

**APPROVED**

**TOWN OF PELHAM  
PLANNING BOARD MEETING  
November 21, 2016**

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

The Secretary Paul Dadak called roll:

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

**ABSENT:** Roger Montbleau, Jason Croteau, Alternate Richard Olsen

Mr. Culbert was appointed to vote in Mr. Croteau's absence.

**OLD 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. McNamara stated the case had been continued from a previous meeting pending a letter from Town Counsel, which had since been received.

Attorney Matthew Caffrey representing the applicant, came forward for the discussion.

Mr. Doherty stated he received his member packet earlier in the evening and read through the information provided. He believed he found an 'out' in the letter sent by Town Counsel - Attorney John Ratigan. He said Attorney Ratigan gave an explanation for public roads; however, the proposal was off a private road. Mr. Doherty read aloud a portion under 56.05- Release by Municipality. Mr. McNamara commented that the release from dedication of the public lane was done approximately 60-70 years ago by operation of law. In reading the State law, Mr. Doherty felt the Board had a right to discharge the lane. Mr. McNamara disagreed. He said the lane had been discharged as an operation of law, the Board didn't have that right. Mr. Doherty felt that was true if it was intended to be a public way. Mr. Gowan said it applied to any platted road of any kind. Mr. McNamara believed Mr. Doherty was misreading the opinion.

Mr. McNamara opened the case for public input. No one came forward.

Mr. Sherman was appointed to vote in Mr. Montbleau's absence.

**MOTION:** (McDevitt/Sherman) To approve the lot line adjustment.

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

**NEW BUSINESS**

**PB Case #PL2016-00024**

**Map 22 Lot 8-35**

**GUZIEKA, Richard – 139 Main Street - Proposed change of use for expansion of commercial business**

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. Ms. Lisa Culletin, the mother of a woman purchasing 160 Main Street, came forward to let the Board know her daughter was running late for the meeting. It was noted that Cheryl Peirce, the present owner of record, received notification of the meeting (*she came forward to speak during public input*).

Mr. Guzioka came forward to discuss the proposed change of use from Residential to Commercial. Currently the property contained a four-family dwelling with four-car garage. He noted the State create a hole years ago by taking fill out for Route 38. He had since acquired fill from the Town to fill that hole. He told the Board he had been retired for eleven years, and the increase in taxes and financial hardship was forcing him to develop.

Mr. McNamara asked for the size of the property. Mr. Guzioka replied the property was 2.1 acres. He believed the area being discussed was .4 acres. He displayed a copy of the tax map and an aerial photograph to show the property's location. Mr. Gowan told the Board that the property was zoned commercial and contained a multi-unit house and garage. Because the property is multi-use, he said the applicant didn't realize he needed to come in front of the Board for a change-of-use. When the Town saw the activity taking place Mr. Guzioka was advised of the required actions to take. Mr. Gowan considered the application a minor site plan review since no structures would be built. He mentioned that the Police Chief and Fire Chief agreed that the application didn't warrant review by the Highway Safety Committee, unless the Board felt otherwise.

Mr. McNamara requested an explanation of what the applicant proposed to put on the property. Mr. Guzioka believed there was enough room for two people. He said one was a known landscaper in Town who kept an organized operation. The other would possibly be a tree cutter, who was also a member of the Town. He said the on-site equipment would be dump trucks for use off-property and bins for bark mulch. Mr. McNamara read aloud a 'prospective equipment list' submitted with the application for the landscape business. The hours of operation were listed as Monday-Friday 7:00AM-7:00PM; Saturday 7:00AM-4:00PM; Sundays by appointment. Winter season November 1<sup>st</sup> through May 1<sup>st</sup>. There was a note at the bottom of the list that read 'equipment list subject to change'. Mr. Guzioka explained the note was included in the event the business expanded, or new equipment was purchased.

Mr. Dadak confirmed the location of the lot and believed he had seen that fill had been brought in. Mr. Guzioka replied (pure sand) fill had been brought in from the high school project.

