

**APPROVED**

**TOWN OF PELHAM PLANNING BOARD  
MEETING MINUTES  
November 7, 2022**

Chairman Tim Doherty called the meeting to order at approximately 7:01 PM.

Ms. Masse-Quinn called the roll:

**PRESENT ROLL CALL:**

Tim Doherty – present  
Jim Bergeron - present  
Roger Montbleau – present  
Danielle Masse-Quinn – present  
Kevin Cote – present  
Hal Lynde – present  
Samuel Thomas - present  
John Spottiswood – present  
Bruce Bilapka - present  
Joe Passamonte – present  
Jenn Beauregard - present  
Jen Castles – present

**ABSENT/**

**NOT PARTICIPATING:**

Paddy Culbert  
Jaie Bergeron

**PLEDGE OF ALLEGIANCE**

Mr. Doherty said the Boy Scouts Troop 610 is here and will be leading the pledge of allegiance.

**MEETING MINUTES**

Ms. Masse-Quinn had a change to the meeting minutes dated October 24, 2022, line 9, to change the name from Ms. Masse-Quinn to Mr. Bilapka. Ms. Beauregard said on line 64, to change 15x125 to 50x125.

**MOTION:** (Mr. Montbleau/Mr. Passamonte) To approve the minutes as amended.

**VOTE:** (6-0-1) The motion carried. Ms. Masse-Quinn abstained.

**Case PL2022-00031 – Cedar Crest Development, LLC (Applicant), Eleanor Burton Revocable Trust (Owner) – Map 38 Lot 1-109-243 Sherburne Road – Seeking approval of a 4-lot subdivision consisting of 3 single-family/duplex lots accessible from Sherburne Road.**

Ms. Masse-Quinn read the list of abutters.

Mr. Kurt Meisner from Meisner Brem Corporation introduced himself representing the engineering and surveying of this project. The property is a 17-acre parcel, with frontage on Sherburne Road and the back portion is on McGrath Road. They are looking to subdivide three lots off of that on the frontage of Sherburne Road and leave the remaining tract, which is 10 acres to the rear of the property, which is considered to be a non-buildable lot right now. He said not to say that wouldn't ever be or would ever be developed, but it's not included in this now. The lots they are cutting out vary from 2.14 acres to 2.96 acres and they all have frontage on Sherburne Road. The first lots have 200 feet, second and third have 257 and 247 feet of frontage. There is an existing farmhouse on the property now that is to be razed as a part of this. They are proposing to build three new dwellings on the site. They have applied for and received NHDES subdivision approval, which is contained in the package. These properties are to be serviced by on-site wells and on-site septic systems. They applied for these to be single-family and or duplex lots. Lot #2 would qualify for a duplex lot from DES rules. At this time, there are no specific house designs but want to keep those options open. On the topographic plan, there is a culvert that crosses the road in the center of the property and the wetlands that are associated with that culvert cut the lot off from the rear portion of the property. They can't go deeper into the lots because of that wetland and those wetlands were flagged and delineated by Luke Hurley of Gove Environmental Services. These are field survey located and the plan was stamped. This has all been surveyed and engineered and these lots have been proven out to NHDES. They are asking for 2 waivers and those requests have been submitted. One waiver is for an irregular shape building envelope. The other is for a well radius to the lot line. The irregular shape is due to the wetlands coming in from the culvert near the rear of the property. One well radius, that is for lot #2 and that is a 75-foot well radius. This lot is the one that could be used for a duplex and if that happened, they would need a 100-foot radius for that which would make it become too close to the lot line at the frontage of the property.

Mr. Doherty said this was the first time a non-buildable lot has been proposed and how is that possible, the board could accept this?

Mr. Meisner said it is just remaining land that comes out of the parent tract. He said this is towards the back and it has frontage on McGrath Road. Mr. Doherty said a 4-lot subdivision and one lot can't be built on. Ms. Beauregard asked if McGrath Road was private? Mr. Meisner said it is and it would have to constructed up to the town's standards. He said it wouldn't behoove them to develop that lot at this time.

Mr. Meisner said when they call it a non-buildable lot, that is for DES purposes because they have to call every parcel of land a lot.

Ms. Beauregard said it would be a legal question because if you're creating a lot that is non-conforming because you're taking away frontage on a town road. She also asked if he was looking for that lot to not remain unbuildable forever? Mr. Meisner said correct. Mr. Doherty asked if it was a wetland? Mr. Meisner said it is a lot of wetlands and they believe it may be non-buildable forever, but it's not feasible to do that now. The Burtons intend to keep owning that right now and that land would sit there. If someone were to try and build on that lot, they would need an approved septic design and get a variance and additional approvals to be able to build.

Mr. Thomas asked his opinion of how they would supply water in this area when there are issues with water across the street from this property? He said by the Water commission, this is a 'hardship' area. He asked how they anticipate the supply and quality of water he is proposing here for the residents that will live in these homes?

Mr. Meisner said there is currently one house on the property now that is serviced by a well. He intends to drill wells for the new homes. He said those wells would have to be tested by the state and town regulations.

Mr. Thomas asked if he's done any drilling yet? Mr. Thomas said there is a concern because in this area, some residents have limited water or have poor water quality. He said it is many homes in this area and he would want to propose to the board that there be an investigation done to see if they are building something that won't have access to water.

Mr. Meisner understood, and he stated when you get a building permit, you have to show a well test for quantity and quality. The quality issues can be remediated easily.

Mr. Thomas said in 2014 this community came before the Selectmen and the residents were told to put tanks in their basements. He said in the fairness to everyone, they need to make sure this issue gets addressed. He said water is an issue in this part of town and this needs to be addressed.

Mr. Meisner said he could talk with Mr. Thomas to make sure to get information.

