



Town of Merrimack, New Hampshire

Community Development Department

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Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MERRIMACK CONSERVATION COMMISSION

APRIL 3, 2017

MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, April 3, 2017 at 6:33 p.m. in the Merrimack Memorial Conference Room.

Chairman Gage Perry presided:

Members of the Commission Present: Matt Caron, Vice Chairman
Michael Boisvert
Cynthia Glenn
Tim Tenhave, Alternate Member
Councilor Thomas Mahon

Members of the Commission Absent: Gina Rosati, Alternate Member

Also in Attendance: Don Laliberte, Alternate Member, Horse Hill Nature Preserve

PUBLIC COMMENT - None

APPOINTMENTS - None

STATUTORY/ADVISORY BUSINESS - None

OLD BUSINESS

Chairman Perry stated a review of past meeting minutes did not reveal a motion to authorize payment to Beaver Solutions, LLC for the 2017 maintenance plan. Although he believed approval had already occurred, as a means of ensuring the matter is addressed, he requested a motion be made at this time. The cost was stated as \$930, which covers all four (4) devices.

MOTION BY COMMISSIONER TENHAVE TO EXPEND A SUM NOT TO EXCEED ONE THOUSAND DOLLARS (\$1,000) ON MAINTAINING THE FOUR (4) BEAVER SOLUTIONS DEVICES. FUNDS ARE AVAILABLE IN FUND 53

MOTION SECONDED BY COUNCILOR MAHON

MOTION CARRIED

6-0-0

NEW BUSINESS

1. Skidder Damage on Horse Hill Nature Preserve (HHNP) Property:

Chairman Perry spoke of a report received from members of the HHNP Sub-Committee relative to damage that has occurred on the property.

Don Laliberte, Alternate Member, HHNP, stated Tim Adams, Alternate Member, HHNP, initiated the email indicating he witnessed damage while walking the property on March 25th. Mr. Laliberte provided photographs of the areas where damage occurred.

Mr. Laliberte read into the record a statement he prepared for the Merrimack Police Department (March 26th @ 3:30 p.m.: Case #567124):

"On March 26, 2017, I was investigating a report of environmental damage done to some of the trails at the Horse Hill Nature Preserve. Most of the damage was in the vicinity of Rocky Trail and vehicle tracks lead to the powerlines and continued to cross Naticook Road and back under the powerlines all the way to the Horseshoe Fish & Game Club parking lot.

After doing a little investigating and tracking, I found that the rig/skidder that did all of the damage on the trails came from the Horseshoe Fish & Game Club parking lot, and belongs to Alex Jordan Logging. They were doing logging for the club. It appears the skidder was driven by Alex Jordan some time Friday late afternoon or early evening under the powerlines and on Rocky Trail, and somehow back under the powerlines to its final destination that happens to be behind the barn at 89 Peaslee.

I met with Detective Maguire, and he spoke with the owner of the property at 89 Peaslee, and got the phone number for Alex Jordan, and ended up leaving a voicemail to return the call.

For some reason the property owner would not give Detective Maguire permission to take a photo of the skidder and tire tracks. The Detective did take a photo, with a zoom lens, from the road. The Detective also asked me to come up with an estimate for the environmental damage, which I am not sure how to do.

The Alex Jordan Logging skidder started from the Horseshoe Fish & Game Club parking lot on Greens Pond Road and traveled north behind the shooting range and onto the powerline right-of-way heading west, crossed Naticook Road, and continued on the powerline right-of-way, and then turned right headed north on Rocky Trail past Posts 13, 14, 9, 17, 10, and then went through the closed off area (please refer to mud photo), and then south on Loop Road past Posts 11 and 4 on the way towards the powerline once again. Once back to the powerline right-of-way, the skidder continued on in a westerly direction, and ended up behind the barn at 89 Peaslee."