Mr. Doherty wanted to know if a tree cutter shared the site if they would cut and split wood on site. Mr. Guzioka answered no, but noted there would be logging in the early fall from previous landscaping customers. Mr. McDevitt asked for clarification of what work would be done on the property and if things would be sold from the property. Mr. Guzioka replied logging (cutting/splitting) was done mostly during the fall. He explained the landscaper accessed his vehicle from the site during landscaping season and in the winter the landscaper would access their plows. Mr. McDevitt wanted to know specifically if there was going to be a business and/or sales conducted on the property. Mr. Guzioka answered no. Mr. McDevitt questioned if there would be any lighting. Mr. Guzioka replied they had plans to install a (down-facing) light. Mr. Gowan said if the Board reached a decision he would work with the applicant to ensure any lighting would be 'dark sky' compliant. Mr. McDevitt asked if the property would be fenced in. Mr. Guzioka said it wouldn't be fenced at this time. He said the landscaper may clean/clear the edges of the property and possibly plant shrubs and trees to dress it up. Mr. McDevitt understood that the Town's Regulations call for screening (fence, shrubs), which the Board typically required. Mr. Guzioka noted that the walls of the bins (4ft in height) screened a portion.

Mr. McNamara inquired if there were any residential neighbors with a direct line of sight into the equipment storage area. Mr. Guzioka said he couldn't answer if anyone else could see the area. Mr. McNamara asked how far away the nearest home was located. Mr. Guzioka believed they were approximately 130ft. He noted the lot directly across the street was vacant and unsuitable for building. Other than what had been described, Mr. McNamara questioned if there would be any other business conducted on the site. Mr. Guzioka said other than the two people discussed there wouldn't be anyone else. Mr. McNamara asked if there would be any vehicle maintenance on site. Mr. Guzioka told the Board they conducted general maintenance off-site. He informed the businesses they had to have drip diapers (under pads) for the equipment on site so any spill could be addressed immediately. Mr. McNamara questioned if there would be any on-site employees, other than to pick up or drop off equipment. Mr. Guzioka answered no; there is no office on site.

In the information provided to the Board, Mr. Gowan saw reference that reclaimed asphalt would be used on site. Mr. Guzioka replied the Town's Code Officer poured a gallon water on the surface and saw it immediately disappeared. Mr. McNamara read aloud a letter dated November 2, 2016 from Code Enforcement Officer John Lozowski in reference to 139 Main Street (Map 22 Lot 8-35). The letter described his investigation of the property and included his opinion that the surface material being used was porous.

Mr. McNamara opened the hearing to public input.

Ms. Cheryl Peirce, 160 Main Street located diagonally across the street from the applicant's property, told the Board she was surprised at the number of trees that had been taken down and the fact that the area had asphalt and a number of trucks on site. When sitting in her home she said she could see all the trucks and found the activity to be noisy. She said bucket trucks often drop the buckets on the ground and there were people on site. Ms. Peirce stated her property was currently on the market and felt the situation could possibly cause a hardship. She said it had always been a quiet neighborhood and wanted to voice her concern. Mr. McNamara asked how far from the applicant's property she was located. Ms. Peirce replied she was across the street, possibly 100ft. Mr. McNamara questioned if there was any buffer. Ms. Peirce answered no. She said if the applicant hadn't taken down so many trees she might not see the trucks as easily. She thought the existing stone wall was also an eyesore. Mr. McDevitt asked Ms. Peirce to point out the location of her lot on the plot plan. She used the displayed plot plan to show the location of her parcel.