Ms. Masse-Quinn asked if his client owns the parcels across the way on Sherburne Road and are they going to be developed also? Mr. Meisner said they are expected to be, yes.

Ms. Masse-Quinn asked what the total acres were for both of them? Mr. Meisner said this project has 17.5 and the other side has 57 acres, he believed.

Ms. Masse-Quinn said that could be 57 new houses alone, along with the three they want to put here. Mr. Meisner said they would not be close to 57 houses there.

Ms. Masse-Quinn said this is an area of concern in her mind and it abuts Chardonay Road, Spaulding Hill, Nicholas Lane, Marie Ave and Applewood. Mr. Meisner said yes.

Ms. Masse-Quinn said there is a huge water concern in this section of town and a hardship. She has a concern for public safety, health and welfare for those members of the community on that way when it comes to their water, lack of water, wells running out of water, fracking and the unexpected expenses they are absorbing for their safety and quality of life. She asked if this infrastructure could handle growth?

She said she reached out to Kim Abare, the chair of the water commission and requested a copy of the resident's responses from her survey to the town. Her survey had 14 questions and 158 residents responded. Out of the 158 responses, 56 of those responses pertain to Sherburne Rd, Spaulding Hill Rd, Nicholas Lane, Marie Ave, Applewood Rd and Chardonay Rd. Those residents on Nicholas Lane on private wells are running out of water and have poor quantity and quality. They have high arsenic and iron levels and most have financial burdens of fracking at this time. One family is displaced as they have no water. The Applewood Rd submissions have private wells and have not good quality or quantity, most have arsenic there and have little water pressure. Marie Ave submissions have private wells, they have issues with quantity and quality, have rust and bacteria and have all run out of water. Spaulding Hill Rd submissions have private wells, they've run out of water and have poor quality and quantity and have a decrease in water pressure. She said Chardonay Rd is one of Pelham's newest communities, they are all on community wells. All these homes had no water and it stopped and ended in June of 2022. Their water quality and quantity are not good, and they have arsenic in their water. She said those areas do have a public safety health and welfare concern and the infrastructure, in her opinion, cannot support any more growth. She looked at the NRPC Website and said this board has two options. Option 1, RSA 674:23, we can create a temporary moratoria ordinance and it may be adopted under unusual circumstances that affect the ability of the municipality to provide adequate services and requires prompt attention to the develop or alter growth of management

process under the NH RSA 674:22. Option 2, under RSA 674:22 we create a growth management ordinance that demonstrates the lack of capacity to accommodate growth typically meaning insufficient infrastructure or inadequate municipal services. She thinks it's important to note that Hollis and Brookline are doing the same thing. She thinks we should address the water concerns that have been going on since 2014 and it's important that our board put this growth management ordinance together because she questions whether the infrastructure on Sherburne Road can handle any more growth. With the knowledge that 54 acres across the way going to be developed on, in addition to these three, that is her position with the board.

Mr. Meisner asked what her expertise in water was, but he would appreciate copies of her reports and her research and from the Water commission. He said this is a valid concern for this development and he wants to make sure these properties have water. Mr. Doherty asked Ms. Masse-Quinn if she can copy that and get that into the files? Ms. Masse-Quinn said yes. Mr. Meisner said he will work with the water commission moving forward.

Mr. Doherty said he can't open this to the public because it's not accepted for consideration.

Mr. Jim Bergeron wanted to talk about the question of the non-buildable lot, and he doesn't think this board can create that lot. He said that question would require legal opinion. He said McGrath Road isn't an accepted road so the road frontage cannot occur there. He wanted to talk about lot #2 and that lot being able to support a duplex. Mr. Meisner said it would, yes. Mr. Jim Bergeron asked about the information for the non-hydric soils. Mr. Meisner said it's on the plan, sheet 3 of 3.

Mr. Meisner asked if we are having all of these discussions, isn't the plan being accepted?

Mr. Jim Bergeron said if the plan gets accepted for consideration, it starts an aspect of legal parameters, and he isn't sure this plan is ready at this time.

Mr. Meisner said he believes because a person from the water commission spoke, that starts an acceptance. He said when the town accepts the plan when they put it on the agenda.

Mr. Cote asked if the water commission spoke on this plan? Mr. Jim Bergeron said no. Mr. Cote said it was just members.

Mr. Jim Bergeron asked if they should discuss the plan, with the plan not being accepted by the board at this point? He said just by Mr. Meisner walking in, that didn't mean we accepted the plan or started the clock.

Mr. Meisner disagreed with that and mentioned a plan he worked on in Concord.

Mr. Jim Bergeron said that is a different form of government.

Mr. Cote said he if he doesn't want any more discussion, it can end there.

Mr. Jim Bergeron said if Mr. Meisner doesn't want this plan talked about to accept or not to accept for consideration, he's putting himself in a place he hasn't seen before.

Mr. Meisner said he believed they had accepted the plan because we are talking about it.

Mr. Doherty said he has not heard a motion to accept this plan for consideration or a second, so it has not been accepted. His biggest concern is the non-buildable lot in the back and of the 4K areas.

Ms. Beauregard said this board's practice is to formally accept a plan for consideration and then the discussion takes place more in depth. She said once it's accepted, you open up the time clock and the applicant can offer extensions along the way.

Mr. Doherty said if the time clock isn't opened, he can't open it up to the public. He said as of right now, it's probably leaning towards failure the way it is drawn up now.

Mr. Jim Bergeron said if this doesn't check off for our acceptance and he would need to hear the reasons why. Mr. Meisner said he would like to hear the reasons why it's not complete. Mr.

