

APPROVED

**TOWN OF PELHAM
PLANNING BOARD MEETING MINUTES
May 18, 2020**

Chairman Tim Doherty called the meeting to order at approximately 7:00pm.

Secretary Cindy Kirkpatrick called the roll:

PRESENT ROLL CALL: Tim Doherty – present
Jim Bergeron - present
Cindy Kirkpatrick – present
Danielle Masse-Quinn - present
Alternate Paddy Culbert - present
Alternate Richard Olsen - present
Alternate Bruce Bilapka - present
Selectmen Representative Kevin Cote - present

Via Telecommunication:

Roger Montbleau – present via telephone
Paul Dadak – present via Zoom
Alternate Selectmen Representative Hal Lynde – present via Zoom
Alternate Mike Sherman – present via telephone
Planning Director Jeff Gowan – present via Zoom

ABSENT/

NOT PARTICIPATING: Alternate Sam Thomas

PLEDGE OF ALLEGIANCE

Mr. Doherty read aloud “A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency” (*regarding access to the meeting*)

MEETING MINUTES

April 6, 2020

MOTION: (Bergeron/Dadak) To approve the April 6, 2020 meeting minutes as amended.

ROLL CALL VOTE: Mr. Doherty – Yes
Mr. Bergeron – Yes
Ms. Kirkpatrick – Yes
Mr. Montbleau – Yes
Mr. Dadak – Yes
Ms. Masse-Quinn – Yes
Mr. Cote - Yes

(7-0-0) The motion carried.

NON-PUBLIC SESSION - If requested in accordance with RSA 91-A:3

Mr. Bergeron requested entering into non-public session to review legal opinions received in accordance with RSA 91-A:3, 2 (l) legal.

MOTION: (Bergeron/Cote) To enter into non-public session per RSA 91-A:3,2,L (legal)

ROLL CALL VOTE: Mr. Doherty – Yes
 Mr. Bergeron – Yes
 Ms. Kirkpatrick – Yes
 Mr. Montbleau – Yes
 Mr. Dadak – Yes
 Ms. Masse-Quinn – Yes
 Mr. Cote - Yes

(7-0-0) The motion carried.

The Board recessed to enter into non-public session at approximately 7:14pm.

The Board returned to public session at approximately 7:44pm.

MOTION: (Bergeron/Cote) To indefinitely seal the minutes of the non-public session.

ROLL CALL VOTE: Mr. Doherty – Yes
 Mr. Bergeron – Yes
 Ms. Kirkpatrick – Yes
 Mr. Montbleau – Yes
 Mr. Dadak – Yes
 Ms. Masse-Quinn – Yes
 Mr. Cote - Yes

(7-0-0) The motion carried.

OLD BUSINESS**Case #PL2019-00024****Map 35 Lots 10-200, 10-312 & 10-351****NEIL FINEMAN 2018 TRUST & LEMIEUX, Albert III & Christine - Currier Road, Peabody Lane & Bridge Street (Route 38) – Proposed 40-Lot residential conservation subdivision with 3-open space lots**

Representing the applicant were Peter Zohdi and Shayne Gendron of Herbert Associates with Attorney John Cronin of Cronin, Bisson & Zalinsky. Mr. Zohdi told the Board he reviewed the meeting minutes from the previous meeting during which there was a discussion regarding the viability of the yield plan. He had also done some research, obtained maps from the State, and met with Mr. Gowan. He found discrepancies and believed there was misinformation regarding how the prime wetland is mapped. He also spoke with the Conservation Commission Chairman Paul Gagnon. Mr. Zohdi believed there was a question regarding the (current) yield plan and the number of lots they could obtain. He had Mr. Gowan and the Health Agent inspect the test beds in field with Mr. Gendron. He also re-hired the (original) wetland scientist to confirm the wetland flagging and believed the Conservation Commission agreed with the wetland flags. He said the State indicated there was a prime wetland; however, it had never been flagged until now. Now that the wetland flagging has been done, Mr. Zohdi wanted permission to have the opportunity to meet with the Chairman of the Conservation Commission to review the prime wetland with a 100ft. buffer to see how many lots they had.

Mr. Zohdi told the Board Mr. Gendron, reviewed Peabody Lane with Steve Keach (of Keach Nordstrom – Board’s engineering review firm) and Mr. Gowan. Mr. Gendron explained Ms. Priscilla Church’s driveway (an abutting property) would be changed with the re-alignment of Peabody Lane. He stated they all (Mr. Gowan, Mr. Keach, Ms. Church) went to a property off Sherburne Road to review a driveway with the exact same slope; then they went back to Peabody Lane with Ms. Church and discussed the project with her and other abutters to give them piece of mind.

Mr. Zohdi spoke about the proposal to improve (a section) of Peabody Lane. He referenced page 21 of the plan that showed the existing condition of the road. He noted based on a discussion with the Town’s Highway Safety Commission (‘HSC’) they agreed to make improvements to Peabody Lane. He pointed out a portion of the road was currently 12ft-13ft wide for two-way traffic; they will re-do that portion to make the width 22ft. from the project entrance to the intersection at Currier Road. He said he would stand by those proposed improvements on the new plan. Mr. Zohdi reiterated his request for permission to meet with Mr. Gowan, Mr. Keach, Mr. Gagnon, and any Planning Board member to review the map and determine the number of lots.

Mr. Doherty said in the past when the plan was in front of the Board, he had suggested not using Peabody Lane and instead have a cul-de-sac so no work at all would need to be done to Peabody Lane. He didn’t understand why Mr. Zohdi kept suggesting the use of Peabody Lane. He said if they wanted to develop a road the access should be out to Route 38 (Bridge Street). He stated the proposal was a conservation subdivision by Special Permit and read the pertinent section of Zoning pertaining to conservation subdivisions and their purpose and intent. He said none of what he read had been done and the plan constantly shows an invasion of Peabody Lane instead of following Zoning. He also read the section pertaining to impacts on existing neighborhoods. He didn’t know how the applicant ended up meeting with the HSC because the Planning Board didn’t ask them to go. He said the ‘neighboring road’ to the proposed conservation subdivision was Peabody Lane and didn’t feel it should be utilized because the traffic from the development would travel in that direction.

Mr. Zohdi told the Board he didn’t make a habit of going to the HSC. He explained he had to meet with them because of the water supply; otherwise the plan wouldn’t be approved. He stated he didn’t want to connect to Peabody Lane and originally showed a cul-de-sac at the end of the road. When they met with the HSC, they were told they wanted a connection to Peabody Lane not a cul-de-sac. He said they changed the plan and went back to the HSC showing a connection to Peabody Lane without touching (improving) the road and were told by Town staff they wanted them to improve Peabody Lane (800ft). Mr. Zohdi reiterated he never wanted to make improvements to Peabody Lane. He noted abutters, along with Ms. Church, attended the HSC meeting when they were told by Town staff to improve Peabody Lane and Ms. Church’s driveway (shown on page 21 of the plan set). After that meeting, they showed the abutter an example of a driveway with the same pitch to view in person. He believed he was told by Mr. Gowan, Mr. Keach and Mr. Gendron that everyone was satisfied and now he heard the Board saying it was him that wanted Peabody Lane improved. He said ‘who am I to spend my client’s money’; the Peabody Lane improvements would cost over \$250,000. Mr. Zohdi referenced page 21 of the plan set that showed the proposed improvements the Town wanted. He explained to the Board the drainage study report was required to have the Town Clerk’s signature before being submitted to the State for an Alteration of Terrain permit. Mr. Zohdi stated if the Board didn’t want him to improve Peabody Lane, he would be glad not to. Mr. Doherty said it wasn’t the ‘improvement’ to Peabody Lane, he was in opposition to the ‘use’ of it. He stated the Planning Board makes the decisions and has full control regarding innovative land use. He added the HSC is advisory to the Planning Board and the Board didn’t ask their advice. He said they still had to address the zoning the adverse impact from the use of Peabody Lane. Mr. Zohdi pointed out currently Peabody Lane is a two-lane road with 12ft. of pavement. He said if the Board didn’t care about what the HSC or Town staff have said about the connection to Peabody Lane, he would be glad to show a 75ft. radius cul-de-sac.