Ms. Lisa and Makala Culletin, came forward. Ms. M. Culletin told the Board she was a potential buyer of 160 Main Street. Ms. L. Culletin stated she had a client who was a landscaping company. She spoke about the noise of the vehicles and the nature of the business, which was a concern for her daughter possibly purchasing the property. She heard testimony that there wouldn't be sales from the location and didn't understand how that could be since materials would be stored on site. Mr. Guzioka replied the material was preordered by customers; there wouldn't be sales on the property. The company would deliver material to the customer's location. Ms. L. Culletin was concerned with constant truck traffic picking up the material and questioned if loam would be screened on site. She reiterated her concern about the noise from the equipment. Mr. Guzioka disagreed that the equipment would be noisy. He told the Board Ms. Peirce's testimony about noise was generated from the dump trucks preparing the site, which was a temporary situation. He stated that the landscaping business hadn't started their operation yet, so any noise wasn't from the future tenant. Ms. L. Culletin reiterated her concern about noise from trucks accessing the site during working hours and early morning hours. She voiced concern about contamination from the vehicles. Mr. McNamara replied the Board had to rely on the applicant's testimony. He said if it's proven not to be the case, there could possibly be code enforcement action or the matter would come back to the Planning Board for modification. Mr. Guzioka told the Board before he flattened out the lot, he allowed a landscaper to store bark mulch on his property. In the spring he would come in to fill up the trucks and at no time was it done before 7am or after dark. He said he wouldn't stand it since he also lived on the property. With regard to fluid leaks, he noted all vehicles leaked oil. He has a house tenant whose vehicle leaks and they weren't allowed to park on the pavement unless they fix the situation. He stated there was more oil on roadways than would ever be on the proposed lot. Ms. M. Culletin asked for a confirmation of the hours of operation. Mr. McNamara replied Monday-Friday 7am-7pm;

Saturday 7am-4pm; Sunday by appointment; winter season November 1<sup>st</sup> through May 1<sup>st</sup>. Ms. M. Culletin noted during winter a snowstorm could occur at any hour of the night, and having the vehicles up and running would be loud. Mr. Guzioka believed any sound would be minimal given snow dampens sound.

Mr. Doherty commented that everyone had to deal with snowplows running in the middle of the night during snowstorms. He said most snowplow vehicles were on customer sites. Ms. L. Culletin voiced concern with the noise from idling vehicles, which would be disturbing at night.

Ms. Sue Vivier, 164 Main Street shared the same concerns with others that had come forward. Specifically the eyesore and the number of running trucks waiting to go out and plow during snow storms. Mr. McNamara asked where her lot was located. Ms. Vivier believed she was approximately 100ft-150ft away. She told the Board the person that previously had bark mulch on the lot was very noisy and at that time the lot had trees to buffer the sound. She was concerned with the hours of operation, given that her days off were Tuesday and Wednesday, she feared listening to noise on both her days off. She noted if her shift changed to nights she would need to sleep during the day and wouldn't be able to rest.

Mr. Lance Ouellette of 13 Gaston Road told the Board he was the owner of A Handy Company and had been hired by the applicant to clean up the lot. He stated that the lot was fully buffered; the entire perimeter was wooded, with anywhere from a 20ft-30ft. tree cover. He noted it was thin this time of year because the leaves were off the trees. He stated Mr. Guzioka made sure to keep the buffer all the way around the lot. The thinnest spots were located on State owned property. Mr. Ouellette suggested to Mr. Guzioka that he provide a prospective list of equipment, which is the same list approved by the Board when the company was located at Tractor Supply Company. He noted that he provided the Board with photographs of his current operation and how vehicles are stored. He challenged the Board to say there had been any noise complaints about his business.

Mr. McNamara questioned if his business was the prospective tenant. Mr. Ouellette answered yes. He then spoke about the equipment and informed in the winter all the heavy equipment was left on the customer's commercial site; for the last nine years they took care of the Chunky's and Hannaford Plaza. Mr. McNamara asked if equipment would be accessing the applicant's property during a snow storm. Mr. Ouellette replied the only equipment coming in and out would be the sanders to be loaded, which was typically either in the morning or around 5pm, because per contract he had to have locations sanded by 7pm. He currently owns two sanders. There could possibly be two or three plow trucks on the premises.