Jim Bergeron said we won't accept this plan for consideration until we can see if it will meet our criteria. Mr. Jim Bergeron said the planning director is not in charge of making sure this meets our subdivisions and land use regulations and this board is that authority.

Mr. Jim Bergeron said they talked about lot 109-2 and he said that was on sheet 3. He asked what the non-hydric square footage of that lot was? Mr. Meisner said it is 129,132 s/f and they show a 15K area in the front and they do meet the standard for the 3500 s/f buildable area. Mr. Jim Bergeron asked him about the aspect of the duplex? Mr. Meisner said it is 5400 and it does meet that. Mr. Jim Bergeron asked about the 100-foot radius which would put him into the front setback and 4K area? Mr. Meisner said it would. Mr. Jim Bergeron said that would exclude the possibility of a duplex on that lot. Mr. Meisner said he would have that discussion and what would happen is that he has a subdivision approval that meets DES standards. Mr. Meisner said he would design an individual septic system on this lot and submit that to the state and they wouldn't have to have a 4K area to show them it was a buildable area. They could encroach into the 4K area with a well radius. Mr. Jim Bergeron said our regulations cannot supersede the state regulations. Mr. Meisner said he didn't say that. Mr. Jim Bergeron said they do supersede, and he knows that. Mr. Jim Bergeron said he wanted to talk about the polygon shape lot that doesn't meet the 4K criteria and both lots are not designed for its functionality to work as a 4K area. Mr. Meisner said he disagrees and that is not true. He said it meets the state requirements for a 4K area and he can design a septic system that goes inside of that. The septic would only be about 400 s/f, not 4000 s/f. Mr. Jim Bergeron said he has the code of administrative rules here. Mr. Meisner said we can address that at the next meeting.

Mr. Doherty asked Mr. Meisner to put the plan on the screen. Mr. Doherty asked him to show the 4K area on lot 109-2. Mr. Meisner showed him and said he is requesting a waiver for that irregular shape and that is caused from the wetlands. Mr. Doherty asked him to show them in the building envelop where the 4K is? Mr. Meisner showed that. Mr. Doherty asked him where the septic would be? Mr. Meisner said when the septic are designed, they are about one-tenth of the size of that 4K area, and he showed them where it would go on the plan. Mr. Meisner said those septic would have to be approved by the town's review consultants, which is Paul Zarnowski. Ms. Beauregard asked about the state approved plan and that he showed 100-foot radius on the well and it appears to not encroach on the setbacks or the 4K area. Mr. Meisner said that well was pushed back into the WCD. Ms. Beauregard said it is allowed to be.

Mr. Doherty said the size of a duplex septic system is larger? Mr. Meisner said yes, a duplex, if it were 6 bedrooms it would be about 640 s/f, which is still significantly smaller than 4000 s/f. It fits in there; they have laid it out to see that it would fit.

Mr. Cote asked if there was a way to get the board of health involved before the planning board makes a decision on that to see if this lot is sustainable to public safety? Mr. Doherty said he wouldn't know how they would know that. Mr. Cote said they would if they were to drill a well and tested it. Mr. Doherty said there is an existing well on the property. Mr. Meisner said they may be able to test the existing well to see the data.

Mr. Doherty asked where the existing well was? Mr. Thomas said the existing well is on 109-1 to the east.

Mr. Meisner said it's to the left of the building, but they proposed to put a new well on that lot because they are going to raze that building. Mr. Meisner said the only other way to do that would be to drill a well and test that water. He could test the existing well also.

Mr. Cote said the unique part of this area is that one neighbor can have a ton of water and the next one could not. He said it is very unique in seeing if this fits into our acceptance for

consideration and he believes public safety is one of those. He thinks there is a public safety issue here regarding having water. He would like to see proof there is water capacity on all 4 lots. Mr. Meisner said it would be 3 lots.

Ms. Masse-Quinn said where he has the other parcel containing 54 acres, would he consider hooking up to Pennichuck water? Mr. Meisner said not right now, no.

Mr. Doherty asked the board what they would like to do? Mr. Thomas said before we go forward, he wants to understand the sourcing of water. He said that is the basic criteria for safety and unless we know there is adequate water, he doesn't know how we can go forward. That area is a general hardship area and these lots will add to that demand. He said we need to know what the water quality and quantity will be for these three lots.

Mr. Bilapka asked what the reason is for the strip of land off of 109-2? Mr. Meisner said that is part of the abutting tract. This board did approve two lots out there that have narrow strips of land and a driveway that goes to properties. Those properties are way down in the back near the Tyngsboro town line. Mr. Bilapka asked if they intend to make that a roadway? Mr. Meisner said no, that is not owned by this tract.

Mr. Doherty suggested Ms. Beauregard talk to town council about that non-buildable lot? Ms. Beauregard said yes. Mr. Doherty said we are always concerned about this. Ms. Beauregard agreed and said we can't create a non-conforming lot and she will check with Attorney Ratigan on that.

Mr. Jim Bergeron said going back to June of 1993, when the town accepted a 30-acre parcel as a non-buildable lot with a conservation restriction on it. Ms. Beauregard said that's why she will ask Attorney Ratigan. Mr. Doherty said that was on a class-6 road. Mr. Jim Bergeron said the applicant deferred all rights to access on that parcel. He said that was done again in 1998.

Mr. Meisner said there is a parcel on the Hudson town line and the town added that to conservation land. Mr. Jim Bergeron said we do that, but he was talking about private individuals. Mr. Meisner said he has done that and may do that along the way.

Mr. Doherty asked if the board could give the applicant guidance?

Mr. Cote asked at what point in the process does he find out about water, meaning does he put in a well and then test it and then build the house or does he build the house and then test the water? Mr. Meisner said different towns have different regulations for that and he believed Pelham or Hudson requires a well to be drilled and tested before receiving a building permit. He doesn't have the answer right now. He said a well is usually drilled when the foundation is going in. He said this board could ask for a condition that these wells be tested prior to any building permit is issued and he wouldn't have an issue with that.

