirmative. Mr. McNamara replied the Board would in effect take back their approval to move forward with a conservation subdivision. This would bring the plan back to 'square one' for how the applicant wanted to proceed. He stated by approving the motion, the Board wasn't rejecting the idea of a conservation subdivision. He believed the idea of the motion was to have the applicant provide a more acceptable conventional subdivision plan. He also believed there was a majority of the Board that preferred a conservation subdivision. He advised, after reconsidering the vote from the previous meeting, the Board could again vote to approve the yield plan as originally submitted.

Mr. Doherty didn't feel there should be two conventional lots in the conservation subdivision, which was the reason he abstained from the original vote at the last meeting. He hoped the Board would vote back to the conceptual so the applicant could think about what they were doing. He felt it was confusing for the Board to try and do hybrid that the Town didn't have. Mr. Lynde stated he had no problem with a conservation subdivision or having conservation land; however, he felt the basis for such should be real.

**MOTION:** (Lynde/Doherty) To reconsider the Board's vote on the plan – Case #PL2017-00012 to go forward based on the yield plan.

**SHOW OF HAND VOTE:** (4-3-0) The motion carried. Voting in favor: Mr. Lynde, Mr. Bergeron, Mr. Doherty, Mr. Thomas. Voting in opposition: Mr. McNamara, Mr. Montbleau, Mr. Culbert.

Mr. McNamara asked Mr. Zohdi if he would like the case date specified. Mr. Zohdi said to the next meeting. Mr. McNamara announced that the case was date specified to the October 2, 2017 meeting; abutters will not receive further notification.

With the vote being taken, Mr. Bergeron understood the Board had the option to reconsider, and accept the conservation subdivision as presented. Mr. McNamara stated that was correct, but felt the applicant should have the opportunity to come back and either present an amended plan, or the same plan.

Mr. Zohdi told the Board they would bring the same plan back to the Board at the October meeting. He said the Board could deny the conservation plan and they would do what they had to do. Mr. Mendes questioned if the Board could vote at the present meeting, since nothing would be changing. Mr. Zohdi asked that the Board go forward with a vote.

Mr. Culbert made a motion to approve the decision to go forward with a conventional subdivision, without deciding on the yield plan. Mr. McNamara stated the motion was a repetition of the vote taken at the last meeting. Mr. Montbleau seconded for discussion. Mr. Lynde felt the problem was that the applicant would come back with the same plan. He said if they did, he expected that the Board would not approve the plan, and would be remiss if they did. He stated he was asking that the applicant be more realistic as the basis of calculating the yield.

Mr. Montbleau understood that the Conservation Commission was in favor of the proposed conservation plan for all the positive reasons that have been spoken of in the past. He questioned if the Board was now reversing that thought process. He didn't understand why. Mr. Culbert also didn't understand. Mr. Lynde didn't feel they were reversing anything that the Conservation Commission does. He believed the end result would be about the same. He simply wanted a (basis) plan that the Board would approve.

Mr. McNamara wanted the Board to be clear, if they voted to deny the motion they were rejecting the conservation subdivision. He assumed that the applicant, in addition to any legal remedies, could come back with a regular subdivision. This may mean the Town won't get the open space that's now proposed.

Mr. Doherty noted that the plan didn't have fifteen (15) acre parcel of land that encompassed the conservation subdivision as required by Section 307-100. He stated two pieces of property would have to be merged. He felt the present proposal violated the Regulations.

**MOTION:** (Culbert/Montbleau) To approve the decision to go forward with a conventional subdivision, without deciding on the yield plan.

**SHOW OF HAND VOTE:** (3-4-0) The motion failed. Voting in favor: Mr. McNamara, Mr. Montbleau, Mr. Culbert. Voting in opposition: Mr. Lynde, Mr. Bergeron, Mr. Doherty, Mr. Thomas.

### **NEW BUSINESS**

#### **PB Case#PL2017-00017**

**Map 28 Lots 2-12 & 2-12-19**

**LEMARRE, Richard & RIESLAND, Steve & Debra - 434 Mammoth Road & 9A Burns Road - Proposed Lot Line Adjustment between lots 28/2-12 & 2-12-19**

Mr. Doherty 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 present to represent the applicants.

**MOTION:** (Culbert/Doherty) To continue the case to the October 2, 2017 meeting.

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

Mr. McNamara asked Mr. Gowan to notify the applicant that this would be the last continuance absent a valid reason. Mr. Gowan stated he would do so.

### **ADMINISTRATIVE**

#### **Bond Reduction for Sweet Birch / Rolling Ridge Lane**

Mr. Doherty stepped away. Mr. Bilapka was appointed to vote.

