

APPROVED
TOWN OF PELHAM
PLANNING BOARD WORK SESSION MINUTES
October 15, 2018
APPROVED – November 5, 2018

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

Secretary Paul Dadak called the roll:

PRESENT: Peter McNamara, Roger Montbleau, Paul Dadak, Tim Doherty, Jim Bergeron, Blake Clark, Selectmen Representative Hal Lynde, Alternate Richard Olsen, Alternate Bruce Bilapka, Planning Director Jeff Gowan

ABSENT: Alternate Derek Steele, Alternate Samuel Thomas, Alternate Paddy Culbert

MEETING MINUTES

October 1, 2018

MOTION: (Montbleau/Lynde) To approve the October 1, 2018 meeting minutes as amended.

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

PUBLIC HEARING – Proposed Subdivision Regulation Changes

Prior to the meeting via email Mr. Gowan provided the Board with a redline draft of the proposed changes to the Subdivision Regulation wording. Mr. Gowan noted that the only member he heard from was Mr. Clark. He said the proposal was essentially a couple typos and one statutory change that found its way into the Regulation in several areas. Steve Keach of Nordstrom Keach (Board's engineering review firm) was present for the discussion and offered his opinion. The Board reviewed and discussed the proposed changes.

There was a brief discussion about open space requirements. Mr. Lynde didn't see reference to certain language in the proposed verbiage (open space/interior parks) that had previously been contained in the Subdivision Regulations. Mr. Keach recalled an inquiry being sent to Town Counsel who wrote something back to the Board that he hadn't seen. He believed when the proposed text was written they were awaiting his input as to whether it was appropriate to continue with the requirement. He recalled (Section XI-14) requiring the creation of park lots. Mr. Lynde replied Town Counsel thought it was legal, but the language needed to be cleaned up. Mr. Keach said if the Board wanted the equivalent to Section XI-14 it could be included; however, he would like Town Counsel's language because he had reservations about it in practice and wouldn't want to be the one who created the words. Mr. Lynde said Town Counsel had offered to clean it up. Mr. Gowan commented that the last part of the existing language was very problematic and read that portion aloud. He spoke about the Board's actions in the past and suggested if they wanted open space that space shouldn't be something that requires on-going maintenance. He said if the Board was going to require open space it should be less than what they require in conservation subdivisions. He was unsure how to articulate that language, where it should be inserted and what purpose it had.

Mr. Montbleau concurred with Mr. Gowan. He didn't believe the Board could mandate open space based on past court challenges where the Judge ruled against the Town because of 'land takings'. During that time all the lots 'taken' were awarded back to the developers. Mr. Montbleau felt during discussions the Board could recommend open space.

Mr. Lynde recalled a presentation given by Ben Frost who clearly indicated the Town had a right to demand as much as 30% land be dedicated to open space. He realized there were problems, but saw it as an avenue to other areas, possibly an alternate concession to open space could be affordable housing. He asked that the Board review the possibility and address at a future date. Mr. Gowan said his interpretation was that the Board could allow conservation subdivisions. He volunteered to work with Mr. Lynde and contact Mr. Frost to create language for the Board to review. Mr. Doherty assumed that Joe Maynard (Benchmark Engineering) would be willing to discuss the topic. He said Mr. Maynard was one of the engineering firms that had come in front of them and spoke about the specific lawsuit that prohibited the Town from having that language in Zoning.

Mr. Doherty stated Pelham was unique in that they not only had voluntary conservation subdivisions, but they also had Forestry Committee in conjunction with the Conservation Commission who did a great job communicating with taxpayers to vote in favor of buying open space. He said the Board was getting open space through developments that tied Town land together. At this point he felt to try to force builders give open space would throw a wrench into something that the Town was already successful in accomplishing. He didn't feel they should 'tinker' with the language and simply keep it with conservation subdivisions. Mr. Gowan noted if a developer is made to have open space it also makes that development have a homeowner's association to manage the space. He understood Mr. Lynde's point and said there may be an alternate way to proceed. Mr. Keach agreed with the various viewpoints. He saw it being the least manageable in minor subdivisions (2 or 3 lot development) which could create an inequity.

Mr. Lynde said the Town had house after house, but no areas for children to play. He felt there should be local places for them to play outside without having to be transported to a local park. Mr. McNamara suggested leaving the current proposal and have the Board come back later to pursue it. Mr. Lynde appreciated that fact. Mr. Montbleau heard Mr. Lynde's comments about children having a place to play. He said it was a different time from when he was young. In this day children don't seem to create their own outdoor activities. Mr. Gowan commented currently there were a few conventional lots being built which had huge yards; however most developments are conservation subdivisions that have protected open space areas. He felt they could come up with something to address Mr. Lynde's concerns that the Board would find satisfactory.