Mr. Cote said knowing there is an issue there, he would think they would want to make sure there is enough water there.

Mr. Meisner said he understands, now knowing the water issues there. Mr. Cote said they have about 12 years of data there regarding water issues. Mr. Meisner is familiar with southern NH and water issues. Mr. Meisner said the first thing they will do is check the water on the existing well. Mr. Cote said he knows about a home on Nicolas that had to drill four times and their neighbor had no issues.

Ms. Beauregard said our regulations are you can get a foundation permit prior to drilling a well and then you would have to submit the sustained yield prior to getting a building permit. She would say Mr. Meisner is right and this board can and should require any permits in that area be done sooner in the process. She said this board has required more testing be done, in this area, to

prove water quantity prior to approving the subdivision. She said that was one of the newer subdivisions off of Sherburne Road.

Mr. Doherty said a few of those wells went dry after that. He doesn't know if the companies weren't testing them properly or if the ground shifted.

Mr. Thomas asked in his opinion, does he believe other builders building in this area, would they participate in the capital investment of a pipeline structure? He said there are aquifers at the bottom of Sherburne in Veteran's Park and a possible cap for water. He asked if builders would participate to help build the infrastructure so the houses they are building, and the built houses have access to water? He doesn't think the town would be able to support that infrastructure itself.

Mr. Meisner said typically no, that would be the town's problem not being able to supply water to its residents. The realist answer would be he has no idea of where the nearest Pennichuck water or community well is near this to be tapped into. He said if it was a municipal project that had a betterment fee, which is common in southern NH, each house built would have this fee to be paid to the town. He said in Salem, when water is extended to a property, they pay a betterment fee of \$3800.00 per home, spread out over 20 years. Mr. Thomas asked if that was a connection fee? Mr. Meisner said it is a betterment fee and there is also a service fee and a connection fee. He said the town has to make a capital investment as well. He said as a homeowner, they would be more likely to drill a well to find out.

Mr. Doherty said 15 years ago he suggested up on Sky View that they stub the water line down towards Eleanor Burton's land, which is 54 acres, the one he is talking about. Mr. Doherty said they also stubbed a water line onto town land so they could add more water into the Pennichuck system someday for the property his client has and be able to extend that. Mr. Meisner said that is interesting and there is a 50-foot right-of-way connection going up to Sky View. Mr. Doherty said there is an 8-inch main stubbed onto that 50-foot right of way on Sky View. Mr. Meisner asked if that was Pennichuck? Mr. Doherty said Pennichuck runs the system and he had asked them to put a line in out back towards the town land to then be brought down and extended down to Sherburne Road. Mr. Meisner said that has created hope and optimism. Mr. Doherty asked if he just heard about this tonight? Mr. Meisner said yes.

Mr. Doherty said he can look into those things talked about and come back.

Ms. Masse-Quinn said she is still concerned about the infrastructure, and can it withstand any more growth? She thanked Mr. Doherty for letting him know about the water up there.

Mr. Meisner asked what infrastructure she is talking about; does she mean the roads? Ms.

Masse-Quinn said the water infrastructure. Mr. Meisner said there is none right now there. Ms.

Masse-Quinn said water falls under it as a safety health concern for the abutters. Mr. Meisner said there is no water infrastructure there now. Ms. Masse-Quinn said Chardonay has a community well. She said Sky View has Pennichuck water now. Mr. Meisner said those would be separate for those communities and not a public infrastructure. Ms. Masse-Quinn asked if he was putting any public infrastructure? Mr. Meisner said no, he is proposing three separate wells. Ms. Masse-Quinn said when she looks at the DES records and people can have water for a few days, but then it dries up. She mentioned Scenic View Drive, Nicholas Lane, Marie Ave and Spaulding Hill Road and talked about the amount of water their wells get. She is concerned when people are looking to develop in this area because at the water test it might pass. She said once these houses are sold, they then run out of water. She said Chardonay is the best example of that happening and that is a community well. She said there is an issue with water in that area. Mr. Meisner said he understands that, and he said that is not infrastructure.

Ms. Masse-Quinn said his definition differs from hers and she said water is viable and you need water to survive. Mr. Meisner said then no more houses should be built in Pelham anymore because those houses have no water? Ms. Masse-Quinn said it is a safety, health and wellness concern. Mr. Meisner said he will work with the water commission for that.

Mr. Meisner will look into the Sky View water and Ms. Beauregard confirmed there is a water stub up there. Mr. Meisner said the two tracts of land are owned by the same person.

Mr. Meisner said he will come back at the December 5th meeting or November 21<sup>st</sup>. Mr.

Doherty said the 5<sup>th</sup> will be the first public hearing for zoning. Ms. Beauregard said there are a few items on the 21<sup>st</sup>.

Mr. Doherty said to schedule him on December 5<sup>th</sup>.

Mr. Doherty said because they haven't accepted this for consideration, he cannot open this up to the public yet.

Mr. Passamonte asked which lot would have the duplex? Mr. Meisner said possible on Lot #2 right now.

### **ADMINISTRATIVE**

#### **Skyview Estates Phase I- Full release of a maintenance bond.**

Ms. Beauregard said Skyview estates Phase I roads were accepted as town roads in October of 2020. They held a maintenance bond of \$36,799.20. There were some items from Jeff Quirk from Keach that had to be taken care of. She spoke with them today and he confirmed those items were taken care of and Jim Hoffman has also confirmed he is happy with the road as well. They are asking to release the maintenance bond they were holding.

