

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

MEETING OF 01/13/21

Members Present: In-Person

Karen Mackay, Paul Gagnon,
Mike Gendreau, Dennis Hogan (alt)

Members Present: On Zoom

Ken Stanvick, Louise Delehanty,
Brandie Shydo, Lisa Loosigian

APPROVED 02/10/21

Members Absent:

Kara Kubit (alt),
Al Steward (alt)

Paul Gagnon brought the meeting to order at 7:00 p. m. This meeting is being conducted both in-person and on Zoom. Four members attended the meeting in-person and 4 members attended the meeting on Zoom. Both applicants attended in-person. Mr. Mark West attended the meeting on Zoom. Mr. Gagnon began by reading a lengthy introduction into the record which described how to conduct meetings according to the Covid-19 pandemic emergency. The emergency procedures have been authorized by Governor Sununu. See attachment # 1 for a copy of the meeting rules for right to know compliance during the pandemic. All votes during this meeting will be roll call votes. All members on Zoom are alone in the room in which they are participating in this meeting.

NEW BUSINESS:

Map 29 Lot 7-27-1	43 Atwood Road – Proposed addition to Crossroads Baptist Church. Addition to have impacts to the WCD – Presentation by Shayne Gendron of Edward N. Herbert Associates.
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Mr. Gendron is proposing to add two portable classrooms to the Crossroads Baptist Church. This proposal has not been submitted to Planning or Zoning yet. He needs a variance from Zoning prior to going to Planning, for building in the wetland conservation district (WCD). One modular classroom was permitted in 2019. The church would like to add two more classrooms to meet the needs of the growing school.

Mr. Gendron plans to reconfigure the drainage structures to accommodate the new school buildings. The detention pond is currently long and thin and runs from the east side of the portable classroom toward the rear/side lot line. The proposal is to move the detention pond toward the rear/side lot line and make the pond wider. Mr. Gendron would like to reduce the size of the pond because the smaller size is all that is required based on the calculations. The detention system must meet the requirements for the 25 year storm, currently the system can handle a 50 year storm event. Ms. Mackay would like the pond to be at least the same size as the current pond. She felt it would not make sense to reduce the size of the pond while adding more impervious surfaces to the lot. The

stream behind the lot has caused serious flooding in the past. During the Mother's Day floods the back of the church lot flooded. Water poured across Dutton Road and flooded out the home across the street from the church.

There will be no wetland impacts on this project. There will be about 1,368 square feet (sf) of WCD impact for the new classrooms and 1,152 sf for the new detention area. Ms. Mackay asked if the new classroom could go up instead of being placed beside the current classroom. Mr. Gendron said these were modular buildings and had no permanent foundation and could not go on top of each other. Mr. Stanvick asked if the new space could be built as a permanent structure so as not to cause disturbance to the WCD. Mr. Gendron said permanent brick and mortar buildings cost much more. Many schools use portable buildings for classrooms.

The area proposed for the classroom is partially within the WCD, but the area is not functioning as a WCD. The area is all grass and is mowed regularly. Mr. Gendron would like our opinions and recommendations about how to make this project better prior to taking the case to Zoning. Our recommendations can help him move the project forward to meet the needs of the property owner.

Ms. Shydo asked if there was space behind the church to place the new buildings so as to avoid the WCD. She also asked if one of the classrooms could be moved toward the parking lot if the rear of the building did not work. She suggested plantings be added behind the proposed buildings to help recreate a natural WCD.

Mr. Gendreau asked why three classrooms were not asked for when the project was presented in 2019. He asked about the growth of the membership and/or the growth of attendance at the school. Mr. Gendron did not know the exact situation related to the membership. He assumes that the church is asking for space they need. Mr. Gendreau asked about fertilizers on the property. Mr. Gendron was not sure what was happening currently, but he is willing to add a note to the plan that limits fertilizers in the WCD. Ms. Shydo does not know about enrollment in this school, but the school her children attend has had an increase in enrollment this year. She speculated parents are looking for options because of the pandemic.