Mr. Cote questioned who wanted the applicant to improve Peabody Lane, specifically if it was the residents that wanted it improved. Mr. Zohdi answered no. Mr. Cote said a lot of people move to Town because it’s small and quaint and questioned if there was a reason to improve the road as there were 7-9 houses on the road. He

asked what the improvements were. Mr. Zohdi stated he wanted to have a cul-de-sac. Mr. Cote wanted to know why the applicant went to the HSC because he didn't see a requirement to do so. Mr. Zohdi explained when there is 'emergency water' the HSC informs where to locate a cistern or hydrant; therefore, every subdivision over two lots had to go to them. He reiterated when he met with the HSC, he wanted to have a cul-de-sac. He said it wasn't his job to spend his client's money. He said he failed when he met with the HSC to be able to have a cul-de-sac. He mentioned Loretta Lane and said when that road was done with a cul-de-sac no one stated differently. It seemed to Mr. Cote water drainage would be easier to manage with a cul-de-sac to have flow go in the direction of the collector road leading to Currier Road. Mr. Zohdi replied the stub road only had a 50ft. right-of-way so they may need waivers to do so; they didn't own frontage lots to install a bioretention, wet pond, retention pond etc. On Peabody Lane they own land to be able to install a retention pond whether or not they improve the road. Mr. Cote asked if any improvements would be done on Currier Road. Mr. Zohdi replied he would have to look at the area, but believed if they went through to Currier Road, they may need to improve approximately 400ft. of the drainage (only) not the road.

Mr. Doherty informed his comments were in reference to 'using', not 'improving' Peabody Lane. He said they wouldn't need to improve it if they weren't using it. He said using Peabody Lane would affect the road and the neighborhood. He noted Currier Road was a 'collector' road because it had double solid yellow lines. He stated the Zoning Ordinance was designed for protection. He said traffic shouldn't be pushed onto a little neighborhood road when there is an ability to push it onto a collector road. He spoke about the former configuration of the plan and the access. Mr. Doherty said they needed to figure out how to make the plan work under the Planning Board's guidance.

Attorney Cronin came forward. He heard Mr. Doherty's comments and concerns regarding the use of Peabody Lane. In terms of 'adverse' (as was in the section of Zoning read aloud by Mr. Doherty), he said many people would say any development next to them is adverse. He added 'adverse' was a broad term. He believed Peabody Lane was a Class V public highway and didn't think anyone in any community in New Hampshire had the right to dictate what goes on a particular road. From a planning function it's health, safety and welfare. He believed the HSC is charged with the duty for how roads work and what's safe. Attorney Cronin mentioned he was present during the last meeting, but not since the beginning, and heard a lot of back and forth about the yield plan as well as the other road and the entrance. To ensure they have a fact specific record, Attorney Cronin asked the Board to develop their meaning of 'adverse'. It was his understanding that a conservation subdivision included buffers that would not exist if it were a conventional subdivision; development could be built up to the boundary without any separation or buffers provided in the proposed plan. He asked for the benchmark of having nothing built, the 'adverse' of a conventional subdivision and what the details were for the 'adversity'. Mr. Doherty said when he read from Zoning and referred back to the yield plan, it was an increase of traffic. The Ordinance reads the impact should not exceed a conventional subdivision. He read aloud a segment of the pertinent section. He mentioned buffers and how a cul-de-sac would preserve the buffer of frontage land. He noted the view shed would also be saved. He added the view shed, frontage, adverse impacts and impact to the neighborhood were all tied together. He described the plan evolution that began with four ways in (access) that was now reduced to two ways in which pushed the impact to two spots when it had been spread out in the conventional subdivision plan. He understood doing so wasn't Mr. Zohdi's intent because he wanted to have a cul-de-sac. He pointed out he had also suggested a cul-de-sac end just prior to Peabody Lane. He questioned how the impact (to the neighborhood) would be mitigated if they shut down the other roads and used Peabody Lane.

Mr. Zohdi called attention to the Board's meeting minutes of February 3, 2020 during which the Board voted (5-2-0) in favor of following the HSC's recommendation (connecting through to Peabody Lane and not have a middle road to Currier Road); motion made by Mr. Doherty, seconded by Mr. Dadak. The two opposing votes were Mr. Bergeron and Mr. Lynde; voting in favor was Mr. Doherty, Mr. Montbleau, Mr. Dadak, Ms. Kirkpatrick, and Mr. Steele. He said they would do what the Board tells them. He said it's a hardship to the engineer and developer to do a \$200,000 (approximate) drainage study to be told at the last minute they were in the wrong place and it was them who wanted to improve Peabody Lane. He said that is not fair to the applicant;

according to Robert's Rule it is the Board's job to give an applicant direction. He pointed to the February 3rd minutes that he believed was a direction. Once that direction was received, he finished his drainage study and sent it to New Hampshire Alteration of Terrain. Mr. Zohdi said during this time he's been working on the plan and drainage while meeting with the Town engineer and Town staff. During the current forum he couldn't sit with the Conservation Chair to resolve the number of lots. He asked at the beginning of the meeting to be able to review the plans and determine how many lots were available. He stated they were doing everything 'by the book'. He said they've come to the meeting and listened to the Board's comments. He added the HSC put their recommendation in a letter submitted to the Board; he didn't ask for that to happen. He wasn't enthusiastic to spend his client's money (approximately \$200,000). He didn't know what they would find if they dug up Peabody Lane. He spoke about the associated costs of reconstruct the road based on the requirements of the Town planner, Road Agent, and engineer.

Mr. Zohdi told the Board the original engineer for the project had done a good job except for running out of time to dig the test beds. He said the first day he took over the subdivision he had Mr. Gendron go to the Town, pay the fees (for the application) and schedule the test beds to be dug. He said the number of lots would not decrease, although he would comply with the prime wetland rules. Mr. Zohdi pointed out every time he met with the Board there were new requests; one meeting the Board wanted them to connect through to Peabody Lane and at the next meeting didn't want the connection at the same time the HSC didn't want a cul-de-sac. He didn't know what direction to go with. He understood the Board's authority and noted the Fire Department would still need to sign-off on Building Permits. He asked the Board to be fair because they had been doing everything each department had asked them to do. He added when Mr. Bergeron had a problem with individual wells, the plan was amended to have a community water system at an approximately cost of \$1 million to \$1.3 million. They are now negotiating with Pennichuck Water Company to deed the system. He reiterated they had done everything to satisfy the Board and felt it was time for the Board to give some latitude to get the plan off the table.

Mr. Doherty said it appeared the HSC in conjunction with Town Staff and engineers are responsible for the use of Peabody Lane as opposed to the applicant wanting to use it. He said he didn't want Peabody Lane used and asked for the Board's input.

Mr. Lynde stated the Fire Chief insisted on having a through way for safety reasons; the HSC didn't want a cul-de-sac because of the road length. They demanded access in and out from other accesses for emergencies. He thought doing so made a lot of sense.

Mr. Cote heard Mr. Zohdi offer to meet with the Conservation Commission Chair to mark the wetlands. He understood this would help them find out if the yield plan was accurate. After that's done, he asked if Mr. Zohdi could come back to the Board with two plans: 1) with a cul-de-sac and 2) with a through way road. Mr. Zohdi answered yes; he had no problem with doing so. He said it may take a few weeks to get Town staff, the engineer, and the Conservation Chair together to do so, although he was ready to go. Mr. Cote felt bad for Mr. Zohdi's situation; however, there were approximately 30 houses proposed and people in the public had concerns. Mr. Zohdi said he would meet with the group of people to review the site and resolve the number of lots. He will return to the Board with a plan showing a cul-de-sac.

Mr. Dadak questioned if there was access to the subdivision through Currier Road and Peabody Lane or if the development had a single access. Mr. Doherty replied the proposal showed two accesses, one from Peabody Lane and one from Currier Road. Based on traffic, Mr. Dadak believed vehicles would travel along the path of least resistance. He didn't think they should assume everyone would travel through Peabody Lane. He noted the proposed improvements to Peabody Lane would be quite significant at the cost of the applicant. He recalled the HSC was concerned about access for fire and emergency. In this situation Mr. Dadak felt it would be good for vehicles to get in and out (of the development) from Peabody Lane. He added currently it was essentially a narrow country road that had drainage problems.

Mr. Bergeron said Mr. Dadak's comments would be accurate if applied to a conventional subdivision. He believed the applicant preferred a conservation subdivision, which allowed for a lot more negotiation than a conventional development. He recalled the original yield plan showed four entrance/exit points; however, now the plan showed two. Also, in the original yield plan he counted eleven lots within the proximity of the wetland. Mr. Bergeron understood the applicant's attorney wanted to understand the 'adversity' and 'effects'. He said 'effect' related to a neighborhood's quality of life not the physical improvements that could/would be made to Peabody Lane. He said the Board was referencing the innovative land use concept; a conservation subdivision should (as much as possible) be a stand alone subdivision (cluster of homes) within an area that doesn't affect the traditional neighborhoods and retains some of the view shed. He said so much had been discussed and suddenly they were discussing vacating a dedicated access left by a previous Board from Currier Road (collector road). He pointed out that access was left for a reason, but the plan came in without it. He said the applicant needs to negotiate theoretical plans with the Board and no one else; the Conservation Commission, HSC, Staff, Town engineers are only there for advice. The final say is the Planning Board.

