

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

**MEETING OF 11/10/21**

Members Present:

Karen Mackay, Paul Gagnon  
Al Steward, Ken Stanvick,  
Dennis Hogan, Scott Bowden (alt)

**APPROVED 12/08/21**

Members Absent:

Kara Kubit (alt), Mike Gendreau,  
Lisa Loosigian

Paul Gagnon brought the meeting to order at 7:04 p. m. Mr. Gagnon welcomed our newest alternate member, Scott Bowden, and appointed him as a voting member for this meeting. Mr. Bowden has been a trail adopter for the Peabody Town Forest and has worked with members of the Forestry Committee.

**OLD BUSINESS:**

Map 24 Lot 12-44-4	96 Mulberry Lane – Discussion of a buffer restoration plan designed by Fieldstone Land Consultants, PLLC. Restoration is for impacts to the WCD for the installation of an in ground swimming pool, deck and fence. – Presentation by Andrew Prolman of Prunier & Prolman, PA, and Christopher Guida of Fieldstone Land Consultants, PLLC – John Lozowski, code compliance officer for the town of Pelham, will be in attendance and answer questions regarding town regulations and procedures related to the pool permit.
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This case was first seen in April 2021. At that time, Aquatime Pools gave a presentation about the installation of the pool. The meeting did not go well and the applicant was asked to come back to the Commission with an engineered plan for how they were going to mitigate the damage to the wetland conservation district (WCD). The applicant contracted with Christopher Guida of Fieldstone Land Consultants, PLLC. They will be making an application to the Zoning Board of Adjustment (ZBA) next week so the case can be heard at the December ZBA meeting. Mr. Prolman is open to a site walk with the Commission.

Mr. Guida explained the plan. Mr. Guida and his company were hired after the Conservation meeting in April. The size of the lot is large, but the buildable area is rather tight with the wetland in the back of the lot. He has designed a plan to try to restore a portion of the 50 foot buffer and try to provide for the functions and values that are missing because of the pool install. He is proposing a high density of native plantings on the top of the hillside. He will grade the land away from the wetland and away from the house to an underground drainage or infiltration trench which will lie between the pool and the house. This trench will capture water runoff from the roof and yard. The yard is flat so runoff into the wetland is not a problem. There was no sign of erosion from the slope into the wetland.

Wild plants have been growing on the slope to the wetland. Mr. Guida would like to keep these plants in place as they are already working to stabilize the slope. He would like to maintain as much of the natural vegetation as possible. The plants he will use at the top of the slope and around the pool will be upland plants as they are best suited for this location. He would like to restore the buffer as best as he can while allowing the home owners to have use of their back yard. He is proposing to install wetland buffer signs along the pool fence so the next owners of the property will know where the buffer is located. He proposed to add some language to the deed to define the buffer location for any future owners. The planting area in question is roughly 10 feet wide and runs along the slope to the wetland behind the pool.

John Lozowski, the town code enforcement officer, gave a brief summary of the case. The permit for the pool was issued last year. The permit stated explicitly that the pool, decking and all equipment would be outside the WCD. The drawing for the pool showed the pool outside the WCD. Code enforcement received an anonymous call that the pool was being constructed in the buffer. Prior to heading to the site, Mr. Lozowski checked the files for any information on the lot. He found there had been a WCD violation in 2007 or 2008, years before the pool installation. The old case was handled by his predecessor, Mr. Wakefield. The case had been cutting trees in a no cut buffer zone. The owner was told to get a plan to replant the trees. Mr. Accomondo, the owner, said he got a plan from a wetland scientist and replanted the trees. Mr. Lozowski could not find anything in the file to prove or disprove the trees were replanted, but he felt the owner was being truthful and assumes the trees were replanted. The problem now is those trees have been removed for the pool and the pool installation did not follow the instructions on the permit. Mr. Lozowski said the owner has been cooperative and stopped work when told. The owner was advised he would need a variance to keep the pool in the present location and was advised to come to the Conservation Commission. Mr. Accomondo has kept Mr. Lozowski informed of the progress since April.