Mr. Stanvick asked if the classrooms could be reconfigured to have no impact to the WCD. Mr. Gendron said the new classrooms will be placed flush against the existing building. The WCD does not function as a WCD and has not for many years. The area has been mowed for as long as anyone can remember. Mr. Stanvick feels that because the WCD has been disturbed does not mean the WCD should be impacted further and remain disturbed. The initial disruption should not be used as a rationale to continue to violate the WCD. The WCD on this lot could be improved if the grass was no longer mowed and vegetation was allowed to regrow.

Mr. Gagnon agreed that because the WCD has been destroyed in the past there is no excuse to further build within the WCD. The first classroom is outside the WCD. The second proposed building will have a small corner of the building in the WCD. Mr. Gagnon could maybe overlook the corner in the WCD if the WCD could be revegetated. The third building is about half in the WCD. Mr. Gagnon asked if the classrooms could be placed over by the leach bed on the west side of the church. Mr. Gendron said there was no space near the leach bed for the buildings. He thought he might be able to move the buildings toward the parking lot.

Mr. Stanvick proposed a site visit. Mr. Gagnon took his comment as a motion for a site walk.

Motion: (Stanvick/ Mackay) for a site walk
Vote: 6-1 in favor. Gendreau opposed.

The site walk will be Saturday, January 16, 2021 at 9 a.m. at the Crossroads Baptist Church.

Map 6 Lot 4-175-1	32 A&B Valley Hill Road – Proposed development – Presentation by Doug MacGuire of The Dubay Group, Bob Peterson, developer
Map 6 Lot 4-175-1	32 A&B Valley Hill Road – Environmental Assessment of the property – Mark West of West Environmental.

Mr. Doug MacGuire presented this case. Mr. Mark West presented his report about this parcel immediately following Mr. MacGuire's presentation. Mr. Gagnon wanted to hear Mr. West's assessment prior to requesting any vote from the Commission. Mr. MacGuire and Mr. Peterson, the land developer, objected to Mr. West presenting in an intermingled fashion with their case. Mr. Gagnon felt the Commission needed to know and understand the damage done to wetlands and possible vernal pools on the site. In addition, NH Department of Environmental Services (DES) sent a letter today to both the applicant and the Commission, stating the applicant's plan for mitigation on the site is not acceptable.

This case is considered a new case because there was a substantial change in the plan. A plan was approved in 2018 for a single duplex on this parcel. The parcel was cleared of vegetation far beyond what was required for that plan. The applicant came back to the town, but not Conservation, with a new plan. Environmental impacts were discovered on the project and the Commission hired Mr. West to evaluate the parcel. Mr. West wrote up a report describing the environmental impacts and submitted it to the state. Work on the parcel was halted. At this time, the applicant is working to solve the problems on the site and begin developing the parcel.

This lot has 50 feet of frontage on Valley Hill Road. The shape of the lot is unusual as the 50 foot frontage is long and narrow several hundred feet into the lot until the lot opens up to a large 11 acre lot. There is not enough frontage to have a building lot without a variance from Zoning, which the applicant received in 2018. There is a small stream that goes through the 50 foot narrow area of the lot. The stream comes from under Brown Avenue and drains to the north into a large prime wetland. This wetland was designated many years ago and is protected as a prime wetland, but does not have the 100 foot buffer protection. A town road into the property would provide the required frontage for the lot to be subdivided.

The lot was approved for one duplex in 2018. Commission members reviewed the expedited dredge and fill wetland permit application. The Commission did not conduct a site walk for this project. The dredge and fill was to permit a driveway crossing over a small stream. The Commission signed the permit and the state approved the permit. The applicant pulled a building permit to move forward with the project. The applicant started driveway construction, cleared the lot and began to move forward. At that time, the applicant realized the costs associated with the driveway access. The driveway was to be 300+ feet long before it reached the open up lot space. The cost of a town road to enter the property was not that much more expensive so the applicant went back to the town with a 3 lot subdivision with the intent to place 3 duplexes on the lot. The new plan met the criteria to have 2 acre lots for each duplex. Mr. Gagnon does not accept that the applicant did not figure the

cost of the driveway. He feels the Commission is being played. Mr. Peterson has had a lot of building experience. He stated he had worked in town for 40 years.