In this case, Mr. Bergeron said lots of things had fallen into place that have thrown the proposal off. He wanted the applicant to leave the meeting with a better consensus. He said they wanted the project to be the best conservation subdivision that had ever been because it might be the last.

PUBLIC INPUT

Mr. Doherty asked if there were any abutters waiting to speak to the Board via electronic communication. Cable Coordinator Jim Greenwood advised there were two abutters (Bruce and Kim Jewett) connected to the meeting via Zoom.

Mr. Bruce Jewett, 4 Peabody Lane understood there would be a development across the road from his home. He said no matter what was done it would disrupt his situation but wanted to make sure the project was done within the guidelines. With regard to redoing Peabody Lane and increasing the width to 23ft-24ft wide he told the Board he was fine with the road as it currently was. Mr. Jewett told the Board he didn't have any issues with water except for the end of the road because that's where water currently pools. He just wanted everyone to keep in mind the existing atmosphere and noted forty (additional) houses would disrupt it tremendously.

Ms. Kim Jewett, 4 Peabody Lane pointed out the other (southern) access point from Currier Road was uphill and thought it may be undesirable for people to come down the road because of the steep grade. She asked if vehicles would slide onto Currier Road (in the winter). Mr. Doherty didn't know the grade of the road. He said that road would be used in either a conventional or a conservation subdivision. Ms. Jewett believed all the vehicles would come down Peabody Lane because the other road would be steep. She understood the (middle) road was being eliminated because of money and having to pay for drainage but believed it was previously all set up to be used. She said the neighbors knew there would be a road going in that location someday. She said when she moved into the neighborhood, she didn't know there would be a subdivision; she loved the quiet neighborhood. She didn't know why the middle road was eliminated and believed without it everyone would access through Peabody Lane.

Mr. Montbleau (via telephone) told the Board he had been listening to the meeting but remained muted (on the Board's end of the line) when he tried to make comments. Because of the problem he had to hang up the call and contact Mr. Greenwood with the problem. He said he called back into the meeting but had missed approximately fifteen minutes of his ability to speak regarding the case. He stated he would continue listening to public input and afterward would like the ability to speak.

Mr. Zohdi told the Board the proposed grade on the entrance (closer to Jericho Road across from Garland Woods) was sloped away from Currier Road at approximately 3% (page 24 of the plan set). He said they could make it more gentle. Mr. Cote described the road/hill from the area being discussed.

Ms. Suzanne Larson, 39 Currier Road came forward (in person). She went to the displayed plan and spoke about the (southern) access from Currier Road and questioned the existing grade because during the site walk, they didn't travel down the hill. She agreed with Ms. Jewett the steep road grade would drive traffic toward the northern portion of the development. Ms. Larson referenced the vote taken during the February 3rd meeting regarding the HSC recommendation. She had issue with the (HSC) meeting and didn't feel it was posted in sufficient time. She believed the agenda was uploaded in less than twenty-four hours. She felt another vote by the Board was warranted and believed several of the Board members (at the last meeting) weren't sure how to vote. She said if abutters had been made aware of the HSC meeting, they could have attended and asked questions specifically about the third (middle) access. Ms. Larson reviewed the Board's December 2019 meeting at which Mr. Keach indicated if the middle access was purpose driven, they could find a way to do the drainage and make it work. She pointed out Currier Road (at that location) was not steep and already partially dug out. She suggested doing a site walk of the area as it wasn't part of the original site walk. She felt there were a lot of issue still up in the air which all lead to the topic of disrupting Peabody Lane. Ms. Larson reiterated her feeling the Board should reconsider their vote (on February 3rd) based on her belief the HSC meeting wasn't posted in sufficient time according to the Planning Board rules. She went on to describe the road layout at the connection of Peabody Lane and Currier Road. She said traffic traveled fast in the area and was concerned about additional traffic being a hazard to pedestrians. In closing she reiterated again her belief that the public and the Board didn't have enough notice about the HSC meeting.

Mr. Paul Diamantopoulos, 11 Peabody Lane came forward (in person). He had an issue with the ingress/egress as currently shown on the plan. He said two meetings ago there was discussion about having three exists. He preferred to see a cul-de-sac (at Peabody Lane) rather than an entrance/exit. Regarding any improvements, he wanted Peabody Lane left alone; however, if it's used for access, he said it would need to be improved. He recalled a discussion about three means of access where Peabody Lane would be 'exit only' to deter traffic and provide access in the event of an emergency with the gas line. He also recalled Board members agreeing it would be a good idea. Mr. Diamantopoulos used the displayed plan to point out his lot. He recalled the applicant agreeing to include a 25ft. buffer but didn't see them included on the posted plan. He said not having a buffer would impact his privacy greatly. He stated he currently had a water problem on his property and would have more without maintaining surrounding growth. Currently his finished basement had no issues. Mr. Diamantopoulos mentioned his concerns regarding his well regardless of whether the proposal shows a community well or individual wells.

Ms. Priscilla Pike-Church, 2 Peabody Lane came forward (in person). She said when she first read the guidelines of the Conservation Subdivisions it said it could not adversely affect abutters but to her the proposal would. She questioned why they would have guidelines if the Board wasn't going to follow them. She indicated the applicant had shown her a driveway that would be similar to the slope she would be given. She also understood she would be given more land. She thought she had no choice but didn't really want more land or a bigger driveway. She agreed with all of Mr. Doherty's earlier comments and reiterated her opposition to using Peabody Lane at all. She believed the development would be a big mistake, traffic would be awful, and her quality of life would be changed. She also believed access could go through Route 38 or Currier Road. She hoped the Board would reconsider doing so.

Mr. Paul Gagnon, 103 Dutton Road stated he was a member of the Conservation Commission. He told the Board he was more than willing to get together with Mr. Zohdi to review the yield plan and get a plan that meets the regulations with 100-foot setbacks from the prime wetland. He pointed out trail connectivity is required in a conservation subdivision and wanted the plan to show that connection. Mr. Zohdi stated the last page of the plan set showed the trail connectivity. When meeting with Mr. Gagnon to review the wetlands, he will also review the trails.

Mr. Bergeron understood there was a no-cut zone shown on Mr. Diamantopoulos' property. Mr. Zohdi replied that was correct. Mr. Diamantopoulos asked that the no-cut area be pointed out. Mr. Zohdi pointed out the location of the 25ft. no-cut zone. Mr. Diamantopoulos recalled the no-cut area was supposed to be located on

the development side of the gas line. Mr. Zohdi discussed how the gas company is required to obtain a landowner's permission to clear land.

Mr. Montbleau recalled the Conservation Commission previously being in favor of the plan and wanted to hear if they had changed their position or felt the 100ft. setback would drastically change the yield plan. He understood that information was yet to be determined because Mr. Gagnon would meet with Mr. Zohdi and review the site. Mr. Doherty confirmed Mr. Gagnon would meet with Mr. Zohdi and correct the setbacks on the yield plan. He said if they end up having to remove lots, and they remove them from Peabody Lane to use a cul-de-sac, he didn't know how the HSC wouldn't allow doing so as it would be a short cul-de-sac.

Mr. Gowan pointed out the HSC was advisory and had submitted a letter to the Board, which the Board acted on. He said the Board had a right to change their mind.

Mr. Sherman wanted to know why the second access to Currier Road couldn't be put back in and use the access to Peabody Lane for emergency only. Mr. Doherty replied that (scenario) had been done to other developments; the Board could consider doing so.

Mr. Bergeron understood the yield plan was not done by Mr. Zohdi's company. He noted the Board had a responsibility to the applicant and to those who would oppose the subdivision. He asked to make a motion to recalculate the yield plan based on using the correct 100ft. setback to the prime wetlands as required by the State of New Hampshire. A mistake was made by the previous engineering firm as they showed a 50ft setback. Attorney Cronin understood if there was some mistake made the Board would have an opportunity to go back and look. He believed when a fee is paid to the Town a review engineer looks at a plan to make sure they are appropriate. He said such a long time had passed and there was reliance on the yield plan previously voted on that he felt it was unfair for the applicant to bear the burden entirely. Attorney Cronin believed if the Board was going to vacate a past vote, the motion to do so should be made by a Board member who (originally) voted in the affirmative. Mr. Cote stated two hours earlier in the meeting Mr. Zohdi mentioned going to the wetlands with the Conservation Chair to verify the prime wetland setbacks and accommodating a new yield plan. He asked if this was now off the table. Mr. Zohdi answered no; the only thing being stated is if Mr. Bergeron was in the negative side (during the original motion) then someone else should make the motion. Attorney Cronin discussed the different roles of the applicant and the Board. He said he was simply protecting the applicant's interests and rights. He expected the Board to vote; his comment was procedural in nature. Mr. Cote didn't feel a motion was needed.

