

**TOWN OF PELHAM
ZONING BOARD OF ADJUSTMENT
November 13th, 2023**

Chairman David Wing called the meeting to order at approximately 7:01 PM.

PLEDGE OF ALLEGIANCE

ROLL CALL

PRESENT ROLL CALL: David Wing
Danielle Masse-Quinn
Ken Stanvick
Matthew Welch
Planning Director/Zoning Administrator Jennifer Beauregard
Recording Secretary Heidi Zagorski

ABSENT: Alternate Shaun Hamilton
John Westwood
Alternate Nicole Pigeon

MINUTES REVIEW

MOTION: (Stanvick/Welch) To approve the October 16th, 2023 meeting minutes as amended.
VOTE: (4-0-0) The motion carried.

Ms. Danielle Masse-Quinn requested to add an “e” to the last name Masse-Quinn on line 297. Ms. Masse-Quinn asked to add the words “Code of” on line 339. These changes were amended.

Ms. Masse-Quinn asked to review the recording of the meeting to clarify who seconded the motion on line 456 and to check the vote responses on lines 459 and 460. After reviewing the tape, these were determined to be correct as originally stated in the draft minutes therefore no corrections were made to lines 456, 459, and 460.

MOTION: (Masse-Quinn/Welch) To approve the September 30th, 2023 site walk minutes.
VOTE: (4-0-0) The motion carried.

Mr. Wing stated that in addition to the Zoning Board of Adjustment (ZBA) site walk minutes, they have Conservation Commission site walk minutes from September 30th, 2023.

Ms. Masse-Quinn read the September 30th, 2023 Conservation Commission site walk minutes into the record as follows:

Site Walk Date 9/30/2023 – Members Present from the Conservation Commission: Karen MacKay and Al Steward. Members Present from the ZBA: Ken Stanvick, David Wing, Matthew Welch, Danielle Masse-Quinn, and Shaun Hamilton. In reference to 37 Woekel Circle.

Members of the Boards and the Public met at 37 Woekel Circle. The site walk was brought to order at 9 AM by ZBA Chairman David Wing. A dilapidated cottage propped up on blocks and stones occupies the center rear of the parcel. This is approximately the location proposed for the septic system. The lot is a low point of the surrounding landscape. On the day of this site visit standing water covered approximately ¾ of the subject lot including under the cottage and out to the street. Water from the property leaked across and down the street then into Little Island Pond. Gove Environmental delineated the wetland on the property in April of 2017 and determined this was not a wetland. Ms. Page and Mr. Bilapka showed various pictures of the subject property with water on it. The owners of the property showed pictures of the cottage from years ago. In these pictures, the cottage was in a good state of repair with no water in the front yard. Additionally, there was a gravel and/or tar driveway along the road. This driveway did not appear to be present when we visited the site. A culvert on lot 31-11-22, 49 Woekel, drains water from a wetland “described by Mr. Bilapka as a possible vernal pool”. Behind lot 22 to the rear of lot 31-11-20, the subject property, the culvert was the subject of much discussion and contention. The culvert was approved by the Department of Environmental Services (DES) and requested to be installed by them so the rear wetland could drain. Prior to the installation of the culvert, a channel carried the water from the rear wetland to the rear of lot 20. The culvert was installed at grade. Lot 22 had substantial fill added at the top of the culvert, so the property is currently 2-3 feet higher in elevation to lot 20. Mr. Bilapka said there was fill but the level of the lot and the area near the house was lowered. DES is currently and for several more years, monitoring how the culvert is working. The owner said they’re having a drainage plan drawn up at this time. The owner said the water problem was made worse by the concrete wall built by Mr. Bilapka. Mr. Bilapka denies the problem was made worse and cited a 2016 court case that determined Mr. Bilapka was not responsible for the water with regard to the new wall. Mr. Bilapka said the water has always been on the subject lot. Ms. MacKay wondered how a septic system could drain on this lot as water cannot drain through water. Ms. Page and Mr. Bilapka wondered why the landowner has had this property for seven years and is just now drawing up a drainage plan. Mr. Bilapka said he is disputing the septic approval because the new proposed system does not have the 75’ setback from his wells. ZBA voted to adjourn the meeting, see attached ZBA minutes (dated 10/16/2023). Respectively Submitted, Karen MacKay, Recording Secretary.

CONTINUED HEARINGS

Case #ZO2023-00015

Map 31 Lot 11-20

PAGE, Andrea & BILAPKA Bruce – 37 Woekel Circle – APPEAL OF AN ADMINISTRATIVE DECISION concerning Article III, Section 307-8, Article VII, Section(s) 307-38, 307-41, & Article VIII-I, Section 307-48-1-1 of the Zoning Ordinance and the Administrative Decision made by the (Alternate) Health Officer regarding the approval of an individual sewage disposal system, NHDES Work #202000255. Approval for construction #eCA2023062223 on 6/22/2023.

Mr. Wing stated that they were returning to the motion made at the last meeting to determine what occurred on the 11/1/22 date and on the 11/15/22 date as reported in the letter from Ms. Jennifer Beauregard. Mr. Wing stated this letter was included in the members' packets. He said the letter appears to have come from the applicants.

Mr. Wing opened the discussion to the Board members.

Ms. Masse-Quinn asked if Mr. Wing was referencing the motion questioning the dates to see if Mr. Bilapka and Ms. Page filed their application with the Planning Department within the 30 days. Mr. Wing answered yes. Ms. Masse-Quinn said when you refer to the Board of Selectmen minutes, she does not understand why they are taking the appeal date from the Board of Selectmen meeting minutes. She said when you look at Health Officer, Gilbert Colburn’s date that he approved the ISDS, it is dated June 21st, 2023. Ms. Masse-Quinn said when you take 30 days off of that date, and you look at the stamped application from Ms. Page, the Planning Department received it on July

21st, 2023 and that is within 30 days of the appeal.

Ms. Masse-Quinn referenced the ZBA meeting minutes dated October 16th, 2023. She stated on line 229, that Mr. Muller had an issue that was not addressed by the applicants. Ms. Masse-Quinn said Mr. Muller stated, “as stated in this letter the town signed off on that on June 6th, 2023. Their appeal was not filed with the statutory requirement which would override anything in the ordinance. The ordinance says you have thirty days. Once the thirty days go by you lack subject matter jurisdiction.”

Ms. Masse-Quinn said when you refer back to the Board of Selectmen paperwork that was filed, we are not basing the appeal date off of their two meetings, they are basing the appeal days off of when they agreed to the mutual agreement, which according to Attorney Mr. Muller, was June 6th, 2023. She said when you look at the application, the Planning Department also received the application on day thirty.

Mr. Matthew Welch said the question he had about the dates was because the applicants' council repeatedly mentioned that she wasn't looking to overturn the mutual settlement agreement, she was looking to overturn the Selectmen's decision which would have had to happen at a meeting. Ms. Masse-Quinn stated that the Board of Selectmen minutes of 11/15/2022 stated that they denied the actual waivers which would and that would make no sense as to why Mr. Bilapka and Ms. Page would want to appeal that. Ms. Masse-Quinn said therefore they could only appeal when the Board of Health decided to settle in the Superior Court off of that date, so it should be thirty days off that date. Ms. Masse-Quinn added that the applicants satisfied this. Ms. Beauregard said the letter that was referred to at the last meeting that she wrote, the dates she refers to are specifically what was on their application. Ms. Beauregard said she provided a packet to each member that included dates since that time along with the date-stamped copies of the front pages.

Mr. Welch added that on the applicants' own application, they site the Board of Selectmen meeting dates 11/1/2022 and 11/15/2022. Ms. Beauregard said that is why her letter had those dates, however, there is other information as well. Ms. Beauregard agreed with Ms. Masse-Quinn about the applicants being within the thirty days.

Ms. Masse-Quinn stated following this, she thinks there should be a discussion on whether or not there was an error made by the Health Officer. Ms. Beauregard said and also to determine whether or not the ZBA has jurisdiction. Ms. Masse-Quinn stated now that they have determined the appeal was filed within 30 days, the ZBA would have subject jurisdiction.

Mr. Ken Stanvick asked if the Board could agree that the appeal was filed in the proper amount of time. Ms. Masse-Quinn and Mr. Welch verbally agreed with this.

Mr. Wing asked if the applicant would like the Board to continue to hear the case.

Ms. Laura Gandia introduced herself as an attorney from Divine Millimet. Ms. Gandia stated that she is representing the applicants. Ms. Gandia said her clients have indicated to her that they would like to continue due to the lack of a full five-member board. Mr. Welch asked Ms. Gandia to state for the record that she agrees to waive the ninety days for the ZBA to be able to continue until next month. Ms. Gandia replied sure. Ms. Gandia also stated for the record that she did send the ZBA an email stating that the minutes from the 10/16/2023 ZBA meeting were incomplete because they didn't reference the various points of objection that she made. Ms. Gandia said these objections were made where there were some procedural errors. Ms. Gandia said at the meeting on 10/16/2023, this Board moved to continue Case #2023-00015 to review the dates, then the Board denied Case #2023-00016. Ms. Gandia said there was a break in the meeting and then the Board returned. Ms. Gandia said the Board attempted to make a motion to deny Case #2023-00015 and at that point in time and before, she raised repeated objections to the process that was being implemented that once the Board continues a case, they cannot deny it. Ms. Gandia said this is also cited in the

Board's rules of procedure. Ms. Gandia said the Board did end up voting on a motion to deny Case #2023-00015 and then she received a notice of decision with the denial of their appeal on 10/16/2023. Ms. Gandia said they have since appealed this decision. She said she did file a motion for a rehearing on this. Ms. Gandia said on November 6th, 2023 she received a revised notice of decision retracting the October 16th, 2023 notice of decision, and that was done without her understanding of any type of public hearing. Ms. Beauregard said the ZBA has received this email as well.

Mr. Wing confirmed with Ms. Gandia that they will continue this case to next month and that she has waived the ninety-day requirement. Ms. Gandia replied yes. Ms. Beauregard said the date of the next meeting would be December 11th, 2023.

MOTION: (Masse-Quinn/Welch) To continue Case #2023-00015 to December 11th, 2023.
VOTE: (4-0-0) The motion carried.

DISCUSSION

Ms. Masse-Quinn shared a copy of Robert's Rules of Order with the Board members. Ms. Masse-Quinn asked the Board members if they would like to update their rules of procedures and bylaws and adopt certain language from Robert's Rules of Order.

Mr. Stanvick asked what the Planning Board had adopted. Ms. Masse-Quinn said it was in reference to learning about the appropriate times to make motions, who can make motions and the procedures of making motions. Mr. Wing suggested for the members to review.

Mr. Stanvick discussed the idea of having a police presence at some of their meetings. Ms. Beauregard said there have been times when they knew in advance there would be a large crowd and had requested police presence. Ms. Beauregard suggested a panic button in the event they needed it. The other members agreed with this idea.

ADJOURNMENT

MOTION: (Welch/Masse-Quinn) To adjourn the meeting.
VOTE: (4-0-0) The motion carried.

The meeting was adjourned at 7:34 PM.

Respectively Submitted,
Heidi Zagorski
Recording Secretary