The project went to Planning. At that time, the applicant was questioned about some possible wetlands on the site that may have been in the proposed construction area. The lot was then surveyed and reviewed by Bruce Gilday a wetland scientist. He walked the whole site. He noticed the depressions in question and investigated them. He determined they were not jurisdictional wetlands though they had poorly drained soils. The town hired Mark West, our wetland scientist, to review the areas in question. Mr. West found evidence these depressions were vernal pools. The state became involved because there were two wetland scientists with conflicting opinions about these depressions.

After months of waiting and delay, Mr. MacGuire and Mr. Peterson met with the state in October with the intention of getting guidance on how to proceed. Mr. MacGuire submitted a plan to the state with 3 duplex lots. He took Mr. West's comments into consideration and suggested doing some type of mitigation for the damage to the site, though they dispute the depressions were vernal pools. The applicant had a productive meeting with the state, but then did not hear back from them. Today they received a letter from the state that said the state would not accept the applicant's mitigation plan for the site. They want the applicant to take a harder look at alternatives. Mr. MacGuire has not spoken to the state since receiving the letter. The Commission received the same letter this morning and we have not spoken to the state either.

Mr. MacGuire spent some time to put together a reduced and minimized plan with 2 duplexes instead of 3 and 500 linear feet of road instead of 900 linear feet of road. This would be 2 lots on 12 acres which Mr. MacGuire felt was reasonable. The lots would be oversized with significant upland. Mr. Gagnon said the plan is not reducing impacts from 3 down to 2 it is increasing impacts from 1 up to 2 as the last time we saw this plan there was 1 duplex.

Mr. MacGuire stated that all 4 depressions were under 2,000 sf and as such were not jurisdictional. Mr. Gagnon disputed the size asserted by Mr. MacGuire. Mr. Gagnon said the two small wetlands were under 2,000 sf, but the two larger wetlands were over 2,000 sf as described by Mr. West. Mr. MacGuire is looking for feedback for the Commission. He does not necessarily see value to reconstructing the depression in their exact locations. He would like to possibly add the smaller wetlands to the larger ones and make a mitigation area that is of higher value. He would like to move the 2 proposed duplexes in such a way that the restored wetlands are not in the back yards of the houses. He could then put a restrictive covenant on the plans to make sure the restored wetland area naturalizes. Mr. MacGuire has proposed a mitigation area close to the large prime wetland to the north of the property.

Mr. Gagnon would not allow discussion on the plan that Mr. MacGuire brought tonight. Mr. Gagnon referenced the letter from the state. Given that the state said the plan presented by the applicant was not acceptable so there is no way this Commission will have a detailed discussion about a set of plans that is unacceptable to the state. Discussion about detentions systems, road size, distance from wetlands and the size of mitigation is premature.

Mr. Gagnon asked Mr. West to present his findings from the site to the public and the Commission. The Commission is unwilling to offer any direction on this case prior to Mr. West presenting his

findings. Additionally, the Commission must hear from the state prior to offering our opinions on the case.

Mr. West conducted an investigation of the property based on a request by the Commission. His main findings were as follows.

- 1) The wetlands were not properly delineated on the site.
- 2) Vernal pools were not properly documented on the site.
- 3) Four vernal pools were filled on the site without NHDES permits.
- 4) Two of the pools were over 2,000 sf.
- 5) There has been no response from the applicant disputing our report submitted June 5, 2020. Since the original letter from Mr. Gilday, there has been no response from him to Mr. West's report.

Mr. West explained the rules in wetland delineation from the federal manual. He explained NHDES rules related to vernal pools. He referenced Mr. Gilday's report and explained how vernal pools can be determined given certain circumstances. Mr. Gilday did his investigation in late July and October which is not the time to investigate for vernal pools. Vernal pool investigations must be done during the breeding season which is April-May. Mr. West showed pictures of hydric soils in filled in areas, drainage overflow areas, salamander egg masses in the remaining section of one of the suspected vernal pools. Mr. West found 19 egg masses in a small section of the remaining pool.

Mr. MacGuire interrupted Mr. West's presentation. Mr. MacGuire said he had already seen and read the report. He felt it would be more productive if we moved on to recommendations from the Commission. Mr. Hogan said he had not seen this presentation and would like to hear what Mr. West had to say. Mr. MacGuire questioned that members had not seen this report that was done almost a year ago. Mr. Gagnon said members of the public have not seen this and members of the Planning Board were watching our meeting and haven't seen this report.

At this point, the exchanges at our meeting become adversarial.

Mr. Peterson said they were not disputing they had depressions on the land. He was cleared by his soil scientist. He did not know Mr. West and did not agree with his findings. He wanted the Commission to discuss Mr. West's report later. He wanted direction from the Commission now. He stated his time was important to him and it was time to go home.

Mr. Gagnon told Mr. Peterson he did not have to stay, but Mr. West would be finishing his presentation because the information he has is important to the Commission. Mr. West is an advisor just as Mr. Keach, the town engineer, is an advisor to the Planning Board. Mr. Keach's advice is used by Planning to make good decisions just as Mr. West's advice is valued by us so we can make good decisions.

Mr. Peterson said he would tell Mr. Keach to go away if he didn't agree with him. Mr. Gagnon said that he might tell Mr. Keach to go away, but Planning would not send him away. Mr. Gagnon told Mr. Peterson he could leave if he wanted, but Mr. West would be finishing his presentation and we will comment after that point. Mr. MacGuire asked if Mr. West was a separate agenda item. He wanted to discuss the merits of this application with regards to the depressions and how we will deal with them moving forward. Again, Mr. Gagnon stated we would hear Mr. West and that will be the basis of our comments.

Mr. Peterson objected again to Mr. West's assessment. He felt Mr. West's opinion differed from his wetland scientist. Mr. Peterson questioned how the Commission could hire their own scientist, go on his property and make his own assumptions. Mr. Gagnon told Mr. Peterson that he signed a document with Planning that authorized the Planning Board and its agents to access the land and review the plan and conduct inspections to make sure all town ordinances and regulations were followed. The town has ordinances and regulations that prohibit the destruction of wetlands. Mr. Peterson said Mr. Gagnon had his opinion, but he had the authority of his soil scientist. Mr. Gagnon said our wetland scientist has shown that wetlands were destroyed. The wetlands need to be restored exactly where they were with the exact size and elevation. He also stated that mitigation above and beyond simple restoration must be done. It needs to be a 1 to 1.5 rather than a simple 1 to 1.

This back and forth continued for some time with Mr. Gagnon insisting the Commission would listen and respect the findings of Mr. West. Mr. Peterson made some insulting comments questioning Mr. West's qualifications and suggested he cherry picked aerial photos that showed conditions as he wanted and didn't pick other years that showed no water in the pools. In addition, Mr. Peterson insulted the Commission by stating that Mr. Gagnon had "brainwashed" fellow Commission members.

Mr. Stanvick at one point interrupted these exchanges. He stated that this meeting was breaking down into a conversation that he found unacceptable. He said Mr. West was presenting what he found on the site and now it seems like we are attacking Mr. West rather than listening to what he has to say and understanding the issues.

Mr. West continued his presentation. He showed aerial photos of water in the pools from April to May on all years of the photos he reviewed. Some years, water was visible in early April and some years, water was visible into late May. The pools must be inundated for 2 weeks during the growing season. These have water for much longer than 2 weeks. Mr. West showed multiple photos from different years. He showed LIDAR maps that showed similar features. Mr. West showed the applicant's own maps with the topography showing the depression areas located exactly as shown on the aerial photos. Mr. West determined the two largest wetlands were 3,900 sf and 2,700 sf. Mr. West was required to look at aerial photos for 5 different years to document areas were inundated with water. The aerial photos he looked at were all taken in the spring as required for this type of investigation.

Mr. Gagnon thought our decision was going to come down to what the state approves. This Commission is not going to be more lenient than the state. If anything, we would ask for more than the state. He said the applicant keeps talking about mitigation and how to put 2 duplexes instead of 3 on the lot and that we should feel good about the reduced impact. Mr. Gagnon feels the wetlands need to be restored to begin to fix this problem.

Mr. MacGuire stated he has a more accurate sizing of the pools because he has had an on the ground survey of the site done in 2018 and some points of the wetland flagged. The largest pool may be 2,000 sf. The next largest is less and the 2 others are much smaller. He will recreate these pools in the exact location if we insist, but he feels there could be a better location for them, farther from the construction area. This would benefit the pools as they would not be within the yards of the houses. They could be better protected and less impacted if they were reconstructed in a more isolated area. He would like to find a solution that satisfies the Commission, the state and his client.

Mr. Gagnon understands Mr. MacGuire's predicament; however, the Commission has the obligation to protect natural resources in the town. We cannot set a precedent of having a developer come into a site, destroy wetlands then relocate them out of the way of the construction.

Mr. West did not realize these wetlands were flagged. He asked Mr. MacGuire if these flagged wetlands were shown on a plan to the town. Mr. MacGuire said the topographic maps had been shown to the town, but the flagged wetlands were not on the plan. Mr. West commented that it was unusual for a wetland scientist to flag wetlands, have them surveyed then not show them on a plan because the scientist changed their mind to think they were not wetlands. Mr. West stated that he was not sure why Mr. Gilday was not present tonight and why he has not filed a report to say he disagrees with Mr. West's report and his aerial photo interpretations.

Mr. Peterson said Mr. Gilday had in his report that he flagged sites to recheck them. The flags were to be able to find them again on the site. Mr. Gilday went back to the site with Mr. Peterson and approved the construction. Mr. Peterson accused Mr. West of not reading the report carefully enough.

Mr. MacGuire said he understands the Commission's position. He is trying to work with us and the state and his client to find some common ground. He is not sure all 4 pools were valuable vernal pools, but he is willing to do some type of mitigation. Again he stated he is looking for our opinions.

Mr. Gagnon again came back to the fact that the applicant does not have the approval from the state for their restoration plan. Mr. Gagnon's position is we will give our input when you get approvals from the state. This is all in dispute because we have two wetland scientists with differing opinions. Had the applicant not destroyed wetlands we could have gone to the site and proved there were vernal pools or not.

Mr. Gagnon sympathizes with Mr. MacGuire on the slow pace of the state. Mr. Gagnon has been trying to get some prime wetlands designated and the state has been dragging its feet. Mr. Gagnon thought the best idea is to have the applicant work out their issues with the state then come back to us when they are ready. Mr. Gendreau and Mr. Stanvick agreed that the state would need to weigh in prior to our comment.

Ms. Delehanty asked if anyone did an endangered animal survey and asked if these wetland animals often return to the same pools to lay eggs. Mr. West did not do an endangered animal survey. There is a prime wetland that abuts this land. He said amphibians often return to lay their eggs. Mr. Peterson stated you can't say for certain that the pools were vernal pools. He has seen eggs in random puddles. He challenged Mr. West to admit this fact. Mr. West said the amphibians do sometimes lay eggs in newly formed depressions with water.

Ms. Mackay acknowledged tonight's meeting was a bit rocky, but invited Mr. MacGuire back when he is ready. Mr. Peterson left the room while saying "let a court decide."

Mr. West said he had called Mr. Gilday and said he was willing to talk about both reports and would talk anytime. Mr. MacGuire did not know Mr. West had reached out to Mr. Gilday. Mr. Hogan thought the two wetland scientists talking may be a good first step.

MINUTES:

Motion: (Shydo/Stanvick) to approve the minutes of December 9, 2020.

Vote: 7-0 in favor. Roll call vote.

WALK-IN ITEMS:

A new open space ordinance has been written and approved by Planning and will be going on the warrant in March. Mr. Gagnon would like to promote this new ordinance to get the voters to approve it. Mr. Gagnon asked for volunteers to promote this new ordinance. He cannot lead these efforts as he has too many projects at this time. Ms. Loosigian, Ms. Shydo and Mr. Gendreau volunteered to promote this to the voters. Mr. Stanvick asked if we could discuss this ordinance at our next meeting and then vote on it. He felt that reviewing and officially supporting this ordinance would help voters make a decision about it. Mr. Gagnon will send the members the most recent version of the ordinance and will highlight the changes from the Conservation Subdivision Ordinance that was voted out last year.

Mr. Gagnon brought up updating our Natural Resources Inventory (NRI) that Mr. Steward has suggested recently. Mr. Steward has volunteered to work on this project and would like other members to help if they are able. Our NRI was written in 2003 and is in need of updating. Mr. Gagnon suggested Nashua Regional Planning Commission (NRPC) could help us. Mr. Gagnon will be working on a rewrite of the WCD ordinance this year and cannot work on this project.

Ms. Delehanty asked about an easement on Peaceful Drive along the cemetery wall for a pedestrian access to Peabody Town Forest. She thought a public access was approved, but it is not clear if the access is only for cemetery personnel. The land owner of the lot adjacent to the cemetery has posted No Trespassing signs which will cut off the easement. Ms. Mackay does not think this was an easement for town residents. The easement was for cemetery workers only. The easement is to make sure there is no digging along the stone wall of the cemetery because on old cemeteries all the bodies are not always within the walls.

ADJOURNMENT:

Motion: (Gendreau/Shydo) to adjourn

Vote: 7-0 in favor. Roll call vote.

Adjourned 9:04 p.m.

Respectfully submitted,
Karen Mackay,
Recording Secretary

Attachment #1

A Checklist To Ensure Meetings Are Compliant With The Right-to-Know Law During The State Of Emergency

1/13/2021 Conservation Commission Meeting

As Chair of the Conservation Commission, I find that due to the State of Emergency declared by the Governor as a result of the COVID-19 pandemic and in accordance with the Governor's Emergency Order #12 pursuant to Executive Order 2020-04, this public body is authorized to meet electronically. Please note that the meeting will be held in Sherburne Hall should anyone choose to attend in person. However, participants may also participate remotely which was authorized pursuant to the Governor's Emergency Order. In accordance with the Emergency Order, I am confirming that we are:

a) Providing public access to the meeting by telephone, with additional access possibilities by video or other electronic means:

We are utilizing Zoom for this electronic meeting.¹ All members of the Commission have the ability to communicate contemporaneously during this meeting through this platform, and the public has access to contemporaneously listen and participate in this meeting by dialing the following phone number:

646-876-9923

or by entering this website address: www.zoom.us selecting **Join Meeting** and entering the meeting ID and password listed below

Meeting ID# 870 5000 7142 Passcode 036771

Please provide your first and last name to the attendant.

b) Providing public notice of the necessary information for accessing the meeting:

We previously gave notice to the public of the necessary information for accessing the meeting, including how to access the meeting using Zoom or telephonically. Instructions have also been provided on the Town website: www.pelhamweb.com on the Conservation Commission page.

c) Providing a mechanism for the public to alert the public body during the meeting if there are problems with access:

If anybody has a problem, please call 603-508-3089 or email at: jgreenwood@pelhamweb.com.

d) Adjourning the meeting if the public is unable to access the meeting:

In the event the public is unable to access the meeting, the meeting will be adjourned and rescheduled.

Please note that **all votes** that are taken during this meeting shall be done by **roll call vote**.

Let's start the meeting by taking a roll call attendance. When each member states their presence, please also state whether there is anyone in the room with you during this meeting, which is required under the Right-to-Know law.

¹ Many public bodies are utilizing video teleconferencing technology, such as Zoom, to ensure the electronic meeting comply with the Right-to-Know law and any applicable due process requirements. In certain circumstances, a regular business meeting of a public body may be conducted utilizing audio-only technology. If you have any questions about the appropriateness of the technology utilized to conduct your meeting, please consult your agency counsel or the Attorney General's Office.