Mr. Doherty addressed Mr. Zohdi and indicated several Board members would like to have the cul-de-sac again. He said Mr. Gowan confirmed the HSC is advisory and the Board doesn't have to use their opinion. There was a consensus by the Board to have a cul-de-sac and not have access through to Peabody Lane. Mr. Doherty advised Mr. Zohdi to show the access from the middle (stub) 50ft right-of-way to Currier Road that was already roughed in and the already proposed access; both coming out to the Currier Road (collector road). Mr. Zohdi understood. He reminded the Board he would be requesting waivers on the road grade for the use of the 50ft right-of-way. Mr. Doherty understood. Mr. Bergeron asked Mr. Zohdi to read the spirit and intent of the Zoning Ordinance.

Mr. Bergeron commented by eliminating the Peabody Lane access the rules of the conservation subdivision were changed, placing the Board in a tough place where they couldn't meet the standards of the spirit and intent of the Zoning Ordinance. He believed the easiest exit would have been through Peabody Lane because of the land slope on the southerly access. He asked if the applicant could now provide an open space buffer in that area.

Mr. Doherty stated if the applicant didn't use Peabody Lane and they lose a lot or two from working with Mr. Gagnon, the cul-de-sac could be pulled further away from Peabody Lane. Mr. Bergeron said the applicant should keep in mind there is a 20% density bonus that shouldn't be presumed. He said unless the Town is given something in return the Board doesn't have to grant that bonus. Mr. Zohdi stated he hadn't indicated they would

give a buffer zone to Peabody Lane. He will work on the plan and come back to the Board. He discussed the items that would be shown on the next plan submitted to the Board for the next meeting.

Mr. Doherty called attention to the density offset language in the ordinance. He suggested if the cul-de-sac was placed further away from Peabody Lane the plan may meet 'D' under Density Offsets: 'the protection of each potential frontage lot as open space' and probably would be entitled for some density offset.

Mr. Lynde's view of the Town is that having through roads was what the Fire Chief wants. They also help the Highway Department plow through without going around cul-de-sacs. Mr. Cote had respect for the Fire and Police Departments; however, he felt having roads that go through is more of a convenience than a safety issue.

The case was date specified to June 15, 2020.

Case #PL2020-00002

Map 6 Lot 4-175-1

PAWTUCKET ROAD LANDHOLDINGS, LLC - 32 A & B Valley Hill Road - Proposed 3-lot subdivision consisting of duplex style units

The applicant Robert Peterson and his representative Mr. Doug MacGuire of The Dubay Group joined the meeting via Zoom. Mr. MacGuire believed the recent site walk with the Board and members of the public was very productive. He described the areas they reviewed. He understood there were concerns brought up about the Department of Environmental Services ('DES') regarding the property; during the last month they have worked with DES to address those concerns and now have a 'clean bill of health'. He informed the site had proper erosion controls installed and placards were installed to delineate the wetland buffers. They were now ready to take the next steps in moving the three-lot subdivision forward. Plans have been submitted to Steve Keach of Keach Nordstrom (Board's engineering review firm), although Mr. Keach hasn't had an opportunity to review the plan because the payment had to be put in order. The Town was now in receipt of payment so Mr. Keach can be authorized to conduct review. He hoped to receive Mr. Keach's comments and have their response ready prior to the next hearing.

Mr. Lynde stated DES advised the Town months ago based on aerial photographs there looked to be four vernal pools that had been deleted. He wanted to know the status of the vernal pools and said he questioned the applicant during the site walk if they would be restored. He said the applicant responded they would work with the DES; the DES had determined there were no vernal pools as the areas didn't meet the criteria for such. Mr. MacGuire stated that was correct. He said DES had brought up a few different concerns as part of their review of the site, one was the possible presence of additional wetlands on the property. In the last month they received a letter from DES and returned their response including supplemental correspondence. Mr. MacGuire described the timeline and action/review that took place. The DES issued a letter May 15, 2020 that indicated the items listed in their letter had been addressed and there were no unauthorized impacts on jurisdictional wetlands. DES has closed the enforcement file.

Mr. Bergeron indicated the Board had received certain correspondence. He heard reference to the letter from BHE Land Consultants Group who had done a survey previous to any activity occurring on the property. Mr. MacGuire stated that was correct. Mr. Bergeron questioned if the Town had a copy of that report and if it was site specific to the parcel. He wanted documentation to support what was being said. Mr. MacGuire replied the situation came about recently but had no objection to providing the Town with a copy of what he had for the record.

Mr. Cote read aloud a section of the Zoning Board meeting minutes from June 11, 2018: *"Representing the applicant was Attorney David Groff. He said the application was straight forward. The applicant's parcel of land contains ten-acres with the only access being off Valley Hill Road through a 50-foot wide right-of-way. Before the subdivision on Valley Hill was approved, there had been a winding path (used for access) that went*

to the parcel of land. At the time that the Planning Board considered the subdivision (1995), the owner and abutter made an arrangement that resulted in the 50-foot wide right-of-way access. Attorney Groff told the Board that the current owner was seeking a variance for frontage only so the parcel could be developed (for residential), either a single-family or duplex, not a housing development. He then read aloud the responses to the variance criteria as submitted with the application.

Mr. McNamara asked if the applicant would be against an approval stipulation limiting construction on the lot to either a single-family home or a duplex. Attorney Groff didn't object since he didn't believe the owner could do anything other than a single-family or duplex with a single driveway without seeking an additional variance." A motion was made and approved: "If the Variance is approved, the construction shall be limited to one single-family or one duplex." Mr. Cote wanted to know why the applicant was coming forward with a subdivision greater than one duplex or house.

Mr. MacGuire stated at the time if anything was going to happen on the property without a subdivision a variance would have been required for the lack of frontage. He said they also obtained an access for the driveway and a wetland crossing. The Zoning Board limiting the approval to one duplex having only 50ft. of frontage made sense. Now they were coming in with a completely new application and plan in which they were proposing a standard subdivision with right-of-way. The right-of-way gives frontage for three lots by right. He pointed out the application in front of the Board didn't require any zoning relief.

Mr. Culbert found it interesting that the proposal for duplex showed a 16ft-18ft driveway and now the proposal shows a 24ft access with three duplexes. He thought there was something suspicious with that. Mr. Cote had the same point; the applicant used the variance to build their 'driveway' to the back and now are using it for the duplex. He believed there were a lot of things being done that were 'sketchy'; it was terrible what they did on the lot. He said he couldn't support the submission. Mr. MacGuire didn't feel the comments were appropriate. He said there was no backing to what was being said and it was getting slanderous toward the applicant. He said the reality of the proposal for a single duplex was more non-conforming than what was currently being proposed. The single duplex required a variance for insufficient frontage. Now the applicant was proposing to build a road to gain proper frontage to develop the parcel. They were in front of the Board to get a road approved per the regulations. Mr. MacGuire stated it was a reasonable proposal for three lots based on the Town's regulations. They had sufficient frontage, lot size and met all the required calculations. He told the Board it was inappropriate to say something is amiss. Furthermore, the DES letter came about because there were accusations brought forward that were unfounded on the property.

Mr. Culbert inquired about the findings on the four vernal pools. Mr. MacGuire replied there were no vernal pools on the property. Mr. Culbert asked how they knew there weren't vernal pools if they had already gotten rid of them. Mr. MacGuire clarified the property was completely surveyed from a wetlands and physical standpoint to locate all applicable wetland flags prior to anything being cut and any construction. The wetland scientist reviewed the exact areas in question by the DES and determined to be not jurisdictional. All information was submitted to DES who have since closed the file. Mr. MacGuire commented no one had asked him or the applicant regarding the accusations; they were made directly to DES and he was blind-sided at the last hearing. He said he wasn't made aware of any concerns or he would have properly addressed them with the Board. He felt they needed to move on and review the application for the merits that are presented.

PUBLIC INPUT

Mr. Doug Viger, 34 Valley Hill Road came forward (in person). He agreed with the engineer that the site plan was perfect for the type of houses they wanted but the access was unacceptable. He explained on a two-dimensional map there appears to be a lot of room. He displayed photographs of the access driveway which had created a 10-foot berm that ran the entire length of his property line. The height of the road is 10-feet above ground with an approximate 1:1 slope with the bottom of the slope being right on his property line. He believed to make the access a road there would be a nearly vertical slope. He commented any guardrails, curbs etc. would

end up on his property including snow being plowed in the winter. Mr. Viger displayed a photo showing the access road from Valley Hill Road with a 100-foot marker located directly adjacent to his house. He also showed a photograph from his property at the location of the access driveway's 100-foot marker with the camera being at eye level. This showed how much above his head the road would be and noted the location of his property marker in relation to the base of the berm. He stated the 9ft-10ft berm would definitely affect his property value and resale value. Mr. Viger spoke to the question of vernal pools and told the Board he would walk the area with his dog in the summer and there were two pools that were always wet; his dog's stomach would always get wet from them. He commented while walking the site today he saw thousands of pollywogs in the water that had been retained in that spot. He understood amphibians returned to places they had previously laid their eggs. In his opinion those pollywogs wouldn't be there unless frogs had laid their eggs there before. As an abutter to the property he believed having a road in that location would be ugly and adverse to his property.