Mr. Gowan asked that the Board date specify the matter, as he didn't have the numbers with him.

**MOTION:** (Montbleau/Bergeron) To date specify the discussion to the October 2, 2017 meeting.

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

Mr. Doherty returned to the Board.

**Discussion** – Regarding the Salem Tuscan Village project and the August 29<sup>th</sup> Salem Planning Board meeting attended by Member Tim Doherty, Nashua Regional Planning Commission Julie Chizmas and Planning Director Jeff Gowan

Prior to the meeting Mr. Gowan sent the Board a lengthy email summarizing the Salem Planning Board's meeting of August 29, 2017. He spoke during Salem's meeting about unintended consequences from traffic and the impacts to the Town. Mr. Montbleau questioned if the project would affect the Route 38 fly-over road at the Rockingham Mall. Mr. Doherty answered yes. He said Salem thought about similar projects many years ago and came up with a large-scale zoning ordinance, in which there's a requirement to push traffic south and east. He discussed the fact that there was full-scale development occurring, even though the overall plan was still 'conceptual'. He explained there were different entities with projects being presented and built. Mr. Doherty then discussed the traffic flow and suggested that the Board request a reduction in vehicle lanes to direct traffic off Mall Road and onto I93 South. He said there were options to consider; however, Pelham wasn't doing anything. He noted that all the developers had engineering firms looking out for their best interest. He didn't feel the Selectmen had given guidance on what to do.

Mr. McNamara understood that Mr. Gowan was appointed by the Selectmen to represent the Town. He said any decision the Board made would have to go through the Selectmen because they are the governing body. Mr. Lynde stated that the Nashua Regional Planning Commission ('NRPC') would be representing the Town during the meetings. He believed they were the Town's best option for representation because they knew about traffic studies and what to look for. Mr. Doherty noted he spoke with Ms. Chizmas of NRPC after the meeting and questioned if any town, who was part of a regional impact project, received anything for their town. He felt it was important to know as soon as possible so the Town can consider what to do at traffic intersections to get vehicles headed toward I93, versus traveling through Pelham. Mr. Gowan noted Routes 28 and 38 were State roads that needed to work together in sync. He discussed the Town's roads that the State should be reminded to be engaged in during the process. He welcomed any thoughts from Board members.

Mr. Lynde stated that the Board of Selectmen's position was that they were going to stay involved through NRPC. He said he didn't know what actions they would take, but the Selectmen felt they would provide what the Town would need.

Mr. Bergeron spoke about the history of the Town and the State's development of Route 38. He said the proposed development may cause a traffic crisis in Pelham. He wanted to know from the Selectmen if there was a legal way for the State Department of Transportation ('DOT') to exact money for offsite improvements now, that could be earmarked for a later date to fix the intersections in Pelham that would certainly be impacted. He said the State talks about the intersections, but nothing gets done. Mr. Lynde didn't know the answer. He stated that the Selectmen had made the decision to pay NRPC to be Pelham's representative, who would advise what needed to be done. He was comfortable with them being involved because they are the experts on the matters and have access to others that the Town will need.

Mr. Montbleau questioned if the project was still in the hearing process, or if the plans have already been approved. With his experience on the Board, during the time that the Rockingham Mall was being constructed, when Salem makes a decision they move forward quickly. Mr. Doherty replied 'the train has left the station'. Salem is in the process of determining the off-site exaction money for the Route 28 area. He said they were trying to get permission from the State to cross the railroad tracks for an entrance near the Coca-Cola building for a road to connect to Route 97. He spoke about the actions being taken to redirect traffic and re-time traffic lights. Mr. Montbleau asked if the plans had been approved by Salem's Planning Board. Mr. Gowan replied the plans were still technically conceptual plans. He said he would set up a meeting with Ross Moldoff, Salem, NH Planning Director to understand what the foundations are, that have gone into the ground. Mr. Doherty replied they were condos. Mr. Gowan stated he wanted to learn what parts of the project are conceptual and what's been approved, so it could be broken out for the Board. Mr. Doherty believed they were one and the same in Salem, under their innovative land use ordinance. He said the conceptual includes the 50-acre parcel where all the foundations were being installed. He said the project was designed to keep it in conceptual until the last tenant moves in. He warned that they were in the process of building the intersections out and spending millions of dollars. He said they would run out of money if Pelham didn't get in line quick. Mr. Montbleau said it sounded like an as-built project and questioned if they had a mechanism where a conceptual could act as an

approved plan to move forward. He wanted to clearly understand what phase the process was in. He discussed the process that occurred during the mall construction and said the current project sounded like it was on a fast track if they were building based on conceptual plans. Mr. Doherty explained that Salem was giving out large quantities of special permits. Their ordinance allows them to vary many items that are usually done by a zoning board. He was pointing out to the Board that it would be nice to give Mr. Gowan the authority to tell Salem that Pelham isn't happy with the traffic being sent toward us.

