

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

**MEETING OF 11/09/22**

Members Present:

Karen Mackay, Paul Gagnon,  
Ken Stanvick, Lisa Loosigian,  
Christine Kamal (alt), Al Steward

**APPROVED 12/14/22**

Members Absent:

Mike Gendreau, Scott Bowden (alt),  
David Abare, Kara Kubit (alt)

Al Steward brought the meeting to order at 7:02. Mr. Steward led the Commission in the Pledge of Allegiance. Mr. Steward appointed Ms. Kubit as a voting member for tonight's meeting.

**OLD BUSINESS:**

Map 22 Lot 8-85-1	579 Bridge Street – Discussion of plantings within the WCD on the proposed multi-unit apartment building project – Presentation by Joseph Maynard of Benchmark LLC and Bill Reno of Reno Properties
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The proposed plan has been discussed as a whole. Mr. Maynard has been working on this plan for months. Mr. Reno has a purchase and sale for the property. They have hired a landscape architect to work on the landscape plans. They would like to talk to the Commission to get our ideas so modifications can be made prior to submitting a working design to Planning. They have been to Planning with conceptual designs, but would like to have more details worked out prior to their next Planning meeting.

The landscape design brings more plantings into the site than plants that are currently growing on the site. The landscape architect has done a graphic rendering of the plans that shows the size and scale of how the building and plantings will look when construction is completed. The developer would like to care for the site and the buffer and plant the buffer more densely with more colorful and interesting plants than currently exist on the site. Plants proposed are native and mature. Proposed trees are 3-4 inches in diameter and about 18 feet tall at installation. The site will look moderately mature immediately following construction and landscape installation.

Ms. Loosigian requested all vegetation be native species. If invasive species are being pulled out, we want to make sure native species will take their place. Mr. Reno said the seed mix for the wetland conservation district (WCD) will be a native New England mix. Some formal plants may not be native, but will be beneficial and not invasive. Mr. Maynard showed the plant list to Ms. Nancy Rundell, their wetland scientist, and she agreed the plants would work, though she may have made different choices because she is not interested in the visual appeal of the plants.

The building will be 4 stories. The building will be white with the top story being black. The black on the top floor will mimic the look of a roof top and will visually bring the scale of the building down.

The storm water basin is an infiltration pond and as such will not be planted on the bottom with any vegetation. The bottom of the basin will be sandy soils. The pond will take the bulk of the drainage on site, will hold then infiltrate the water. Native New England seed mixes will be used on the slopes of the pond.

Ms. Kamal appreciates how attractive the landscape looks. The look of the landscape does not remove the concerns about the septic loading, protection of the wetlands and natural resources. The proposed build is too large for the 5 acres on the lot. She spoke with Eric Thomas and Travis Guest at the state. They said the regulations require the calculations of site loading need to include 20,000 square feet (sf) of contiguous suitable soils. The 10 acres across the wetland are not contiguous; they cannot receive this effluent. The wetland should not be used in the calculations if it is very poorly drained soils. She is concerned with protecting the wetlands. Most of the surface area on this development site is impervious.

Mr. Maynard said the Planning Board was also concerned about this intense development and if the calculations could be done in the manner Mr. Maynard used. The Planning Board talked to the state and the state agreed with the manner of Mr. Maynard's calculations. The Planning Board backed off of the loading aspect of these calculations and said they would pursue changes to zoning ordinances in the future. This project would be exempt from zoning changes. Mr. Maynard talks to Mr. Thomas and Mr. Guest at the Department of Environmental Services (DES) regularly and deals with DES regulations on a daily basis. He cannot use very poorly drained soils, but he can use poorly drained soils in his calculations. Most of the soils on this site are poorly drained. He can use the acreage of the whole lot in his calculations.

Mr. Steward said he accepts what Ms. Kamal has asserted and also accepts Mr. Maynard's assertions, but he would like to get back to the plantings which is the subject of this meeting. He thinks the state will do the math and evaluate the regulations. Mr. Steward assumes this case will come before us again for discussion of this topic.