Mr. Cote asked if they have a community well up there? Ms. Beauregard said they are on Pennichuck. Mr. Cote asked if there were water issues up there? Ms. Beauregard hasn't heard of any. Ms. Masse-Quinn said no.

Mr. Jim Bergeron asked if that was a private well system that Pennichuck accepted?

Mr. Montbleau said yes. He said that well at the top of the hill was drilled by John Gargas that bought the project. He said it supplies about 63 homes. He said they've had no problem with water at all, even in this drought.

He said hydrology is a strange thing and he knows it well because he learned over 20 years about this. He said underground and topography are both different. He said we need to get that report that we just agreed on. He said there was a person near this subdivision that wasn't allowed to hook up to this water, so he drilled down, close to Marie Ave and he has enough water underground. He said we need a water specialist in here before we start trying to kill everything and get some opinions about what goes on underground. He said we need to get educated on these issues and the survey that was sent out should help us. He wants the board to know there is a lot more to know about hydrology. He talked about how plumes move, and it is very hard to understand this. He talked about his previous experience with underground contamination and clean-ups.

Mr. Cote asked if Skyview had an issue with water, could we do something about the bond or is that solely for the road? Ms. Beauregard said the bond has to be used for what it is collected for and she believes water is not in that calculation. She said it is specific for the road development. Mr. Cote said that might be something for the board to think about when a builder goes in, that part of that bond has to do with water structure. Members of the board agreed with that.

Mr. Montbleau said to Ms. Masse-Quinn's point about drilling wells and three days later they have no water and he said that is impossible. He said Skyview was all under state control and



they had no problems. He said the water did not go away and will be there always. He suspects the people that built homes didn't do their homework correctly and it wasn't sufficient from the outset. He said if you drill a well and get water, that water doesn't go away.

**MOTION:** (Mr. Montbleau/Mr. Cote) To release the bond in full.

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

### **DISCUSSION**

Mr. Doherty said we have the water shed protection ordinance in front of us. This talks about wells not getting destroyed and the surface water around the four ponds. He said we discussed this at the last meeting and made some changes. Mr. Doherty asked Mr. Jim Bergeron if he made changes on the septic part of the ordinance?

Mr. Jim Bergeron wanted to start from the beginning, and he made some small changes. He said there were discussions about how many water bodies of water there are. Mr. Doherty said it is Long Pond, Gumpas Pond, Harris Pond and Little Island Pond is what it says on the top. Mr. Jim Bergeron asked about in every place there are three mentioned, should that be changed to four? He noted every place it was written. Mr. Doherty made note of these changes and asked Ms. Beauregard if she could go through the Word document and find each of the words 'three' and make sure that's changed to 'four'. She said yes. Mr. Jim Bergeron asked for under 'seasonal dwelling, a dwelling unit that lacks any one of the following amenities' or is that okay 'at any of the following amenities? He said if any one of the amenities is missing, it qualifies as seasonal. He asked if that would help or not?

Mr. Doherty said it will be a town document if it goes on the ballot. Mr. Doherty said to add the word 'one'. Mr. Jim Bergeron read the 'substandard lot' and he's wondering if it should say 'does not meet the minimum area requirements that are in existence now when created'? He asked if that was okay with everyone? Mr. Doherty said that is standard for most of the county. Mr. Jim Bergeron talked about a 'water course' definition. Ms. Beauregard said seasonal is a good thing to add. Ms. Masse-Quinn and Mr. Bilapka liked that change. Mr. Jim Bergeron said to add 'year-round or seasonal'. Mr. Jim Bergeron said not all vernal pools are filled year-round. He said seasonal flows that are dry, and we would want to protect those. Mr. Doherty asked if that was called seasonal or perennial? Mr. Jim Bergeron said perennial is year-round. Mr. Thomas asked if they want to put 'year-round and or seasonal'? Mr. Jim Bergeron said that was his suggestion at the end. Mr. Thomas said to say 'and or'. Ms. Masse-Quinn said she would go with the 'and or'.

Mr. Jim Bergeron said for the general septic system said to say 'require' and not 'requiring' (for the 100-foot setback) and he would add 'year-round conversion' of an existing structure.

Ms. Beauregard said he doesn't think it can be year-round and seasonal, not both. Mr. Thomas said it can be both, but if you don't have one, you wouldn't have the approval. He said if you didn't have seasonal it could discount it, if it didn't have year-round, it could discount it so you have the 'and or' so you can use either one as an option.

Mr. Jim Bergeron went back to his septic discussion and edits. Ms. Beauregard said she thinks if you're going from a seasonal conversion, you're converting a seasonal to a year-round. Mr. Jim Bergeron said you need to say that. Mr. Bilapka said a three-season is seasonal. Mr. Thomas said to take the whole thing out. Ms. Beauregard said because sometimes you're taking an existing structure and you're not expanding it, just making it year-round from seasonal. Mr. Doherty said, or you could be taking a seasonal structure, expanding it and it still can be

seasonal. Mr. Doherty said this doesn't take into account year-round structures, this is strictly vacant lots and seasonal lots. Mr. Bilapka asked if we should add abandoned to that also? Mr. Doherty said right now if you have a seasonal structure and it's 400 s/f and you want to make it 3000 s/f and your lot is 4000 s/f, the ZBA might say okay.