Mr. Culbert asked if the sand and salt would be covered. Mr. Ouellette replied yes; the State recommends anything under 200 tons be covered. He noted they also have tarp underneath the sand and salt pits. He told the Board they were in the process of cleaning up the lot, but ceased doing so because of the meeting. He stated he had been in business in Pelham since 2002 and had yet to have a complaint. Mr. Ouellette addressed the concern about trucks idling during storms. He said they didn't have time because they had to clear their contracted commercial complexes. He stated they remained mindful of the residences around them.

Mr. Sherman questioned how close the salt would be stored to the seasonal stream. Mr. Ouellette replied the stream was approximately 225ft. away.

From abutter testimony, Mr. Doherty heard concern about the proposed property being plowed and wanted to know what time of day/evening would it be done. Mr. Ouellette replied the lot was generally the last place they plow and typically done during the day. He wanted the Board to know that within an eighth of a mile from the property they had over twelve residential and four commercial clients for landscaping and plowing. In review of the hours of operation, Mr. Doherty asked what guarantee the Board had that the lot wouldn't be plowed in the middle of the night. Mr. Ouellette stated they typically didn't work weekends. However, they did when it snows in the winter. Generally they out before 4am and sanding prior to 7pm. In the event of a snowstorm, they operate much like the Town does. He said he wouldn't be plowing the proposed property at

I am, they would wait until the next day. He noted he would do a couple passes on the property so they could access the sand and salt.

Mr. McDevitt heard the discussion regarding ‘screening’ and noted that there were no provision for when trees have leaves versus when they don’t have leaves. He read aloud a portion of the general screening requirement contained in the Site Plan Regulations. Mr. Ouellette spoke about the plantings and told the Board the applicant understood there would need to be plantings. Mr. Culbert questioned if the area required plantings per the landscape regulations. Mr. Gowan replied the Site Plan Regulations required a buffer and there could be discussions with the applicant regarding such.

Mr. McNamara suggested the Board conduct a site walk. After a brief discussion, the Board decided to conduct a site walk December 3, 2016

Mr. Passamonte noted that the lot was small and already buffered by trees. Since buffers were required, he wanted to know if the Board would go back and look at other commercial properties that had no buffers. Mr. McDevitt replied he was speaking to the case in front of the Board at the present time. He felt that he addressed every case fairly and consistently with the Regulations. He stated he did not, and would not ignore the Regulations. Mr. Passamonte said the Board should apply the same standard to everybody, but noted in this instance the lot was small. Mr. McDevitt replied that the standard didn’t make an exception for a small lot. He would like to work with the applicant; however, the Board couldn’t ignore the Regulations. Mr. McNamara reiterated that the Board reviewed situations on a case by case basis.

Mr. Ouellette wanted the Board to be aware that a lot of the equipment wouldn’t be on site since it was December and the beginning of the winter months. Mr. McNamara replied the Board would want to see where equipment would be located and asked that the area be staked out.

The case was date specified to December 5, 2016.

## **DISCUSSION**

### **Sherburne Road area water/well issues**

The Board was provided with a letter dated November 14, 2016 received by Charles Head of Sanborn Head in response to recent presentations to the Board and interested residents.

Mr. McDevitt stated the reason Mr. Head gave a presentation was because of ongoing water issues in the areas of Sherburne Road, Spaulding Hill Road and Scenic View. The purpose was to provide education on impacts to wells. He noted that the initial meeting had a notification error, therefore, Mr. Head provided the same presentation at a later date to interested residents. He told the Board it was a very difficult meeting because there were a number of residents in the area with significant ongoing water problems. Mr. McDevitt said the reason the Board received the letter was because Mr. Head was asked, as a result of the meeting, to get back to the Selectmen with solutions. He stated neither the Planning Board nor the Selectmen were under a legal obligation to make sure that people had water. He said the question was if they had another obligation to those who had little to no water on their property. He noted there were three different groups involved; the Selectmen, to decide whether to react to the letter; the residents, to organize and create a district or have a betterment assessment; and the Planning Board to decide if/what action to take.