Mr. Gowan asked the Board if they felt the proposed amendments were substantive changes that required a second hearing.

Mr. Doherty spoke about open spaces and discussed a subdivision off Spaulding Hill Road that had a perfect flat 'farm/agriculture' land. He asked the applicant to deforest that area, so children would have a place to play; he was the lone Board member to want that type of area. He said if it couldn't be done within a conservation subdivision it wouldn't get done within a conventional development. With regard to 'substantive changes' Mr. Doherty stated the Board was completely changing the Subdivision Regulations and felt the entire thing was a substantive change. He said if this was the first public hearing and the Board wanted to ensure they 'covered their bases', they should hold a second hearing to vote. Mr. McNamara said it wouldn't hurt the Board to hold a second hearing. Mr. Keach believed the question of 'substantive change' pertained to the document the Board viewed during the meeting. Based on the discussion of what was currently in the Board he didn't feel they had made substantive changes.

Mr. McNamara polled the Board to see if they had any additional changes. There were no additional amendments proposed. He wanted to know how the Board wanted to proceed. Mr. Gowan noted that the draft had been available for public inspection at the Planning Department counter. Mr. McNamara pointed out if the Board voted to approve the language and they later came upon an error or wanted to make additional changes, they would simply have to schedule a public hearing to make those changes. The process was different for Zoning amendments.

Mr. McNamara opened the discussion to public input. A member of the public came forward thinking that the Board was discussing another agenda item. They had no questions/concerns with the current discussion and returned to the public.

Mr. Bergeron felt the Board should conduct a second public hearing and made a motion for such to occur. He didn't feel they had addressed Mr. Lynde's concerns regarding workforce housing. Mr. Montbleau seconded for discussion.

Mr. McNamara believed the Board was going to revisit the language in the future. He didn't think they would get to a point of including workforce housing in the Regulations by changing language. He said the Board could come back at any time to amend the language. Mr. Lynde understood that the Board could address the question of open space at a later date since they could amend the document at any time and not wait for Town Meeting. He was willing to address his questions later. He was unsure about the language for affordable housing. Mr. Bergeron was not ready to accept the proposed language.

MOTION: (Bergeron/Montbleau) To conduct a second public hearing.

SHOW OF HAND VOTE: (2-5-0) The motion failed. Mr. Bergeron and Mr. Doherty voted in the affirmative. Mr. McNamara, Mr. Montbleau, Mr. Dadak, Mr. Clark and Mr. Lynde voted in opposition.

Mr. McNamara accepted a motion to adopt the land use regulations as amended during the meeting; Mr. Gowan will make those changes. Mr. Montbleau made the motion based on the fact that the Board could make those changes as the process was not the same as required for Zoning amendments. Mr. Dadak seconded.

MOTION: (Montbleau/Dadak) To adopt the Regulations as amended.

SHOW OF HAND VOTE: (5-2-0) The motion carried. Mr. McNamara, Mr. Montbleau, Mr. Dadak, Mr. Clark and Mr. Lynde voted in the affirmative; Mr. Bergeron and Mr. Doherty voted in opposition.

Mr. Gowan will provide the Board members will a final version along with a statutory 'cheat sheet' broken down by section to go along with the verbiage.

The Public Hearing was closed.

ADMINISTRATIVE

Map 39 Lots 1-54-2,3,4 & 1-55 RJ MCCARTHY – Waterford Estates – Request for Bond Reduction

Mr. McNamara referenced a letter submitted by Keach Nordstrom (Board's engineering review firm) dated October 3, 2018 and signed by Jeff Quirk, Senior Project Engineer.

The remaining bond is: \$264,833.50

Recommended bond reduction: \$89,700

Remaining balance: \$175,133.50 to support completion of project.

MOTION: (Montbleau/Clark) To reduce the bond by \$89,700 and retain \$175,133.50.

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

OLD BUSINESS**Case #PL2018-00023****Map 7 Lot 4-182****Yellow Wood Land Holding, LLC Attn: Blake Clark, Manager – Yellow Wood Drive – Pre-Design Review for Proposed Conservation Subdivision**

Mr. Clark recused himself. Mr. McNamara appointed Mr. Olsen to vote.

The applicant Mr. Blake Clark came forward.

Mr. McNamara stated that the matter had been continued from the previous meeting, so the Board could seek legal comment. The Board received a letter from Town Counsel via email earlier in the day and hard copy was handed out during the meeting. Mr. McNamara assumed since Board members hadn't had an opportunity to review the letter that they would like to continue the case to their next meeting. Mr. Clark felt that was reasonable given the late hour of the opinion.