Mr. Bilapka asked if we should list abandoned or discontinued? Ms. Beauregard asked if they mean a re-establishment of a discontinued property? Mr. Bilapka said yes. Ms. Beauregard said this is about septic. Mr. Bilapka said yes and still meet the same requirements for the septic we'll put in there because there are some. Mr. Bilapka said there are seasonal lots that people use and there are lots that haven't been used for 30 or 40 years. Mr. Doherty said an abandoned property would go back to the following page, which is substandard lots. Mr. Bilapka said it doesn't meet building codes so it would be a substandard lot. Mr. Doherty said people could just go there and start rebuilding it and the planning board wouldn't even know. Mr. Bilapka said that does happen. Mr. Doherty said if they want to reestablish a use that would be a call for the board to figure that out. He asked if Ms. Beauregard would know that it would fall under this ordinance. Ms. Beauregard said if you want it to fall under that ordinance, it should be in here, to include the rehabbing or renovation of the abandoned property. She said their abandoned definition is that it hasn't been used for a year or more.

Mr. Jim Bergeron read the standard and said that it is very strict and he asked if that covered it all? He said the state will recognize a lot down to 20,000 s/f as being viable and that is in the code of administrative rules. He said it excludes anything under that, as they are amended.

Mr. Doherty said if there is an abandoned property and they aren't planning on making it larger or year-round, do they need to come in front of the board to be able to use their property again? Mr. Jim Bergeron said everything he said, except for the word abandoned. He said to take that word out and he'd agree with him. Mr. Doherty asked if we want to cover that in this ordinance or is it already covered in zoning 307-4?

Mr. Jim Bergeron said it's already covered and it's very simple. Mr. Bilapka asked if it has to be put into this then or is it already covered? Mr. Jim Bergeron said they should follow that. Ms. Beauregard said Mr. Jim Bergeron is saying that any expansion of an existing structure to a year-round must conform to this? Mr. Jim Bergeron said that's what it says now. Ms. Beauregard said an expansion of an existing structure or the seasonal conversion. Mr. Jim Bergeron said he had a problem when he read 'or the seasonal conversion'. So, are you going from something that is nothing and you're going to make it a seasonal? He is asking if right now, it means to a 'year-round'?

Mr. Doherty said if you put all the seasonal conversions to year-round, you could add the words 'to year-round'. Mr. Jim Bergeron said that would be his first recommendation. Mr. Thomas asked why are we hung up on the seasonal and why can't we take it all out? Mr. Doherty asked to take what out? Mr. Thomas said 'or the seasonal conversion of the existing structure.' He asked why you care if it's year-round or seasonal, let it read 'any expansion of an existing structure the owner shall conform to RSA'. Mr. Doherty said the ordinance doesn't apply to year-round structures that we currently have. He said the way it stands now, if there's no structure there at all now, it's a substandard lot. Mr. Bilapka said it can be amended down the road.

Mr. Doherty said this is under innovative land use as well, meaning the variances don't go to the ZBA, they stay at the planning board level. Then we can aid the ZBA because they are starting to allow building on under 20,000 s/f lots.

Mr. Jim Bergeron said there's also a time stamp on that they are ignoring.

Mr. Doherty said under innovative land use there could be ones that could really have the ability to do something more than they are presently doing. Some may be can be converted and some can't. Right now, it says 'any expansion to an existing structure'. That would be a seasonal structure for it to apply to this ordinance. If it were year-round, this ordinance wouldn't apply to it.

Mr. Passamonte asked what the difference is between a seasonal and a year-round? Mr. Doherty said a dwelling that lacks any one of the following amenities: functioning electricity, central heating system, insulation in walls and ceiling, indoor drinking water and cooking and indoor sanitary facilities. If it lacks any one of those, it's seasonal. Mr. Passamonte said if they put this in and say it's a seasonal, what is the difference?

Ms. Beauregard said they can use it seasonally.

Mr. Passamonte asked who's to say that's not a year-round home after they do all of that? Ms. Beauregard said it wouldn't matter because it would fall under this ordinance either way.

Mr. Passamonte said they can say they are making a seasonal, but they are living there year-round and how can you control that?

Ms. Beauregard said she doesn't think they can, because if they have all those amenities, it can be year-round. Mr. Passamonte asked if they were rehabbing a seasonal house and not put all of this in? Ms. Beauregard said they have to at this point to meet code.

Mr. Doherty said there are a lot of structures around the pond that don't meet that definition. Mr. Bilapka said a lot of them wouldn't even meet the building codes.

Mr. Passamonte said they could then use it as a year-round home. Mr. Bilapka said they would have to come before us with this ordinance. Mr. Passamonte said they already got approved for seasonal and why would they come back for year-round when it's already done?

Mr. Cote asked what the actual difference is in Pelham between seasonal and year-round living?

Ms. Beauregard said we just read the definition, but tax-wise she didn't know. Mr. Cote said there is no difference between seasonal and year-round. He said if you have a seasonal home, you can send your kids to the schools. Mr. Cote said in Pelham you can use that for your address, even though it's seasonal.

Ms. Beauregard said he is right, and she asked the assessing assistant, how many months a year do you have to live in a house to be seasonal and there wasn't a set amount.

Mr. Passamonte said it's all innovative, so we can decide as it comes along and it is fine the way it is then.

Ms. Masse-Quinn said seasonal is different for homeowners.

Mr. Doherty said we put 'to year-round' after conversion.

Mr. Jim Bergeron said under conditions for approval, to put 'restrictions of water flow' rather than 'restricts'? Mr. Doherty said yes.

Mr. Cote said the term water shed is: a land area that channels rainfall and snow melt to creeks, streams, rivers and eventually to outflow points such as reservoirs, bays and the ocean.

He asked if these bodies of water in Pelham contribute to the water table and the housing's drinking water? He asked if he lived near a pond and drilled a well, is that water coming from

the pond? Mr. Bilapka said a dug well probably would.

Mr. Doherty said it depends on how the well was sealed to the ground and most of the existing ones near the ponds probably were not sealed well to the ground. This ordinance is here to protect the water shed. He said you have to be careful with the location of the septic and the wells.