The plants chosen by the landscape architect are suitable for the site. The plants are appropriate for our zone. There will be a maintenance plan for weeding, watering, and caring for the new plants. Mr. Stanvick would like fertilizers and insecticides to be considered when choosing plants. The less of those substances needed to keep plants healthy the better. Ms. Loosigian advocated for native plants that would not need regular fertilizers or insecticides because they are naturally suited to the environment. Mr. Maynard said they would ask for more detail from the landscape architect as to the types of plants, the suitability of the plants, fertilizers and maintenance of the plants. Some degree of maintenance will be required for the plants. There will be drip irrigation around the tree roots. Mr. Stanvick wants to minimize the use of fertilizers and other chemicals that can be taken into the plant and then have toxins be passed to beneficial insects, such as honey bees, through the pollination process.

Mr. Gagnon thought the landscape plan looked nice, but was not sure that should weigh on our decisions. He wanted to know where the snow would be plowed. Mr. Maynard said he could put the snow in the detention pond. Some openings would need to be kept in the landscape so the snow could be pushed into the pond. Alteration of Terrain (AOT) allows the snow to go into

detention ponds. Mr. Gagnon did not know if that would be appropriate. Snow in the detention pond would reduce capacity for water especially with spring rains into frozen or iced ponds. The Green Snow Pro program does not teach plowing into detention ponds. Mr. Gagnon wanted to know if the capacity taken by frozen ice and snow was figured into the calculations for the detention pond. Mr. Maynard said this was not fully figured out yet and he would get back to us. Members would like to request the maintenance personal who will do plowing be certified though the Green Snow Pro program or some similar program.

Mr. Gagnon returned to the issue of the back land on this project. The Commission voted against this project last month. The Commission was looking for the back land to be locked up with an agreement to never develop the land. This land was used to calculate the number of units/bedrooms and calculations for soil loading capacity. This land should not be able to be used again in the future for more development.

Mr. Maynard is reluctant to put an easement against further development on the back land. If the future zoning changes, the developer should be able to use the land. He will not be able to modify any type of development or a road through the parcel if he consents to a conservation easement. Mr. Reno is opposed to an agreement to never use the back land. He does not consider the 10:1 ratio mitigation reasonable. Commission members had suggested a 10:1 ratio similar to the state requirement on the prime wetland buffers. The Selectmen have just approved a 19 acre mitigation for an approximately 1 acre prime wetland buffer impact. The mitigation is on a different parcel of land than the land with the prime wetland buffer impact. Mr. Gagnon acknowledges this is not exactly the same situation as this case because the buffer impact in that case was a prime wetland and this is not, but he would still like to see some land locked up for a positive recommendation from this Commission.

Ms. Mackay does not see any of this back land easement as mitigation. The developer has used this entire lot for the project even though all structures are on one corner of the lot. There is no more space on the lot to use. Current zoning says the entire lot has been used. Ms. Mackay said the land has been used, it cannot be used a second time, ever, for any reason. She voted no to recommend this project at our last meeting. She will stay a no vote on this project if the back land is not permanently removed from possibility of being developed in the future.

Ms. Mackay would like to see a thicker buffer of plants near the abutting land owner. Mr. Reno said he has been talking to the land owner about planting the buffer and maybe planting on the abutter's land as the land slopes up and plantings on the abutter's land may provide more screening from the development. Ms. Mackay suggested the evergreen plants be spread throughout the site. Evergreens located only in the area of the abutter may look off balance. If a cluster of evergreens are located adjacent to the abutter, then other similar clusters may look good spread around the site. She would like to see drought tolerant plants. The less water needed to maintain the landscape the better. Trees should need water for a few years, but a maple tree should not need any water after it is established.

Ms. Mackay wants no fertilizers in the WCD for any reason. We need to keep extra nutrients out of the WCD and wetlands. Snow in the basin will bring salts into the basin. Salts will infiltrate into the ground and the wetland. Mr. Gagnon said salts will infiltrate into the ground even if snow is not pushed into the basin. Ms. Mackay would like to see the snow removed from the site so salts would infiltrate the ground in an area without a wetland. Salts will need to be used on the site. This will be a large apartment building and must be safe for walking during the winter.

Salt alternatives will be explored by the developer and may be used if shown to be safe to clear ice from walkways.

A maintenance plan for caring for the vegetation on site will be described. Mr. Reno wants the property to look good as his company will be managing the property. He wants to work with us. He wants support of the Commission for this project. He does not want us to be 7-0 against this project. Ms. Mackay wants to be clear. A vote in favor of the planting scheme in no way should be seen to imply an approval of the project. The Commission wants the best project possible even if we vote against the project.

Public Input:  
None.

Mr. Maynard will work on our suggestions and has requested to be on our December agenda. No vote was taken.

### **PUBLIC COMMENT ON OHRV'S:**

Public comment session on the use of OHRVs on town owned land. Members of the public will share opinions and comments about the use of OHRVs on town land.
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Ms. Michelle Cooke sent a letter to the Commission and other town boards. She read her concerns from her letter into the record. She is opposed to the use of OHRV's on town conservation land and believes this proposal near Gumpas Pond will reduce her property value. She owns 11 acres that abuts conservation land and wants quiet and peace. There is a noise ordinance in town that allows for the peaceful use of one's property. The noise from these quads will echo across the pond. The noise will disturb eagles and porcupines. Users of the OHRV trails will not stay on the trails. They have ridden quads through her property. Parks and Recreation have had trouble monitoring the two parking spaces on Hinds Lane. People reuse stickers. There is no control of who is using the parking area. People dump trash, fishing gear, and beer cans in her yard. There is no oversight of that parking area and the OHRV area would be the same. She said the OHRV Committee said at our September meeting that the abutters had no problem with the use of the land near Gumpas Pond. The abutters did not know about the discussion going on at the OHRV Committee. The last they had heard there was talk about Raymond Park. Minutes seem to be behind schedule and she has not seen an agenda posted for the OHRV Committee for September, October or November.

Mr. John Walter was at the last meeting and presented a letter with 30 signatures. These people are opposed to this OHRV park. Mr. Walter read a list of many concerns of the residents in the Gumpas Pond area.

The OHRV trail would contradict the Gumpas Pond citizens for maintaining water quality.

Deep tread tires break up soils and cause runoff.

Erosion from runoff going into the pond.

Witnesses have seen trail riders off designated trails. They go around gates, cut vegetation and go over stone walls.

OHRV's are a threat to wildlife, habitat, homes and young animals.

Adjacent property owners have problems now with ATVs and motor bikes that illegally access their properties.

Area residents have noise concerns.

Air pollutants will be increased.

Oil, gas, and fuels could be spilled on soils, contaminated soils would lead to pond water contamination.

Forest fire potentials with no access for fire vehicles.

Wetland destruction and disruption to vernal pools, one of which is located near the Rolling Ridge property.

Problems with policing the trails and people who don't obey the rules.

Potential for accidents, injury or death.

Diminish property values on adjacent properties.

Fish and Game has extensive rules on OHRV use for state lands. Trails would need to meet these standards. Some land may have deed restrictions related to funding sources for purchases. Many lands specify passive recreational uses. Mr. Walter has photos of some areas including vernal pools.

Mr. Raymond McKinley is the registered agent for Sweet Birch Place Home Owners Association. He is representing the 16 homes in the development. This development is a conservation subdivision and as such land had to be set aside for conservation purposes. All residents in this subdivision bought their homes because of the secluded and quiet nature of the area. There are many young children who engage in outdoor activities and ride bikes in the neighborhood. If this plan goes through, there will be an increase of traffic with trailers, multiple vehicles being carted into the area. This will lead to a reduction of property values because of traffic, trash and noise. The Gumpas Hill Road bridge may not be made for this type of traffic. Tower Hill Road was reclassified as a class A trail last year at town meeting. Highway vehicles are not allowed on class A trails. Trucks with trailers was not what the town voted for when this warrant article passed. Mr. Gagnon clarified the class A trail starts about 2,500 feet up Tower Hill Road. The location being discussed for parking is not a class A trail. Mr. McKinley does not think Tower Hill Road can handle the potential traffic. The road is regularly washed out and in some places it can be nearly impassable. He does not think riders would stay on the trails. Penalties are too low and may be unenforceable. The police did not say they would be consistently monitoring the area which could lead to reckless driving or other violations. Mr. McKinley agrees with Ms. Cooke that the OHRV Committee minutes and notes are not easily available to find and that the OHRV Committee members lied to the Commission when they said abutters were on board with this project. He said they were not and did not even know about this proposal. Mr. Gagnon said he didn't think Mr. McKinley was directing his anger at us. Mr. Gagnon said the Commission has heard the same amount of information that the public has heard about this discussion. The Commission is not advocating for this project. The OHRV Committee asked to be on our agenda and we allowed them to come and speak to us. Mr. Steward asked if there were children and teens that owned ATV's in their development and how many of this type of vehicle were in his development. Mr. McKinley said he thought there were about 8 ATV's and a lot of people were excited to ride. Currently, kids in the neighborhood ride ATV's in the yards and common areas of the neighborhood. Many of these kids are too young to use this proposed trail. Mr. McKinley thinks the whole town should be open to ATV's usage with no restrictions. He feels the whole town is ok, but one place is not acceptable because if it is one place the whole town will benefit and only one neighborhood will have to have the consequences. He said there have been no noise complaints about ATV riding in his neighborhood.

Mr. Nate Boutwell thanked the Commission for purchasing this land it is a great asset to the town. He read from the minutes of when the land was under consideration for purchase. The land would protect water resources, wildlife, forest management, education, and connectivity. He referenced his comments from the last meeting where he explained his concerns. He asked the Commission not to recommend this site for OHRV's. There is a great group of people that contribute to the Gumpas Pond Association to protect the area. He reiterated a thought from our last meeting where he suggested the OHRV park would be better suited to a commercial or industrial site where noise, dust and traffic would not be an issue.

Ms. Beth Jussaume submitted a letter to the Commission. She said everyone who has spoken is conservation minded and concerned about the OHRV park. She asked where the OHRV Committee is in relations to meetings. Mr. Steward said the OHRV Committee is on hold at this time but that is not an official position. He will talk to the Selectmen and try to clarify when they will be meeting. At this time, there is no defined plan, but a lot of work has been done by this Committee. They are trying to fulfill the mandate by the Selectmen and the town warrant to take one year to come up with recommendations relating to OHRV's on town land. That deadline is March as far as Mr. Steward understands. Ms. Jussaume asked if the OHRV Committee had submitted a warrant article for this year. Mr. Steward did not think they had. Mr. Stanvick said he spoke to Jason, the Selectmen's representative on the OHRV Committee and he had no information to share about the Committee. The Commission has a representative on the OHRV Committee also. The OHRV Committee at the present time is in a fact finding mission. No decisions have been made. Mr. Stanvick said it was important to hear from the public. Ms. Jussaume thanked the Commission for its work for the town.

Mr. Dave Hennessey explained this process goes back to the Deliberative Session last year where a citizen's petition was put forward to ride OHRV's on town land. The petition was then withdrawn, by the people who put the petition forward, in favor of a committee to study the issue. At this time, OHRV's can be ridden on private land with owner permission. Mr. Hennessey asked if there would be another warrant article about riding OHRV's on town land or will the Selectboard allow riding on some parcels without a warrant article. Will the town have to vote to allow OHRV's on any public property. He has asked multiple officials in town and has not got a straight answer if there will be a warrant article or not regarding OHRV's. Mr. Stanvick said we were not the right board to ask this question. Ms. Kamal said she was concerned if there was a warrant article and there was a majority 'yes' vote because there may be a conflict with land owners selling to the town and thinking they are protecting their land. Mr. Hennessey is not sure of the legality of this whole situation and not clear of what this all means.

Ms. Deb Waters explained complaints she has heard from residents about OHRV's and that the Forestry Committee is still receiving. Complaints average to about 1-2 per month. Folks are riding all over town. The number one complaint is trail damage which is often severe. The second most common complaint is noise. Mr. Stanvick talked to the police last month about stepping up patrols on town lands after the killing of a couple in Concord a few months ago. They gave him a sample of a patrol log they conducted for Wolven. He hopes increased patrols can catch some of these causes of complaints. Ms. Waters directed the Commission to RSA 215-A which relates to OHRV's on state land. The law is 39 pages long. The last 3 pages are an evaluation process if the state wants to open up an OHRV trail. Most of the criteria on these 3 pages are environmental criteria. There are many hoops to jump through to open an OHRV trail to have it legally acceptable under RSA 215-A. Ms. Waters wanted to reiterate the noise aspect

of OHRV's. The noise affects wildlife and people. There has not been an evaluation of the distance to noise and how it affects residents. New Hampshire courts found the town liable in the case *Sterns v. Town of Gorham* when the town ignored adverse impacts of the quiet enjoyment of homes due to OHRV activity. The town had to pay damages to these home owners. Once the town sanctions OHRV use on public land, the town could be liable for noise or other nuisances caused by the machines. Ms. Jussaume said continuous sounds over 70 decibels can be harmful for hearing. OHRV's are over 80 decibels.

Alicia Hennessey said town residents have been generous to give millions of dollars to buy land for conservation purposes. This has been good for the town. People who sold their land, often at a reduced price, thought it would be kept in its natural state. This OHRV park will disappoint many people who have voted to support the money for conservation land. Ms. Hennessey hopes the OHRV park does not get built in town anywhere.

Mr. Steward thanked the public for their input. He thinks they have been affective so far as many more people have come forward in opposition to an OHRV park than have supported a park. Mr. Stanvick asked if there was anyone who wanted to speak in favor of an OHRV park. No one responded. Mr. Steward said this subject will not move forward until a proposal is put forward.

**DISCUSSION:**

A proposed ordinance for the use of town lands will be discussed. The proposed ordinance will be a Select Board Ordinance. Discussion will be led by Paul Gagnon
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Mr. Gagnon is before us as a member of the Forestry Committee. He is pursuing a clarification of an ordinance that describes the rules of what is allowed and prohibited on town land. Permitted and prohibited uses are listed on the signs at the kiosks at the entrances of town lands. These signs were done many years ago. The town does not have an ordinance to describe permitted and prohibited uses on town land.

Last year, some people were target shooting on town land and started a fire that burned 30+ acres of town land. Mr. Gagnon asked the police what happened with those people. The police said there was no town ordinance to prohibit target shooting even though it was listed as a prohibited use on our town signs. Mr. Gagnon thought this should be fixed. He went to the Selectmen and asked if they wanted him to pursue a town ordinance to specify what is allowed on town land or if he should drop the task and remove anything from the list on the kiosks that was not described in a town ordinance. The town cannot have it both ways. The Selectmen agreed Mr. Gagnon should pursue an ordinance.

The best ordinance he found was from Hollis. The ordinance specifies exactly what is allowed on town land and what is prohibited. He has edited the Hollis ordinance and is going to talk to departments and boards in town. He wants to know if we agree he should keep working on this clarification.

Ms. Loosigian suggested Mr. Gagnon contact Hollis and ask how this ordinance has worked and if there were things they wish they had included and/or things they wish they had left out.

Members generally agreed it was a good idea to have an ordinance that specifies allowed and prohibited uses on town land. Mr. Gagnon will continue to work on this and bring it before us again.

**WALK IN ITEMS:**

Mr. Stanvick contacted NH Fish and Game to see if the town could participate in a New England Cottontail project as we have land that may be of use. He contacted the manager of this program and she said she also works on a project with butterfly gardens. She agreed to find a time to come and talk with us about these programs.

Ms. Kamal attended the NH Association of Conservation Commissions annual meeting. She learned that town lands needed to be under a conservation easement in order to be permanently protected. She asked if our town lands had this protection. Most do not. We do have town forests which provides some protection because they were voted to be town forests. In order for them not to be town forests, they must be voted out of that status. The Selectmen will not put conservation easements on town land. The residents paid for the land, the residents own the land and the residents have right to make decisions about the land. These decisions may be different 50 years from now than the decisions we would make and the residents at that time should have the right to make those choices. The town does hold some conservation easements.

Mr. Gagnon described some new signs that have been posted at town land kiosks. The addition to the signs informs residents that the areas are monitored by the Pelham Police Department and may include video surveillance.

**MINUTES:**

Motion: (Gagnon/Stanvick) to approve the minutes of October 12, 2022.

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

**NON-PUBLIC SESSION:**

Motion: (Mackay/Stanvick) to enter non-public session to discuss land acquisitions, seal the minutes of non-public, and adjourn after non-public.

Vote: 6-0-0 in favor.

Adjourned at 9:50 p.m.

Respectfully submitted,  
Karen Mackay,  
Recording Secretary