Mr. Paul Gagnon came forward in person to speak on behalf of the Conservation Commission. He said generally when a plan is submitted to the Town a copy of the drawing, lot layout, road and wetland scientist information goes to the Conservation Commission for review. In turn, the commission then has the ability to draft a letter to advise the Planning Board what they see from a conservation perspective. He questioned why this parcel had been cleared of trees, stumped, and leveled without meeting with the commission. He agreed with Mr. Culbert's comment that something wasn't right. He noted there was a State law that indicates a site isn't supposed to be cleared before receiving permits; however, over three acres of the proposed site that had been cleared, stumped and bulldozed. He said the puddles in the remaining gravel were full of thousands and thousands of tadpoles. Mr. Gagnon questioned why the applicant hadn't met with the Conservation Commission first.

Mr. MacGuire stated he planned to bring the plan (currently in front of the Planning Board) to the Conservation Commission as they always would do. At this stage he hadn't had the opportunity to do so because of the other items that had to be addressed. He stated he intended to present the application to the Conservation Commission for their feedback and asked to be placed on their next available agenda. He said they had been placed in a holding pattern because of the DES compliance issues that had to be addressed. Mr. MacGuire informed the applicant had received a variance for the duplex along with an active building permit as well as a wetland permit for the crossing. He stated they had gone to the Conservation Commission for that application to present the wetlands crossing. He agreed the plan for the three-lot subdivision had not yet been to the commission as it was a new application. Mr. MacGuire agreed the current condition of the site was not ideal. He mentioned a cease and desist was given therefore the state of the site cannot be changed until they address the application. He informed a stormwater pollution prevention plan had been put in place for the land currently disturbed. Erosion protection measures were in place. His office was reviewing those as part of the inspection process. There are currently no illicit discharge locations on site. He said they were going to have ponding water, as was the intent since the side slopes were cut down to limit the potential of erosion. He added the cuts wouldn't be as severe with the submitted proposal. Mr. Gagnon stated if things were done properly, the applicant wouldn't be dealing with any of the stated issues and they would have had time to come in front of the Conservation Commission. He pointed out they had time to cut all the trees, stump everything and push the gravel apart. He recalled the applicant coming to the commission in the right order (with the previous plan); the commission was favorably inclined. He said at that time they should have just cut the trees for a duplex; however, it was against State law for three acres of trees to be cut. He thought it set a terrible precedent and the Board would be hard pressed to approve it.

For the record, Mr. MacGuire told the Board those areas were non-jurisdictional (not classified) as wetlands. Mr. Gendron replied if the applicant had gone to the Conservation Commission ahead of time, they could have had a site walk to see them. He said when there is an abutter of twenty-five years who tells the Board his dog was wet up to his belly in the middle of summer its hard to believe they weren't wetlands, especially since the remaining pools are full of tadpoles. He agreed with Mr. Viger that frogs don't decide to lay eggs in puddles. He said the fact that there were tadpoles in the pools (of water) was because frogs were used to going to those areas and laying their eggs. He commented the pools showed up on aerial photography and the neighbor's dog swam in them. He had a hard time believing the applicant giving they went through the process upside down.

Attorney John Cronin came forward in person told the Board he was present for the applicant in the next case but heard reference to cutting trees being illegal. He wasn't familiar with the case; however, if reference was being made to RSA 485-A (Subsurface Statute) it prohibits someone from cutting trees and building a road in relation to subsurface and septic approvals. That same statute exempts timber harvesting.

Mr. Darren Martin, 21 Benoit Avenue came forward in person. He mentioned he was a direct abutter and one of the first to call out there were wetlands destroyed on the property, although he didn't know how it got to DES. He's lived in his home for eighteen years and had also walked the property when a prior owner owned the land. He stated there had been vernal pools/primary wetlands but unfortunately couldn't tell now because it had all been destroyed. He felt the engineer was correctly representing his client and trying to get validity through the scientists hired to analyze. He pointed out the State and the Town had never had a chance to do analysis and had to go off the information from someone else that the areas weren't vernal pools or wetlands. He found this completely unfair that the Town had to work off aerial photographs. He continued to attest there had been wetlands on the property and had worked with DES at the time they were doing extension work on Benoit. At the time Dr. Frank Richardson (DES) had indicated there were vernal pools/wetlands on the other side of the property; the same situation was on the applicant's property. Mr. Martin said they couldn't tell now because the owner willfully destroyed the property. He hoped the Board had an opportunity to indicate this was not how someone would get approval. He didn't want to give the engineer any leeway to seem like they had done the right thing, when they had intentionally done the wrong thing. He noted this wasn't the builder's first subdivision; it wasn't a mistake. He believed they knew exactly what they were doing. It wasn't a minor operation, and, in his opinion, they were putting everything in place for a three-lot subdivision so they could later come to the Board and apologize and have the plan move ahead. Mr. Martin didn't think the Board should do anything until they get a determination whether laws were broken. He saw no point in moving forward until they have answers to what they would do about the land clearing and destruction of the wetlands. If those things couldn't be answered he didn't see the point of moving forward.

Mr. Shawn Parsons, 19 Valley Hill Road speaking via Zoom told the Board he lived on Valley Hill for sixteen years. He had issues with putting in three duplexes in a condensed fashion when all the homes on Valley Hill and Brown Avenue were single-family and roughly two acres. He was concerned about traffic and didn't feel the road could handle more capacity without being altered. He commented there were several abutters on the Zoom call earlier that didn't make this far in the meeting because the earlier focus was on another subdivision. He pointed out there were a lot of abutters present for the site walk and none were happy about what had occurred on the property. They were sad it had gotten this far in the process before it could be stopped because the damage was reprehensible. Mr. Parson stated he wasn't anti-development and didn't object to a single home or duplex but a whole subdivision was different and would change the neighborhood's quality of life. He felt every Board member should see for themselves what had occurred so it would never occur again.

Mr. Culbert wanted the Board to hold off taking any action until they received the report requested by Mr. Bergeron, including information regarding vernal pools. Mr. Bergeron said he originally asked the engineer if the Board had copies of the report sent to the DES. He noted the Board heard testimony from long-time residents that there were wetlands on the property. He said he wouldn't pass judgement on the plan at this point in time. He referenced RSA 485-A:32, III and read a portion aloud. He stated the proposal was a major subdivision that fell under Section 202-6 in the land use regulations. He said the Board was missing a lot of information and disagreed with the statement that the proposal was done properly and in the right chronological order. He saw a violation of law and was prepared to reject the plan as it stood.

Mr. Doherty spoke about the site walk conducted May 16th. He said as they got to the end of the driveway there was a major excavation on the side of the wetland that was cleared (dug out) to the end of the property. He didn't think it needed to be done for a duplex. He said the area resembles a gravel pit and was unsure if Pelham allowed material to leave the site. Mr. MacGuire didn't know all the details but had the understanding material wasn't moved; there were areas piled up and other areas were cut down. He said the cut was more extreme than

it will ultimately be which was a positive from an erosion standpoint. There will be walkout basements in back of the proposed duplexes. There won't be a further cut beyond that. He believed it would look nice in the end with three buildings in the development. It won't feel overly dense because there is a lot of land.

Mr. Cote mentioned the Board heard data from the residents that seemed to go against what the applicant's data was saying. He read a portion aloud from RSA 485-A:43 pertaining to RSA, 485-A:32 - data being submitted. He pointed out the Town had a gravel ordinance (that should be followed).

Mr. MacGuire didn't believe RSA 485 was being interpreted correctly by the Board, but it wasn't for him to decide. He was curious if the Board had received legal opinion from Town Counsel regarding such interpretation. With regard to the wetland scientist's analysis he believed the Board would find it wasn't necessarily contrary to some of the abutter's assertions. He said standing water didn't automatically mean it was a jurisdictional wetland or vernal pool. The analysis speaks to the characteristics of those as the wetland scientist had looked specifically at them. He offered to share the report with the Town and hadn't earlier as he was dealing with DES (that was resolved May 15th).

Ms. Kirkpatrick stated there was quite a bit of land disturbed for the one duplex and questioned if it was normal practice. Mr. MacGuire replied it was a difficult site and the site walk showed the applicant wasn't building the road proposed on the subdivision. There was no option except using the 50-foot right-of-way. He noted the proposed road was no where near where the disturbance area is. Previously, when the plan was for an 'estate-style' lot with multiple acres of land the duplex was centered and not near the 50ft entrance. He said the lot has a big open area and some developers like to have the room to move around and get things done. He wasn't aware of any violations in an owner cutting a property; this lot was done with an approved Intent to Cut permit.

