

**APPROVED**

**TOWN OF PELHAM PLANNING BOARD  
MEETING MINUTES  
December 5, 2022**

Chairman Tim Doherty called the meeting to order at approximately 6:56 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  
John Spottiswood – present  
Bruce Bilapka - present  
Joe Passamonte – present  
Jenn Beauregard - present  
Scott Sawtelle – present  
Jaie Bergeron – present  
Hal Lynde – present

**ABSENT/**

**NOT PARTICIPATING:**

Paddy Culbert  
Jaie Bergeron  
Samuel Thomas  
Jennifer Castles

**PLEDGE OF ALLEGIANCE**

**OLD BUSINESS**

**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.**

Mr. Doherty said the applicant requested a continuance to December 19, 2022.

**NEW BUSINESS**

**PL2022-00034, Map 35 Lot 6-91 – Taylor, Michael – 32 Leonard Drive – Seeking approval of a Site Plan for a ground-mounted solar array, consisting of 20 modules in 2 rows measuring 2' x 6' each for a total of 4000 sq. ft.**

Mr. Doherty said the applicant requested a continuance to December 19, 2022.

Ms. Masse-Quinn read the list of abutters.

## **PUBLIC HEARING**

Mr. Doherty opened up the public hearing at 7:00 pm. He said the public hearing will be reserved for questions and answers. He asked people to make any accusations that aren't true regarding social media. Mr. Doherty read the following:

1. To amend Pelham Zoning ***Article III Section 307-13 Additional Lot Size and Street access requirements*** to remove the Wetland allowance of Conservation District setbacks to be counted in the computation of contiguous non-wetlands when meeting the minimum lot size area requirements of Section 307-12 for single-family, two-family and workforce housing parent lots.

Mr. Doherty said this Article has been in existence for some time and it's been amended over the years. It was suggested that we change number 7, from 2 feet to 4 feet. This is regarding the feet of preexisting, naturally occurring non-wetland soils. This change would be throughout this section. He said they would add a number 8 to say, 'wetland conservation district setback areas'. In paragraph A, under lot size requirements, it says now every new workforce housing parent lot in the residential district shall contain 217,000 s/f of non-wetlands. WCD wetland areas may be counted in the computation of the 35,000, 55,000 and 217,800 s/f requirements. The suggestion is to strike that and add the number 8.

Mr. Doherty opened this one section up to the public.

Amy Spencer from 27/25 Honor Roll Road introduced herself. She asked if this applies only prospectively to after the effective date of this amendment, would that apply to single-family lots that have existing dwellings on them? Mr. Doherty said this is for subdivision of land, for new developments. He said this doesn't affect anything that's been done or existing lots.

Mr. Joe Maynard from Benchmark LLC introduced himself. He asked about a development with single-family and duplex lots and the way it's written now, he includes the WCD in the calculations. He is asking if this is now saying, he is no longer allowed to count that area for new lots? Mr. Doherty said yes, in the wetland district conservation area.

Mr. Maynard said anything in the WCD was counted towards that and now after this, will it not be counted towards it? Mr. Doherty said yes, that's the way it is proposed.

Mr. Maynard asked for the reasoning for this, and he is working on a couple of projects, and this will potentially half the development of their properties. Mr. Maynard asked why they are changing directions for the zoning. Mr. Maynard said there are rules already that make their lots larger, such as well radius. Mr. Maynard said the state allows overlapping of well radius and Pelham's radius is very specific and it has to be outside the building setback lines. Mr. Maynard is asking why they want to exclude these areas for lot sizing? Mr. Maynard said he is concerned about the 2 to 4 feet because he doesn't see a soil erosion issue, whether it's 2 or 4 feet of soil and isn't sure where that came from. Mr. Maynard said when he puts a septic in, the board of health requires test pits that are at least 4 feet, so the septic and 4K areas meet the 4 feet. He said from a state standpoint, the 2 feet is standard to do a subdivision anywhere else in the state, except for Pelham. He is concerned about having the 4 feet of soil across the site and he's not worried about erosion issues on a 2-foot soil. To summarize, he is asking why now are they excluding the area in the WCD from the 35,000, 55,000 or the 217,000 s/f requirement? He said this will affect the development potential of many areas in town and these owners have been in this town for years and this is their retirement. He said there are other provisions in zoning that deal with the buildable areas of the lots.

Mr. Doherty said he believes this was suggested because of bottlenecking of property if there were a wetland in there. He said by taking the WCD away, it makes sure it guarantees a continuous tract of land.

Mr. Maynard said if this said it had to be a contiguous 35,000 s/f out of the wetlands, he would understand that, but the soils in the WCD, he doesn't understand why those are being excluded?

Mr. Doherty said from an engineer's point of view, we don't need to be concerned about it and it is valid the way it's presently worded, without making this change. Mr. Doherty said a few years ago, the town had subcommittees and asked Mr. Maynard to be on them to give his input, which has always been valuable to this board in the past.

Mr. Montbleau asked if Mr. Doherty agrees with Mr. Maynard? Mr. Doherty said yes. Mr. Montbleau said he agrees too. Mr. Doherty said he feels we don't need to now make this change.

Mr. Montbleau said the way Mr. Maynard is explaining it, it seems more onerous on people with properties that have a contiguous 35,000 s/f without penalizing them. Mr. Doherty said Mr. Maynard said it's working fine the way it is now. Mr. Maynard said yes, from a residential standpoint he thinks all the other provisions in zoning are what really governs the building area sides of things. He said the area within the WCD should be counted towards this instead of not allowing it.

Mr. Jim Bergeron said the reason for not including the WCD district in the calculations had to do with comparisons from other towns and from recommendations from the conservation commission. He said the average NH lot breaks out to 2.06 acres. He said Pelham only requires 1 acre per house. He said the intent of the WCD district was to be a no-cut area and is sensitive. He said the conservation commission has been asking for 100-foot setback. He said the board thought this was fair to protect the WCD.

Mr. Maynard said he just finished a subdivision in town and his lots ended up larger due to the setback requirements. He said this will decimate some people regarding their land. He said about wetland buffers there are different buffers to wetlands based on the value of the wetland and he can see an ordinance for that, but from a lot sizing perspective, this doesn't help the way the ordinance is written today. If something like a well radius didn't have to stay in setbacks, he could say that won't affect it as much.

Mr. Doherty said some things are better in subdivision regulations as opposed to zoning. Mr. Maynard said they can be waived.

Mr. Jim Bergeron asked if this is the areas calculatable for minimum lot size requirements? Mr. Maynard said yes. Mr. Jim Bergeron said they were striking the WCD language and add it to the non-inclusive areas and put in number 8.

Mr. Maynard said he doesn't agree with both of those changes. Mr. Maynard said he wouldn't have a problem if the area was not contiguous. Mr. Doherty said this is for 307-13.

Mr. Doherty read the following:

2. To amend Pelham Zoning ***Article VII Section 307-41 Special Provisions*** to increase residential and commercial septic leach fields from Wetland Conservation District areas from 25 feet to 50 feet from poorly drained soils and from 50 feet to 75 feet from very poorly drained soils. these changes are consistent with the State of New Hampshire Code of Administrative Rules (Env-Wq 1008.04).

Mr. Doherty said in 307-41, the words Conservation District was struck from that. He asked if that should just say ‘from the wetlands’? Mr. Maynard said yes. Mr. Doherty said then change it from 50 to 75. Mr. Maynard said when they say Wetland Conservation District that means the WCD. Mr. Maynard said he thinks the intent was to make it consistent with the state rules and that is 50-feet from a hydric or poorly drained soil and 75-feet from very poorly drained soil. He said the state has had that for 40 or 50 years. Mr. Doherty said the words ‘Conservation District’ should also be struck from the zoning? Mr. Maynard said yes because that is the limit to that 50-foot setback.

Mr. Doherty opened 307-41 to the public and asked if they understood what was just talked about? He said they would strike the 25 and make it 50 and strike the 50 and make it 75.

Amy Spencer introduced herself and agreed with the suggestion. She said changing this really doesn’t change the requirements and we have to also comply with the state. Mr. Doherty agreed. Amy said this won’t change anything in practice. Mr. Doherty said if these go on ballots, they won’t be one question. Amy agreed these need to be separated out also.

**MOTION:** (Mr. Cote/Mr. Bilapka) To strike out the words ‘Conservation District and the two sentences in A and B’

Ms. Beauregard asked if you don’t want to remove ‘Wetland Conservation District’ from B?

Ms. Beauregard said in B, it’s no building or structure can be located in a wetland conservation district and that is a true statement and should be left there. Mr. Doherty said he was just pertaining to A. Mr. Cote will revise his motion.

**MOTION:** (Mr. Cote/Mr. Bilapka) To strike out the words ‘Conservation District and the two sentences in A.

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

Mr. Cote said in 307-13, are we not striking out that sentence? Mr. Doherty said we haven’t had a motion, only input from the public and board. Mr. Cote said to be clear, whether we strike it or not, it doesn’t really matter. Mr. Doherty said it matters to large, parent parcels moving forward and handling it in subdivision regulations would be a better way rather than worrying about it being a bottleneck in our zoning. Mr. Doherty said this would make some lots almost half their size and he didn’t believe it was the intention of the board to do that.

Mr. Montbleau asked if he was looking for a motion on number 1? Mr. Doherty said he would leave the zoning on 307-13 as is and scrap that from going forward.

Mr. Cote asked if we could strike out and change 2 to 4 and number 7?

**MOTION:** (Mr. Passamonte/Ms. Masse-Quinn) To leave 307-13 as is.

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

Mr. Jim Bergeron asked if there will be a second public hearing? Mr. Doherty said it wouldn’t be on that section because that is no longer being amended, so 307-13 won’t be publicly heard at the next meeting. Mr. Doherty said 307-41 will be at the next hearing and the words

‘Conservation District’ will be removed from sentence A and 25 will be to 50 feet and 50 will be to 75 feet.

Carmine Sarno, 25 Lilac Lane introduced himself. He asked how they define poorly versus very poorly drained soils? Mr. Jim Bergeron said NH has administrative rules from DES. They have all the definitions for poorly drained soils, hydric and wet soils. He said these setbacks mimic exactly the DES setback requirements. He said we noticed we weren’t at the state requirements for this, and we can be more stringent than the state requirements. Carmine asked if these were subjective?

Mr. Maynard said there is a science behind it and the federal government has standards for what these are, and the state of NH has adopted them. Mr. Maynard talked about the science behind this. Carmine asked where the homeowner would go to dispute this? Mr. Maynard said a licensed wetland scientist in NH would go out and map the soils and if someone was to disagree with them, then another scientist would come out and review their work. He said there is no one in the town who is certified to do that. He said we hire professionals to do this.

Mr. Jim Bergeron said the code of administrative rules has a reference for the engineers that come in front of all NH Planning boards and there is an entire mapping of the state of where soils are. If there is a dispute, then a third-party comes in to make a judgment. He said this is to protect the groundwater through which all our septic pass. He thinks there are 4,809 private wells in Pelham, and they all depend on water and our job is to keep that water clean.

Mr. Doherty read the following:

3. To add a new article to Pelham’s Zoning Ordinance ***Article TBD Solar Ordinance*** to permit the regulation of solar energy systems and to support solar energy system usage. This ordinance will allow residential roof top solar installations less than 15KW to be permitted by right in all zoning districts and ground-mounted solar systems that are 15KW or less, and five hundred square feet or less will not require Planning Board approval. Any commercial solar energy systems would require application to the Planning Board for Site Plan Review as well as Conditional Use Permit. All solar energy systems shall obtain building and electrical permits prior to installation.

Mr. Doherty said there is a new proposed ordinance and he read the ‘draft solar ordinance’ into the record, which is attached to these minutes. Ms. Masse-Quinn said to move the definition section down to its own line on the second page.

Ms. Beauregard said she had some input from Mr. Keach. Mr. Jim Bergeron said there may be a conflict between residential solar and the applicability section in residential.

Ms. Beauregard said Mr. Keach’s comments were about draft amendment #3, given anticipated proliferation of solar technologies in future years, he views this amendment as appropriate and timely. He suggests revising the second sentence of the section, purpose and intent to read as follows: Pelham fosters good stewardship in the environment and thereby recognizes NH statute pertaining to solar ordinance systems. The intent of the revision is to refer to statutory citations which follow as statute rather than state regulations and recognize, rather than adopt the same as statute and legislation already does that. Mr. Doherty said we don’t adopt state RSAs, we just follow them. No one had any objections to those changes.

Ms. Beauregard said under the section of applicability, Mr. Keach said to revise the subsection under residential (1<sup>st</sup> paragraph) to read as follows: roof top solar installations that are 15KW or less and ground-mounted solar systems that are 15KW or less and 500 s/f or less in area are

permitted by right in all zoning districts subject to receipt of required permits from the planning department's building inspector prior to installation.

Mr. Jim Bergeron said in addition to that, the definition of residential solar is anything less than 1000 s/f. He said under applicability he should have it say 1000 s/f or less, so it's in line with the definition. Mr. Doherty said to insert the word 'of' after 1000 s/f and not 500. Mr. Jim Bergeron said most people have roofs that are 3,000 or 4,000 s/f and if they do one side, it's 1000 all day long. He said we may find that not to be big enough and that depends on what planning sees in the future from residents. He said his opinion is that 1000 s/f feet doesn't give close to 15KW. Mr. Maynard said there are different size panels. Mr. Doherty said he didn't open it up to the public yet and asked Mr. Jim Bergeron if he wanted the applicability section to read 1000 s/f to be in line with the definition? Mr. Doherty said we will change the 500 s/f to 1000 s/f.

Ms. Beauregard said Mr. Keach had the following suggestion, in the second subparagraph in the applicability section, titled commercial. Establish requirements for both site plan review and issuance of a conditional use permit. This is an instrument available for municipalities for implementation of an innovative zoning control ordinance pursuant to RSA 674:21. If the board wants to adopt the plan solar, the text of the draft ordinance should be revised to indicate. Since most commercial land use requires a site plan review by this board, the best outcome would delete the reference to the term conditional use permit from the draft. It would appear the board enjoys authority to require all other performance standards specified under the draft ordinance to be satisfied under the board's normal site plan review function. She said he is saying you don't need both (innovative land use or under the site plan review). If you had both, the ordinance would have to be changed to be an innovative land use ordinance. It doesn't need to be because it's already going to the Planning Board's review. He is recommending all references to conditional use permits be stricken.

Mr. Doherty said this board wouldn't have time to implement another innovative land use ordinance. Ms. Beauregard said you would have to amend it to state, such in the ordinance. She said if it's going to the Planning Board anyway under site plan review, you don't need a conditional use permit, you would just get a site plan review for a solar array.

Mr. Cote asked if we issue conditional use permits for accessory dwelling units? Ms. Beauregard said we do now. Mr. Cote asked if that was innovative land use? Ms. Beauregard said last year they made that change. Mr. Cote said anything that requires a conditional use permit falls under innovative land use? Ms. Beauregard said yes.

Mr. Doherty opened this up to the public.

Mr. Maynard said the ordinance is lacking something with this now, but he doesn't have any issues with this proposal and said it sounds reasonable. He asked if Pelham has one for windmills? Ms. Beauregard said yes.

Amy Spencer introduced herself and she said she agrees that the applicability section for residential should mirror the definition and it should be 1000 s/f or less.

Carmine Sarno introduced himself and said under permits, how do you define a qualified solar installer? The other part is abandoned systems and he thinks when the system is no longer used, will it be removed from the property and disposed of properly? Mr. Doherty believed that is the intent of that. Carmine said they should clarify that. Carmine asked how do you deal with the 55 and older community and where it's residential or commercial, where does that fall in?

Mr. Doherty said that's why it talks about the size of the 15KW. If it's over 15KW, then it's a commercial system. Carmine said a typical house is 7K to 10K to power your house. Carmine said 15K is a lot and who needs that much energy? Carmine said in the 55 and older community

and the new building that went in across from the Urgent Care, how are those properties defined? Are those residential, commercial, are they 15K, 500 or 1000 s/f per roof, per section?

Mr. Doherty said he believes each of those are considered individual dwellings. Mr. Maynard said they are rentals. Mr. Doherty said they are owned by one owner, so that may make it a commercial system. Mr. Maynard would say it's a commercial system, however if there were detached condominium units, then it's residential. Mr. Doherty said the reason why that was put on there is he didn't think the board members were hoping to see 30- or 50,000-KW solar arrays in someone's yard.

Mr. Cote said the typical house being 7-10KW and new houses being built are somewhat larger and that coupled with electric vehicles, it made sense to bump that up to 15K to add extra power. Mr. Montbleau said he looked at a residential one and this can also heat a pool. He said if you're producing more than you need it goes back into the grid and it gets sent to average houses that don't have it and you get credit for that. He said you can get credits for production over the summer to use for winter use. He feels that's a good number.

Carmine asked if this was a stepping stone because they anticipate everyone will be driving an EV? Mr. Montbleau said no. Carmine asked why do you need 15K? Mr. Montbleau said if you need it, you will have it.

Mr. Doherty said the intent of the ordinance was to make it so you don't have to come in front of this board to put a solar system in if you're under a certain size. It can be done in the planning department. He said now, if you put it on the ground, you have to come in front of this board.

Carmine said at 15K, do we need to have more knowledge for someone to understand roof loads, wiring, battery capacity, and where do those batteries go?

Mr. Cote said most systems don't have a battery backup; they mostly have the solar. He said getting rid of solar panels are hazardous waste. He said they did define qualified solar installers. He said all companies require an engineering plan of the roof before it can be designed.

Mr. Doherty said this isn't designed to restrict from having solar, it is to make it easier to have solar. He said Mr. Keach made some changes and asked Ms. Beauregard to get that typed up for the next public hearing. Ms. Beauregard said yes, but asked about the conditional use permit.

Mr. Cote said he's ok with taking that out. Ms. Beauregard said so they would require anything over 15K or commercial would automatically fall under site plan review at the Planning board?

Mr. Doherty said they still have to come to the Planning board for site plan review. Ms. Beauregard said this ordinance has been checked over by both the building and electrical inspectors and they didn't have any problems with it. She said they are issuing about 2-3 rooftop solar arrays weekly now.

Mr. Cote wanted to add under decommissioning, on the last line, 'an abandoned system shall be removed' and insert 'and disposed of properly and the site restored within 6 months of abandonment by the owner'.

Mr. Maynard said, in accordance with state and federal regulations, because those will change over time. Mr. Doherty said we will see the language that gets put together and review it at the next public hearing. Mr. Montbleau asked if there needs to be a vote? Ms. Beauregard said they should.

**MOTION:** (Mr. Cote/Mr. Montbleau) To remove all the conditional use permit wording. To insert the change to the square feet, from 500 to 1000 for residential. The decommissioning portion. The two changes that Mr. Keach made regarding the statute.

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

Mr. Doherty read the following:

4. To add a new article to Pelham's Zoning Ordinance ***Article TBD Long Pond, Island Pond, Gumpas Pond and Harris Pond Water shed protection ordinance*** to apply to proposed development within the watershed for substandard and non-conforming lots with seasonal dwellings to prevent undue crowding of land by providing adequate spacing for light, air, and spread of fire to the neighboring properties and to protect surface waters and aquifer from the effects of point and non-point source pollution and wastewater systems. The watershed shall include all areas within 1500 feet of these four surface water bodies.

Mr. Jim Bergeron read the draft ordinance into the record, which is attached to these minutes.

Mr. Doherty said on the second page, septic systems, he said it was pointed out that the 100-foot setback from hydraulic soils A, and the 75 setback from hydraulic B, should've been 75 and 50. A similar mistake was made earlier when we were talking about the WCD.

Mr. Montbleau said on the first page, applicability, the second paragraph says all lots must completely satisfy there will be no undue crowding. Should that say all lots must completely satisfy that there will be no undue crowding? Ms. Masse-Quinn said yes.

Mr. Doherty said when it says all lots, that's only pertaining to substandard lots or nonconforming lots with seasonal dwellings. He said this doesn't apply to all lots within 1500 feet of the four bodies of water. Mr. Doherty said the first sentence is the most important and you can see the definitions. He said currently the ZBA handles all the rest of the lots around the ponds. He said you would then come in front of this board; we are not allowed to make any suggestions to the plan and we either thumbs up or thumbs down the Selectmen to issue a building permit. When the Selectmen get it, they either grant the permit or not. This ordinance is an innovative land use and it's designed so that you're not confirmed to what the ZBA says. He said this is designed to create an innovative land use to allow the ZBA to not be the board that is saying no. This gives the Planning board the ability to work with the applicant and the engineer and potentially come up with a plan that works. This has no effect on someone with a house on the pond now. This will hopefully make the lots that aren't built on, to be used in a way that works for everyone and doesn't destroy the environment.

Mr. Maynard said he takes issue with what's in here. First, regarding applicability, it says all lots must completely satisfy there is no crowding of undue land and providing adequate spacing for light, air, etc. He said there is no standard, but only says you need to meet that and that is subjective to him. He likes this in zoning because you have to prove five points of law. (Prove you won't impact property values, have a true hardship in the lot), but the way this is written, this is just a wild card. This is saying we have to go to Conservation, Selectmen, Planning Board and board of health. He said there is no real standard here. He asked, what is 'adequate for spacing'? It may be inferred differently. He said the spread of fire is a NFPA regulation and he deals with towns on this ordinance. He had to go to a fire marshal's office before and the NH marshals told him that's not the case and not what NFPA says. He doesn't find zoning easy, and his standpoint is that, is what I am applying for reasonable from setback requirements. He said shoreline protection already has guidelines in place. They have a 30% cap on impervious coverage, so that 30% cap, the state will let you go over that now, but you have to do a drainage measure to handle a 10-year storm event and a lot of times on small lots you don't have the room to do that. He said it's a weighted average calculation, so there's a place to start. He said some towns regulate the size of the structure based upon the size of your structure and it's typically around 20%. This ordinance doesn't have any of that, it's arbitrary. When we look at the peer



review portion to go before Planning, Selectmen, board of health and shoreline and also have peer review from an outside consultant. This is additional work and time to get through the process. Regarding the septic system, which says 175, he thought they were increasing it, but it sounds like they are trying to bring it to continuity with the state guidelines. Regarding adjusting streams, is also governed by other regulatory stuff. He said they can't culvert a brook or a stream that flows through someone's lot. That would require a wetlands permit from the NH Wetlands board and that usually isn't allowed. Regarding protecting vegetation on the lot, again, shoreline has a point scoring, and they break the frontage into 3 zones. The first one is 0-50 and that's the primary building setback. He said they break down the grids and point out certain trees and shrubs. The second zone is 50-150 and that is the woodland's buffer. He said a lot of lots that aren't developed, the state says you must maintain 25% of the area between 50 and 150, what they call an unaltered state. That means you can prune or take out dead trees and rake the area and keep the area in a natural state. Once you get outside the 150-setback, there's a lot more leniency to the shoreline protection regulations. He said this takes it one step further, to 1500 feet out and he understands from the 1500 feet, the only thing that would apply would be if it's a substandard lot, meaning it doesn't meet the one acre or the 200 feet of frontage criteria. He looks at this as they are trying to protect the ponds and he thinks shoreline does a good thing about that and Pelham's Zoning board also does a good job. Their concerns are the height and size of the structure, and this is all discussed in those meetings. He said the way this is written; it is very arbitrary as to what the standard is.

Mr. Jim Bergeron said this is only applicable to lots that are of record that don't have a use, or the use is seasonal for a while. He said the peer review he spoke of are the same reviews that are used for a standard subdivision. He said they noticed things happened without peer review to lots without a use already. This doesn't apply to lots with a use already.

Mr. Maynard said that it does talk about seasonal conversion to year-round and there isn't a standard to say what the board feels is reasonable. He asked what the 'adequate' spacing is?

Mr. Jim Bergeron said an engineer would show the lot is similar to those that surround it, and it won't cause any undue issues. He said the code of administrative rules breaks off after 20,000 feet. Mr. Maynard said 20,000 s/f for land area? Mr. Jim Bergeron said yes. Mr. Maynard said when you talk about administrative rules for DES for subsurface is, no matter how small your lot is, they give you 2 bedrooms. When you want more, you have to have more land and have to get closer to  $\frac{3}{4}$  acres to get to that. Mr. Jim Bergeron said that has a condition that there is no taking of vested right from anyone who has an established use on a piece of property.

Mr. Maynard said you're saying if they want to take a seasonal home and make it year-round.

Mr. Jim Bergeron said if it's a seasonal home, and it's converted to year-round, it would be dependent on what an engineer could produce for meeting the requirements. He said he thinks these are fair conditions.

Mr. Maynard said you don't get year-round conversions in the state of NH if you need any waivers for environmental matters. The state won't allow overlapping wells and septic. The state will allow a replacement on a valid approved septic design to be within someone's well radius. If you meet the state's criteria, they will give year-round on the septic system and that is straight forward. He said there is no standard here in this proposed ordinance.

Mr. Jim Bergeron said they would defer to the fire people to determine the spacing needed. He said our fire department has been requiring 20-feet between setbacks in developments. He said on the smaller lots that's difficult to maintain. He asked if it's reasonable to ask a homeowner that is close to this land, be subjected to a building that's within a risky distance?

Mr. Maynard said that is zoning and not a Planning Board application.

Mr. Jim Bergeron said if that gets written into zoning, there will be no exceptions.

Mr. Doherty said this is innovative land use and if there was a lot that is next to an open space from a subdivision then the board may say it's not a problem. If they want to put a building 2 feet from another person's building on their property line, that may be a problem.

Mr. Maynard said he understands, but there is no standard written.

Mr. Doherty asked him if he thinks there should be definitive numbers written in here?

Mr. Maynard said yes, it needs to have a standard that has to be applied to, otherwise it's arbitrary.

Mr. Jim Bergeron said zoning is absolute. Mr. Maynard said yes, but the process or the relief is the ZBA. Mr. Maynard said if there was a standard in this, that would be great.

Mr. Doherty said under innovative land use if there were a standard, this board could shift that standard to make it less invasive. Mr. Maynard said if there's a standard then he can figure it out.

Mr. Jim Bergeron asked if he had any specifics to where he would see a change? Mr. Maynard said there's no standard to apply anything to. Mr. Jim Bergeron said the standards are the normal setbacks. Mr. Maynard said it's hard to apply a normal setback to a substandard lot.

Mr. Jim Bergeron said innovative land use allows us to waive those conditions.

Mr. Maynard said if that's what the intent is, this should say it needs to meet current standard building setbacks in this ordinance.

Mr. Doherty said they can't meet current setbacks with these lots around the pond.

Mr. Montbleau said if they put that in the language, but subject to Planning board issuing waivers for the setbacks?

Mr. Maynard said they can put language in saying a waiver may be granted for this if shown there is no other alternatives or some other relief.

Mr. Maynard understands his point about not being definitive. If we put in that it needs to meet current setbacks. Mr. Doherty said with current setbacks, some lots are only 30 feet.

Mr. Montbleau said if we make it like Mr. Maynard said, the Planning board may approve waivers.

Joost Verhofstad introduced himself living at 96 Webster Avenue. He wanted to address the social media comment. He wanted to explain some facts as to why there was that reaction. He said this is very vague what they have here. He said adequate spacing for air and light would have to do with what neighbors have to say about that. He said the same with the spread of fire and that you would leave that up to the fire department and no one else. So why is this here? He said this undue crowding is already applied and it's vague in concerning manners. He said overcrowding in Pelham is very different from overcrowding in New York City. He said the same is true on these ponds. He said if someone proposes to build a house with the same footprint as the house next to it and it's similar, so it fits in and it's a reasonable size. There would be no risk to the pond, yet it's been denied because of overcrowding. Mr. Doherty asked if he had something specific. Joost said it was something that happened in the zoning board regarding what he just described. He said there are no significant issues with any of these items, but he heard someone on the ZBA say, we need to close the barn door, meaning no more building. He said people see this vague language and people are reading what is not written here.

Mr. Doherty said this wasn't designed to be more restrictive than the ZBA. This had to do with this board trying to help out with this. He said where do you go when the ZBA turns you down and if the Planning board was involved with another peer review, then things can get hashed out. He said with certain instances, this is trying to eliminate the ZBA.

Joost said that wasn't clear at all. He said on Little Island Pond there is an association. They are very concerned about these issues and want to work with the town. He asked why this board didn't call up the association and meet with us to collaborate. They are doing everything they can to maintain the water quality and they are working on watershed issues. They are raising money and are educating people on the ponds.

Mr. Doherty said they were looking to limit the substandard lots and taking it out of the hands of the ZBA and brought to this board. He said it wasn't designed to make it so people not do anything on the pond. Joost said it would be good to communicate with them.

Mr. Doherty said the Planning board has to do things by the RSAs. Joost asked if they weren't allowed to talk to them? Mr. Doherty said this is why they are here for the public's input and they're not trying to destroy people's ability to enjoy their lives.

Mr. Jim Bergeron said this isn't about anything that exists at the pond already. Anything that is vested or pre-zoning. This doesn't affect anything that already is. Joost said he understands that, and the town values a lot at \$242,000.00 and they can't build anything there.

Mr. Jim Bergeron said if you apply the zoning ordinance, there's no expansion of a use. That's been since the day zoning was implemented in the state. Joost said he disagrees with that, and the chairman of the zoning board said that application would've been a no-brainer and it seems there are some new people in town that want to stop this stuff.

Mr. Jim Bergeron said the Planning board takes undeveloped land and brings engineers in to produce new lots. Zoning is established to prevent overcrowding, pollution and to give an area for a well and septic. These are based on soil conditions and in an area of town where lots don't meet that it is a threat to you that is there now. The Planning board looks out for that. Joost said there needs to be some clear standards.

Mr. Doherty said right now there aren't clear standards. He said there are lots around the ponds now called septic lots because they only have septic on them for houses on the water. He said it's not legally tied to the lot that's using it. He said that lot could be sold, and the house lot can be sold separately. He asked what would be used if someone buys that lot? When you look at what's happened over the years and the town and state is trying to catch up now. We are trying to give some uniformity to this.

Mr. Jim Bergeron said there are at least 3 members of this board that own property on the pond. He said if they thought this wouldn't be helpful then we would hear them talking. Joost said he sees that and accepts what they are saying. Joost said they want to protect and improve. Mr. Doherty said they aren't looking to stop things. Joost said they can come talk to them anytime.

Amy Spencer introduced herself residing at Honor Roll Road. She said her son is the sixth generation to live on the pond. She agrees with the sentiment that we all want to preserve and protect the water and its quality. She said it seems there have been more cyanobacteria outbreaks in the last 10 years and that's a problem. She has some legal questions about what's in here and not in here and also on some of the minutes. She thinks asked if this was a process instead of, or in addition to the current zoning board process? She asked if landowners have an option to go through the proposed process here or the current process through the zoning board? She said if someone gets denied again and again, they can end up in court for due process.

Mr. Doherty said it's instead of and it only pertains to those two types of lots we've been talking about. This board isn't trying to overwhelm itself by taking on the ZBA's role. This is strictly for a lot with no house there or a seasonal conversion that is looking to make a larger house by tearing down what's there now.

Amy said legally it's important legally to have sufficient clear standards to apply to ensure this ordinance can be applied fairly. The definitions are important and language matters. She said for applicability and part of the confusion is the first sentence for the special provisions. She thinks the first point is it seemed he just said nonconforming lots and didn't add with seasonal dwellings. She said most lots around the pond are non-conforming. She said this ordinance would not, if passed, apply to non-conforming lots with existing year-round dwellings.

Mr. Doherty said correct. Amy said in that case, she would propose a change to the 2<sup>nd</sup> paragraph, where it says 'all lots', it should make clear that all substandard lots and nonconforming lots with seasonal dwellings (not 'and' seasonal dwellings).

Ms. Masse-Quinn said that was a change we already made and discussed tonight. Amy said that wasn't discussed tonight. Amy said we are talking about property rights and language is important and she said Attorney Ratigan agrees with that. She said that would help address the concern that some people have about which lots that applies to.

Amy said she shares concerns about what undue and adequate means. She is also concerned about the word arbitrary. She said they are talking about whether this should even exist. She said we should legislate how this should be applied. She said if there aren't any standards there's a greater risk. She said she has spoken to folks on Little Island Pond and there is concern about arbitrary application or enforcement.

Mr. Montbleau asked if these properties are presently under innovative land use? Mr. Doherty said no. Mr. Doherty said this ordinance was to try to get them under this use.

Amy said this was instead of going to the ZBA, which results in going to court if you are denied. She said the definition of the watershed area within 1500 feet. She said that is nearly a quarter of a mile. She said a quarter of a mile from the eastern shore of Little Island Pond is the Shephard cul-de-sac. Mr. Doherty said there wouldn't be any substandard lots there. Amy said there might be some in between. She said Honor Roll Road and Shepard and that is a very far distance. She said in the minutes for October 24, 2022 on page 207 there is a line in the first paragraph, 6 lines down it read regarding the 1500 feet 'Mr. Doherty said that's an arbitrary number pulled out of the air'. Mr. Doherty said it would be. Amy said if this went to court and somebody in that distance said they don't like this outcome because it's arbitrary, there wouldn't be a defense because it is arbitrary, and it says that in the minutes. She said if this is considered, she wouldn't pull a number out of the air, or changing it with a scratch of a pen. She said if we are concerned about protecting the watershed or the land around the ponds, we need a wetlands expert to tell us or give an opinion on what that area should be.

Mr. Doherty said it can be extended to any area that has water being shed on it. Amy said yes, but that is arbitrary. She is suggesting we hire an expert to determine the distance that it should apply to. She said before the next public hearing, they have an expert come in to make that determination as to what needs this process.

Mr. Doherty said she is looking at one pond. Amy said she is looking at the number of 1500 feet and not one pond. Mr. Doherty said when you set lines of districts, there are lines that get drawn. He said we can table this ordinance and we will be back to where we started. He said he doesn't want to make it a situation where she is saying we didn't go out quite far enough. Amy said she did not say that we did not go out far enough. She said the number 1500 feet is very

large from any pond shore. She is also saying that number by this board's words was an arbitrary number pulled out of thin air. Mr. Doherty said those were his words. Amy is suggesting instead of a number pulled out of thin air, that we as a town or this board consults an expert that knows and understands the land around these water bodies.

Mr. Montbleau said she is looking at the number being arbitrary, but if we do get an expert, she may not be happy. This goal post may be moving. This board is trying to protect the water bodies in this town. He said a woman came in front of this board, an environmentalist and spoke for an hour about the life and history of the pond's ecosystems. He said she used Little Island Pond as one and she said in the last 10 years this pond has advanced hundreds of years in a short period of time. He said there is an association to protect that pond and we are on board and we're trying to create something protective for the pond. He said this board is trying to protect that and it seems like around Little Island Pond is more concentrated. He said they are trying to slow the process down because the pond is dying. He said we are here to protect you and we start with a number and try to work with it. He said if an environmentalist comes in, they may go further than 1500 feet. Amy said that is fine.

Mr. Doherty said they used the Assessor's office and tried to look at the ponds and how far out you would find a nonconforming lot with a seasonal dwelling. He said they were looking more at the substandard lots because nonconforming lots would be close to the pond, maybe within 400 or 500 feet. He said to pick a number and try and be inclusive, you go with a larger number. If it doesn't apply to anything beyond 500 or 1000 feet, it's not really that relevant. He said as far as what she is suggesting to hire an expert, that is fine. This can be done next year or in the next few years. He said if the people of the town want to do something that's even better before it comes to the board. You can do zoning by ballot petition.

Amy said there were investigations done to see how many substandard lots or nonconforming lots with seasonal dwellings on them were in this 1500 feet. She said she didn't see that analysis in any minutes. She asked where that analysis took place? She asked about the environmentalist that came in and gave her opinions and she said she didn't see that in any minutes.

Ms. Masse-Quinn said to search the town's web page by searching biologist. Amy said the ordinance and the 1500 feet is not informed by an expert opinion. She said the process would replace the current zoning board's process. Mr. Doherty asked why she keeps going over the same things? Amy asked what the appeal process is if someone is denied by this board? Unintelligible, said court.

Mr. Doherty said the same appeal would be if you lost to the ZBA, you would be going to the Superior Court. That is the way the state RSAs work.

Amy said she doesn't want to and wanted to make sure that was the case. Amy read the definition of seasonal dwelling. She's heard a few different references to these dwellings, and this doesn't apply to a lot that has an existing house or structure on it and she said that's not true if it applies to seasonal dwellings, right? She asked if a seasonal dwelling is a structure?

Unintelligent, said yes. Amy said if passed, it would apply to lots with some existing structures. She doesn't see where it says you can change a seasonal dwelling to a year-round dwelling as long as you don't increase the footprint. She said that might be good, but this doesn't say that. She said that might alleviate some concerns.

Mr. Doherty asked if she was trying to say a definition should be part of the applicability?

Amy said she doesn't know, but does that apply to turning a seasonal dwelling into a year-round dwelling by adding functioning electricity? Would you have to go through a few different boards, pay for an engineer and then be subject to arbitrary standards?

Mr. Doherty said she is trying hard to get this board to try to implement an ordinance that's not. This is a draft. Amy said she is making suggestions and the definition doesn't adequately describe what this ordinance applies to. She said if someone comes in to add electricity to a seasonal dwelling, is that no longer a seasonal dwelling and do they have to come to the board to ask to do that? If they get permission from the permitting process, is that a seasonal dwelling now?

Ms. Masse-Quinn said that's a change of use and would that have to go in front of the board of adjustment? Mr. Doherty isn't sure what she is asking. Mr. Passamonte said she is trying to change the use of the structure from seasonal to year-round. He said she would have to go through the permitting process.

Ms. Beauregard said it was a similar concern she had, if something becomes year-round by doing one of these things, we don't have something now to convert from seasonal to year-round.

Mr. Doherty said there is no process in this town or most towns to follow a process to convert a seasonal property over.

Amy said she is not asking for an ordinance like that. She said she doesn't like being talked over.

Mr. Doherty said we all volunteer our time to this board, and we are trying to help the town. He said this proposal was something we came up with to help the town, but it's not going to happen because she will have to get the associations involved and come back to the board. He said people will have to remain being at the will of the ZBA for now.

Amy said she was a member of the select board and a member of the budget committee.

She said the language regarding septic systems, there is language in there that is ambiguous with regard to expansion of existing structures or the seasonal conversions. Mr. Doherty asked her to step down so other members of the public could speak.

Gail Ratcliff from 17 Woekle Circle introduced herself. She has been a Pelham resident since 1965 and things have changed. She said she made an investment and bought property behind one of the board members here. She said there are three members on this board that shouldn't be on this board. She said she is looking to build and from what is going on she can see they will have a problem with building. She said she could probably put 9 homes there. Mr. Doherty said this would have nothing to do with this then. She said if you are looking at 1500 feet it does.

Mr. Doherty said if there is a substandard lot, under one acre, less than 200 feet of frontage on her property, she could do that under innovative land use. If she has a larger parcel, this wouldn't apply to that. She said she's already been told she will never be able to build in back there. Mr. Doherty asked her what pertains to this ordinance and asked her how many acres she has. She said she's not sure, but then said nine acres. Mr. Doherty said this wouldn't apply to that then.

Molly introduced herself, helping out her mother. She said they have a side property next to 17 Woekle, 15 Woekle Circle and wouldn't be within 1500 feet from the waterfront. This also doesn't have a foundation, so how would this affect us? Mr. Doherty asked how big is the property? Gail said 75x100. Mr. Doherty asked if it had a house on it? Gail said there is a year-round house on it. Mr. Doherty said it doesn't affect it then. Molly said if they were to put a foundation or tear it down at some point. Mr. Doherty asked if someone lives in it? Molly said yes. Mr. Doherty said this wouldn't apply to that. Mr. Passamonte said it is already existing. Molly asked about a seasonal property on the same road? Mr. Doherty said if they were looking to do a conversion on it and make it year-round then they would go to the ZBA or if this was in

effect, you would come to this board. Molly said a seasonal one would be the concern. Mr. Doherty asked if it is on a lot less than one acre? Gail said no.

Mr. Passamonte said they would work with this board to figure out how to make that best work for them versus going to zoning where they might get denied. This was created to try and help people out.

Mr. Doherty said you might get through the ZBA process, but if it's on a private road then it comes here as a recommendary board to the Selectmen. Then our hands are tied. Gail said it's a public road. Mr. Doherty said it wouldn't come here then. (Mr. Bilapka wanted to add, after reviewing the minutes, that 'Woekle Circle is a public and a private road' - See minutes from the 12/19/2022 meeting).

Gail said she is concerned about her investment. Mr. Doherty said it wouldn't have any relevance to this ordinance. Mr. Doherty thanked her for her questions because it helped clarify this more.

Julia Steed Mawson introduced herself as living at 17 South Shore Drive. She thanked everyone for their hard work in trying to understand how these waterfronts work. She said Little Island Pond has deteriorated and is aging from an oligotrophic lake to a mesotrophic lake within less than 10 years. She is glad this is a draft and they wanted our comments. She asked what other towns have they used as models for this? She said their lake association chair is here tonight. She said in their January meeting Neasa March from DES and the head of the watershed program there is doing a presentation for us so we can learn to develop a watershed management plan. She said this may be relevant to some questions tonight. She asked if there was a possibility to have patience from the board. She said the neighbors have great concerns, because they have suffered because of poor development decisions that have happened on South Shore Drive. She asked if it's possible for a committee to be established in amending this in some way?

Mr. Doherty said there have been subcommittees in the past working on zoning and it's possible. It wouldn't be for this upcoming zoning cycle and the amount of work this needs, there's not enough time. Julia said that was fine. Mr. Doherty said the Planning board treats each applicant individually under innovative land use. This ordinance may not be ready for this year. He said she had something to do with this board making some decisions in the past. Julia said she is excited about the comments from the neighborhood, and she asked if there will be another meeting for comments and would there be a deliberative session before the vote?

Mr. Doherty said no, we are limited on time, and we've been working on this for a long time.

Mr. Jim Bergeron said yes, they were model towns and Windham has a watershed protection ordinance, that is very involved.

Mr. Doherty said if we implemented that, every person on the pond would be at this board.

Mr. Jim Bergeron said Windham reaches the entire watershed and it goes for miles, it's not 1500 feet. He said all the water comes to ponds. He said we didn't want to go to anything like that.

He said this would affect the lots that aren't developed, that have seasonal uses on them that could have negative effects on existing properties.

Julia said she liked they said the opportunity if the ZBA denied it, they can go to the peer review, because then they can talk to someone. She said that would help the proposal by having discussions would be a good aspect to this.

Mr. Jim Bergeron said the intent is to work together.

Mr. Doherty said if an applicant goes in front of the ZBA and they get their variance granted and if it's a private road they come in front of this board. He said the ZBA and Selectmen don't have

peer review, but the Planning board does. We can get our engineer involved and we still have to make a decision.

Julia said if this process works out, it might be that before someone gets their plan together, they can learn ahead of time.

Mr. Doherty said this board has had peer review and other committees change our minds.

Julia said this process may have saved us on South Shore Drive regarding the poor development efforts. She said it's important everyone is taken care of, and individual landowners have the rights to their land and that our lake is being protected.

Mr. Doherty said we are trying to get the public's input.

Mr. Montbleau suggested that this article be tabled or withdrawn and maybe for a committee and then over the next year work on something that may help them. He wanted to make that motion.

Carmine Sarno from 25 Lilac, introduced himself. He said regarding the four Pelham ponds and the 1500 feet, how many properties are we thinking there are?

Mr. Doherty said he thinks there were 10 on Long Pond and it's closer to 50 or 100 and he didn't know exactly.

Carmine said the way this is worded, it's not worded well. He said this could end being a back door for someone putting a garage on a seasonal dwelling and then a septic or a house, if it's not worded right, because these are properties that can't be built on.

Mr. Doherty said through the ZBA, he could show him a property where that happened and because of these, it's creating a health hazard.

Carmine said this is a protection ordinance and if it is, you don't build.

Mr. Doherty said the intent is not to stop the building and you can't stop building. It's to make it the least damaging to the pond.

Carmine said if they have less than 200 feet and less than 1 acre and are there any other things that would keep someone from building on this lot that's currently empty. Or is this just a size and frontage issue?

Mr. Doherty said you can't build on wetlands, but right now depending on the engineer if they say there are no wetlands and there's no peer review and you take the blessing of the ZBA.

**MOTION:** (Mr. Montbleau/Mr. Jim Bergeron) To withdraw the zoning issue and to set up a subcommittee.

Mr. Jim Bergeron said that's a great point to work with the association. He said this shouldn't be dropped and should continue. He is asking to get a commitment from that association. He said they should be concerned with the ponds and wants to be sure there's a commitment.

Mr. Montbleau asked to get a commitment from their chairperson.

Leanne Withrow from 23 South Shore Drive introduced herself as the president of the Little Island Pond Association. She said they would be willing to work with this board as a subcommittee.

Mr. Jim Bergeron wants to make it understood they are going to build your own protection and we will help work with them to implement it.

Julia asked if the Gumpas Pond Association can be invited? And she doesn't know if the other two ponds have associations. Mr. Doherty said the more the merrier. Mr. Montbleau said it's up to them to invite whomever they want.

Mr. Doherty said they can take language from other towns and tailor it to their needs.



Julia asked what the process is. She asked who are the people from this board? Mr. Doherty said we will have to work that out and we can't have more than three people before it becomes a quorum. It may be a couple of people. Julia said they can work that out and then send her the information.

Mr. Jim Bergeron said this board can create subcommittees and we will publicize a request for invitations to become a volunteer. He said they can have meetings and can come up with something. Julia asked if someone from this board can be on this? Mr. Jim Bergeron and Mr. Doherty said yes. Mr. Montbleau said they would give their reports to Ms. Beauregard. Cynthia Hay, 349 Old Gage Hill Road introduced herself as living near the Harris Pond area. She said she owns three seasonal properties on Little Island Pond. She said if anyone thinks that people who own seasonal properties are not vested, she said we are vested. She said they may be nonconforming and seasonal, and they may be converted to year-round going forward. She thanked them for allowing them to make the properties work for them.

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

Mr. Doherty read the following:

5. To add a new article to Pelham's Zoning Ordinance ***Article TBD Natural Resources Management Ordinance*** to promote and ensure the orderly development of land within the Town of Pelham to promote public health, safety, and welfare of its residents and to ensure for the future population of the town that essential municipal services, transportation/roads, and clean water are available and will have sufficient capacity and quality to accommodate new and future development.

Mr. Doherty read this into the record and it is attached to the minutes.

Mr. Doherty said this is applying to large parcels of land that would be getting subdivisions on them for residential and or commercial purposes.

Mr. Doherty opened this to the public.

Mr. Doherty said this is basically, so developers don't come in and clear-cut land and then come in front of us and say they want to develop this land.

Charlene Takesian from Jeremy Hill Road introduced herself. She likes this ordinance, but asked if they can add something to it to protect properties around the development, such as water runoff. Mr. Doherty said we handle that in the site plan review regulations as opposed to zoning. He said there are already RSAs that apply to this and what has to be done. He said we try to put a 50-foot perimeter buffer, so the edges aren't cut.

Charlene is glad for that, but she knows of an instance on Sherburne Road where land was developed uphill and it's affecting, according to engineers it's affecting homes downhill.

Mr. Montbleau said in every subdivision, our engineer reviews the applicant's engineer's drainage and water calculations and they can't have any more water velocity that didn't before. He said this is all state regulated as well as our town and the two engineers have to agree on this. Charlene said she heard from an engineer that when land is clear cut there are no roots to hold water back. She said someone has asked her about this.

Mr. Montbleau said most subdivisions will create retention ponds to help this from going downstream.

Mr. Doherty closed this to the public.

Mr. Doherty said there will be another public hearing. He said Ms. Beauregard will post what will be on the next public hearing. Mr. Doherty closed the public hearing.

## **NEW BUSINESS**

**Case PL2022-00036, Map 20 Lot 2-132 – Boissonneault, Tyler – 27 Bush Hill Road – Seeking approval of a Conditional Use permit for a 1-bedroom accessory dwelling unit that will be located on the 2<sup>nd</sup> floor of an existing 2-car garage on a 5-acre +/- property.**

Tyler Boissonneault from 27 Bush Hill Road introduced himself and his brother Ryan who is the co-owner of the property. Tyler said the garage already exists and he wants to add an apartment above it. The stairway exists already and there is a deck on the back.

Mr. Doherty showed the plan, and he asked if there was another way out on the back of the deck? Tyler said yes. Mr. Doherty asked what the square footage of living space is? Tyler said 900 s/f. Mr. Doherty asked if it is 972, which includes part of the garage and is that the staircase? Tyler said yes.

Ms. Masse-Quinn read the list of abutters.

Mr. Doherty asked how far off of Bush Hill Road is the house and garage? Ryan said about 100 to 200. Mr. Doherty asked if the buildings are visible from Bush Hill Road? Ryan said in the summer, they're not very visible. Mr. Doherty said if it's close to the road, then we would like to see what it will look like, but he's pretty far back so it won't come into play as much. Mr. Doherty said the garage is there already? Ryan said yes.

Mr. Passamonte asked if the garage on the bottom will remain as a garage? Ryan said they don't have any plans for that. Mr. Passamonte said the plan says 30x40, so that's 1200 s/f, and how does he get the 972? Tyler said that is the livable space. Mr. Passamonte asked if the building department would review this?

Ms. Beauregard said yes, the building inspector already has reviewed it and it doesn't have to include the space for entryways or unlivable area. The building inspector has already confirmed that has all been met. Mr. Passamonte asked if there are cars parked in there? Tyler said yes. Mr. Passamonte said the garage will have to get finished off because it has to be fire proofed because there's living above? Ms. Beauregard said yes, and the building inspector will make sure of that. Mr. Passamonte asked if they would have to use 5" fire board? Mr. Doherty said he would go through that.

Ms. Beauregard asked if they are putting a new septic system in or using the existing? Tyler said they plan on using the existing. Ms. Beauregard said we would need confirmation that the existing system is in good working condition as part of the building permit. Tyler said okay.

Mr. Montbleau said they will put the plumbing underground all the way to the tank downstream of the other house? Tyler said yes. Mr. Montbleau asked if it will go into one tank? Tyler said yes.

Mr. Doherty said the approval of the sewerage system says it's approved for a three-bedroom home and a one-bedroom ADU? Ms. Beauregard said yes. Mr. Doherty asked if the home presently has three bedrooms? Tyler said yes. Ms. Beauregard said yes, and she also confirmed with assessing records that it's a three-bedroom home and this should be adequate.

Mr. Jim Bergeron asked if the approval for construction is for the potential in the event? Ms. Beauregard said yes, if the current system failed, they would have to put this in.

Mr. Jim Bergeron asked if the ADU already exists? Tyler said the garage already exists.

Mr. Jim Bergeron asked if he built the original house? Tyler said the house has existed since 1918.

Mr. Jim Bergeron asked if the applicants understood the requirements? Tyler said yes. Mr. Jim Bergeron asked if the land was pretty flat and wasn't over the 20% slope percentage? Ms. Beauregard said it's more of a consistency matter and she reached out to the applicant's engineer.

Mr. Jim Bergeron appointed Mr. Sawtelle to vote in place of Mr. Doherty.

**MOTION:** (Mr. Montbleau/Mr. Bilapka) To accept this plan for consideration.

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

**MOTION:** (Mr. Montbleau/Mr. Bilapka) To accept this plan for approval with the conditions stated by our Planning Director.

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

Mr. Jim Bergeron said the condition was to certify the septic system is working.

### **REVIEW OF MINUTES**

Mr. Lynde had the following changes: line 54, to add an 'i' to the 'man' door to make it say 'main' door. Line 72, he asked to not exceed what? Ms. Beauregard said she believes it is 45,000 s/f.

**MOTION:** (Mr. Montbleau/Mr. Passamonte) To approve the minutes from November 21, 2022, as amended.

**VOTE:** (6-0-1) The motion passed. (Mr. Jaie Bergeron abstained).

Mr. Jaie Bergeron said the Selectmen are meeting tomorrow and will be looking back in the past on warrant articles and that they used to show the tally of the votes and they noticed that was stopped and they would like to bring that back. He asked this board to discuss and vote on either supporting it or not.

Mr. Jim Bergeron said that is the purview of the Selectmen to do that.

**MOTION:** (Mr. Jim Bergeron/Mr. Bilapka) To recommend to the Selectmen that the voting tally be on there.

**VOTE:** (6-0-1) The motion passed. (Mr. Jaie Bergeron abstained).

### **ADJOURN**

**MOTION:** (Mr. Montbleau/Mr. Passamonte) To adjourn the meeting at 11:12 pm.

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

Respectfully submitted,  
Jennifer Castles, Recording Secretary

**Draft Zoning Changes for the 1<sup>st</sup> Planning Board Public Hearing**  
**December 5, 2022**  
**Newly created section in its entirety**

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## **Draft Solar Ordinance**

### **Purpose and Intent:**

New Hampshire permits the regulation of solar energy systems by municipalities and supports solar energy system usage by statute. Pelham fosters good stewardship of the environment and fully adopts the state regulations pertaining to solar energy systems, specifically RSA 672:1, I, and III-a, as well as RSA 674:17 (I)(j) which encourages access to sunlight and prohibits unreasonable limits imposed on solar energy systems by municipal zoning powers.

### **Definitions:**

**Solar Access** – Space open to the sun and clear of overhangs or shade so as to permit the use of active and/or passive solar energy systems on individual properties.

**Building Integrated Photo Voltaic (BIPV) Systems**- A solar energy system that consists of integrating photo voltaic modules into the building structure, such as solar shingles on the roof or the facade and which does not alter the relief of the roof.

**Collective Solar** – Solar Installations owned collectively through subdivision homeowner associations, co-housing, other similar arrangements

**Commercial Solar** - Any and all systems that do not fall into the definition of **Residential Solar**. These systems could be for, but not limited to, agriculture, industrial, large scale residential (condominium associations, homeowner associations, etc.), solar farming, etc. Any system that is commercial in nature, including roof top systems larger than 15 kW AC will require a Conditional Use Permit from the Town of Pelham Planning Board.

**Net Metering** – A billing mechanism authorized by NH RSA 362-A and corresponding regulations, which credits solar customers for surplus electricity that they generate and deliver back to the grid, and which allows these customers to pay only for their net electricity usage during the applicable billing cycle.

**Qualified Solar Installer** – A NH licensed electrician who has specialized knowledge and corresponding skills related to the installation, construction, and operation of solar electrical equipment, and who has received safety training on the hazards involved with solar installation.

**Rated Nameplate Capacity** – Maximum rated alternating current (“AC”) output of solar collection system based on the design output of the solar system.

**Residential Solar** - Any ground, pole or roof mounted solar collection system primarily for on-site residential use, and consisting of one or more free-standing, ground, pole or roof mounted, solar arrays or modules, or solar related equipment, intended to primarily reduce on-site consumption of electric utility power and with a rated nameplate capacity of 15 kW AC or less and/or that is less than 1000 square feet solar land coverage.

**Solar Collection System – (or “solar energy system”)** Includes all equipment required to harvest solar energy to generate electricity. The Solar Collection System includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. Solar Collection Systems include only equipment up to (but not including) the stage that connection is made to the utility grid or site service point. A Solar Collection System may be allowed by right or authorized by a Conditional Use Permit.

**Solar Energy** – Radiant energy provided by the sun that can be collected in the form of heat or light by a solar collector.

**Solar Land Coverage** – is defined exclusively for the purposes of calculating the footprint of the land area occupied by the components of a solar array. The Solar Land Coverage is the land area that encompasses all components of the solar collection system including but not limited to mounting

equipment, panels, and ancillary components of the system.

This definition does not include access roads or fencing and is not to be interpreted as a measurement of impervious surface as it may be defined in this ordinance.

**Solar Skyspace Easement**—A recorded easement pursuant to NH RSA 477:51 sufficient to create a Solar Skyspace easement.

**Solar Storage Battery** – A device that reserves energy for later

consumption that is charged by a connected solar connection system. **Solar Thermal Systems** - System converts solar radiation to thermal energy; system directly heats water or other liquid using sunlight; used for such purposes as space heating, cooking, domestic hot water, and heating pool water.

#### **Applicability:**

**Residential** - Pelham will permit rooftop solar installations less than 15KW by right in all zoning districts. Ground mounted solar systems that are 15KW or less, and Five Hundred (500) square feet or less will not need Planning Board approval, but approval from the Planning Department's Building Inspector.

**Commercial** - Any person seeking to construct or to carry out any **Commercial Solar Energy System** shall apply to the Planning Board for Site Plan Review in accordance with the requirements set forth in the Pelham Site Plan Review Regulations as well as a Conditional Use Permit (CUP). In addition, such applicant shall submit the information required in this Ordinance. If any property owner/s wish to install a ground and/or pole mounted solar system, they must come to the Planning Board for a conditional use permit that shows they have met the conditions listed above, as well as any other conditions, such as protecting the view shed of neighbors and passerby's, the Planning Board may feel necessary to be in the best interests of the town and abutting residents.

**Permits** - No solar energy system shall be erected, constructed, or installed without first receiving a building and electrical permit from the planning department. Furthermore, a building permit shall be required for any physical modifications to an existing solar energy system. All solar energy systems are to be installed by a Qualified Solar Installer.

#### **Restrictions:**

Because Pelham recognizes the importance of solar energy systems and the need to balance state solar energy regulations with the wishes of the community to protect natural view sheds, the following restrictions are placed on solar energy systems as authorized by the state:

- Location
  - All ground-mounted and pole-mounted systems shall be located at inconspicuous locations, such as the side and rear yards, low to the ground and screened to limit visibility. Every attempt should be made to keep these systems away from the front of the main structure so as to limit visibility to the abutting neighbors and not detract from the natural view of the front of the main structure.
- Setbacks
  - All solar systems shall comply with the Town of Pelham building setback requirements from lot lines for the entire system – including the panels.
- Lighting
  - All solar systems lighting shall be minimal, limited to access and safety, downcast and shielded from abutting properties.

#### **Decommissioning**

Solar systems shall be deemed to be abandoned if operations have discontinued for more than 6 months without written consent of the municipality (such as for reasons beyond the control of the owner). An abandoned system shall be removed, and the site restored within 6 months of abandonment by the owner.

**Draft Zoning Changes for the 1<sup>st</sup> Planning Board Public Hearing  
December 5, 2022  
Proposed new wording in red, eliminated text strikethrough**

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**307-41 Special Provisions [Amended ATM 1991; amended ATM 1999; amended March 8, 2005 ATM]**

- A. Residential and commercial septic leachfields must be setback from Wetland Conservation District areas the following distances:
  - 1. Poorly Drained Soils - ~~25~~ **50** feet
  - 2. Very Poorly Drained Soils - ~~50~~ **75** feet
  - 3. Ponds, streams and year-round brooks - 75 feet
- B. No building or structure may be located within a Wetland Conservation District area.
- C. No individual, company, or entity shall cause to remove from the Town's above ground water resources or below ground aquifers more than 1000 gallons of water per day, unless said water is for the purpose of redistributing that water to the landowners of Pelham. **[Amended March 8, 2005 ATM]**

**Draft Zoning Changes for the 1<sup>st</sup> Planning Board Public Hearing  
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Proposed new wording in red, eliminated text strikethrough**

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**307-13 Additional Lot Size and Street Access Requirements**

[Added 3-4-75 by ballot by the ATM, Art. 4; amended 3/95 ATM; Amended March 8, 2005 ATM; Amended March 13, 2007 ATM, Art. 2, Amended March 8, 2022 ATM Art. 2]

The intent is to provide for an area that accommodates the building site including all utilities, water supply, sewage disposal for on-site septic tanks and leach fields, drainage retention, slope stabilization and safe lot access. This area shall include both a primary and an alternate leach field location. [Amended ATM March 13, 2007]

A. Lot Size requirements

In addition to meeting the minimum lot size Area Requirements of Section 307-12 of the Pelham Zoning Ordinance, every new single-family lot approved by the Planning Board, **after the effective date of this amendment**, shall contain a 35,000 contiguous square feet non-wetland area. Every new two-family lot approved by the Planning Board, **after the effective date of this amendment**, shall contain 55,000 contiguous square feet of non-wetland area. Every new Workforce Housing Parent Lot in the residential district shall contain 217,800 contiguous square feet of non-wetlands. ~~WCD set back areas may be counted in the computation of the 35,000, 55,000, and 217,800 square feet requirements.~~ The following land **shall not** be counted in the computation of the required minimum 35,000, 55,000, and 217,800 contiguous square feet non-wetland area requirements: [Amended ATM March 13, 2007, Amended ATM March 8, 2022]

1. Land areas containing poorly or very poorly drained soils as defined by the Site Specific Soils Mapping Standards for New Hampshire and Vermont or such subsequent version as adopted by the Planning Board. [Amended ATM March 13, 2007]
2. Land areas having a pre-existing naturally occurring slope in excess of twenty percent (20%). [Amended ATM March 13, 2007]
3. Land areas located within Recreation, Conservation and Agricultural Districts. [Amended ATM March 13, 2007]
4. Land areas located outside the geographic boundaries of the Town of Pelham. [Amended ATM March 13, 2007]
5. Land areas that would be flooded by the 100 year flood as defined by Flood Insurance Maps prepared by the Federal Flood Insurance Administration. [Added by ballot ATM March 13, 2007]
6. Land areas located within any high-tension electricity or high-pressure gas utility line easement (areas located on opposite sides of any high- tension electrical easement shall not be considered contiguous for the purposes of this section). [Added by ballot ATM March 13, 2007]
7. Land areas wherein ledge and bedrock are not covered with a minimum of at least ~~two~~ **four** feet of pre-existing naturally occurring non-wetland soils (soils not classified as poorly drained or very poorly drained soils as defined by Site Specific Soils Mapping Standards for New Hampshire and Vermont) unless contradicting evidence is provided by the engineer. This-~~2~~ **four-foot** requirement is intended to minimize erosion and landslides by absorbing and slowing runoff. [Added by ballot ATM March 13, 2007]

**8. Wetland Conservation District set back areas.**

B. Street Access Requirements: **[Added by ballot ATM March 13, 2007]**

1. All one and two family lots approved by the Pelham Planning Board, **after the effective date of this amendment**, must have 200 continuous feet of frontage on either a State of New Hampshire maintained highway or a Town of Pelham Class V or higher street(s) that was in existence on March 14, 2007, or on a new street(s) approved by the Planning Board and accepted by the Town of Pelham after March 13, 2007, but only if the new street(s) is-directly accessible to police, fire, medical emergency and school transportation vehicles, without those vehicles first having to leave the corporate limits of the Town of Pelham.
2. The Planning Board shall not approve any new subdivision street or any elderly housing complex driveway, if the new street or driveway would not be directly accessible to police, fire, medical emergency or school transportation vehicles without those vehicles first having to leave the corporate limits of the Town of Pelham.

C. Application: **[Added by ballot ATM March 13, 2007]**

The changes to the Pelham Zoning Ordinance approved by the 2007 Annual Town Meeting Hall only apply to new lots approved by the Planning Board after the statutory effective date of the changes.



**Draft Zoning Changes for the 1<sup>st</sup> Planning Board Public Hearing  
December 5, 2022  
Newly created section in its entirety**

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**Long Pond, Island Pond, Gumpas Pond, and Harris Pond Watershed  
Protection Ordinance**

**Authority:** Pursuant to RSA 674:21, Innovative Land Use, the Planning Board is hereby authorized to grant Conditional Use Permits for the purpose of Surface Watershed Protection. This zoning and the accompanying regulations are to ensure the protection and preservation of our four significant surface water bodies within the Town of Pelham and their watersheds from the effects of point and non-point source contamination and pollution, as authorized by RSA 483-B:8.

**Purpose and Intent**

Conditional Use Permits may be issued by the Planning Board to ensure that enforcement of this ordinance will not adversely impact neighboring properties, surface waters, watersheds, Pelham's Aquifers, and

To protect public health, by preventing overcrowding of wastewater treatment systems,

To reduce erosion and sedimentation by retaining existing vegetation,

To protect ground water supplying aquifers that serve as potential drinking water resources,

To protect the surface waters, wetlands, and vernal pools associated with the surface waters,

To protect the undisturbed natural areas and wildlife habitats in and around the water shed,

To prevent the degradation of water quality through the regulation of land uses and development within the water shed.

In the event of a conflict between the requirements of this section and other requirements of the Pelham Zoning Ordinance or state law, the more stringent requirements shall govern.

**Applicability**

The special provisions established in this Watershed Protection Ordinance shall apply to proposed development within the Water Shed for Substandard Lots and non-conforming lots with seasonal dwellings.

All lots must completely satisfy there will be no undue crowding of land by providing adequate spacing for light, air and spread of fire to the neighboring properties. Limitations shall be made to prevent future demand on public services from pollution, environmental damage, and over concentration of wastewater systems in an existing neighborhood.

The Water Shed Protection area is considered to be essential to the protection of the surface waters and aquifer from the effects of point and non-point source pollution and wastewater systems.

The Water Shed area shall include all area within 1500 feet of these four Surface Water Bodies.

**Definitions:**

**Contamination:** Sedimentation, point and non-point source pollution, septage, or the discharge of hazardous materials.

**Non-point Source Pollution:** Non-point source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, septic seepage or hydrological modification. Nonpoint source (NPS) pollution comes from many diffuse sources. NPS pollution is caused by rainfall or snow melt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into our ponds, streams, wetlands, coastal waters, and ground waters; Contaminants including, but not limited to pesticides, fertilizers, human and animal wastes, sediments, nutrients, and heavy metals that are deposited on the ground surface and flow into and pollute nearby surface waters.

**Point Source Pollution:** Point pollution comes from a single source such as the discharge from a drainage pipe.

**Seasonal Dwelling:** A dwelling unit that lacks any one of the following amenities: functioning electricity, central heating system, insulation in walls and ceilings, indoor drinking water, indoor cooking, and indoor sanitary facilities.

**Substandard lot:** a legally created lot of record without a dwelling that met minimum average area and dimensional requirements when created but does not meet the requirements for a new lot under current zoning.

**Watercourse:** A natural or artificial channel or culvert through which water flows year-round and/or seasonal.

**Watershed:** The area of land surrounding and forming the drainage basins supplying our four surface water bodies.

**Administration:** The Pelham Planning Board shall have authority to grant a Conditional Use Permit to administer the provisions of the Watershed Protection Ordinance.

**General:**

**Septic Systems:** For any new construction or seasonal conversion, an Effluent Disposal System (EDS) shall be installed in accordance to NH DES regulations and requiring a 100 foot setback from Hydric-A soils or surface water and a 75 foot setback from Hydric-B soils or other wetland area. In addition to the setbacks any expansion of an existing structure, or the seasonal conversion to a year-round of an existing structure, the owner shall also conform to RSA 485-A: 38 and the associated Code of Administrative Rules for Subdivision and ISDS Design Rules, as amended.

**Watercourses, Drainage Ditches and Culverts:** Any existing watercourses shall be kept and maintained within the property free of trash, debris, excessive vegetation, obstructions, or other matter that would pollute, contaminate, or retard the flow of water through the property. Property owners shall not cause a watercourse that enters their property from flowing onto their property. Mechanical pumping of a watercourse is prohibited.

**Ground Water Flow:** To prevent the restriction or alteration of the flow of underground water from the watershed into the ponds and aquifers the use of subsurface concrete structures shall be minimal with perpendicular alignments to allow the underground flow of water to continue its course into the ponds. Any proposed walls parallel to the ponds must be designed built and maintained with drainage piping, crushed stone base, and culverts so all ground water will continue through the ground and into the ponds.

### **Conditions for Approval**

**Peer Review:** To prevent unintentional restriction of water flow or adverse impacts to neighboring properties and the ponds, the Planning Board prior to final approval shall have the applicant submit the plan to the Conservation Commission, peer review engineering, and the Board of Health for review and comment prior to final approval of the Planning Board. All plans receiving final approval shall also post bond and receive review engineering monitoring of development to ensure compliance with the final approval.

The Planning Board may conditionally approve a Watershed Protection Application pending conditions precedent to the issuance of a conditional use permit which shall be satisfied within 120 days of the Board action.

The applicant may request an extension of time required to satisfy conditions precedent to the issuance of the conditional use permit by written request (including the reasons therefore) with the Board no later than 14 days prior to the expiration of the 120-day period provided. The Planning Board shall vote on whether an extension is appropriate under the circumstances.

**Expiration of Approvals:** All Watershed Permits, not associated with a subdivision of land, expire one (1) year after the date of issuance if not exercised by the recipient.

**Draft Zoning Changes for the 1<sup>st</sup> Planning Board Public Hearing**  
**December 5, 2022**  
**Newly created section in its entirety**

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## **NATURAL RESOURCES MANAGEMENT ORDINANCE**

### **Purpose and Intent:**

As the Town of Pelham grows, the management, use and preservation of natural resources are paramount in protecting Pelham's rural character.

The purpose of this ordinance is to promote and ensure the orderly development of land within the Town of Pelham, to promote public health, safety, and welfare of its residents and to ensure for the future population of the Town of Pelham that essential municipal services, transportation/roads, and clean water are available and will have sufficient capacity and quality to accommodate new and future development.

Under the authority of RSA 674:35, it is the intent of this ordinance to give the town the ability to protect and/or preserve these resources before any major subdivision and or commercial/business development shall commence.

### **Definitions:**

**Natural Resources:** resources that are drawn from nature and used with few modifications. This includes the sources of valued characteristics such as commercial and industrial use, aesthetic value, scientific interest, and cultural value. On Earth, it includes sunlight, atmosphere, water, land, all minerals along with all vegetation, and wildlife.

### **Applicability:**

1. The Conservation Commission must have the opportunity to give an opinion to the Planning Board on the proposed development's natural resource inventory prior to the final approval of the Planning Board
2. All minor/major subdivisions and commercial/business developments, before any disturbance of land and/or cutting/removal of any wooded vegetation can begin, all federal, state, and local permitting must be approved in its entirety.
3. After acceptance of this ordinance, parcels of land that have been clear cut of 50 % or more of the wooded vegetation will be required to wait a period of five (5) consecutive years before submitting a plan for development.
4. A fifty (50) foot perimeter buffer of all parcels shall remain undisturbed with exception of the entrance into the property.
5. Small disturbances on the lot will be allowed, if needed, to collect the data needed for the permitting process, i.e., test pits.
6. Any development under this ordinance must provide proof of sustainable potable drinking water access for each proposed unit.
7. Any development under this ordinance, the water infrastructure (private well or community well systems) will require a performance guaranty.

This performance guaranty will be released upon that infrastructure's successful operation for one (1) calendar year after issuance of an occupancy permit.