Mr. Cote said we are not protecting the water shed, the water shed is the land that funnels water.

Mr. Doherty said these ponds are all in a water shed and so is the land around them. The water sheds into these ponds and then eventually ends up in the oceans. This is only going 1500 feet out, so it's not a large area of protection.

Mr. Cote said when he read the purpose and intent, he said in addition of Pelham's aquifers, he said that opens up this ordinance a little bit. He asked if that meant underground bodies of waters as well? Mr. Doherty said yes, to protect ground waters supplying aquifers yes. Mr. Cote said that opens it up to a lot of Pelham. Mr. Doherty said if you want to expand the ordinance?

Mr. Jim Bergeron said where it's just 1500 feet around those bodies of water, he thinks it confined to that. He said every inch of the earth is the water shed. He said what Mr. Doherty's ordinance is limited, and it's just for those non-conforming lots. Mr. Doherty said with seasonal dwellings.

Mr. Cote asked if they want to require the approval of the full board of health in a public meeting for this to happen? Mr. Doherty said this is zoning. Mr. Cote said they are coming to this board for a conditional use permit, so as part of that do you want them to go to the board of health to get an approval to be part of that?

Mr. Jim Bergeron said if that were the Selectmen, he would be in favor of that, but not a single individual. Mr. Cote said that's been happening forever. Mr. Jim Bergeron said he would say the full board of Selectmen. Mr. Cote said the full board of health, meaning all health agents involved and the board of Selectmen in a public meeting. Mr. Jim Bergeron asked if he wanted that insert? Mr. Cote asked if that would be something that would make this ordinance? Mr. Bilapka said it would be for input too.

Mr. Cote said this came up last week regarding a meeting with the board of health for this particular issue.

Mr. Doherty asked if he wanted to add a paragraph to include the full board of health? Mr. Cote said yes in a public meeting.

Mr. Lynde said there is only one board of health, and it is a health officer and five Selectmen.

Ms. Beauregard said he is saying the board of health is the full board of health, it's not a board without the full board of health. Mr. Cote said we have an agent that is giving these types of permits out.

Ms. Masse-Quinn asked if the Selectmen could override that? Ms. Beauregard said the state has started to allow the health agents to sign off certain waivers without requiring the full board. It was a waiver to Article K, it's not chapter 295 of the wastewater disposal systems. She said this case that came to them, they asked us if they should go for the town's approval. She said they can add that on there if they want.

Mr. Cote said a lot of questions arose after that meeting. Ms. Beauregard said they wanted the town's input, that's why they came to them.

Mr. Cote thought it came to them because of a conflict of interest. Ms. Beauregard said they wanted the town's input on the approval.

Mr. Jim Bergeron said it's the better wisdom for them to come in front of the Selectmen instead of one person making decisions? Ms. Beauregard said she's not sure why that stopped.

Mr. Bilapka said the more input on anything, as far as septic, is a good idea.

Mr. Doherty said on page with peer review, it says the applicant submit the plan to peer review engineering. He said they can put a comma there and write in 'Select board, board of health, conservation commission'.

Mr. Bilapka said conservation would be good, because most of this land has wetlands on them.

Mr. Doherty said where it says 'submit the plan to' put in conservation commission comma peer review engineering comma and then board of health. Ms. Beauregard said for final approval for the board of health, if we're going to ask them to approve them.

Mr. Doherty said it would still have to come back to the planning board because they have to issue the conditional use permit. Ms. Beauregard said this is for review and comment. Mr.

Doherty said they would still have to post bond. He said monitoring would need to be done as well. Ms. Masse-Quinn said it would offer some checks and balances.

Ms. Beauregard asked if they were ready for this to go to legal? Mr. Doherty said if we make those changes, then she can send it to legal. Mr. Passamonte asked her to email it to them. Ms. Beauregard said yes.

Mr. Doherty said there were other changes proposed. Mr. Jim Bergeron said there were others for lot size requirements.

Mr. Doherty said the solar ordinance was wrapped up and Mr. Cote said yes, he sent the board the changes talked about. Mr. Doherty said that can also go to legal.

Mr. Jim Bergeron said a land use regulation for cutting pre-construction on major subdivisions. He said it has affected us. he said as a condition of approval, they can't go in and cut until they get approval and until they touch the property. Mr. Cote said the original idea was to take what was in the RSA's and put then into zoning. Mr. Jim Bergeron said we can put that into land use regulations rather than zoning for now. Mr. Cote said it's already there and that is the problem. Mr. Cote said it's also in the RSAs, but we can't enforce it. Mr. Cote said it could be put into zoning and in the ordinance with elicit discharge, but that didn't make sense. He said it should have its own ordinance. He said up on Foreman, they did it the right way, they didn't clear anything until it was approved and that is the way it should be.

Mr. Doherty asked if he wrote something? Mr. Cote said he has notes. Mr. Thomas asked if he wanted him to put it in a document for the next meeting?

Ms. Beauregard said it would have to be at the next meeting.

Mr. Cote said on a legal note, the next meeting, even at the public hearing, we can make changes that night? Mr. Doherty said yes. Mr. Cote said we have two meetings to work on that.

Mr. Doherty said that's assuming at the public hearing, we don't get into the innovative land use.

Mr. Cote said he thinks he can get something by the 21<sup>st</sup> and he will reach out to Attorney Ratigan.

Mr. Doherty said we should try to get it through email so we can read it prior to the meeting.

Mr. Cote said we can include phrases in the zoning that are already there, like an edit.

Ms. Beauregard said ideally when we have the public hearing posting legal notice, that's when she has to post the language as well. Mr. Cote said that's by the 23<sup>rd</sup>? Ms. Beauregard said yes, the actual proposed language. She said it can be changed.