Mr. Cote pointed out a notice of Intent to Cut is for tax purposes and had nothing to do with anything else. Mr. MacGuire wasn't aware of any restriction/limitation for a homeowner to cut trees on their property. Mr. Cote replied that was correct 485-A,32 talks about building a subdivision and added the Town could not stop anyone from cutting trees. From what Mr. Cote stated, Mr. MacGuire understood the Town could not stop someone for building one duplex lot and cutting their entire property within the setbacks. Mr. Cote replied they were discussing proper planning. He said if the applicant had come to the Board before they cut and dug (the property) and held the proper site walks prior to that occurring, the Board could have gotten their own wetland scientist involved they wouldn't be there (in the current meeting). He thought that was probably why RSA 485-A:32 existed for proper planning procedures so people don't go in (to a property) and destroy everything, take out all the good soil, gravel when no one knows about it. He said that was part of the problem. He said they weren't discussing the right to cut trees; they were speaking about proper planning for the Town. Mr. MacGuire stated the RSA being referred to is in regard to sewer disposal systems.

Mr. Culbert told Ms. Kirkpatrick in his 30+ years on the Board he had never seen the extent of cutting that was done for one duplex.

While walking the site, Mr. Doherty commented it wasn't just the cutting he noticed. The land was also stumped and excavated; there was a massive 3-4 acres dug out that had now become one large vernal pool. He said it was obviously not a foundation for a duplex. Mr. MacGuire clarified at the request of the Board they had gone out and done an as-built survey of the existing conditions; it was another item brought up by the DES because a disturbance area over 100,000SF would constitute an Alteration of Terrain ('AOT') permit. He said Mr. Doherty's contention that 3-4 acres had been opened up was not accurate; there is only 70,000SF disturbed on site. He added those (disturbance) limits were surveyed and didn't necessitate an AOT permit. He understood an AOT would be required when the plan came to fruition but not at the current time. He mentioned there was more area that had been cut in reference to trees, but the land-disturbed area was calculated based on the on-site survey of existing conditions (70,000SF).

Attorney Cronin heard RSA 485-A, 32 be the topic of discussion and noted it was a septic provision. He said the intent of the RSA was to provide for septic systems to make sure they work. He said under the prohibition it talks about construction of roads and filing a subdivision plan; when the trees were cut there was no need for a subdivision plan. He added there was no look back period in that particular statute and if the Board was looking at the land retroactively it would be unconstitutional. He said when Statutes are read, they should be read in a manner that doesn't result with an unconstitutional provision. He knew the Board and Town had able counsel with Attorney John Ratigan and in the past never hesitated to request opinion. He suggested the Board may want to get their counsel's opinion regarding the intent of the Statute as they were reading it.

Mr. Gowan heard the applicant speak about going to the Conservation Commission in June; therefore, he recommended date specification to either June 15th or July 6th.

Mr. Sherman (via telephone) asked if Mr. Keach had seen the site. Mr. Keach (via Zoom) told the Board he went out to the site casually in early March with Mr. Gowan because Mr. Gowan knew a plan would be coming in and wanted to show him what he'd be seeing. He recently received plans from Mr. MacGuire's office and received an email earlier in the day from Zoning Administrator Jennifer Beauregard that confirmed an escrow deposit had been made today. He hasn't done a formal review of the plan but will in advance of the Board's next meeting. Mr. Sherman questioned if Mr. Keach agreed with the applicant's statement that they had disturbed less than 70,000SF. Mr. Keach replied he couldn't speak to it because of the time of year he visited the site and because it was a casual visit. He added he wasn't at the site to make measurable observation; it was a courtesy Mr. Gowan afforded him while traveling between other sites being reviewed.

Mr. Cote questioned if a wetland crossing is different for a driveway versus for a subdivision. Mr. MacGuire replied the limit of which they propose to cross the area within the 50-foot area won't result in any different need for the wetland permit. Mr. Doherty did a quick calculation and believed the disturbance for the road would be approximately 20,000SF - 25,000SF. He said it was possible the dug-out area (to the left) might be just 70,000SF. Mr. MacGuire stated they had an exhibit, submitted to Mr. Gowan, concerning that item, and offered to provide it to Mr. Keach for review. Mr. Cote inquired about the definition of altering terrain. Mr. Keach replied the DES defines it as disturbing the natural ground surface (i.e.- top soil, roots). Mr. Cote questioned if removing a stump was considered altering a terrain. Mr. Keach said absolutely. Mr. Cote wanted to know if trees and stumps were removed from ten acres if it was considered a ten-acre alteration. Mr. Keach replied it could be. Mr. Cote mentioned the notice of Intent to Cut listed 10 acres of clearing. Mr. Keach commented there were facts the Board was starved for. He said they received a lot of testimony and felt the applicant owed it to the Town to have dialog with the Conservation Commission. He would like an opportunity to review the documents that have been submitted so he could properly advise the Board.

Mr. Bergeron wanted to make Mr. Keach aware of a couple things from the recent site walk. Mr. Keach commented he would probably walk the site and invited Mr. Bergeron to go with him to show him things firsthand. There was no objection by the Board. Mr. Keach said he had a lot of concern after seeing the embankment and didn't know what was underneath. He said he wanted to know what was underneath if it was going to be a Town road. Mr. Bergeron said they would discuss the road area and invert heights that were causing back ups on abutting properties.

Mr. Doherty spoke about the wetland area and round culvert being close to the driveway. He asked Mr. Keach's thought on the culvert becoming a box culvert if a road was put in. Mr. Keach believed it was premature for him to give a proper answer.

Ms. Kirkpatrick believed the Conservation Commission would be meeting June 10th and questioned when to date specify the plan. There was a brief discussion. Mr. Sherman questioned if the Board would receive Town Counsel's opinion on some of the points raised. Mr. Doherty replied it was up to the Board.

The case was date specified to the July 6, 2020 meeting. Mr. Bergeron said there were several points and in-depth discussion the Board would need to have regarding the points of law. He questioned how they would do it. Mr. Cote stated he could do it though the Selectmen's office as the Selectmen's representative to the Board. Mr. Bergeron asked how the Board would set a non-public to get a letter sent to counsel. Mr. Doherty didn't feel a non-public session was needed to ask for counsel's opinion. Mr. Bergeron wanted to ensure the questions and opinion were attorney – client privilege protected. Mr. Cote mentioned Town Counsel was already familiar with the case because he had already had correspondence relating to it. Mr. Doherty asked the Board if they wanted Mr. Gowan to contact Town Counsel; there was a consensus to have Mr. Gowan contact Attorney Ratigan in regard to legal questions.

Mr. Gowan stated he would speak to Mr. Doherty off-line to ensure he had all the questions the Board wanted responses to.

Mr. Montbleau told the Board he had been blocked out of the meeting for approximately 45 minutes; he could hear what was being discussed but was unable to offer comment because the Board couldn't hear him.

Case #PL2019-00029

Map 31 Lot 11-33 &

Map 31 Lot 11-37 Access Lot

KLECZKOSKI, Charles Jr. (Owner) / AMERICAN TOWERS, LLC (Applicant) - Off Spring Street – Site Plan Review for a Wireless Communications Facility, pursuant to Section 307-58(B)(3) of the Town of Pelham Zoning Ordinance and Site Plan Regulations & a Special Permit pursuant to Section 307-40(A)(1) of the Ordinance relating to wetlands for the construction, operation and maintenance of a Wireless Communication Facility

Representing American Towers and TMobile was Attorney Edward Pare of Brown Rudnick who joined the meeting via telecommunication (Zoom). He provided the Board with a summary history of the plan that began with variance relief granted through the Zoning Board. During Planning Board hearings, the plans have been revised to address the issues raised by the Board. The plans have also gone through engineering review by Steve Keach of Keach Nordstrom (Board's engineering review firm); plans have been reviewed to address the comments and all of the Board's issues. They've met with the Conservation Commission and Highway Safety Committee ('HSC') and received letters of recommendation/approval. Attorney Pare stated as part of the proposal they had moved the access road to Blueberry Circle and provided a temporary turnaround that would be paved in accordance with the HSC request. In summary they have satisfied each of the conditions placed upon them and received favorable recommendations from all Town boards and have the complete support of the public safety officials in the Towns of Pelham, NH and Dracut, MA. He pointed out American Town was building the tower 25ft. taller to accommodate public safety needs.

Due to the expiration of Zoom meeting (at the previous hearing), Attorney Pare understood a neighbor had raised some issues with the Zoning Board of Adjustment case and therefore reminded the Board they had received approval from the Zoning Board in September 2018. There was no request for rehearing or appeal filed. To the extent anyone wants to raise question in relation to the Zoning Board's proceedings, he would object and didn't believe it was appropriate. He stated the plans had gone through a number of hearings and felt the plans were in good order. He respectfully asked the Board to approve the Special Permit and Site Plan.

PUBLIC INPUT

Mr. Doherty invited the public to comment either in person or via telecommunication.

Mr. Mike Ausevich, 8 Falcon Road offered comments via telecommunication (Zoom). He told the Board the tower would be in direct view of his home once the trees were taken down for the access road to the compound. He said the cell tower would be in a very wide open/clear view from his home. He disagreed that the applicant

received favorable approval from the other groups in Town and felt the proposal was ‘rammed through’ Zoning. Mr. Ausevich said during the Zoning hearings Attorney Pare mentioned the FCC Regulations and how Pelham would be foolish to go against them which made everyone believe the only option was to go forward with the cell tower. He added it’s a residential neighborhood and there were tons of outcry to reject the tower. He wanted to make sure the Board knew there were a bunch of abutters against the cell tower to a great degree. He didn’t want the Board to only hear the applicant’s side of the story.

Mr. Larry Horgan, 32 Blueberry Lane came forward in person. He noted during the last meeting he wanted to bring his laptop to play a three-minute video clip (of the Zoning meeting). He provided the Board with a transcript of the (Zoning) meeting leading up to their vote and spoke about the discussion that had occurred. He believed it was a point of order as there was a driveway with deed restrictions in question that was located on a residential lot on Blueberry Circle. He said if he is allowed to play the video the Board could decide whether they wanted to move forward. He said there were several other things stated by the attorney that he thought should be ‘fact checked’. Mr. Horgan wanted to know if anyone had asked the applicant to look into co-locating elsewhere. He also noted he had done some fact checking with the New Hampshire Heritage Bureau. He asked if he could play the video clip.

Attorney Pare objected to doing so as the information had already been litigated and presented to the Zoning Board of Adjustment approximately two years ago. He stated New Hampshire Heritage information was included in their application packet and provided to the Conservation Commission. He commented they didn’t ask the Zoning Board for relief for access, in fact had satisfied the condition in the letter dated February 19, 2020 to the Planning Board. He pointed out the approved site plan contained a conditional restriction; the proposed temporary turn-around resolved that condition. There was nothing the Zoning Board had in front of them that was any different from the current public record. Attorney Pare said the Zoning Board made the decision to approve the proposal after all of the back and forth and the applicant proving the case that there were no existing facilities, no existing towers, and no proposed towers. He added there was no appeal filed. He pointed out the driveway access will be paved at the request of the HSC and provide a temporary turnaround. It will also provide the ability for Town vehicles (snowplows etc.) to use the turnaround. He reiterated the facts were made to satisfy the condition and the Zoning Board approved the use. Each of the issues raised by Mr. Keach have been resolved. The location was made better by providing additional fencing/screening as suggested by the Board. He stated the application was for a site plan review and the abutters were trying to re-litigate something that had already been approved and not appealed. The time to appeal the Zoning Board decision was over a year and a half ago. He ended by saying there was nothing the Zoning Board did regarding ‘access’ the applicant had simply complied with the condition of the subdivision approval from 1977. Attorney Pare respectfully suggested they weren’t at the Planning Board meeting to re-litigate something that had occurred and been approved at the Zoning Board meeting and not appealed.

Mr. Doherty believed Attorney Pare was correct; the time to appeal the Zoning Board was at the time the case was with the Zoning Board or to go to court after that time. Mr. Horgan replied there was no plan in front of the Zoning Board. He said the plan in front of the Planning Board was different than that shown to the Zoning Board. Mr. Doherty replied the Zoning Board had a different role than the Planning Board; a plan in front of the Planning Board went through engineering review. Mr. Horgan understood the Planning Board had to adhere to Zoning and questioned if a Special Permit was needed for two driveways on one property. Attorney Pare answered no; there was a driveway restriction on the approved subdivision plan that was conditional on a temporary turnaround, which was done. He didn’t see that the ‘use’ needed to be relitigated.

Mr. Doherty asked if any member of the Board wanted to see the video offered by Mr. Horgan. No one answered in the affirmative.

Mr. Horgan understood if someone is doing a major project, they had to use the data check tool through the New Hampshire Heritage Bureau. He said the applicant stated they had done that data check and there was nothing found on the property. He contacted them to do a data check on his own property, which reviewed threatened

species within a one-mile radius. He spoke about the threatened species (plant and vertebrae) found within one mile of his property. He found it hard to believe the applicant's survey came out negative as their property was less than 1,200 feet from his property. Attorney referenced tab #11 of the application material submitted to the Zoning Board and Conservation Commission concluded the information from the New Hampshire Heritage Bureau. He added they were also subject to the National Environmental Policy Act because TMobile is a federal licensee; both filings came back negative. Mr. Horgan rebutted that statement and told the Board he had an email from Amy Lamb of the New Hampshire Heritage Bureau that indicated the applicant's data check material should be renewed annually but had expired May 2019. He described the threatened species listed on the report of his property. Mr. Doherty asked if Mr. Horgan's property was within one mile of the cell tower location. Mr. Horgan displayed a document and marked off the cell tower location. Mr. Cote wanted to know specifically which species were threatened and if projects should stop because of it. Mr. Horgan summarized the species listed on the report.

Attorney Pare stated they had run into similar situations and understood Mr. Horgan didn't want the cell tower on the property; however, they were required to comply with New Hampshire statutes and the statutes of the United States. With respect to the impact on the environment, he understood Mr. Horgan was reviewing information and stated they would be happy to comply with a condition that indicates a requirement to comply.

Mr. Horgan commented no one was checking the applicant's facts. He said he contacted the New Hampshire Heritage Bureau who indicated there were threatened species on his property, but the applicant was saying they didn't have any. Ms. Kirkpatrick noted the file contained documents submitted by the applicant from the New Hampshire Heritage Bureau that indicated a negative result. Mr. Cote questioned what it meant that there were threatened species. Mr. Horgan replied they were rare. Mr. Doherty asked if that meant the cell tower would end the species. Mr. Horgan responded by saying maybe in that area. Mr. Horgan explained his point was the applicant was saying one thing, but when he checked on it, he received a different answer. Mr. Doherty understood the New Hampshire Heritage Bureau gave the cell tower area a 'clean bill of health' but around Mr. Horgan's house there were some things that were endangered. Mr. Horgan noted he was located 1,200 feet away from the proposed tower and found it hard to believe the applicant's report came back negative.

Mr. Horgan told the Board the applicant continued to get the abutter's list wrong on the plan set; there were three abutters listed that were no longer there and had moved out since the project had started. He noted he lived in the neighborhood thirty-five years and there was hardly any turnover. It was a well-desired neighborhood, but people were leaving because of the project; the whole character of the neighborhood was being changed.

Mr. Keach told the Board he had no further concerns about the application. With regard to the Special Permit for the limited area of Wetland Conservation District ('WCD') impacts, he reminded the Board it was still pending in his letter of March 24, 2020. He believed the Board received correspondence from the Conservation Commission regarding such. He said if they had yet to act on the request it would be appropriate to do so at some point during the meeting. Mr. Doherty confirmed Mr. Keach felt the Board could act on the tower. Mr. Keach answered yes. Also, in addition to any conditions the Planning Director recommended, he wanted to ensure there was also a condition requiring the appropriate sureties were in place. The recommendation in the letter of March 24th a limited surety for erosion control and site restoration in the event of abandonment be received as a condition of approval. He pointed out the Zoning Ordinance for telecommunication facilities requires receipt of certain bonding and assurance requirements to guarantee appropriate removal and site restoration in the event of abandonment. He suspected Mr. Gowan would recommend identical conditioned. Mr. Gowan told the Board he provided a carefully worded and legally reviewed set of draft conditions that should be read into the record at the appropriate time.

Mr. Doherty asked the Board if they wanted to move forward on the case and have the conditions read into the record. Mr. Gowan suggested acting on the Special Permit before stipulating the conditions of approval.

Mr. Ausevich asked what the Special Permit related to. Mr. Montbleau called a point of order to ascertain if the discussion had been closed to the public. Mr. Doherty replied the discussion was back to the Board. Mr. Ausevich apologized for speaking out of order, he didn't recall hearing anything about a special permit. Mr. Gowan explained Zoning allows the Planning Board the ability to issue a special permit, with Conservation Commission comment, for impacts to the WCD buffer relating to access or utilities to a property. He said in this case it was access. Mr. Doherty inquired if the size of the impact needed to be specified in the motion. Mr. Keach replied the impact size was 6,535 SF; Zoning citation Article VII, Section 307-40.

MOTION: (Montbleau/Dadak) To grant a Special Permit for a Wetland Conservation District (buffer) impact of 6,535SF (for access to the cell tower) under Zoning citation Article VII, Section 307-40.

ROLL CALL VOTE: Mr. Doherty – Yes
 Mr. Bergeron – Yes
 Ms. Kirkpatrick – Yes
 Mr. Montbleau – Yes
 Mr. Dadak – Yes
 Ms. Masse-Quinn – Yes
 Mr. Cote - Abstained

(6-0-1) The motion carried. Mr. Cote abstained.

Mr. Doherty asked the Board if they wanted to move forward and have Mr. Gowan read aloud the draft conditions of approval. There was a consensus to move forward.

Mr. Gowan read the following draft conditions aloud:

- 1) Based upon the applicant's representations to the Planning Board, the Town shall have the right to access the site and shall be able to install its public safety emergency communications equipment on the top 25ft. of the tower and that the Town shall have no less than a 10ft.x10ft. area on the ground to install a structure/cabinet to house some of its communications equipment. The applicant shall work with the Town to draft an execute a cell tower lease acceptable to the Town, notice of which shall be recorded at the Registry of Deeds prior to the plan being signed, prior to the required pre-construction meeting being held and prior to the issuance of any permits or the start of any construction.
- 2) Any waivers approved by the Planning Board along with this Notice of Condition to be noted on the final plan.
- 3) Written memorandum from Steve Keach (of Keach Nordstrom) indicating his satisfaction with all final plan details prior to plans being signed.
- 4) Surety and plan compliance escrow are to be provided as estimated by Keach Nordstrom prior to permit issuance and commencement of construction.
- 5) In conformance with Pelham Zoning Article X, Sections 307-61 and 307-62, a separate long-term surety in a sufficient amount shall be provided, as estimated by Keach Nordstrom, to cover the cost of tower, compound, pad and equipment removal in the event it becomes abandoned or is inadequately maintained at any point in the future.

Mr. Montbleau made a motion to accept the plan for the cell tower subject to the provisions Mr. Gowan read into the minutes.

Mr. Doherty asked if Attorney Pare was still connected via telecommunication (Zoom). Attorney Pare indicated he was still connected. Mr. Doherty inquired if there were any waivers not yet approved by the Planning Board that needed to be acted on. Attorney Pare believed they only requested one waiver regarding the soil survey that was granted at the last meeting. Mr. Keach stated that was correct. There was a wavier of Section 302-3, E for site specific soil survey mapping granted during the February 2020 hearing.

Mr. Doherty confirmed Mr. Montbleau's motion was to 'approve' the plan and not 'accept' the plan. Mr. Montbleau stated his motion was to 'approve' the plan.

Mr. Bergeron seconded the motion for discussion. He asked Conservation Commission Chairman Paul Gagnon to come forward. He wanted to know if a negative approval of the tower would put the purchase of the large parcel of land for the Town in jeopardy. Mr. Gagnon said it would likely do so; the current purchase and sale would become null and void so they would have to 'go back to the drawing board'.

Mr. Sherman inquired if the applicant's attorney agreed to the stated conditions. Mr. Doherty replied it didn't matter because they were the Board's condition.

Mr. Doherty stated again the motion was to approve the plan with the stated conditions.

Mr. Cote commented he had been thinking about the proposal for a long time and struggled with the actual vote. He would have a problem having a cell tower in his own back yard. Mr. Doherty commented he could see the balloon during the balloon test from his property as well. Mr. Cote said he had terrible reception from his house but loved that because he could put his phone down. As technology moves forward technology companies were providing service via satellite and didn't know if cell towers would be relevant in the coming years. He reminded the Board there were nine provisions the plan received variances for; one was to place a cell tower in a residential district. Mr. Cote believed the only benefit was the Town obtaining 35 acres of land but didn't know if that benefit was worth having the cell tower that may be taken down. Mr. Culbert pointed out the Fire and Police Departments currently used walkie-talkies in that area, which was a safety issue.

Mr. Bergeron understood the first proposal had the tower located in Pelham with access through Dracut, MA. Attorney Pare replied the tower was never proposed to be located in Dracut. He described the history of proposal and determining its location. He reminded the Board the top 25ft. was reserved for public safety. He added consumers were driving the demand for service. He said they anticipate if technology changes the Town will end up with all of the tower for public safety.

MOTION: (Montbleau/Bergeron) To approve the plan for the cell tower subject to the provisions Mr. Gowan read into the minutes (*listed above*).

ROLL CALL VOTE:

Mr. Doherty – Yes
 Mr. Bergeron – Yes
 Ms. Kirkpatrick – Yes
 Mr. Montbleau – Yes
 Mr. Dadak – Yes
 Ms. Masse-Quinn – No
 Mr. Cote - No

(5-2-0) The motion carried. Ms. Masse-Quinn and Mr. Cote voted in opposition.

COREY CONSTRUCTION, LLC - 499 A & B Mammoth Road - Proposed 12-Lot Subdivision consisting of single-family homes

Mr. Doherty asked the Board if they wanted to date specify the case.

Representing the applicant via telecommunication was Doug MacGuire of The Dubay Group agreed it was late in the evening to get into the hearing. He understood the Board previously planned to conduct a site walk that had been postponed because there was no where to park safely. He asked the Board if they were interested in setting a date for a site walk.

Mr. Bergeron felt it was important for the Board to review the site prior to discussing the proposal. Mr. MacGuire informed the applicant had coordinated with his existing tenants of the duplex off Mammoth Road to allow for parking of those attending a site walk.

A site walk was scheduled for June 6, 2020 beginning at 8am.

The plan was date specified to June 15, 2020.

NEW BUSINESS**Case #PL2020-00008****Map 41 Lot 6-119**

JUSZAK, Brandon, Birch & Brick Realty (owner) / KNOWLTON, Joshua & NORMANDIE, Alyssa (applicants) - 49 Bridge Street, Unit 1 - Site Plan Review for a change of use to permit the operation of a dog training facility that will also offer limited boarding.

The Board date specified the case to June 1, 2020.

Case #PL2019-00016**Map 39 Lot 1-49**

WILLIAMS, Bruce & Rhonda - 157 Mammoth Road - Proposed 4 Lot Subdivision and Special Permit for Wetland & WCD Crossing for access to proposed homes

The applicant requested the case be continued to the next available meeting. During the meeting, the abutter list was not read into the record and the plans were not accepted for consideration.

The case was continued to June 1, 2020.

Case #PL2020-00009**Map 22 Lot 8-31**

C & T BEAUREGARD LAND HOLDINGS, LLC - 91 Main Street - Site Plan Review to remove existing buildings and construct two 34ft. x 84ft buildings (*original application Case #PL2019-00027 to be withdrawn*)

The applicant requested the case be continued to the next available meeting. During the meeting, the abutter list was not read into the record and the plans were not accepted for consideration.

The case was continued to June 1, 2020.

DISCUSSION

CIP, Zoning & Land Use Regulation Subcommittees – Potential appointment of committee members

Mr. Gowan asked if he should proceed with the CIP. Mr. Doherty stated Sam Thomas would represent the Planning Board. Mr. Gowan stated he would assist Mr. Thomas to coordinate the meeting.

DATE SPECIFIED CASE(S)

June 1, 2020:

- 1) Case #PL2020-00008 - Map 41 Lot 6-119 - JUSZAK, Brandon, Birch & Brick Realty (owner) / KNOWLTON, Joshua & NORMANDIE, Alyssa (applicants) - 49 Bridge Street, Unit 1
- 2) Case #PL2019-00016 - Map 39 Lot 1-49 - WILLIAMS, Bruce & Rhonda - 157 Mammoth Road
- 3) Case #PL2020-00009 - Map 22 Lot 8-31 - C & T BEAUREGARD LAND HOLDINGS, LLC - 91 Main Street

June 15, 2020:

- 1) Case #PL2019-00024 - Map 35 Lots 10-200, 10-312 & 10-351 - NEIL FINEMAN 2018 TRUST & LEMIEUX, Albert III & Christine - Currier Road, Peabody Lane & Bridge Street (Route 38)
- 2) Case #PL2020-00003- Map 27 Lot 3-125 - COREY CONSTRUCTION, LLC - 499 A & B Mammoth Road

July 6, 2020:

Case #PL2020-00002 - Map 6 Lot 4-175-1 - PAWTUCKET ROAD LANDHOLDINGS, LLC - 32 A & B Valley Hill Road

SITE WALK - June 6, 2020 beginning at 8am

Case #PL2020-00003 - Map 27 Lot 3-125 - COREY CONSTRUCTION, LLC - 499 A & B Mammoth Road

ADJOURNMENT

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

ROLL CALL VOTE: Mr. Doherty – Yes
 Mr. Bergeron – Yes
 Ms. Kirkpatrick – Yes
 Mr. Montbleau – Yes
 Mr. Dadak – Yes
 Ms. Masse-Quinn – Yes
 Mr. Cote - Yes

(7-0-0) The motion carried.

The meeting was adjourned at 12:08am.

Respectfully submitted,
 Charity A. Landry
 Recording Secretary