Mr Stanvick asked about the homeowner's knowledge of the WCD. Mr. Prolman said the owner knew he violated the WCD by cutting the trees, but he thought he could replace them after the pool was installed. There were buffer markers on the trees. Mr. Stanvick said the pool location was measured from the deck when it should have been measured from the house, as stated in our last meeting. This led the pool to be located much closer to the wetland and within the WCD. The homeowner knew this as the project was being undertaken. Mr. Stanvick feels the pool should be moved. A pool is a luxury not a necessity and it was installed in the wrong location. The WCD is there to protect the wetlands. The WCD cannot be replaced once it is gone. Mr. Prolman acknowledged that the home owner knew the location of the WCD. Mr. Prolman said they understand the problems with this project that is the reason they will be applying for a variance to keep the pool in its current location.

Ms. Mackay said she liked the underground drainage proposal. The proposal is to install a drainage trench underground between the pool and the house and slope the land toward the system. This would allow runoff from the roof and the yard to flow into the system and prevent runoff from eroding the slope to the wetland. Ms. Mackay said the shed must be moved outside the WCD. She was aggravated when she saw the shed in the WCD because the Commission was very specific of how much they did not want the pool in the WCD and then the applicant brought an engineered plan back to us with more structures in the WCD. The applicant said they could move the shed a bit to outside the WCD. There will be underground pipes from the shed to the pool for pumps and filters related to the operation of the pool. The WCD signs are proposed to be on the pool fence, but that is not the WCD boundary. The WCD boundary is 40+/- feet from the proposed fence.

Ms. Mackay felt the planting scheme was wholly inadequate. The proposal has a line of plants about 10 feet wide, though 40 feet of the WCD is impacted across the entire back yard. This plan comes nowhere near the restoration efforts she expected. She would like to see plantings in a half moon shape to the north of the pool and to the south of the pool so more of the WCD area can be filled with plants. She specifically said there needed to be hundreds of plants. This plan proposed 42 plants with some seed mixes.

The size of the proposed plants appears to be quite small when they are purchased. With heights of trees from 2-4 feet and some bushes 24 inches tall. Ms. Mackay said she wants the seed mixes with the wetland mix down by the wetland and the conservation/wildlife mix on the slope and at the top of the slope. She does not want to see the slope dug up as some wild vegetation has begun to grow on the slope and will help reduce erosion. She would also like to see more diversity of plants in the project. She liked the blueberries, dogwoods and junipers, but there are many other plants on the website described on the plan. Ms. Mackay named a few species such as sweet pepper, sweet fern, gray dogwood, hazelnut, witch hazel, winterberry holly, pussy willow, elderberry and meadow sweet. Elderberry is good for erosion control as said on the website. In addition, she has concern about the sugar maples and red maples proposed. These are lovely trees, but they will grow 60+ feet in size and may shade the pool in the future which may prompt the next home owner to cut them down. She does not want to tell the applicant what to plant, but just to think about the future when making the choices and increase the diversity of the proposed plantings.

Mr. Steward asked the size of the WCD buffer. The lot is 2.3 acres in size. The majority of the lot is wetland. A large portion of the back yard is in the buffer zone. The plan, as presented, will fill approximately one-quarter acre with new plantings. Mr. Guida thinks he can get about one-half acre of plants in the buffer if he takes some of our suggestions to increase the buffer restoration area. Mr. Steward commented that the land owner knew where the WCD was located. The activity on site was extensive with trucks coming in, trees cut, fill removed, the pool hole being dug. The owner had ample opportunity to stop the work at an early point. The application for the pool showed the pool in an acceptable location on the lot, but that location is markedly different than where the pool was installed. In addition, the size of the pool on the application was 21x40 feet. Mr. Gagnon estimates, based on the drawing, the installed pool is 30x40 feet.

Mr. Bowden asked about flooding on the property and the type of wetland in the back yard. The property is elevated above the wetland and does not experience any flooding issues. The wetland is a ponded wetland. Mr. Gagnon displayed a picture of the wetland. The wetland is substantial in size with extensive open water.

Mr. Hogan said the property has had two problems with the WCD. One years ago with the tree cutting and now with the pool installation. The owner knew he was building the pool in the WCD. Mr. Hogan wants to know how we treat other applicants that pose a similar problem for us. If we approve this project, why should we not approve the next project on another resident's land? If we say yes to this project, then how do we say no next time? He wondered if we would be encouraging residents to do a project or make a mistake in a project, then come back to the town and ask forgiveness. This is a very uncomfortable position for the Commission both now and going forward. Mr. Prolman agreed this situation was difficult, but he was trying to resolve this situation to the best of all our abilities.

Mr. Gagnon stated this wetland was several acres. State law says we are to protect the town's natural resources. This wetland is a great natural resource. This was not a good effort to draw up a plan. He felt this plan was an insult to the Commission. This is a 50 foot buffer which is a no cut/no disturb zone. This pool installation destroys 40 feet of the 50 foot buffer and we are supposed to accept that some pool guy came in and dug a hole in one day and the home owner didn't notice it happened to be in the wrong place. This was a long process with digging a hole, removing the fill, setting wires and spraying the gunite. The home owner knew the location of the WCD. He could have held this up in an early stage. He could have informed the pool company the pool was in the wrong place. Mr. Gagnon stated he could not vote for this. The pool has to be moved. There is no way to plant enough shrubs to offset the damage to the WCD. Mr. Gagnon agreed with Mr. Hogan. The town is full of wetlands. The message we would send if we approved this is that the WCD is a joke. This would say to the public they did not need a permit or could not follow a permit, then wait for someone to complain, then claim the process is to far along and can't be stopped. This situation and the restoration plan are completely unacceptable.

Mr. Gagnon said if they were 10 feet in the WCD that may have been a situation we could work through. The Commission is not unreasonable, but an owner cannot be 40 feet into the WCD with a pool that took days to install on a site that has already had a violation of the WCD. He cannot vote to approve this project. The pool must move and the shed must move. If the applicant gives us 40 feet of WCD, then we can talk. Mr. Gagnon stated he will be a no for the vote tonight. Mr. Gagnon called for a motion to vote on this project. Mr. Prolman interjected. He stated that no insult to the Commission was intended by this plan. He asked if the Commission would not vote tonight. He would like to go back and confer with his client and come back at a later date. Mr. Gagnon agreed. No subsequent date was specified as Mr. Prolman thinks their reevaluation may take a few months.

### **DISCUSSION:**

Mr. Kevin Cote will discuss the rewriting of the Master Plan. He is looking for volunteers for the process and will discuss how interested parties can participate.
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Mr. Kevin Cote is a Selectman and the representative from the Select Board to the Planning Board. The Master Plan is to be rewritten this coming year. The last Master Plan was written in 2002. The recommendation is to rewrite the Master Plan every 10 years so Pelham is years overdue. The Master Plan will be voted on the town warrant.

The Master Plan describes the goals of the town. The Master Plan describes how we want to grow, natural resources, transportation, workforce housing, population, historic resources, existing land use, future land use and community facilities. The next version of the Master Plan may include more categories. The Master Plan should anticipate demographic and business changes and how residents, town boards and competing interests interact with each other in the town.

Samuel Thomas, a Planning Board member, will chair the Master Plan subcommittee. He will be in charge of the number and frequency of meetings. At this time, Mr. Cote does not know the extent of the commitment needed by volunteers. He would like to have many volunteers so the burden will be less on each member of the subcommittee.

Mr. Cote is spreading the word that the Master Plan Committee is looking for volunteers. He would like to see at least one Conservation member on the Committee, more would be better. Mr. Cote is looking for volunteers from the public also. Conservation members may extend the invitation to town residents if they know anyone who is interested in working on the Master Plan.

Planning Board is in charge of the Master Plan. They initially had 5 companies present bids to the town to rewrite the Master Plan. Planning narrowed the choice to Nashua Regional Planning Commission (NRPC) and Resilience Planning. These two groups made presentations. The positives with NRPC were they have worked with Pelham extensively and know the region and town well. They had a price in the \$80,000.00 range. Resilience offered a different perspective because they have worked all over the state and Planning felt they may have novel ideas. Resilience had a cost over \$100,000.00. Planning liked Resilience's approach and chose them for the contract to rewrite the Master Plan.

Resilience wants to have an interactive experience with town residents and the Master Plan Committee. The contract will be for 14 months and will start after the March ballot vote. The writing of the Master Plan and the cost must be approved by the voters. The town is moving forward with the assumption that the Master Plan rewrite will be approved. We must start planning now in order to be ready to write the Master Plan after the vote. If the residents do not approve the writing of the Master Plan and the expense of Resilience to help us, then the Master Plan will not be rewritten. There will inevitably be conflicts of interest in the different stake holder groups. Resilience will take in all information and formulate a plan to balance competing interests. They will not decide how the conflicts will be solved, but will make suggestions on how to balance different priorities.

Mr. Cote talked about the changes in the town and state from the covid-19 pandemic. The whole world shut down. The Master Plan can have contingencies on how a community can and should deal with a massive disruption. In Salem, NH, office space that were proposed in Tuscan Village were changed to housing and medical offices as many people began working from home. New Hampshire has experienced a boom in real estate as people moved out of cities and into the state. In addition, the 2020 census numbers recently came in and these numbers showed a shift in demographics in Pelham. These issues will be described and discussed in the Master Plan and potential directions/solutions for the town may be proposed.

Conservation has been working on an update to our 2003 Natural Resources Inventory (NRI). Mr. Steward has been leading the effort and has done the majority of the work on this project. He is working with NRPC. He anticipates a meeting with NRPC in December and another in January with the project to be finished in February. The new NRI could and should be incorporated into the Master Plan.

Mr. Ken Stanvick will lead a discussion about ways to make the Commission more accessible to residents and how to solicit more public input.
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Mr. Stanvick would like to find a way for residents to participate in the Commission without having to come to the meeting in person. He said there are residents that cannot attend public meetings because of medical issues or other factors. Many seniors have difficulty attending, but still may want to participate.

He suggested a dedicated phone line or email portal may provide a way for town residents to interact with the Commission.

The Commission is working on buying land. Residents may want to weigh in from a remote location. Mr. Stanvick was prompted to look into this because he was talking to an ex-member of the Commission who had to resign and cannot attend meetings because of medical issues. This person had a lot of good ideas and participated fully in our discussions. Mr. Greenwood said Zoom type participation is only open for board members.

Mr. Gagnon suggested we may be able to have an open forum like the Selectmen have at the beginning of meetings. This would give the public an opportunity to ask questions of the Commission or bring up concerns. The email form may work best. Members speculated everyone could see the email and we could discuss the email at our monthly meeting and answer questions town residents may submit. The Commission could specify a time during our meeting that we will answer email questions or comments. Ms. Mackay said we would need to be careful not to violate open meeting rules. We could not have discussions on email. All discussion must be in public. Other members agreed we would answer questions from the email in public session once per month during our regularly scheduled meeting.

Ms. Mackay will look into how we can add an open forum or email contact for town residents.

#### **MINUTES:**

Motion: (Hogan/Stanvick) to approve the minutes of September 8, 2021.

Vote: 5-0-1 in favor. Bowden abstained.

#### **WALK-IN ITEMS:**

Mr. Steward was recognized by the Commission for pulling together the deal on the Steck Farm property. Last night the Selectmen voted 4 in favor-1 opposed to approve the purchase of three easements on Steck Farm. The closing will be November 16, 2021 at 10 a.m.

Mr. Gagnon said the Selectmen voted to approve the purchase of the 85 acre parcel with 700 feet of frontage on Gumpas Pond. Mr. Gagnon hopes to close on this property soon.

#### **ADJOURNMENT:**

Motion: (Hogan/Bowden) to adjourn.

Vote: 6-0-0 in favor.

Adjourned at 8:47 p.m.

Respectfully submitted,  
Karen Mackay,  
Recording Secretary