

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

MEETING OF 02/10/21

Members Present: In-Person

Karen Mackay, Paul Gagnon,
Mike Gendreau, Dennis Hogan (alt),
Brandie Shydo, Lisa Loosigian,
Al Steward (alt)

Members Present: On Zoom

Ken Stanvick, Louise Delehanty

APPROVED 03/10/21

Members Absent:

Kara Kubit (alt)

Paul Gagnon brought the meeting to order at 7:00 p. m. This meeting is being conducted both in-person and on Zoom. Seven members attended the meeting in-person and 2 members attended the meeting on Zoom. The applicant attended in-person. 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. The members on Zoom are alone in the room in which they are participating in this meeting.

NEW BUSINESS:

Map 31 Lot 11-278	38 Woekel Circle – Review of an Expedited Minimum Impact Wetlands Permit Application for the removal of a permanent docking structure on Little Island Pond – Presentation by Kathy Woekel.
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Mr. Gagnon explained that docks are managed by the state. This application is expedited which means the process can move faster through the state regulatory process if the Commission approves this application.

Ms. Woekel began by showing the Commission an overview map of town and the tax map with the parcel. Both maps indicated the location of the lot which is on the east side of Little Island Pond. She showed a color photo of the dock with the property line marker just to the north of the dock. The photo showed how the dock has shifted over the years and now is right along the property line or possibly in front of the neighboring property. This is a permanent dock and has been in this location for many years. Ice has caused the shift in the dock location over the years.

The state informed the applicant that the dock is ‘grandfathered’ which means the applicant can replace the damaged dock for a new dock in the same location. The ‘grandfathered’ status lasts only a short time. If the dock is not rebuilt in the same location or if the property is sold to a new owner, than the

‘grandfathered’ status will not apply and anyone wanting a dock in that location would need to apply for a new permit with the state. The applicant owns the adjacent property at 40 Woekel Circle and has a dock on that property so this dock is no longer needed. The applicant will not be replacing this dock.

The dock will be mechanically removed, the applicant presumes with heavy equipment. The dock will be lifted from its location as opposed to dragged out of the water. Ms. Mackay said she did not want heavy equipment in the pond or to have this equipment drag the dock from the pond so as to not dredge/damage the bottom of the pond. The dock could be removed by hand, but the owners will not be undertaking that project. They will be hiring a contractor to remove the dock. They have not received a formal estimate for the cost for removal yet because they must pay disposal costs and they are not sure the exact amount of materials under the dock. Ms. Woekel also wanted to make sure she had state approval prior to engaging the contractor. She has chosen the contractor and has assured the Commission that the person has the best interest of the pond in mind. There is no indication the state will inspect the site after the dock removal.

There is a metal crib under the dock which is used to support the structure. Mr. Gagnon had thought the crib was made of wood and had been full of rocks. Ms. Woekel was not sure of the number of rocks in the crib. Ms. Woekel showed pictures of the dock with a large swimming area to the south of the dock. She had not thought about the rocks under the dock or whether they would try to move the rocks after the dock was removed from the site. Mr. Gagnon suggested the rocks within the crib should stay in the pond.

Motion: (Mackay/Delehanty) the Commission should sign the expedited permit application for the removal of a permanent dock without replacing the dock.

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

Mr. Gagnon signed the five copies of the permit application and gave the applicant two copies.

Discussion of a new proposed zoning ordinance: Residential Open Space Subdivision – The purpose of this ordinance is to “promote the conservation of undeveloped land and to limit the length of new roads to minimize the impact of their future and ongoing maintenance.” – Presentation by Paul Gagnon
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Mr. Gagnon began the discussion by giving a brief summary of the Conservation Subdivision ordinance that was voted out last year at town meeting. The Conservation Subdivision ordinance was on the books for several years. Last year there was a citizens petition to remove the ordinance from the regulations and it passed by 51 votes. The final vote was 1,503 to 1,452.

The new proposed Residential Open Space Subdivision (Open Space) ordinance is very different and dramatically improved from the Conservation Subdivision ordinance. Mr. Gagnon was part of a subcommittee to rewrite the regulations. The subcommittee had about 10 meetings to discuss the ordinance.

Mr. Gagnon summarized the differences between the Conservation Subdivision ordinance and the new Open Space ordinance in order of significance (see table 1). The largest change is with the density offset or bonus lots. The Conservation Subdivision ordinance allowed Planning to give density offsets or bonus lots up to 20% of the number of lots that would be approved for a conventional subdivision. The Open Space ordinance has eliminated any bonus lots. There will be no more houses than the

conventional subdivision. Mr. Gagnon thinks residents may have been upset with the Conservation Subdivision regulations because developers could build more houses than conventional subdivision regulations allowed.

The Conservation Subdivision had no minimum lot sizes. Lots could be down to 0.4 acres in size. This is less than one-half an acre which meant two houses could be placed on a 1 acre (43,560 sf) lot where the conventional subdivision could only have one house. This provision allowed for a much denser, more noticeable grouping of houses. The Open Space ordinance requires 0.7 of an acre (30,000 sf) as a minimum size lot for building. This size is just under three-quarters of an acre and would not be noticeably different than a 1 acre lot.

The Conservation Subdivision had no minimum feet of frontage for a buildable lot. The Open Space Subdivision requires 125 feet of frontage for a buildable lot. The conventional subdivision requires 200 feet of frontage. The Open Space development will not require as much as a conventional subdivision, but will be substantially more than the Conservation Subdivision.

The Open Space ordinance must preserve 40 percent of the lot in open space of which 50 percent must be uplands. There was no requirement for the developer to conserve upland open space in the Conservation Subdivision. One of the complaints about the Conservation Subdivision was that the developers could give the town wetlands which are already protected land as nothing can be built on wetlands. Conservation thinks wetlands are very valuable and need to be protected. Conservation also wants to protect uplands that surround wetlands. The Conservation Subdivision could use up to 50 percent of the open space for storm water treatment structures. The Open Space ordinance only allows 10 percent of the open space to be used for storm water treatment. A 100 acre parcel could be developed under the Open Space ordinance. Forty acres must be preserved; half of which must be uplands. Of the 40 acres preserved, 4 acres could be used for storm water management and 36 must be left untouched open space.

Mr. Gagnon credited Mr. Jim Bergeron (Planning Board) and Mr. Kevin Cote (Selectman) for the section of the ordinance that specifies that a lot cannot be cleared of forest then developed any time within the next 5 years. This is to prevent a developer from buying a lot, clearing the lot, then coming to Planning the next year and trying to develop the parcel with not a stick of wood on the property to buffer neighboring homes from a new subdivision or any trees on the open space. Any developer clearing a lot would need to wait 5 years to go through the subdivision process. The specific language copied from the Open Space ordinance to follow.

307-102 Lot clearing

To limit unnecessary tree cutting and to prevent clear-cutting and its negative impacts to abutting properties, no Open Space subdivision application shall be considered by the Planning Board within 5 years of any cutting operation that required an intent-to-cut approved by the Pelham Board of Selectmen. The intent of this section is not to regulate timber harvesting operations, rather to insure there are enough remaining trees to contribute to a well-designed subdivision.

The Open Space Subdivision specifies the Commission must review all yield plans and all Open Space Subdivisions then provide recommendations to Planning. The yield plan determines the number of lots that may be built on a subdivided lot and is directly related to the number of lots that may be built in a

conventional subdivision. The Conservation Subdivision did not require the Commission to review yield plans or subdivisions if there were no wetland impacts. This led to one case that the yield plan showed houses in the prime wetland buffer. This was not realized by anyone reviewing the plan and was allowed to move forward. The Commission would have noticed these lots were not valid lots and the yield plan would have had fewer houses allowed.

All mentions of workforce housing have been removed from the ordinance. Mr. Gagnon believes there is a need for workforce housing, but it does not belong in the Open Space ordinance.

Table 1: Summary of differences between the new proposed ordinance, Residential Open Space Subdivision and the old ordinance, Conservation Subdivision.

Residential Open Space Subdivision New Proposed Ordinance	Conservation Subdivision Old Ordinance – Voted Out 2020 Town Meeting
Density offset (bonus) lots eliminated	Density offset (bonus) lots up to 20%
Minimum lot size 0.7 of an acre	No minimum lot sizes
Minimum frontage 125 feet	No minimum frontage
40% of lot preserved; 50% must be upland	No upland requirement for preserved land
Up to 10% open space used for storm water treatment	Up to 50% open space used for storm water treatment
No lot clearing within 5 years of development	No limit on lot clearing
CC must review all yield & open space plans	No review of yield or conservation plans unless there are wetland impacts
No workforce housing component	Workforce housing included

In a conventional subdivision, all square footage of the lots are owned privately. Buffers and wetlands are privately owned and subject to encroachment as resident expand their yards, add pools and sheds. The Open Space Subdivision allows for a large portion of the parent lot to be preserved. Buffers and wetlands can largely be within the open space of the development. The open space areas are owned by the home owners association (HOA) or are owned by the town if the land is donated.

Mr. Gagnon fully supports the new Open Space Subdivision. Planning has voted to support this new ordinance and it will be on the warrant on March 9, 2021. Mr. Gagnon felt the Commission should give our opinion and vote on the ordinance. He said a lot of developers wanted to use the Conservation Subdivision and presumes they will want to use the Open Space Subdivision. Town officials assumed developers would need incentives to build Conservation Subdivisions which is the reason the bonus lots were offered. Developers want to build these subdivisions even without the bonus lots because they cost less to construct. Residents mistakenly thought some of the developments in town were Conservation Subdivisions, such as Nashua Road, but they were wrong.

Ms. Shydo commented that this new ordinance could protect land owners also because much of the buffers and wetlands will be within the open space. Land owners would be freer to use their own land in a manner they wanted because they would not be impacting buffers and wetlands as these features would be in the open space. Presently, some land owners have wanted to do something with their land and have found out that they cannot because they are in buffers or too close to wetlands.

Mr. Steward said he is in favor of anything that encourages open space in town. He asked if the new ordinance encourages developers to give the open space to the town. Mr. Gagnon said no. The ordinance was written in a manner so as not to make it look as though the town was 'taking' land. Developers are free to offer land to the town, but that is in no way suggested or required in the ordinance. If developers offer land to the town, then the Commission must give our opinion about the value of the land and recommend if the Selectmen should accept the land. The ordinance makes sure there is no pressure on land owners or developers to give land to the town.

Ms. Delehanty asked about duplexes in the Open Space ordinance. Only single family homes can be built in the Open Space Subdivision.

Mr. Gendreau asked about trail connectivity. The developer is required to show existing trails on the yield plan. The trails must be maintained. They can be moved onto the open space, but the connection must be maintained by the developer. The trails will have easements if the land is owned by an HOA. The HOA cannot stop residents of town from using the trail. If land is given to the town, there will be no need for a trail easement as the town would own the land.

Ms. Loosigian thanked Mr. Gagnon and other members of town that worked on this ordinance. The reimagining of the regulation regarding open space will help address some of the issues town residents had in the Conservation Subdivision. She has a friend in Portsmouth that is interested in learning about open space subdivisions. Mr. Gagnon said the new ordinance is public information that she can access. Mr. Gendreau felt the largest concern from town residents was the size of the lots. The minimum size requirements in the new ordinance should address those concerns.

Planning has approved this ordinance and it will be on the warrant in March. No further approvals are needed for this to be voted on by the town residents. The Commission should vote on this and if we vote in the affirmative then we could encourage residents to vote for this ordinance. This could be added to the Facebook page.

Motion: (Loosigian/Gendreau) to recommend this newly formed Residential Open Space Subdivision ordinance.

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

MINUTES:

Motion: (Stanvick/Gendreau) to approve the minutes of January 13, 2021.

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

A short discussion took place about adjustments to the minutes. Ms. Loosigian suggested the minutes needed clarification in 3 places. Members decide the wording changes would not change the information. Members agreed to vote on the minutes. Ms. Mackay agreed to go back to the specified areas and reword the sentences to be clearer.

WALK-IN ITEMS:

Ms. Loosigian commented on the last site walk the Commission conducted. The applicant said they didn't like the tone of the meeting and felt like they were being attacked. Ms. Loosigian agreed the tone seemed aggressive. She said since she has been on the Commission we have enjoyed cooperation with applicants and other town boards. This is achieved because of our reasonable and measured

responses to plans that are presented. The Commission at times needs to point out problems with a plan or conditions on a lot, but we work hard to advise the applicant. The Commission should go into a meeting with the assumption that the applicant is developing their lot in good faith and will cooperate with us and respect the advice we give. Ms. Loosigian has felt this way at some of our meetings too. She stressed that we must act in a professional manner, let an applicant finish their presentation and assume the applicant will work with us to make the best possible outcome of a project.

Ms. Dena Hoffman introduced herself to the Commission. She is the new Environmental Regulation Compliance Specialist for Pelham. Ms. Hoffman was hired in October. She attended University of New Hampshire and graduated with an environmental science degree. She will present to the Commission next month regarding the Municipal Separate Storm Sewer Systems (MS4) regulations. Any questions members have for Ms. Hoffman will be sent to Ms. Mackay and she will forward the questions to Ms. Hoffman.

Mr. Steward has volunteered to lead a group to update our Natural Resources Inventory (NRI). The document was written in 2003. Conservation Commissions are responsible for recording and managing all natural resources in town. Mr. Gagnon told us that Mr. Gowan, the Planning Director, will help us coordinate with Nashua Regional Planning Commission to complete the task. Mr. Gagnon would like a few more volunteers to help Mr. Steward.

Mr. Gagnon will be working on the prime wetland studies we voted on last year. We made a mistake on notifications of abutters which led to the rejection of the wetlands by the state. The state will require us to go through the process again including voting to approve the prime wetlands at town meeting. The revote will be next March.

Mr. Gagnon is also working on the rewrite of the wetland conservation district (WCD) ordinance. He would like to add regulations on vernal pools and prime wetlands. Mr. Stanvick would like a more concrete procedure to post WCD signs so the buffer would be visible to residents and therefore be more protected.

Merriam Farm Proposal

Mr. Gagnon presented a proposal for trails and two benches to be added to the Merriam Farm Conservation Area. He acknowledged and the members agreed this was not really a walk-in item and should have been an agenda item.

Merriam Farm is a 46 acre parcel of town land near the intersection of Mammoth Road and Sherburne Road. The parcel was declared a town forest last year. Forestry would like to put in some trails and two benches. The benches and part of one trail will be within the 100 foot prime wetland buffer. This means Forestry will need a permit from the state. Forestry has hired a wetland scientist to pursue the required permits. Conservation must weigh in on the trail application.

An old woods road will be used as part of the new trail. This road does not need a permit. A bench is proposed near Beaver Brook on the south-east corner of the property. Another bench is proposed on the north-east corner of the property also along Beaver Brook and backwaters that form a pond which waterfowl frequent. A trail is proposed to access the location of the second bench. This section of trail and the two benches need a permit.

There is a trail proposed in the center of the property that leads from the proposed parking area, along Mammoth Road, to the trail and benches along the brook. This section of trail does not need a permit. The state has requested trails do not bisect a field as this is important habitat. No trees will be cut for this project as the area of the benches and proposed trail extension have mature forest with widely spaced trees and minimal undergrowth.

Mr. Stanvick asked if the trail and benches could be kept out of the buffer. He asked if the benches were necessary and commented that benches are not usually a feature found while hiking in the woods. Benches do not seem to be a part of the Commission's protection of the environment. Mr. Gagnon said it was a balance between use of the land and protection of the land. The residents of town support our mission to protect the land, but we may not have their support if we do not allow them to use the land. Residents must be able to use the land. Mr. Stanvick is concerned about pulling permits to disturb the buffer. Ms. Mackay agreed with Mr. Stanvick that new trails and benches may not be needed in the buffer. She would like to see more trails on the parcel, but outside the buffer.

Mr. Steward thought the benches near the brook would be a good idea for seniors. He thinks older residents of town may want to take a hike and then be able to take break at the end of a trail. He thinks a bench at the end of a trail is considerate of seniors. Ms. Delehanty agreed. She thought benches would be a good idea for residents. Residents could take a hike than have a rest and enjoy watching wildlife along the brook.

Forestry contacted the Natural Heritage Bureau. There is a swamp white oak flood plain forest, bulbus bittercress and meadow garlic sightings in the area. The project should not affect any of these species or communities. Mr. Gagnon is planning to go out in the spring to look for the meadow garlic.

Motion: (Delehanty/Shydo) to recommend two trails in the prime wetland buffer with 1 bench at the end of each trail.

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

Mr. Gagnon will send a letter to Forestry with our support for this project.

ADJOURNMENT:

Motion: (Gendreau/Mackay) to adjourn

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

Adjourned 8:40 p.m.

Mr. Hogan left the meeting a few minutes early at 8:34 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

2/10/2021 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# 846 9337 3061 Passcode 636291

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.