Mr. Cote said they can insert some RSAs into zoning.

Ms. Beauregard said if they work with Attorney Ratigan, it will be legal language.

Mr. Doherty said anything is better than having nothing.

Ms. Beauregard asked if we are talking about four zoning questions, correct? The solar array, water shed, lot sizing and this one? Mr. Cote mentioned the builder's bond including water infrastructure? Ms. Beauregard said he can put that in the land use regulations.

Mr. Jim Bergeron said his question is to Ms. Masse-Quinn, she raised the possibility for two other options to show up in zoning having to do with the statute. Ms. Masse-Quinn said for growth management 674:22 and 23. Mr. Jim Bergeron asked if we need to take that from another town and get that on the ballot? Ms. Masse-Quinn will work on that. Mr. Doherty asked for what on the ballot? Mr. Jim Bergeron said for the potential for the planning board to have....? Mr. Doherty said moratoria, he started reading the RSA and it lasts one year. Ms. Masse-Quinn said that is under the first one under 674:23, that's the moratoria and that has a time restriction of one year. The second one does not, but it needs a study by the planning board, which the water commission has the water survey and there isn't a time restriction on that. Mr. Cote said it has to include a termination date and he said you can use the master plan for that.

Ms. Masse-Quinn said she can work on that for the growth management. Mr. Cote said the growth rate for the town. Mr. Thomas said that is in the master plan existing conditions report. Ms. Beauregard said it sounds like there has to be a study performed by the planning board and you'd have to hire a firm to do this study.

Mr. Jim Bergeron said that's being done, but not sure if it covers that detail.

Mr. Cote said the study should be based on competent evidence and should consider the municipalities projected growth rate and the need for additional services to accommodate such growth, that's what the RSA says.

Mr. Jim Bergeron asked if that looked like to the water commission as not having enough to adopt that provision? Mr. Cote said he thinks we have plenty with what Ms. Masse-Quinn presented tonight and the master plan.

Ms. Masse-Quinn said NRPC might have some information too. She said she can look at other towns that are working on this. Mr. Doherty asked if Ms. Beauregard can run that by Attorney Ratigan too. He said maybe we can use one the water commission is doing. Ms. Beauregard said she believes any applicants that have applications in, would not be subject to any new zoning changes.

Mr. Cote said he didn't know about that, but he did read something.

Ms. Beauregard said they can't rush them in once they post it, but prior to posting they can get applications in.

Mr. Cote said there's a case in Manchester regarding this. Ms. Beauregard said that would be a legal question.

Mr. Jim Bergeron said somewhere in the RSA's, all of this is exempt when it comes to do with public health and welfare.

Mr. Doherty said there's a letter from Attorney Ratigan about water infrastructure and he asked if they want to go into non-public session to discuss that?

Ms. Masse-Quinn said she sat with the agricultural commission, and they were pondering the idea of creating a right to farm ordinance and to incorporate that into zoning and is that the commission? She phoned in and discussed the proposed ordinance and how they wanted to handle that, they could go in front of planning for zoning or to the board of Selectmen. It was the board's consensus to say let's keep it out of zoning and present it to the selectmen as a standalone ordinance.

Mr. Doherty asked if they have to fall under the public notice? Ms. Masse-Quinn asked if that could be under the 41:14 B item? Mr. Cote said if it's a town ordinance, that's different, but zoning ordinance is different. Mr. Cote said the commission could do that at any time.

Mr. Bilapka asked the board about looking into other firms for peer engineering? Possibly having a soil scientist or a wetlands scientist. We need these people in place and this can be discussed at the next meeting.

Mr. Jim Bergeron said last year we hired out a wetlands scientist and it enables us to get an outside peer. Mr. Bilapka asked if he should make a motion? Mr. Doherty asked if we want to look into that to do additional peer review? The board members all agreed to this. Mr. Doherty asked Ms. Beauregard to see what that procedure would be. Ms. Beauregard said they did a RFP or an RFQ where they all responded.

Mr. Jim Bergeron said when we're looking at a major plan and there's a report from a scientist, it's not a bad idea, even the state recommends it that a third party can come in and make a recommendation. Then a determination is made, and we can get assured. He thinks it's a great idea and is all for it.

Ms. Beauregard said the statute already allows us that right to do that. She wondered if we have to have people to chose from and how do we get there? Or is it a case-by-case basis and how do we choose?

Mr. Jim Bergeron said if the board has a consensus to do that, then planning would put it out there to request a structure we could use. Ms. Beauregard said that would work.

Mr. Bilapka said he thought it was already in place.

Mr. Thomas said his experience is that they have subject matter experts submit a resume and then they get grouped. They go through a prequalification process for each subject. The board can review them and decide.

Mr. Doherty said after the public hearings, they can take this up again.

Mr. Jim Bergeron said we have to remember when we send things out to independents, the applicants are paying the bills. We need to organize ourselves so that what we're doing because we are looking for complete information. he said we need to be legally founded and we don't want to be sued for stonewalling. We want to say we have a system in place.

**MOTION:** (Mr. Cote/Mr. Bilapka) Request for a non-public session per RSA 91-A, L (Consideration of legal advice).

**ROLL CALL VOTE:** Mr. Doherty - YES  
Mr. Jim Bergeron - YES  
Mr. Bilapka - YES  
Mr. Montbleau - YES  
Ms. Masse-Quinn - YES  
Mr. Passamonte - YES  
Mr. Cote - YES

It was noted that when the Board returned, after the non-public session, the Board would not take any other action publicly, except to possibly seal the minutes of the non-public session and to adjourn the meeting. The Board entered into a non-public session at approximately 9:51 pm.

Respectfully submitted,  
Jennifer Castles, Recording Secretary