Mr. Laliberte stated he also wished to indicate the day after the email from Tim Adams was received was the day that he investigated the problem. He noted on that same day he consulted with members of the HHNP Sub-Committee; Debra Huffman, Roland Roberge, Newt Coryell, and members of the Commission; Cindy Glenn and Gage Perry.

What he finds disturbing is the amount of damage that was done with total disregard to what was happening, e.g., in some cases the skidder just drove right over trees. There is evidence of where the belly of the skidder scraped the trees and places where some trees that were scraped were still standing. What he found particularly odd was at the bottom of the Plumber's Trail the skidder drove in such a way and it was so wide that the growth that was on the side of the trail, if getting into Rocky Trail, was just folded over. Up until recently, it would be difficult to even ride a mountain bike without having all of the limbs sticking into your spokes (collapsed into the trail).

Mr. Laliberte commented he is a member of the Horseshoe Fish & Game Club, and spoke with some of the members. They knew where the tracks led to and indicated it was not a monster truck but a logging skidder that had been parked there for some time while it was in use, and had been removed that Friday (March 24, 2017).

Commissioner Boisvert questioned if the path was used as a shortcut. Mr. Laliberte responded it could not stay on the powerline right-of-way, and had to go around Long Pond.

Chairman Perry commented the issue has become more of a legal matter. The Community Development Department is involved, and has been provided a copy of the photos.

Mr. Laliberte commented within the coming weeks there will be the desire to utilize those trails. There will be the need for a work party of some sort to help remedy the damage. There is also the effect of the trees that will die after what has occurred.

Councilor Mahon stated there to be a formula that is used, and his recollection is if you cut illegally you can be charged three times the value of the timber.

Commissioner Tenhave commented the last time the Commission sought to put a monetary value on environmental damage that occurred within an easement area of the HHNP, the amount of time invested by him and many others was tremendous. When all was said and done, from the Commission's perspective, not a great deal happened in regard to the action the Town took to remedy the situation. In this case, it is even more blatant. He stated his belief the Commission would like to see the Town take a far more proactive role to document and assess damage, and chase all legal avenues to address this. If people get the idea this kind of behavior is tolerated it could be catastrophic to other properties.

Councilor Mahon stated there to be a potential trespass issue and certainly malicious mischief. Chairman Perry remarked there is also the potential there were NHDES violations with regard to the wetlands. He stated the need to review the area and maps to be certain the area of wet is in fact a wetland. Commissioner Tenhave noted the property is managed by the Commission, but owned by the Town. He spoke of the time and effort that will be required of the volunteers to remedy the situation in order to make the trails passable and usable for the approved uses.

Councilor Mahon questioned if the photos accurately represent what occurred in the area. Mr. Laliberte stated his intent had been to walk the trail and photograph areas where he saw damage that was caused by the wide tracks of the skidder.

Mr. Laliberte stated Ms. Huffman had indicated to him that her husband commented on having seen large muddy tracks that crossed the road on Naticook Road under the powerlines. Commissioner Tenhave commented that indicates the individual trespassed or crossed Eversource property as well.

Mr. Laliberte stated his willingness to accompany an arborist or other party should the Commission wish for the damage to be viewed firsthand by another. Commissioner Tenhave suggested the Commission not take action before learning how the Town intends to proceed.

Mr. Laliberte stated his last discussion with the Police indicated the need for the Police to be provided with a monetary value to apply to the damage. The Police report is incomplete without that information.

Commissioner Tenhave commented the Division of Forest & Lands has a complaint form that can be filled out if a Forest Ranger is needed to address a law enforcement issue. He stated he would forward a link to Councilor Mahon as it is the property owner/Town that would be responsible for moving this forward.

When asked how quickly Councilor Mahon could bring the matter before the Town, Councilor Mahon stated he would be in front of the Town Manager the following morning.

Mr. Laliberte suggested the Commission view the problem in terms of what it would cost to repair the damage as he saw that as outweighing the value of timber associated with young trees.

It was noted mud season signage is up in the area.

