

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

MEETING OF 06/08/22

Members Present:

Karen Mackay, Paul Gagnon,
Ken Stanvick, David Abare,
Christine Kamal (alt)

APPROVED 07/13/22

Members Absent:

Mike Gendreau, Lisa Loosigian,
Kara Kubit (alt), Al Steward,
Scott Bowden (alt)

Karen Mackay brought the meeting to order at 7:05. She welcomed Mr. David Abare as a new member and Christine Kamal as a new alternate member of the Commission. Ms. Mackay appointed Ms. Kamal as a voting member for tonight's meeting. Mr. Ken Stanvick took roll call at this meeting.

OLD BUSINESS:

Map 24 Lot 12-44-4	96 Mulberry Lane – Discussion of a buffer restoration plan designed by Fieldstone Land Consultants, PLLC. and Gove Environmental Services, Inc. Restoration is for impacts to the WCD for the installation of an in ground swimming pool, deck and fence. – Presentation by Christopher Guida of Fieldstone Land Consultants, PLLC and Luke Hurley of Gove Environmental Services, Inc. and Attorney Tom Hildreth of McLane Middleton
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Mr. Hildreth began by reviewing information discussed at our meetings on April 14, 2021 and November 10, 2021. The applicant is before the Commission tonight with a new plan and they are seeking a favorable recommendation from the Commission for the Zoning Board of Adjustment (ZBA). The applicant has applied for a variance from ZBA to complete the pool within the wetland conservation district (WCD).

The Accomando's acquired the property in 2006. They had trees cut down in the back yard to enlarge their back yard. Tom Wakefield, the code enforcement officer at the time, opened an enforcement action against the Accomando's and told them they could not cut down the trees. The Accomando's had a mitigation plan drawn up and had the trees replanted. Mr. Hildreth felt the Commission had made assumptions about what the Accomando's knew and understood about the WCD. He said they were innocent victims of the system and the pool company. The pool company had convinced the Accomando's that they knew how to navigate the process and the Accomando's should not worry about anything. The Accomando's trusted the pool company knew how to proceed. The family was an innocent victim in this case.

The pool was mistakenly installed in the WCD. The applicant was issued a stop work order by the town prior to the Conservation meeting on April 14, 2021. The Department of Environmental Services (DES)

was contacted for possible violations to the wetlands. DES investigated and found there were no violations and closed their case. The town still must decide how to deal with the WCD impact.

The Accomando's had a different attorney that was distracted and did not move the case forward. Mr. Hildreth was hired in April to pursue the case for the Accomando's. Mr. Hildreth has sent a demand letter to Aquatime Pools. The Accomando's would have preferred to have their pool closer to their home. They had asked Aquatime if they should put the pool on the side of the house because of the problems they had with the cutting of trees previously. Aquatime said a pool belongs in the back yard so they moved forward with that plan. Mr. Hildreth said the pool company pulled the permit for the pool and signed the application as the owner. The permit was issued with the specific instructions, written on the permit, that the pool and all associated structures were to be outside the WCD.

The new plan was developed over many months at a large expense to the land owner. Both Mr. Guida and Mr. Hurley have been working on this project. The applicant will ensure no further impact to the buffer if the pool remains in place. The current design will make the remaining buffer area better than it was before the pool work began with the variety and quantity of plants.

Mr. Hildreth also felt the Commission was wrong to conclude that if the Commission let this project move forward, then other town residents would violate the WCD then ask for forgiveness later. Mr. Hildreth assured the Commission no one would willingly go through this situation. The pool has sat unused, partially filled with green water. Their back yard has been completely unusable for the past two summers. They have spent tens of thousands of dollars to rectify this situation and the whole process has caused tension in their marriage.

Ms. Mackay apologized to Mr. Hildreth for not sending him a copy of the agenda. She had understood Mr. Guida and Mr. Hurley would be presenting the case.