Mr. Gowan noted there was a difference between NRPC and Rockingham Planning Commission. He noted that the former executive director of NRPC just became the executive director of Rockingham, so he'll be able to contact them to complain when appropriate. He told the Board that he had to leave to attend the Budget Committee meeting.

Mr. McNamara asked Mr. Gowan to speak to Mr. Moldoff about where in the process everything stood. In response to Mr. Bergeron's question regarding getting money for impacts, he felt Mr. Lynde might be able to seek an answer. Mr. Gowan suggested he and Mr. Lynde collaborate and possibly get an answer from Town Counsel.

Mr. Gowan left the meeting.

Mr. Culbert said it sounded as though Pelham was 'behind the eight ball' and the time to act was now. He agreed with Mr. Doherty. Mr. Doherty noted that Ms. Chizmas of NRPC was already looking to see if off-site improvements have ever been done anywhere. He also wanted NRPC to speak with the State, since all the roads were State roads and would need their approval. He said the process was moving quickly and reiterated his suggestion to ask for traffic lanes near the mall to be redirected away from Pelham. Mr. Lynde felt having NRPC involved was going to be beneficial and they would protect the Town. He said the Selectmen relied on NRPC because they are the experts.

Mr. McNamara left the meeting. Vice Chair Montbleau conducted the remainder of the meeting.

Mr. Lynde noted Town Counsel worked on retainer. He said he wouldn't charge out on doing something if he didn't know what he was talking about. He said he would find out what the Town should do from Ms. Chizmas and Mr. Gowan. Mr. Doherty discussed the fact that engineering firms had been hired to protect the interest of abutters. He said abutters are all concerned about having the 'wool pulled over their eyes' because the project is an innovative land use ordinance that's able to be done quickly. He felt the Town should at least let Salem know we're not happy.

Mr. Thomas questioned if there was a project engineer and time table that laid out the process. He didn't understand how construction could be commencing without certain things in place. Mr. Montbleau said the Town needed to send someone to find out who is in charge and have NRPC's assistance. He felt the project was moving so quickly that whatever the Town says will be minimized. He believed if the hearings were over Pelham is coming in late to the process. He said having NRPC represent the Town with Mr. Gowan to voice concerns for the record was very important. Without having any answers, Pelham needed to have a fact finding group put together as soon as possible. Mr. Lynde said NRPC attended the Selectmen's last meeting to discuss the intersections of Sherburne Road/Mammoth Road/Marsh Road and Route 38/Old Gage Hill Road. They used traffic simulation tools to show vehicle data and could do the same in connection with the Tuscan project. He said Pelham may be coming in late to the process, but felt NRPC were the right people to connect with Mr. Gowan and gather information.

Mr. Culbert questioned if Mr. Gowan could provide the Board with a daily input of what he was doing. Mr. Lynde stated Mr. Gowan had a job to do. He noted Mr. Gowan would be speaking to Salem's Planning Director and coordinating with NRPC. He pointed out the project would be going on for a few years. Mr. Doherty replied the intersections were being done right away; the internal portion of the parcel would take a long time. He

discussed traffic simulation with Ms. Chizmas, who indicated she currently didn't have the ability to run them in the area the Town was concerned with because she didn't have Rockingham County data. Mr. Lynde said he would discuss this with Ms. Chizmas.

**Discussion of Planning Director reading abutter's lists at the beginning of each hearing**

Deferred to a later meeting.

**DATE SPECIFIED CASE(S):**

- 1) PB Case#PL2017-00012 - Map 7 Lots 9-135 & 9135-1 - MENDES, David – Katie Lane & Simpson Road
- 2) PB Case#PL2017-00017 - Map 28 Lots 2-12 & 2-12-19 - LEMARRE, Richard & RIESLAND, Steve & Debra - 434 Mammoth Road & 9A Burns Road
- 3) Bond Reduction for Sweet Birch / Rolling Ridge Lane
- 4) Discussion of Planning Director reading abutter's lists at the beginning of each hearing

**ADJOURNMENT**

**MOTION:** (Culbert/Lynde) To adjourn the meeting.

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

The meeting was adjourned at approximately 8:58pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary