

**APPROVED**  
**TOWN OF PELHAM**  
**PLANNING BOARD MEETING MINUTES**  
**January 23, 2020**

Chairman Roger Montbleau called the meeting to order at approximately 7:00pm.

Secretary Cindy Kirkpatrick called the roll:

PRESENT: Roger Montbleau, Cindy Kirkpatrick, Paul Dadak, Jim Bergeron, Tim Doherty, Alternate Paddy Culbert, Alternate Bruce Bilapka, Selectmen Representative Hal Lynde, Alternate Selectmen Representative Kevin Cote, Planning Director Jeff Gowan

ABSENT: Derek Steele, Alternate Richard Olsen, Alternate Samuel Thomas

Mr. Culbert was appointed to vote in Mr. Steele's absence.

**PLEDGE OF ALLEGIANCE**

**MEETING MINUTES**

**January 6, 2020**

**MOTION:** (Doherty/Culbert) To approve the January 6, 2020 meeting minutes as amended.

**VOTE:** (7-0-0) The motion carried.

**ADMINISTRATIVE**

Mr. Montbleau spoke to the Board about creating a subcommittee to review the Subdivision Regulations as some had been identified as needing improvements, language changes and additions. He would like the subcommittee to also work on finetuning the Conservation Subdivision Ordinance. He asked the Board for volunteers and noted the subcommittee wouldn't begin until after Town Meeting in March when the voters make a decision on the warrant articles.

Mr. Doherty understood the subcommittee would review the Subdivision Regulations. He noted those changes wouldn't go on the ballot and could be done in-house. He stated a lot of the complaints regarding the Conservation Subdivision Ordinance could be addressed through language within the Subdivision Regulations. He stated he would like to be on the committee so the Town wouldn't have to wait an entire year and changes could be made immediately.

Mr. Bergeron, Mr. Lynde, Mr. Cote and Mr. Bilapka were also interested in being on the committee.

Mr. Doherty mentioned there were several members of the public that should also be on the committee, such as members from the Conservation Commission, Zoning Board, Forestry Committee. Mr. Gowan offered to be involved with the subcommittee.

**PUBLIC HEARING ON PROPOSED ZONING AMENDMENTS**

*The full text of all proposed articles is available at the Planning Department (the Municipal Center) Town Hall, 6 Village Green during normal business hours and from the Town of Pelham website at [www.pelhamweb.com](http://www.pelhamweb.com) on the Planning Department page.*

**Pelham Planning Board DRAFT zoning change to modify Article XII Special Exceptions:**

Are you in favor of Amendment No. 1 as proposed by the Planning Board for the Town of Pelham to change Pelham Zoning Article XII Special Exceptions to allow Accessory Dwelling Units (ADUs) to be a maximum of 1,000 square feet (increased from 800 square feet), and to eliminate the common wall requirement. To clarify, ADUs shall not be allowed on lots of less than one acre unless the lots are within an approved Conservation Subdivision or within the Mixed-Use Zoning District where the Planning Board has approved smaller lots under their authority over Innovative Land Use projects. This amendment would also allow detached ADUs by Conditional Use Permit issued by the Pelham Planning Board when the lot is at least 1.5 acres in size with a minimum of 45,000 square feet of contiguous non-wetland soils. The Planning Board shall also have the authority to determine placement of the detached ADU within the lot. The primary purpose of this ordinance is to expand the mix of affordable housing opportunities throughout the Town by permitting the creation of secondary dwelling residences as an accessory use to existing single-family detached dwellings while maintaining the visual and functional character of single-family residential neighborhoods.

Mr. Gowan read aloud the changes made during the first public hearing. He reminded the Board there could be no substantive changes made during the present meeting (second public hearing).

Mr. Montbleau opened discussion for public input. No one came forward.

**MOTION:** (Doherty/Culbert) To APPROVE placing the article on the ballot.

**VOTE:** (7-0-0) The motion carried.

**Pelham Planning Board DRAFT zoning change to replace in its entirety Article VIII-I Illicit Discharge & Connection (IDDE) Ordinance:**

Are you in favor of Amendment No. 2 as proposed by the Planning Board for the Town of Pelham to replace in its entirety, the existing IDDE Ordinance with a revised IDDE ordinance that will comply with the Federal EPA mandate to control stormwater runoff and its negative impacts to drinking water, ecosystems and wildlife. The proposed amendment clearly defines what are acceptable water discharges and those that are defined as Illicit discharges and how the Town can regulate and enforce any illicit discharges.

Mr. Doherty spoke about the Board's discussion from the first public hearing and felt the ordinance (as written) was extremely invasive. He didn't see the need for it to be in zoning and suggested it should be under a nuisance ordinance. He said he couldn't support the article. He understood it was an unfunded mandate coming from the Federal Government, down to the State and to the Town. He stated the Town already had an ordinance and didn't support making it worse than it currently was.

Mr. Gowan reviewed the changes made to the ordinance during the first public hearing. He felt it was important to understand the things that were exempt from the ordinance. He stated the ordinance needed to 'live' in zoning. He explained the Department of Environmental Services ('DES') advised (several years ago) the Town to adopt the existing ordinance; unfortunately, it had 'no teeth'. He stated the Town must enforce the aspects of the clean water act or the Town itself would end up in court. He said illicit discharges would be discovered during dry weather sampling of flows into the outfalls; a function required by the MS4 permit. He noted the Town had to

test hundreds of outfalls in the Spring to be in compliance with the permit. Without fines, if an illicit discharge is found the only option is to go court and seek the daily fines the statute provides. The ordinance is advised and drafted by the Town's consultant; much of which was verbatim from the Environmental Protection Agency ('EPA') guidance. He stated the rules were set up to protect drinking water and the Town needed the ability to go after someone doing an illicit discharge. Without the ordinance the Town would fall out of compliance with the EPA mandate. Mr. Gowan urged the Board to support the article.

Mr. Bergeron concurred with Mr. Doherty's point about where the ordinance belonged; either in zoning or part of the Town's health code (adopted/enforced by Selectmen). He agreed an illicit discharge ordinance was needed but believed it belonged in the code.

Mr. Lynde stated the Town had Zoning Enforcement and didn't know why they wouldn't be the one to do the enforcement. Mr. Gowan replied Pelham's Zoning Compliance Official would have authority to take action but absent the proposed ordinance, the Town would only have 'nuclear option' as provided as general guidance in the RSAs. He said the recommendation is to have the ordinance in Zoning. He noted there were things currently in Zoning that the Board didn't deal with, but it didn't mean those items shouldn't be there. Mr. Lynde asked if the proposed ordinance was the template recommended by the EPA. Mr. Gowan replied it was based on the template called for in the various steps of the permit (MS4) the Town was trying to satisfy. He would prefer to have the ordinance and mirrored language in the Health Code. He reiterated the proposed ordinance was recommended by the consultants hired by the Town who help with the MS4 permit process.

Mr. Dadak was in favor of the ordinance. He asked if the consultant provided any guidance regarding where it should fit in the Town's structure. Mr. Gowan replied the guidance from the meetings with other municipalities in the region was to have it in zoning. He said the value of having it in zoning was the voters had an opportunity to vote on it and gave the Town statutory authority. He noted the Town had a number of impaired waters on the State's lists; illicit discharges contribute to impairments. He felt the ordinance belonged in Zoning and told the Board they would have another one to review next year that closely controlled and regulated the impact to development on stormwater runoff.

Mr. Montbleau spoke about cases in Massachusetts of businesses discharging water with chemicals, oil etc. into the Merrimack River. Those discharges were tracked back to the sources. Because there were ordinances with 'teeth' people were brought to court and heavily fined. He said it wouldn't be good for Pelham to not have an ordinance. He believed it would address serious situations where water sources are contaminated. Mr. Gowan read aloud the list of items that were exempt within the ordinance. He wasn't aware of any current illicit discharges and hoped they didn't find any during the testing that would occur during the spring. He said if the article passed the Town (Selectmen) would need to create a fine schedule. Mr. Dadak spoke about the storm drains in Lowell, MA which were all marked to indicate it flowed into the Merrimack River and prohibited hazardous materials. He noted education was important.

Mr. Cote stated the biggest water pollutants was fertilizers and pesticides. He questioned how the ordinance would help prevent those things since they are used with irrigation techniques. Mr. Gowan replied if they followed an illicit discharge upstream and found it was related to agriculture activity or fertilizing the Town would work with that individual/group. He believed the nitrate loading from fertilizer was likely the cause of the impaired waterway at the Town beach. He said beside giving 'teeth' to the ordinance there were many other things the Town had to do regarding outreach and informing people there were more responsible ways to fertilize lawn and remind people to be good stewards to their septic tanks. He said they would also need to speak to private parking lot owners to discuss plowing and storage of snow and materials. Mr. Gowan said he despises unfunded federal mandates, but it didn't change the fact that the Town had to live by it. He said the permit (MS4) had been litigated over and over and held up for years; however, they had no choice but to follow it. He noted if the Town failed or didn't live up to the terms of the permit the Town would be fined thousands of dollars and still have to do the work.

It was reiterated public education for residences and businesses would be very important. Mr. Doherty spoke about situations in Lowell, MA where septic pumpers disposed of sewage into the canal and other instances/locations of improper disposal. He said Pelham didn't have sewage or other major problems. He acknowledged Pelham already had an illicit discharge ordinance but believed they should think about where it should be placed. If it's in Zoning the Zoning Board could grant a variance to it; however, if it's put it with the subsurface disposal ordinance (within the Health Ordinance) it wouldn't be able to receive a variance. Mr. Doherty didn't want to change the ordinance just to have the federal government keep coming back to change it again and again. He spoke about the federal government mandating them to put MtBE in gas, which caused contamination to wells in Town. He didn't want to rush and change the ordinance and suggested possibly holding off a year.

Mr. Bergeron stated he agreed with adopting the ordinance but felt it would be a difficult task to alter/amend it by putting it in the Zoning Ordinance, whereas the Selectmen could adopt the document under a health ordinance. He thought having it under the health ordinance was a better place for it. He felt having it in Zoning would make things difficult; any modification would need to go in front of the voters. He said he wouldn't vote to put it on the ballot because he felt it belonged under the health ordinances where it was enforceable.

Mr. Gowan told the Board he meets with the Town's consultants who were experts. He heard references made about Massachusetts and explained the MS4 permit was nationwide; Massachusetts was one year ahead in the permitting cycle. He said the instances brought up weren't done anymore and hadn't been done in years. He said the proposed ordinance wasn't Pelham trying to emulate Massachusetts, it was about compliance with the clean water act. He advocated they put it in Zoning; they couldn't have a rule without having a waiver process. He outlined the appeal process if the ordinance was located in Zoning and what process would be followed if it was in the health ordinance. He felt moving ahead was the right thing to do; if they found changes had to be made it could go back on the ballot. He hoped the Board and citizens supported the article.

Mr. Montbleau wanted to know if the Board voted to recommend the article and part way through the year the Selectmen agreed to have it under the health ordinance, if it could then be on the ballot for next year to repeal it. Mr. Gowan said that could be one option. He pointed out the Town currently had an IDD ordinance that wasn't effective. Mr. Lynde felt the language should stay in and let the Selectmen take the issue up another time.

#### PUBLIC INPUT

Mr. David Hennessey, 71 Dutton Road told the Board similar to Mr. Gowan he had been attending meetings. He said three years ago he was on the executive committee of the Nashua Regional Planning Commission ('NRPC') and met with the EPA administrator on what was coming. He wanted everyone to understand this was serious; Pelham, Hudson, Nashua have bullseyes because water is flowing downhill. Pelham has a river flowing into Dracut, MA that ultimately went into the Merrimack River and shared a pond with Massachusetts. These have been brought to the attention of the EPA Director who spoke at NRPC and specifically talked about the water flowing out of southern New Hampshire through the different rivers, including Beaver Brook that ultimately led to the Merrimack River and also about the shared shore lines along the Massachusetts border. Mr. Hennessey stated it was unfortunately an unfunded mandate and begged the Board to approve the article. He said Massachusetts doesn't like the idea that New Hampshire has had extra time and were watching border towns closely to make sure they comply. He reiterated with shared waterways, Pelham had a bullseye and asked the Board to pass the article and not bring the heat of the federal government onto the Town.

After hearing Mr. Hennessey's testimony, Mr. Montbleau felt it would be prudent for them to act on the article. He was in favor of voting to recommend it. Mr. Doherty liked the fact that Mr. Hennessey came forward to speak and hoped as a sitting Zoning Board member wouldn't give a variance to the IDD ordinance. Because of what he heard he said he could be swayed to allow the article to go forward onto the ballot.

**MOTION:** (Culbert/Lynde) To APPROVE (the article for the ballot).

**VOTE:** (7-0-0) The motion carried.

**Citizen Petition Zoning Question:**

**Are you in favor of the adoption of Amendment No. 3 as proposed by Citizen's Petition for the Town of Pelham Zoning ordinance as follows: Are you in favor of repealing, in its entirety, Pelham Zoning Ordinance Article XV, Residential Conservation Subdivisions by Special Permit? The effect of the repeal would be to eliminate the building of subdivisions that would allow "cluster" style developments where houses are built closer together (on less than the required 1 acre of property) in exchange for open space land.**

Mr. Montbleau stated the Board heard a lot of testimony during the first public hearing. He was personally opposed to the citizen's petition and would vote to not recommend/not approve. He said being on the Board and working with the conservation subdivisions he saw real benefits from many of them. He stated the Board would be creating a subcommittee to review and rework the conservation subdivision regulations to be more beneficial/acceptable to the community, which he felt was a better alternative than throwing it out.

Mr. Doherty was interested to see if there were members of the public that would come forward to speak and either support or not support the petition. He also wanted to know if there were people willing to sit in subcommittee to fix the ordinance.

**PUBLIC INPUT**

Mr. Paul Gagnon, 103 Dutton Road (member of the Conservation Commission) stated he would readily agree to be part of the subcommittee. He spoke to the people who were in favor of the petition because they didn't want to see another development similar to one on Nashua Road and reminded them that development was a 55+ subdivision, not a conservation subdivision. For those upset with the proposed development off Currier Road, the article will have no effect because that plan has already been accepted by the Planning Board. Aside from those two developments, the question was if a person liked conservation developments. Mr. Gagnon believed there were approximately ten conservation subdivisions. He went on to speak about four which he felt were beneficial to the Town: 1) Briarwood – Town acquired 16 acres for Peabody Town Forest, 2) Waterford Estates – 16 acres added to Pelham Veteran's Memorial Park, 3) Garland Woods – 38 acres were protected and a trail (the only one connecting the east side of Town to the west) and 4) Sky View Estates – 42 acres protected. He commented they spend (on average) \$7,000 per acre.

Mr. Gagnon stated he was an advocate of conservation subdivisions, although felt improvements could be made to the ordinance. His top three suggested improvements were: 1) have the Conservation Commission involved with all conservation subdivisions, 2) don't allow bonus lots and 3) do something to handle well radii and overlapping well radii and septic placement. He ended by asking the Board not to support the petition article and urged the public to vote against it. He wanted the subcommittee to have an opportunity to work on it and come back with something better next year for the Board to work with.

Mr. David Hennessey, 71 Dutton Road stated he would like to be on the subcommittee. He said as predicted, Governor Sununu has spoken about legislation he was putting in. One item is grading every community in the State based on affordable housing. He said the density bonus lots may qualify. When all the proposals make it through the legislature (in the next couple months), he believed they would have a lot to talk about. He was sorry the citizen's petition could be pulled back because he wanted to see what the Governor was sending down before they change the ordinance.

Mr. Bill McDevitt, Lane Road stated he was a member of the Board of Selectmen but informed his comments didn't represent anyone's opinion except his own. He believed one of the problems the public had with conservation subdivisions was what they saw with their eyes; houses close together. However, what they didn't see was all the open space that had been saved. He commented he was really disappointed to see the petition come forward because he believed it was based on a lot of misunderstandings. He's heard the Nashua Road development used as an example of a conservation subdivision which it wasn't. He understood some of the houses within conservation developments sold for 'big' dollars and were contributing a great deal of money to the tax base without having school age children. He said they were high-end homes somewhat closer together. Mr. McDevitt pointed out there was a lot of open space preserved and available to wildlife. He strongly urged the Board to not approve the citizen's petition. He believed without it, it would change the look and feel of Pelham and they were much better off with open space subdivisions than they were in the past.

Mr. Doherty questioned if there would be a savings to the Town by having conservation subdivision roads that were half the length, or less than those within a conventional subdivision and the Town owned them. Mr. McDevitt replied it would save the Town a lot. He noted the Highway Department had trouble hiring people to plow; the Town would be better off with fewer Town roads that were shorter to plow. Shorter roads save money for paving (length and width) and maintenance.

Ms. Karen MacKay, 31 Blueberry Circle told the Board she didn't support the citizen's petition. She felt conservation subdivisions were a good tool for the Board and provided another option (to conventional development). She pointed out conservation subdivisions contained less impervious surface and salt usage because the roads and driveways were shorter; there were less structures to deal with stormwater. Overall, she felt the existing ordinance was good and the subcommittee should have an opportunity to fix some things. Ms. MacKay reiterated she did not support the citizen's petition and urged the Board to not support it.

Mr. Lynde stated he was not in favor of the proposed petition article. He understood there were problems with it but felt they could be fixed, such as well radii. He explained it was cost effective for the Town to have houses closer together. He believed the Planning Board was more mindful about the ordinance. He would like to keep it in place so it could be enhanced.

Mr. Bergeron stated about a year ago (or two) he attempted to make changes to the existing ordinance as was now being recommended and was shot down by a 4-3 vote. He heard testimony that four out of ten developments were good, which meant there were six that weren't. He also heard people speak about problems; he didn't want those problems. He said he was criticized for trying to be 'too perfect'. Mr. Bergeron stated he would support the repeal of the ordinance to be able to rewrite it entirely and take out all the loopholes because they should have gotten it done in the last year. He said if they didn't take them out now the Board was missing their duty to the residents. He saw the number of signatures on the petition which included former selectmen and planning board members and respected their opinions. He said they thought conservation subdivisions were a good thing, but not the ordinance currently in place. He wanted to give the Conservation Commission legal teeth by being involved with every plan and give the Board a list of target areas they wanted to see go into a conservation subdivision. He said there were multiple problems that needed to be addressed such as lot sizing. Mr. Bergeron reiterated his position of repealing the ordinance for 10-11 months so a new and good ordinance could be written. He didn't think they would lose anything given the fact that during the last year only a couple had come in. He said the work of the Conservation Commission was invaluable to the Town. He will support the citizen's petition.

**MOTION:** (Culbert/Lynde) To NOT APPROVE (the citizen's petition).

**VOTE:** (6-1-0) The motion carried. Mr. Bergeron voted in opposition.

Mr. Montbleau stated the Board would 'not recommend' or 'not approve' the citizen's petition on the ballot. Mr. Bergeron believed the language had to be 'not recommend' because the petition would be going onto the

ballot. He said it would go on without the Planning Board's recommendation. He said citizen petitions were sacred rights. Mr. Gowan commented the Statutory word is 'approve' or 'disapprove'; however, the Selectmen have a long-standing tradition of using 'recommended' or 'not recommended'.

### **Citizen Petition Zoning Question:**

**Are you in favor of the adoption of Amendment No. 4 as proposed by Citizen's Petition for the Town of Pelham Zoning Ordinance as follows:**

**Are you in favor of repealing, in its entirety, the ordinance that was created by Article 3 of the 2019 Town Warrant, passed at the March 2019 Town election stating, "Are you in favor of the adoption of Amendment No. 2 as proposed by Citizen's Petition for the Town of Pelham Zoning ordinance as follows: this amendment would modify; Article IV, Section 307-16 (A); Article V, Section 307-18 Table of Permitted Uses; and Article V-I Mixed Use Overlay District as follows: The raising and keeping of livestock, excluding poultry, may be conducted as an accessory use of a principal Residential or Mixed-Use Overlay District property of at least (3) acres and shall be clearly incidental and subordinate to the use of the lot for its principal purpose. Structures and enclosures used in conjunction with the raising and keeping of livestock shall be a minimum of fifty (50) feet from any property line and shall comply with the best practices as identified by the UNH Cooperative Extension's housing and space guidelines for livestock. At no time shall a nuisance be created as to sight, sound, smell, or any other impact that may interfere with nearby property owners' rights and enjoyment of their properties." A yes vote would remove this language from the Town of Pelham's Zoning Ordinance**

Mr. Lynde understood the issues on both sides and spoke to each. He believed there had to be a middle ground and will take the position of not supporting the petition article. In reviewing the meeting minutes from the first public hearing he saw the reference to UNH Cooperative Extension. He downloaded the information and reviewed the items under their best practices. It looked to him that the Selectmen as the Board of Health could enact an ordinance that dealt with the issue of how 'droppings' are managed that would eliminate the concerns regarding smell and flies. He said he would speak to the other Selectmen and obtain opinion from the New Hampshire Municipal Association to see if they could do so.

Mr. Dadak agreed they should have something that represented both sides. He would rather not see the ordinance thrown out; however, he believed in the wording there were some things that were specific and other things that weren't. He noted in the past there was a lot of open space and undeveloped land and added the Town was evolving and thought both sides had to have their voices heard through a compromise.

Ms. Kirkpatrick commented when the Board met last time, they heard everyone's conversation and stories. She had been concerned that the ordinance would be repealed and that would be the end of it; however, since that meeting, she'd heard from many people that they wanted to stay involved. She felt it was great that the Selectmen and others have spoken about creating an agriculture commission so something could be put in place using the UNH Cooperative Extension guides that the Town's Board of Health could follow. Ms. Kirkpatrick was hopeful something could be done.

Mr. Bergeron stated he supported the citizen's petition to repeal the restriction on three acres. After doing research in the last few weeks believed the enforcement belonged in a nuisance ordinance. He said they would work if they were properly adopted, administered and enforced. He outlined the reasons the current ordinance didn't work. Mr. Bergeron commented New Hampshire was a 'right to farm' state. He referenced RSA 674:32,C pertaining issues that affect properties surrounding a farm and citizen protection. He didn't feel the existing ordinance would legally stand as it restricted keeping animals on a certain acreage size given the State doesn't recognize it. He said the only thing the State recognizes is a health ordinance. He noted a health ordinance is enforceable, backed by the courts, and contains language specific to New Hampshire. He said he

would speak again after the public offers comment. He added that the proposal for a health ordinance would stop the aggressors.

Mr. Dadak questioned if the document Mr. Bergeron referenced could be adopted without going to Town Meeting. Mr. Bergeron answered yes. He added the document would fix the existing problems and give citizens back their property rights. He said a health ordinance had no 'vested rights'. Mr. Lynde explained the five Selectmen and the Health Officer (as Chair) constituted the Board of Health. He would confirm their ability to enforce the document described and would bring information to the Deliberative Session for discussion. Mr. Gowan noted the adoption process (by the Selectmen/Board of Health) followed the rule of having two public hearings, which would give residents an opportunity to comment.

Mr. Cote explained there would be an article on the ballot to ask voter's permission to create an agricultural commission (as outlined in the RSA). The Selectmen will appoint members (5 regular members/ 5 alternates) similar to the Zoning Board and Water Commission. The agriculture commission will not be an authoritative board, they will be advisory. Part of their job will be to give recommendations based on the UNH guidelines.

Mr. Doherty was in agreement with citizens to eliminate the existing ordinance. He discussed situations in Lowell, MA and Dracut, MA with people that created health problems with their pets. He commented the existing ordinance made it sound like animals were a problem, when actually it's people that are the problem.

#### PUBLIC INPUT

Mr. Hershel Nunez, Webster Avenue began by providing the Board with a 22-page document titled "Public Health Nuisance Guidance Document" completed by the NH Public Health Nuisance Taskforce and the Network for Public Health Law Eastern Region. He understood the conversations during the first public hearing were heated and direct; nothing he said (during that meeting) was meant to be a direct attack toward any person. He didn't want anyone to feel they shouldn't have the right to address their problems to the Board or community. He apologized to the public if anyone felt his intentions were less than genuine. Mr. Nunez read aloud a prepared statement which was entered into the public record. He spoke to New Hampshire being a right to farm state and described in summary what it meant for residents. Additional information is outlined through the New Hampshire Department of Agriculture and guidelines set forth by the University of New Hampshire Extension of Agriculture and Livestock. He stated understanding those guidelines comes with personal responsibility for the land and livestock and also comes with a responsibility to understand good practices and nuisances, nuisance issues and improper care. He reviewed the following RSAs and read portions of each aloud: RSA 432:43, 672:1 and 674:32,a. Mr. Nunez offered the following suggestions to farmers and/or neighbor of a farmer where challenges may occur: 1) be willing to have open dialog with your neighbor and be polite when communicating any issues, 2) if there is an issue that cannot be resolved between neighbors because of a true nuisance, odor, pests or other real concerns the resident has a right to report such to the Town, as a licensed health officer, animal control officer and code enforcement officer may be needed to work with the parties and determine if a true nuisance is present. He spoke about the responsibilities of a health officer in determining nuisances. Mr. Nunez encouraged the Board to deliberate with an open mind to understand that each resident has a right to farm on their property and a few issues don't require restrictions to be set on an entire population of the Town. He also encouraged the Board to approve the repeal measure to be voted on by the Town residents during Town Meeting (March 10<sup>th</sup>).

Mr. Jeff Caira, Bush Hill Road offered to volunteer for the agriculture commission. He noted the number of comments he had was decreased based on the comments of others. He offered the following suggestions: 1) for an agricultural committee with a case by case basis that can assist with conflicts, complaint and remediate situations, 2) use UNH guidelines as written, 3) rewrite laws with practical enforcements and 4) adopt a nuisance order that works. He stated Ms. Kirkpatrick's situation was terrible and he wanted to help her out; he wanted to help the whole community. He ended by asking the Board to recommend the citizen's petition.



Mr. Montbleau believed the Board had heard a lot of compelling information and was provided with a document to get their thinking in line with going forward with a public nuisance ordinance. He felt it may solve the problems and give everyone an opportunity to continue activities with their livestock and pets while giving the opportunity for people to enjoy their property. Mr. Dadak thanked the public for providing the Board with backup information. Mr. Montbleau stated he had personally reversed his opinion based on testimony and the knowledge that an agriculture committee would be formed. He felt supporting the petition was the beginning of the changes.

Mr. Gowan read aloud citizen submittals supporting the citizen petition to repeal article 3 from the 2019 Town Meeting (copies are part of the permanent record and available for review in the Planning Department). Submissions were made by:

Theresa Wentzel  
Judith Borak  
Mark Wholley  
Jessica Chase  
Melissa Scavo  
Stu Labrecque

Mr. Gowan stated there was a significant stack (100-150) 'form' letters that had come in stating their support for the citizen's petition.

Mr. Montbleau found the submissions passionate and compelling. Mr. Doherty appreciated the public attending the meeting. He said it helped the Board gain perspective on issues and make decisions.

**MOTION:** (Bergeron/Doherty) To APPROVE/RECOMMEND the support of the petition warrant article to repeal Article 3 (created at the 2019 Town Meeting).

**VOTE:** (7-0-0) The motion carried.

## **NEW BUSINESS**

### **PL2020-00001**

#### **Map 40 Lots 6-183 & 6-184-1**

**NEITUPSKI ET-AL, (owners) / CMK EQUIPMENT LLC (applicants) – Cornstalk Land off Patriot Drive – Proposed 11 Conservation Lots to be constructed off a new road + (1) 7.9 acre Conventional Lot with frontage on Mammoth Road**

Representing the applicant was Joseph Maynard of Benchmark Engineering. He stated the last time they were in front of the Board was March 2019. At that time, they came in with a similar plan to the current submission and asking to do a conservation subdivision. At that time, they were asking for a density offset of one lot; however, after the initial meeting they understood the Board didn't like the project being proposed. They've since reconfigured the conservation subdivision and eliminated the density offset lot. They met with the Conservation Commission in November 2019 and conducted a site walk to evaluate the open space parcels.

It was noted the initial submission was in front of the Board for discussion/conceptual review. Mr. Gowan stated with the new application the abutters should be read aloud. Ms. Kirkpatrick read the list of abutters aloud. There were no persons present who asserted standing in the case, who did not have their name read, or who had difficulty with notification.

Mr. Maynard explained the property was made up of two lots; a larger parcel and a small 20ft. strip of land. Those two pieces of land would be combined to create a 35.9 acre property. Before the proposed conservation

subdivision took place, they are looking to subdivide off eight acres that exists along Mammoth Road and Marsh Road. In that eight acres is the existing Neitupski family home and out-buildings utilized for business (F&F Paving). The second part of the request is the rear portion of the site (25.6-27 acres) that contains frontage on Cornstalk Lane that ultimately leads out to Patriot Drive. Mr. Maynard noted Cornstalk Lane was in front of the Board approximately four years ago for a subdivision of a frontage lot on Patriot Drive constructed 250ft-300ft into the land primarily with the purpose of someday giving frontage/access to develop a subdivision at the back side of the property. Mr. Maynard spoke about the lot and called attention to an old rock crushing plant in the center of the property. C&K Equipment, who will be purchasing the parcel spent all of 2019 and the fall of 2018 dismantling the old rock crushing plant and removing the old asphalt equipment from the property. Subsequently they've had an environmental engineer do a phase I environmental of the property and were also on site as items were removed from the property; the environmental engineer gave the property a 'clean bill of health' when they were done. He stated the office building and paved surface remained on site. The building will remain during development to provide the developer a place to lock things up at night. The paved surfaces (driveway leading to Marsh Road) will be removed as part of the development.

Mr. Maynard indicated they had come in front of the Board last spring with a similar plan. At that time, they were contemplating requesting one additional lot given the open space of the property was well above 50%. Based on their prior discussion with the Board they regrouped, met with the Conservation Commission (November 2019) and conducted a site walk to primarily look at the open space parcels as they currently exist toward the rear of the property near Beaver Brook and possible connection to other Town conservation land. The agreement with the commission is if the projects moves forward as a conservation subdivision, would be to deed a 1.8 acre lot to the Town for connectivity of trails. Along with this is a 3-acre area that falls over flood plains/wetlands that would go with the deeded lot as the center line of the lot extends to Beaver Brook. Mr. Maynard stated the Conservation Commission was kind enough to write them a letter; a copy was provided to the Board. He read the letter (dated December 2019) aloud. The commission voted (5-0) to recommend the subdivision proposal based on: 1) no bonus lots, 2) conservation subdivision has less impervious surface since the road length will be reduced from approximately 2,000ft down to 750ft., 3) no work is proposed within the 250 shore line buffer to Beaver Brook, other than possibly an infiltration basin, 4) no wetland or Wetland Conservation District ('WCD') impacts with a conservation subdivision and 5) one of the open space parcels will be donated to the Town and provide excellent connectivity of Town parcels from north and south.

Mr. Maynard stated they were back in front of the Board to discuss the project. They provided the same yield plan presented in the past. There were twenty-six acres included with the conservation subdivision; 15.9 acres would be put in open space (63% of the land area). Approximately 48% of the open space 7.71 acres is wetlands. He noted one waiver would be requested for the conventional yield plan to work. The waiver primarily dealt with the 100ftx150ft. building box requirement for lot 2 (conventional layout); the box fit on the property, but it encroached in the setbacks. He said he could probably reconfigure the plan and make it work somewhere else on the property. The road grades (conventional plan) were between 1% to 3.5% and within the conservation plan 1% to 4%. In reviewing the conservation layout, the lots will range anywhere from 23,000SF to 35,000SF in size with frontages ranging from 94ft to 280ft. There will be a waiver for some of the wells to overlap within the conservation subdivision. He ended by pointing out one of the concerns from the Conservation Commission with leaving some of the area under the old asphalt crushing plant in an open space area; they have since reconfigured some of their lots to incorporate it into the house lots instead of putting it under the open space areas.

Mr. Lynde questioned if there would be any impact from the proposed roundabouts that would be constructed in the area (Mammoth Road/Sherburne Road and Mammoth Road/Marsh Road). Mr. Maynard replied he wasn't proposing anything at that end of the site. Any land the Town may need in that area will be part of the 8-acre lot that will maintain the existing house. He heard about the roundabout but hadn't seen any formal designs or plans.

Mr. Dadak stated he had a background in contaminated sites. He said the applicant submitted a nice report and saw reference to there being no visible contamination. He believed there was no need/necessity to take samples during a phase I and questioned if there had been any soil samples taken in the asphalt area. Mr. Maynard replied he didn't do the environmental side and would have to ask the environmental engineer that question. Mr. Dadak understood oil is used to make asphalt and wondered if it was something the owner would want to take samples and know the answer. Mr. Maynard only knew the applicant hired a consultant to conduct a phase I and came back with the indication there were no issues. He noted there were no subsurface tanks, they were all above ground (on stilts) with a concrete enclosure below.

Mr. Doherty asked if Paul Gagnon (Conservation Commission Chairman) could step forward and show the Board the location of Town property and proposed connectivity.

Using the displayed plan proposal, Mr. Gagnon pointed to the abutting Town parcels. He showed the shoreline setback and noted the Town would own approximately 150ft. back from the brook (Beaver Brook). He described the land that would be given to the Town through the proposal. He said the commission was pleased to obtain the strip near the brook which would make for an excellent trail. Someday they hoped to build a bridge to cross the brook for access to several hundred acres of Town land.

Mr. Lynde asked if Town land would still be mowed. Mr. Gagnon didn't believe so. He said they didn't grow corn this year. He stated the Town mowed the field this year as they wanted to maintain it so it wouldn't grow into forest.

In reviewing the conventional plan, Mr. Cote wanted to know if zoning relief was needed for the first two houses. Mr. Maynard answered no. Mr. Cote saw within the conservation model ten of the eleven lots were under one acre of land. Mr. Maynard replied conservation rules in Pelham don't have a minimum lot size it falls under the State's regulatory rules for conservation subdivision lot size which range between approximately 20,000SF-33,000SF. He informed the soils were very good in the area and were sandy with deep water tables, therefore would meet the State's criteria for lot sizing. Mr. Cote asked if they calculated any percentages for open space (Site Plan Regulations 205-5) with regard to the 100-year flood plain. Mr. Maynard didn't do the calculations but believed he wasn't at the threshold for 50%. He said the area in the flood plain was primarily in the rear of the site along the brook; that area had been excavated in the past which probably made it become a flood area over time. Mr. Cote had printed out a copy of the flood plain map from the Nashua Regional Planning Commission; on their mapping site it shows quite a bit of flood plain considerations. Mr. Maynard explained their mapping site didn't take into consideration the actual field locations and elevations of the site. Because of the flooding that's happened in Beaver Brook over time it's actually an established elevation for the flood. He said the maps might show some line work of a bigger area, but it's all based upon elevation in this area. He added they had tied in USGS and brought in GPS elevations to check everything. He said the information was based on an elevation and doesn't truly reflect what the NRCS map shows.

Mr. Gowan stated it would be appropriate for the Board to accept the plan for consideration.

**MOTION:** (Lynde/Dadak) To accept the plan for consideration.

**VOTE:** (7-0-0) The motion carried.

Mr. Gowan spoke about how the proposed zoning could impact the case and mentioned the Statutory section he believed was relevant; page 485, RSA 676:12. He read a portion of the section aloud. Mr. Montbleau understood Mr. Gowan's suggestion that the plan could be sent to the Board's engineer for review, but they should hold off voting until after Town Meeting. Mr. Gowan believed Town Meeting would occur prior to the Board taking a final position. He said they would be able to approve a plan; however, no permitting could be given. He referred back to RSA 676:12, VI which speaks to the timeline for plan submission. Mr. Gowan

understood Mr. Maynard's client wanted to proceed with the case with the knowledge that there is some risk it may not have met the timing to be approved if the proposed zoning article passes.

#### **PUBLIC INPUT**

Mr. Daniel Colpa told the Board he was the main abutter being affected by the proposal. He showed the location of his lot and explained he purchased the property approximately two years ago as new construction. He enjoys his privacy and was concerned with the increased traffic and vehicle movement with headlights shining into his home. He was also concerned with the loss of privacy and with the devaluation of his property. He would like to work on an agreement with the applicant to maintain his privacy. He reiterated his concern about the loss of his property value. Mr. Montbleau explained the Board's review and site walk process. Mr. Colpa replied he appreciated the process.

Mr. Doherty asked which method (conventional or conservation subdivision) would give an abutter more of a buffer. Mr. Maynard replied both were about the same based on house location and platted lot placement. He said the difficulty (for the abutter) was the location of the development and the parcel containing a big open field with minimal vegetation along the property line. He spoke with Mr. Colpa prior to the meeting and discussed what could be done to address concerns; he would also need to speak to the owner.

Mr. Culbert questioned if the applicant could plant arbor vitae. Mr. Maynard spoke about the doing so and explained the root structure of the existing vegetation/trees may be impacted by doing so or the existing canopy might not allow arbor vitae the ability to grow. The area has some mature trees, but not a thick forest. Mr. Culbert replied they would be able to see it during a site walk.

Mr. Jaie Bergeron, 55 Patriot Drive lived across the street from the proposal. He had no objection to the development as long as rules were followed. His only concern was water and the safety of his well. Based on the test pits, Mr. Maynard didn't anticipate any blasting or water issues associated with the project. He believed the area had aquifer-type soils and noted the wells in the area were historically good.

Mr. Lynde asked Mr. Bergeron if he had any problems with Mtbe. Mr. Bergeron answered no.

The case was date specified to March 16, 2020 – to be the first item on the agenda.

#### **DATE SPECIFIED PLAN(S)**

PL2020-00001 - Map 40 Lots 6-183 & 6-184-1 - NEITUPSKI ET-AL, (owners) / CMK EQUIPMENT LLC (applicants) – Cornstalk Land off Patriot Drive

#### **ADJOURNMENT**

**MOTION:** (Lynde/Kirkpatrick) To adjourn the meeting.

**VOTE:** (7-0-0) The motion carried.

The meeting was adjourned at 10:20pm.

Respectfully submitted,  
Charity A. Landry  
Recording Secretary