Mr. McDevitt said the recurring challenge was the resident’s question of how the Planning Board could approve homes to be built for people who haven’t paid a penny in taxes, when their concerns are getting attention. He felt the Planning Board should consider whether or not they wanted to address the lack of water in the area; particularly focusing on perhaps slowing down further development in the area until a water infrastructure is built. He didn’t expect the Board to answer at the present meeting, but felt the members

should give serious thought to whether or not they wanted to address the issue of further development. He noted there was not a lot of remaining land to develop.

Mr. McNamara pointed out that property owners who had not yet developed in that area had a right to develop their land under the law; regardless of the length of time people had resided in Town. As long as an owner abided by State and local Regulations they had a right to develop. He then referred to information provided during Mr. Head's presentation cited from "Hydrogeology" by Davis and DeWiest *'Few tasks in hydrogeology are more difficult than locating drilling sites for water wells in igneous or metamorphic rock.'* He also read aloud the following from Mr. Head's presentation *"It is highly improbable and very atypical that pumping from residential bedrock wells in a development with acre-type zoning would materially impact other nearby wells. Chances of impact increases some with larger scale ground water withdrawals and high density development, but there is no easy and inexpensive way to determine this"*. Mr. McNamara stated that information was the real problem they faced in trying to come up with any solution. He said it would cost several millions of dollars to develop and implement some kind of comprehensive plan. When speaking about slowing development, Mr. McNamara said they would have to have a reason sufficient in law to do so, and not simply driven by a fear of something that could happen. He said there had to be a causal nexus between a future development and the existence of a problem and not a 'potential' existence.

Mr. Doherty felt one thing slightly possible for concerned residents was to lobby conservation groups to raise money to create larger forestry within the Town. He said by concentrating on the area the Town would have the timber and forested recreation. He spoke about the conservation land acquired since 2002 and thought it was incredible what the conservation commission had done. Mr. McDevitt noted purchases took a willing seller and a price the Town was willing to pay. He stated land purchases has to remain consistent with the plan they created.

Mr. Molloy asked for clarification of the area being discussed. Mr. McNamara replied Scenic View Drive. Mr. Dadak stated the area was at the top portion of Sherburne Road; however, the water situation was inconsistent. He said there was an owner who had three wells and very little water and their neighbor had one well and plenty of water. As he learned from the hydrogeologist, finding water was more of an 'art' than a 'science'. He said he couldn't imagine Pelham was the only town with a water situation. He questioned if the State had any input on distances to wells. Mr. Gowan replied he hadn't asked the State. He commented it was hit or miss for anyone drilling wells in that area. He believed Mr. McDevitt was suggesting that the Board think about the situation and come up with reasonable approaches. He said the Board might consider on the high ground of Sherburne and areas of Mammoth Road only allowing conventional development with one acre zoning. Mr. Gowan stated it wasn't in the Planning Board's power to solve any of the existing water problems. He said they should discuss what tools they could employ to pay attention to the situation in the future, short of creating a moratorium on development. He noted there was a lot of land on Spaulding Hill Road left to be developed.

Mr. Doherty commented that the Board should start making all water runoff in the area infiltrate back into the ground. He worked in developments that didn't allow water to run off properties. Mr. Dadak said one concern from residents was other residents watering their lawns. There was a brief discussion regarding community water wells. Mr. Gowan said when the State approved them, they were not allowed to have any hard piped irrigation. He stated the Board had a blank slate as far as what projects may come through and said they would have to weigh each of them as a thoughtful and considerate matter as the Board always did.

Mr. McNamara asked the Board to think about the situation and solutions.

**SITE WALK – December 3, 2016 beginning at 9AM**

PB Case #PL2016-00024 Map 22 Lot 8-35 - GUZIEKA, Richard – 139 Main Street

**DATE SPECIFIED PLAN – December 5, 2016**

PB Case #PL2016-00024 - Map 22 Lot 8-35 - GUZIEKA, Richard – 139 Main Street

**MINUTES REVIEW**

**November 7, 2016**

**MOTION:** (Culbert/Dadak) To approve the November 7, 2016 meeting minutes as written.

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

**ADJOURNMENT**

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

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

The meeting was adjourned at approximately 8:23pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary