

**Town of Pelham, NH
Pelham Conservation Commission
6 Village Green
Pelham, NH 03076-3723**

MEETING OF 09/08/21

Members Present:

Karen Mackay, Paul Gagnon
Lisa Loosigian, Mike Gendreau,
Ken Stanvick, Dennis Hogan

APPROVED 11/10/21

Members Absent:

Kara Kubit (alt), Al Steward

Paul Gagnon brought the meeting to order at 7:00 p. m.

PUBLIC HEARING:

Map 30 Lot 11-100	71 Dutton Road – Proposed purchase of 11 acres of a 13.6 acre lot. Property to be acquired for use as conservation land – Presentation by Paul Gagnon
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The land owner has a home on this parcel. The proposal is for the town to purchase 11.6 acres of this parcel and for 2 acres to be subdivided off and remain with the house. The land is rolling hills with a small field of about one acre with the remainder of the land forested. The northern edge of the property drops down to a large wetland. The parcel is adjacent to Peabody Town Forest and a huge wetland that was a prime wetland, but lost prime status when the state changed the requirements for prime wetland designation a few years ago. The town will be reapplying for this wetland to become a prime wetland again.

Peabody Town Forest is about 200 acres. The Girl Scout camp of 300 acres, is adjacent to Peabody Town Forest. Adjacent to these parcels is the powerline easement. This is a total of over 500 acres of contiguous property. This purchase would add to this area of open space land.

The Commission has hired Joe Maynard, a surveyor, to draw up a plan for the subdivision of this land. He will be before the Planning Board on September 20, 2021. If the subdivision is approved, we will move forward to the Selectmen's public hearings.

The purchase and sale was signed in February 2021 and is contingent on the approval of this board, the subdivision of the 2 acres through Planning and the approval of the Selectmen. The agreed upon price for the 11.6 acres is \$80,000.00.

The owners have placed restrictions/limitations on the use of the property. The owners wanted assurances that the property would stay in its current state. There will be no timber harvesting on the land. Other specifications are: no wheeled vehicles, no structures, no dog parks, no animal grazing and no hunting. Mr. Stanvick had some issue with the town spending money to buy land that cannot be used

for all legal activities. Specifically, he referenced hunting as a legal activity that town money was being expended and residents that hunted could not use this land for that purpose. Most of our conservation land allows hunting and timber harvesting so Mr. Gagnon felt that we would be fine in excluding this small area from those activities. Mr. Gagnon did understand Mr. Stanvick's point of spending town money and restricting activities that residents may want to pursue. Mr. Gagnon talked to the land owners more than once about these restrictions and tried to convince them to make the restrictions for their lifetime only, but they felt strongly about having the restrictions in place in perpetuity so Mr. Gagnon consented to their wishes.

There are areas of town land that we do not hunt on such as Raymond Park and Muldoon Park. There are areas that we have no plan to timber harvest such as the yellow trail on Merriam/Cutter. All other restrictions insisted by the owners are in place on our other conservation land. Snow mobiles will be allowed on this property, but ATV's will not be allowed as they are not allowed on other town properties. There is a snow mobile trail that presently goes through the large wetland in the rear of this property. The trail could be moved onto uplands if the purchase is approved. Trees may be removed from the property if they pose a risk to hikers or if they threatened a home. There are no homes in the vicinity of the property line so that should not be an issue.

The owners have already posted 'no hunting' signs and they will maintain them. Mr. Gagnon and Mr. Stanvick went back and forth about the hunting restriction. Mr. Stanvick felt one activity was being favored over another by allowing some activities and not allowing hunting. Mr. Gagnon said we are trying to keep open space and reduce house lots and this purchase will accomplish that goal. He said if houses were built on the land there would be no hunting. Mr. Stanvick said the town would not be expending funds if houses were built. Mr. Gagnon said there would be residents in those houses that would need town services which would expend town funds in a different way.

Mr. Gagnon reviewed the Checklist for Open Space Acquisitions with the Commission (Checklist). The Checklist has three sections. Section one is a list of requirements that all must be met in order for the Commission to consider a purchase. The requirements are: The purchase must protect the rural character and natural resources of the town, the purchase must meet one or more goals of the master plan and open space plan, and the owner must be interested in conservation. This property met all these criteria. The second section of the Checklist specifies attributes of the property. This property protects water resources, land connectivity, outdoor recreation, educational value, wildlife habitat and reduces house lots. The last section has qualities that would disqualify a parcel from purchase. These include: contamination, small size, ethical/image problems, and/or the land would be difficult to manage. This parcel had no qualities that would disqualify the purchase.

Mr. Stanvick asked if these criteria may be too subjective and wondered if we needed to update this Checklist to have more objective criteria and definitions of what 'educational value' or 'rural character' etc. actually means rather than what each individual person thinks it means. Mr. Gagnon welcomed the discussion and asked if Mr. Stanvick wanted to pursue an update to the Checklist. Mr. Stanvick said he would like to look into this update. Ms. Mackay said part of the reason the criteria are on the loose side is that we want to conserve land and do not want to disqualify land by being too strict with the criteria.

This parcel was not independently appraised because the cost for an appraisal is about \$3,000.00 and the value of the land was not high. The Commission used the old town appraisal for this land. Recently, lots

have been reappraised. By using the town appraisal numbers, Mr. Gagnon estimated the land value for the 11.6 acres of land to be \$95,000.00. We offered the land owners \$80,000.00 at a bargain sale. The cost per acre will be \$6,900.00, which is just below our target goal of \$7,000.00.

Motion: (Hogan/Stanvick) to recommend, to the Selectmen, the purchase of the property for \$80,000.00 (eighty-thousand dollars).

Vote: 6-0-0 in favor.

OLD BUSINESS:

Map 23 Lot 8-15	16 Webster Ave – Proposed 3 lot subdivision with WCD impacts – Presentation by Shayne Gendron of Herbert Associates, Walter Kosik, the land owner, present
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The proposal is to subdivide the lot into 3 buildable lots. At this time, the rear lot has not been proposed to be built upon. This case was reviewed last month and the Commission took a site walk on the property. The lot is large with the bulk of the rear lot being wetland. There can be no more than 3 houses built on this property.

Commission members noticed a cinder block foundation along the side of the driveway when we visited the site. Mr. Gendron has added the foundation to the plan with a note that the foundation will be removed. Members felt that the foundation must be removed at the time of construction of the homes so as to disturb the WCD one time rather than going back in a year or two later to remove the foundation and disturb the WCD twice.

There are no wetland impacts. There are three WCD impacts for the driveway which total 6,576 sf. The first two impacts will be 3,500 sf and 346 sf. The rear impact, which leads to the rear lot, is 2,730 sf. This impact will not happen at this time as the rear lot is not proposed to be built at this time. Members must consider this impact when voting on this project because there will be no further review of this case once the plan is approved.

On the site walk, Ms. Loosigian noticed one wetland on the plan seemed larger when we visited the site. Mr. Gendron agreed to have Mr. Luke Hurley reevaluate that wetland. The wetland in question was determined to be 6,000+ sf and therefore needed a WCD protection. This increased the WCD impact on the plan as the wetland was directly beside the proposed rear driveway. Ms. Loosigian appreciated Mr. Gendron looking at this wetland a second time.

Ms. Loosigian was concerned about how close the houses look to be to the WCD. Mr. Gendron said there needs to be space for fire trucks to turn around in the driveway area. The turnaround space determines where the houses can be located and the size of the back and side yards of the houses. Mr. Gendron said he could guarantee the houses would be no closer than 15 feet from the WCD and he would add a note to the plan.

Mr. Gagnon said there was already a lot of impact to the WCD and that the driveway had existed for a long time. Ms. Mackay felt the impact would be more when the houses were built. If all 3 lots were built, there would be a minimum of 6 cars going in and out of the parcel several times each day. The

vehicle traffic would be heavier than the occasional and leisurely use that the owners have been doing for years. Mr. Stanvick made the point the WCD is often violated, then when we say it should not be used for a driveway or other purpose the owner will say it has always been used so I want to continue to use it. Mr. Stanvick commented that the WCD often gets violated, but never seems to be returned to its natural condition. He wants residents to be careful how the WCD is used and to think ahead before the WCD is destroyed.

Motion: (Stanvick/Hogan) to recommend the project to Planning with the conditions that a note be added to the plan that states the houses will remain at least 15 feet from the edge of the WCD and if there are no trees to hang WCD signs, than WCD signs will be placed on posts.

Vote: 6-0-0 in favor.

NEW BUSINESS:

Map 35 Lots 10-312 & 10-351 and Map 41 Lot 10-200	Currier Road – Proposal for mitigation for an infringement into the prime wetland associated with the new subdivision – Presentation by Luke Hurley of Gove Environmental Services and Shayne Gendron of Herbert Associates
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This project is a 42 lot conservation subdivision that was approved prior to the residents voting out the old conservation subdivision regulations. The issue at this time is the detention/retention pond for this subdivision is within the 100 foot protected prime wetland buffer. This project must be permitted through the state and have mitigation because of the impact to the prime wetland buffer.

The project will impact 47,384 square feet of the prime wetland buffer. There are no wetland impacts, crossings or fill. The state application has not been submitted yet because of the impacts and a mitigation plan must be included with the application. The state requires mitigation for impacts to the buffer of prime wetlands. The applicant went through several steps in the process. First, the applicant tried to do mitigation on-site. They proposed removing a multitude of invasive species and planting new native plants on the property. The state felt this was not adequate mitigation for this parcel. Next they tried to conserve land on the parcel, but that land was already conserved by the town in a conservation subdivision and could not be conserved again.

Another option is the applicant can conserve land in town in a different location. The ratio for this mitigation is 10:1, which means if the developer impacts 1 acre of land they must protect 10 acres of land. Fifty percent of the land must be uplands and there should be some wetlands also, as the state describes in their regulations. Mr. Gagnon has found a piece of property in town that he thinks would work for mitigation. He has walked it with Mr. Hurley and has talked to the owners. The owners would like to keep ownership of the land, but may be willing to sell the development rights to 15 acres of their land. No price has been negotiated yet. A conservation easement would be placed on the land. This is more land than required by the 10:1 ratio. Mr. Stanvick asked if there were other parcels that may work for this purpose. He feels we should not be tied to this parcel. He does not like that land will be purchased that will not be open to the public as we have just agreed to spend a lot of town money on the Steck property and it will not be open to the public. Mr. Gagnon welcomed anyone to find another property that we could move on quickly as this process cannot drag out as the developer wants to get started on their project.

The last option is for the developer to pay the state into the Aquatic Resource Mitigation (ARM) Fund. This is a fund that gives grants for conservation efforts within the watershed that was impacted. The problem with this for the Commission is that funds may go into the ARM fund from Pelham, but we would have to apply for a grant to get the money back and the money from our town may go to a different town and we may never get the money back. Commission members want the money to stay in town if possible. The ARM fund option is easier for the developer because they simply pay the money and get their permit, after approvals. The rough amount the developer would need to give the ARM fund for this project is \$276,000.

Mr. Hurley and Mr. Gendron are looking for a letter from us to Planning. They would like the Commission to recommend that the builder be able to start a phased approach to the development. The project can be done in 3 phases, two of which are nowhere near the wetland buffer area and could be started without impact to the buffer. The developer needs to get started on this project as this process has been going on for a year. They are before Planning on September 20, 2021. If Planning does not agree to a phased approach, then the developer will likely pay the penalty to the ARM fund, get his permits and start the project. Mr. Hurley asked if there could be a line in the letter that specifies the developer has come before the Commission to discuss mitigation and the town would like to protect land in town, but that if that is not possible, then the developer will be paying into the ARM fund. Mr. Gagnon agreed to include this in the letter.

Public Input:

Mr. Linwood Pitts is concerned about how the water in the detention system is going to affect property in the neighborhood. He felt he was not heard during the Planning meetings. He went to the Planning office and could not get a look at the plans for this project. He was told they were missing. He wants to know the up side and down side of this project. He was wondering why we were talking about money and land and mitigation rather than how this project was going to affect the neighbors. Members told him mitigation was the only purpose of this meeting. The plan has already been approved. All these water issues should have been talked about at the Planning meetings. Mr. Gendron said this plan has not changed since the approval of Planning. Mr. Gagnon explained we have no control over the water system designs. All those issues have been discussed at the Planning meetings. Alteration of Terrain has approved the drainage systems. Members suggested he go to the Planning meeting on the 20th.

Motion: (Hogan/Stanvick) to send a letter to Planning to support mitigation in town and to allow the developer to use a 3 phased approach and start the development in the area away from the buffer area.
Vote: 6-0-0 in favor.

DISCUSSION:

Paul Gagnon will lead a discussion of four proposed warrant articles that will be added to the March ballot. One article requests an increase to the Land Use Change Tax (Current Use) from 75% to 100%. Another article is to propose a Conservation Bond of 2.5 million dollars to be used for the acquisition of conservation land and associated costs. The last two articles are to reapprove the two prime wetland articles that were voted on last year.

Mr. Gagnon reviewed the amount of money we have in the Conservation Fund and the two Bond Funds. Mr. Gagnon made up a document that shows the available money for current and projected projects.

Additionally, he made up documents with proposed wording for the 4 warrant articles he would like to place on the ballot in March. He requested these documents be included in the minutes. The documents he presented are as follows. (I have altered them with font, font size, and spacing between rows in order to condense space in the minutes.)

Conservation Commission
Available funds and projected spending
September 8, 2021

Funds Available:

Current Use Fund Balance as of August 23, 2021	\$1,044,000
2003 Bond Remaining Balance	\$ 315,000
2018 Bond	<u>\$1,500,000</u>
Total Funds Available	\$2,859,000

Funds Committed:

Kleczkowski (40 acres off Blueberry Circle)	\$ 225,000
Steck (240 acres off Jeremy Hill Road)	\$1,715,400
Zolkos (85 acres off Tower Hill Road)	\$ 655,000
Hennessey (12 acres off Dutton Road)	<u>\$ 80,000</u>
Total Funds Committed (377 acres)	\$2,675,400

Total Funds Uncommitted	\$ 183,600
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Proposed 2022 Warrant Article
Increase in Land Use Change Tax into Conservation Fund

Shall the Town vote to place 100% of the revenues of all future payments collected from the Land Use Change Tax into the Conservation Fund in accordance with RSA 36-A:5 III, as authorized under the provisions of RSA 79-A:25 II, said monies to be used for the acquisition of conservation land, conservation easements, development rights and the costs associated therewith? Currently, 75% of the revenues from the Land Use Change Tax are placed into the Conservation Fund so this would be an increase from 75% to 100%. (Recommended by the Board of Selectmen?) (Recommended by the Budget Committee?)

2022 Proposed Warrant Article
Conservation Bond

Shall the Town vote to raise and appropriate the sum of two million five hundred thousand dollars (\$2,500,000.00) (gross budget) to purchase land and easements for conservation purposes, and to authorize the Board of Selectmen to issue bonds or notes in compliance with provisions of the Municipal Finance Act (RSA 33:1 et seq., as amended); provided, however, that notwithstanding anything herein to the contrary, the Town shall not issue more than one million five hundred thousand dollars (\$1,500,000.00) of bonds or notes in any one calendar year; to authorize the Selectmen to issue and negotiate such bonds or notes and to determine the rate of interest thereon and the maturity and other terms thereof, and to take any other action they deem appropriate to effectuate the sale and/or issuance

of said bonds or notes; and additionally to raise and appropriate the sum of twenty five thousand dollars (\$25,000.00) for the first year's interest and costs. Land or property interests to be purchased with bond proceeds shall be acquired in the name of the Town by the Conservation Commission, subject to the approval of the Selectmen, pursuant to RSA 36-A:4. (Tax impact?) (Recommended by Selectmen?) (Recommended by Budget Committee?) (3/5 Vote Required).

PROPOSED WARRANT ARTICLES
Designate Prime Wetlands

Article XX: Shall the Town vote to re-designate the following wetland systems as prime wetlands as authorized by RSA 482-A:15. These were designated as prime wetlands in 1987 but the boundaries have been re-mapped using modern, GPS technology hence must be re-designated. There is no tax impact. This is a special warrant article (Majority vote required) (Recommended by the Conservation Commission) (Recommended by the Selectmen)

NAME	ACRES (1987)	ACRES (2019)
Lower Golden Brook	72.7	98.8
Upper Golden Brook	85.3	64
Camp Runels	38.0	32.1
Dunlop	79.5	88
Cranberry Bog	16.7	20.9
Mountain Orchard	28.2	21.3
Harris Brook	14.2	29.6
total	334.6	354.7

Article YY: Shall the Town vote to re-designate the following wetland systems as prime wetlands as authorized by RSA 482-A:15. These were designated as prime wetlands in 2000 but the boundaries have been re-mapped using modern, GPS technology hence must be re-designated. There is no tax impact. This is a special warrant article (Majority vote required) (Recommended by the Conservation Commission) (Recommended by the Selectmen)

NAME	ACRES (2000)	ACRES (2019)
Little Island Pond	24.6	26.9
St. Patricks	16.1	14.5
Sherburne Road Bog	2.4	3.7
Sherburne Road Open Water	17.7	19.7
total	60.8	64.8

Mr. Gagnon asked the Commission to vote to change the Land Use Change Tax (current use) from the current 75% of the tax going to the Commission for land conservation, to 100% going to the Commission for land conservation. Currently, 75% goes to the Commission and 25% goes to the General Fund. Current use was designed for the purpose of conservation of land; therefore, all the money raised by this tax should go to conservation efforts. Mr. Gagnon gave an example. If land that has been in current use is sold for \$1,000,000, then the town gets \$100,000 from the sale. At the present time, the Commission gets \$75,000 of that money and \$25,000 goes to the General Fund. Mr. Gagnon believes all \$100,000 of that sale should go to conservation efforts.

Motion: (Stanvick/Loosigian) to approve the warrant article and add it to the ballot that changes the Land Use Change Tax from 75% to 100%.

Vote: 6-0-0 in favor.

Mr. Gagnon requested we vote to add a warrant article to the ballot that requests a new bond for \$2,500,000 (2.5 million dollars) to purchase conservation land. We passed a bond in 2004 for \$3,000,000 and another for \$1,500,000 in 2018. These bonds will be spent after the proposed acquisitions (listed above) have been purchased. We need to ask the voters for more money or we will be unable to purchase more land in the coming year. Mr. Gendreau stated the comments he hears most often from town residents relates to how we can slow development in town. A major way to slow development is for the town to buy land. The land the town has purchased through conservation funds cannot be developed. The more land purchased by the town the fewer new houses that will be built. Mr. Gendreau said we should ask for more than 2.5 million. He suggested we go as high as 6 million. Mr. Stanvick and Ms. Mackay thought 2.5 million was good. Ms. Mackay said we could go back and ask for more in a few years if necessary.

Motion: (Mackay/Stanvick) to add a bond to the warrant for 2.5 million dollars for the purpose of land conservation.

Vote: 6-0-0 in favor.

Last year, the set of prime wetlands in the two proposed warrant articles were voted on and passed. The Commission submitted them to the state for designation. The state would not approve the designation because they said we did not notify enough abutters. Mr. Gagnon would like to add them to the ballot this year so they can be reapproved by the town residents. He has not had any direction from the state as to how many abutters he must notify or how many residents that are a certain distance from the proposed prime wetlands that he must notify. He will send letters to residents next week and will over notify if the state does not get back to him. The wording on the articles is exactly as it was last year.

Motion: (Stanvick/Loosigian) to add the two prime wetland warrant articles to the ballot for March.

Vote: 6-0-0 in favor.

MINUTES:

Motion: (Stanvick/Loosigian) to approve the site walk minutes of August 17, 2021.

Vote: 4-0-2 in favor. (Hogan and Gendreau abstained)

Motion: (Hogan/Gendreau) to approve the minutes of August 11, 2021.
Vote: 6-0-0 in favor.

Motion: (Stanvick/Loosigian) to approve the non-public minutes of August 11, 2021.
Vote: 6-0-0 in favor.

WALK-IN ITEMS:

None.

ADJOURNMENT:

Motion: (Loosigian/Gendreau) to adjourn.
Vote: 6-0-0 in favor.
Adjourned at 9:22 p.m.

Respectfully submitted,
Karen Mackay,
Recording Secretary