Mr. McNamara announced for the public that the Board wouldn't hear the case at the present meeting; however, it would be date specified to the November 5, 2018 meeting. He said abutters wouldn't receive further notice.

Mr. Clark questioned if he would be notified prior to the next meeting so he could prepare and know if his engineer should be retained for that next meeting. Mr. Montbleau stated the Board (at their last meeting) had agreed to give Mr. Clark direction and suggested they provide a list of concerns prior to the next meeting. Mr. McNamara felt the legal opinion would resolve most of the concerns that were raised.

Mr. Lynde questioned if the applicant could have a copy of Town Counsel's opinion. Mr. McNamara replied doing so would destroy 'attorney - client' privilege. The Board discussed how to proceed. Mr. Gowan felt the Board should first acquaint themselves with the legal opinion and then decide the next step.

Mr. McNamara stated the Board would enter non-public session at their next meeting to discuss the legal opinion. He believed they would have guidance once they came out of that session.

The case was date specified to November 5, 2018.

Mr. Clark returned to the Board.

Case #PL2018-00031**Map 39 Lot 1-103****4 Jones Road Realty Trust, Michael Farris, Trustee – 4 Jones Road – Proposed 2 Lot Subdivision**

Mr. McNamara stated the Board continued the matter from their last meeting to seek comment from the Conservation Commission. The Board was provided with a letter from the commission dated October 15, 2018. He read the letter aloud, which indicated they voted (6-0-0) to recommend the plan contingent upon the applicant moving the lot line that divides the two parcels toward the existing driveway such that the proposed driveway can be moved a minimum of 25 feet (half of the 50 feet Wetland Conservation District 'WCD' buffer) from the edge of wet.

Representing the applicant Mr. Karl Dubay of The Dubay Group who told the Board he hadn't had the opportunity to review the letter from the Conservation Commission but agreed with its contents. He indicated that the plan had been amended per the commission's comments; they slid the driveway over as much as possible to still make both lots viable within the purview of the waivers. He said they couldn't get the whole 25ft. from

the edge of the wetlands to the edge of pavement; however, they achieved 18ft-22ft. The plan notes, calculations, upland areas, lot loading etc. had been updated as requested. He reviewed the plan and discussed the adjustments that had been made.

Mr. Bergeron questioned if the Conservation Commission had looked at the site. Mr. Dubay replied he couldn't speak for the commission; he didn't know if they had. He explained it was a roadside swale/wetland that happened to be WCD. He felt if they reviewed the site they would agree that it was a natural place for the driveway to be. He said they followed the commission's requests and updated the plan set. Mr. Gowan confirmed that the applicant still needed the Special Permit for WCD impact. Mr. Dubay answered yes. He believed the Board would also condition an approval on the State Subdivision Permit and that they obtain the Selectmen approval of the driveway on the road.

Mr. Gowan stated the requirement to go in front of the Selectmen was by a separate statute. He understood the applicant would need State Subdivision approval, along with any other State permitting to be noted on the plan, and letter of satisfaction from Keach Nordstrom. He reviewed the proposed conditions from the last meeting and saw that the other points were addressed.

Approval conditioned upon receipt of all applicable State permitting, letter of satisfaction from Keach Nordstrom, Board recommendation letter to issue a building permit from Mr. Gowan to the Selectmen. It was noted that Jones Road was a private road. There was no objection by the Board to have Mr. Gowan send a letter to the Selectmen as stated.

MOTION: (Clark/Montbleau) To approve the Special Permit for Wetland Conservation District crossing.

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

The Board then approved the subdivision with the stated conditions.

MOTION: (Montbleau/Clark) To approve the subdivision with the stated conditions.

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

NEW BUSINESS - There were no new business items.

DISCUSSION

Mr. Gowan reminded the Board that a site walk was scheduled for Saturday.

Mr. Lynde wanted to know the deadline for submitting Zoning changes. Mr. Gowan didn't have the calendar in front of him but believed the second public hearing couldn't be after late December-early January. He will provide the Board with the specific dates by their next meeting. Mr. Lynde wanted the Board to take up the issue of elderly housing. Mr. McNamara said the Board's subcommittee could hold a meeting in November specifically on the subject of elderly housing as he didn't believe they had time to do anything else for March. Mr. Gowan advocated discussing the areas the subcommittee should address.

NON-PUBLIC SESSION in accordance with RSA 91-A:3 – Not requested.

DATE SPECIFIED PLAN – November 5, 2018

Case #PL2018-00023 - Map 7 Lot 4-182 - Yellow Wood Land Holding, LLC Attn: Blake Clark, Manager –
Yellow Wood Drive

ADJOURNMENT

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

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

The meeting was adjourned at approximately 8:21pm.

Respectfully submitted,
Charity A. Landry
Recording Secretary