Ms. Mackay told Mr. Hildreth he sounded harsh toward the Commission with his presentation. She could not allow Mr. Hildreth to think this board would be punitive to the Accomando's or any other applicant. At our meetings with the applicant there was no intent to punish the applicant. We are responsible for looking at the environmental conditions on a site and making them the best they can possibly be on any given project.

At previous meetings we accepted that the applicant did what was required as far as replacing trees at the time of the tree cutting incident. We have been satisfied with that action and resolution. The Accomando's acknowledged they made a mistake and then took corrective action. The problem is they knew the trees were in the WCD and had to be replaced but then allowed the pool company to take them down again. We do not expect the Accomando's to know everything about the WCD or any other regulation, but when you have action taken against you for the cutting of trees, then cut the trees again, that is a problem.

We are in full agreement that the pool company situated the pool in the wrong location. The location was not to the plan or the permit specifications. The permit specifically showed the pool outside the WCD. Aquatime said they measured wrong, but no one fixed the problem at the time. In addition, the pool size was enlarged and a different shape than in the permit.

This Commission is looking out for environmental conditions on sites being developed. We will flag if conditions on permits do not match the conditions on a site. We will bring up any issues we find, this is our function. We are not and do not punish any applicants.

Mr. Hildreth said there were 3 inspections by town officials and no one flagged that the pool was in the wrong location. This reinforced their belief that Aquatime knew what they were doing. Mr. Hildreth said the pool was the same size as on the permit.

The new plan has kept the underground infiltration drainage trench between the house and pool. The shed, which contains the pool equipment, filters, pumps, has been moved outside the WCD. Eight varieties of plants, totaling 124 plants and 2 types of seed mixes will be added to the WCD. The WCD will have dense plantings with 81% of the area being a vegetative mix and 19% for the pool and deck. This planting regime will improve the functions and values in the yard over the condition of the yard prior to the pool project. The pool shell has now been there for 18 months. Natural vegetation has taken root. There would be vastly more damage to the buffer if the pool was removed. The buffer would be more disturbed if the pool was jackhammered out.

Mr. Stanvick said the pool location mistake was partly the owner's responsibility. They knew they had taken down trees and had an enforcement action taken on them then they took the trees down again for the pool. The area should not have been disturbed again. Mr. Hildreth reiterated the Accomando's were the innocent victims of the pool company and believing the pool company knew what they were doing. Mr. Stanvick said the town inspectors were at the pool for specific purposes so it would not be unusual for them not to know the pool was in the wrong location.

Mr. Guida explained they designed the plan, got feedback from the Commission, and then reworked the plan. During the rework process, Mr. Hurley began consulting on the plan. Towns vary on things they want to see in buffer zones. Mr. Hurley has some familiarity with Pelham and proved to be a great help in designing the plan.

There is no erosion on the slope. The land sloped slightly toward the wetland when the project began. With fill and leveling, the land now slopes slightly toward the pool and house, but is still relatively flat. The plantings proposed for the buffer will be dense with a variety of plants that provide benefits to wildlife, birds and insects.

Removal of the pool and reconstruction would be major further disturbance to the buffer. This disturbance could add a few more years before the land was stable again. At present, the land is stable. There is no erosion and native plants have re-inhabited the slope and area around the pool. Mr. Hurley and Mr. Guida recommend leaving the pool in its current location and following this plan to restore the buffer. They assert the buffer will be better, fuller and more functional than before the pool project was started. The variety of plants of different sizes and the seed mixes will improve the buffer.

Originally, on the pool plan, the decking along the wetland side of the pool was 4 feet in width. They have reduced the width to about 2 feet with the fence directly along the deck. The backside of the pool will not be walkable. All construction related to the pool and the planting of vegetation will be done by hand. There is no further need to bring heavy equipment into the back yard.

Mr. Gagnon would like to see the fence represented on the plan. The fence will be outside the WCD except along the edge of the pool deck. There will be WCD placards on the fence. Mr. Gagnon would like this Buffer Restoration Plan recorded with the NH Registry of Deeds. He does not want to see this type of problem again on this property with a new owner. Mr. Gagnon was going to vote no on this project the last time, but this has been a tremendous improvement. Wetlands are very important to this Commission. We have protected almost 1,000 acres of prime wetlands in town.

Mr. Gagnon would like a letter signed by the Accomando's stating they will maintain the rain garden and underground pipes and maintain the buffer as described on this plan. The letter should be sent to Planning (Jenn Beauregard and John Lozowski) to be kept on file. In addition, he would like the plants to be monitored for 5 years for health rather than the 2 years on the plan. He would like a letter from Mr. Hurley or Mr. Guida to be sent to the Commission each year to be sure the plantings are thriving. The applicant agreed to these terms.

Mr. Hurley described the rain garden. The garden will be a 3 foot round depression filled with flowers and hearty grasses. The depression will have a gravel base with wood chips over the gravel then filled with special plants not just mowed grass. A pipe between the pool and the house will collect storm water and roof runoff and direct the water to the rain garden. This is an additional measure to collect runoff.

Mr. Hurley said they had surveyed the existing plants in the surrounding area. They decided to choose plants for the yard that were already growing in the yard. All plants will be native to New Hampshire and the Accomando's neighborhood. The species will be planted at random within the WCD. The plants have seeds, berries and flowers that will benefit wildlife. The vegetation will be spaced close enough to fill the space, but far enough apart not to choke each other out. The plants will naturally regenerate as they mature and drop seeds.

Mr. Abare said we should have builders alert new homeowners to the wetlands and WCD's. This knowledge could have avoided this situation.

Motion: (Gagnon/Stanvick) to approve the revised plan with the following conditions

- A) The rain garden and underground piping be maintained.
- B) The fence must be shown on the plan as Mr. Guida drew it on the plan.
- C) The plan is filed with the Registry of Deeds and referenced on the deed.
- D) The Accomando's write a letter to Planning saying they accept the responsibility for maintaining the buffer, rain garden and underground piping.
- E) The plants will be inspected once a year for 5 years with a letter sent to the Commission to make sure the plants are thriving.

Vote: 5-0-0 in favor.

NEW BUSINESS:

Map 18 Lot 12-16	Off Beechwood Road in Salem, NH – Proposed 15 lot subdivision which will extend into Salem, NH. The subdivision will have WCD impacts. – Presentation by Shayne Gendron of Edward N. Herbert Associates, Inc.
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This parcel is located along the Pelham, Salem and Methuen town line. Herbert Associates designed the Beechwood subdivision in Salem about 10-12 years ago. A right-of-way (ROW) was established into the Pelham lot at that time. The Pelham lot has sat vacant since that time. Mr. Gendron received a variance from the Zoning Board of Adjustment (ZBA) to develop a subdivision on this parcel with no access from Pelham. Mr. Gendron has been to Planning with a conceptual plan and then a preliminary application. They are now in the process of pursuing a final application. They have been to the Salem Planning Board because of the regional impact of the project and the access to the subdivision through Salem. Mr. Gendron has been working with Pelham and Salem as far as fire and police coverage for the subdivision. School busing will be another aspect to discuss and resolve. Busing has not been fully discussed yet because there is no set plan yet.

The roadway is proposed to be a private road so Pelham town trucks will not have to go to plow the road. The subdivision will be conventional with 15, 1+ acre lots with private wells and septic systems. The road will be 24 feet wide and curbed. The lot is 21.3 acres in size.

There will be three WCD impacts for grading on infiltration basins. Basin 1 has a 3,000 square foot (sf) impact. Basin 2 has a 3,899 sf impact and basin 3 has a 504 sf impact. This is a total WCD impact of 7,403 sf. Infiltration basins are often partially in the WCD because storm water needs to be released at the lowest possible spot on the landscape to drain toward the wetlands. Infiltration basins are the more desired form of treatment at this time. The road will be curbed with catch basins. Catch basins will capture large amount of solids. More solids are captured in a sediment forebay. Water will then enter the infiltration basin and slowly, over 24 hours, will absorb into the ground. The infiltration pond has a porous bottom and a grassy bottom. The basins will need to be maintained by mowing at least twice a year. The sediment forebay needs to be raked out periodically.

There will be a home owners association to manage the subdivision because there will be a private road. A maintenance schedule for the infiltration basins will be written up in the home owners' associations documents. The maintenance will be done in perpetuity. The town will not be responsible for maintaining this road or basins. The town will not be required to plow this road.

There is a large wetland to the west of this parcel. There is no way to cross this wetland to access this property. This large wetland is not related to any of the WCD impacts on this project. There is a potential subdivision project in Methuen that may provide access to this subdivision. That project is not off the ground yet so Mr. Gendron will provide a ROW, but there is no agreement that the ROW will ever be used.

All engineering work will be reviewed by the town engineer Steve Keach.

There is an old trolley line along the edge of the property and another trail that crosses part of the property. Mr. Gendron did not think there were any snowmobile trails on the property.

There are no vernal pools on the property. A permit has been submitted to Alteration of Terrain (AOT). This permit requires consultation with Natural Heritage Bureau (NHB), which has a database of threatened, endangered and species of concern in New Hampshire. Mr. Gendron has not received any information from NHB yet.

A site walk was scheduled for Wednesday, June 29, 2022 at 6:00 p.m.

MINUTES:

Motion: (Stanvick/Gagnon) to approve the minutes of May 11, 2022.

Vote: 3-0-2 in favor. Kamal and Abare abstained.

WALK-IN ITEMS:

Mr. Stanvick brought up the issue of safety on the trails after he had seen a report of a double murder on trails in Concord, NH last month. He took the action item to contact the Pelham Police and find out how often they monitor the trails. Captain Stephen Toom sent the following email back to Mr. Stanvick. Mr. Stanvick read this message into the record.

From: Stephen Toom <stoom@pelhampolice.com>
Sent: Monday, June 6, 2022 10:50 AM
To: Kenneth Stanvick Intertek <kenneth.stanvick@intertek.com>
Cc: Anne Perriello <aperriello@pelhampolice.com>; Joe Roark (T/A) <jroark@pelhamweb.com>
Subject: [External] Increased patrols for conservation trails

Kenneth,

Regarding increased patrols on conservation trails in Pelham I have spoken with the patrol sergeants. We will increase patrols to include walking of the trails. Unfortunately I can not give you exact number of hours or patrols that can be completed each week as manpower and call volume dictate our ability for increased patrols. Our police budget includes \$5,000.00 for overtime OHRV patrols. We will utilize that money by putting out separate dedicated patrols on the trails in town by OHRV and on foot so you'll see some officers out there from time to time.

I would suggest maybe putting up signs at all trail heads that indicate these trails are monitored by the Pelham Police Department. Those signs often work as a good deterrent. I would also spread the word through social media that the trails will be monitored and patrolled by the Pelham Police Department and encourage people to call the police (see something say something). If you have further questions or concerns let me know.

Respectfully,
Captain Stephen R. Toom
Pelham Police Department
14 Village Green
Pelham, NH 03076
(603) 635-2411 extension 3012

Ms. Kamal suggested cameras at parking areas could provide some coverage if the police could not monitor the areas at some times. Mr. Gagnon said new gates were installed on the 2 roads that were changed to class A trails. Cameras were placed to monitor the gates. The police paid for the cameras and Forestry paid for 12 months of service. The cameras are motion activated and can send a 6 second video clip to the police department. In the past, there has been a problem with dumping on the town lands. The cameras could be good to detect this behavior. Mr. Gagnon anticipates the cameras on the gates will be taken out by this winter and they may be able to be used in another location.

Our next meeting is scheduled for July 13, 2022.

ADJOURNMENT:

Motion: (Stanvick/Abare) to adjourn.

Vote: 5-0-0 in favor.

Adjourned at 9:15 p.m.

Respectfully submitted,
Karen Mackay,
Recording Secretary