2. Procedure for reporting problems/ Damage on properties.

Chairman Perry remarked the discussion is intended to identify procedures for reporting problems/damage on properties. There are both properties owned and managed by the Commission and properties that are managed by the Commission, but owned by the Town.

Commissioner Tenhave suggested if anyone notices damage on a property an email should be generated to the entire Commission as quickly as possible. There is the need for some separation, for legal reasons, between properties the Commission owns and those which it manages, but does not own, as often it is the owner of the property that is required to initiate legal activities. He stated his belief it is the obligation of the Commission to inform the owner/Town as quickly as possible. Matters believed to be criminal should be reported to the Police.

In the recent incident, the Commission utilized the Community Development Department as the avenue to the Town. However, what was learned, in this case, was the department was short staffed this past week. He suggested the Commission request the Town inform the Commission of the protocol to be followed.

When asked, Mr. Laliberte stated once he had information in hand, he contacted the Police Department. Chairman Perry stated concern with an individual, whether a member of a sub-committee or resident-at-large, being placed in the position of confronting an individual who may have been the cause of damage.

Mr. Laliberte commented when he spoke with the Dispatcher, and stated the desire to speak with an Officer regarding property damage, he was informed he should be using the term environmental damage not property damage as there was no real property/structure that was destroyed.

Mr. Laliberte questioned if the Commission should follow up with Eversource to inform them of the incident, that a report has been filed with the Police, and provide the case #. Commissioner Tenhave suggested that to be a question for the Town to answer. Councilor Mahon commented unless there was physical damage to their property, it is highly unlikely they would have any knowledge of the incident. He felt the Commission should report the incident to Eversource.

Mr. Laliberte commented the skidder traveled through an area that was taped off as a wetland that is under the powerline. Vice Chairman Caron referred to the area as the overflow from where the beaver device is located. He noted, from what he could count, the skidder traveled through 6 wetlands. Chairman Perry remarked there are photos showing the skidder traveled right into the water. That is something that should be brought to the attention of NHDES. Commissioner Tenhave commented right outside of the sandpit is a wetland, which was marked as a wetland at one point in time by a Wetland Scientist. Vice Chairman Caron noted it is also a turtle nesting area.

The consensus was to look to the Town to weigh in on what the process should be for handling such incidents.

Commissioner Tenhave suggested if experiencing an incident the Commission should follow a process and learn from it. At the conclusion, the Commission could discuss what did and did not work, and make adjustments as necessary.

Councilor Mahon stated he would look to legal counsel to provide an opinion as to what legal issues might be, and how the property owner should proceed. Commissioner Tenhave suggested the conversation include discussion of the fact that there are two different property owners involved, particularly given the Commission is an all-volunteer board of the Town. Essentially it is all Town property at some level. There might be nuances between the two or it may be the exact same process.

Mr. Laliberte suggested the future process could be that an individual witnessing damage contacts a designated member of the appropriate sub-committee as well as a designated member of the Commission. Those individuals could be responsible for getting the information to the entire membership of the Commission as well as determining whether or not legal action is required.

Councilor Mahon noted, by Charter, the Town Manager is responsible for Town property. The Town Manager is the primary point of contact. The Town Manager has the ability to appoint a designee to address certain matters.

Chairman Perry noted each sub-committee has a member of the Commission serving on it. That Commissioner can serve as the initial contact person, and could ensure the entirety of the Commission is made aware of the

situation. He suggested Commissioners make each of the sub-committees aware of the current situation and that the Commissioner who serves on the sub-committee is the initial point of contact for any such issues.

Chairman Perry will reach out to Tim Thompson, Director, Community Development Division, to identify the chain of command.

3. Wasserman Conservation Area permitted uses:

The commission to discuss what the deeded permitted uses are at the Wasserman Conservation area proper; and if the same restrictions should be extended to Commission managed properties surrounding it.

Chairman Perry stated the intent for the Commission to identify the permitted uses on the recently acquired land abutting the Wasserman Conservation area. A copy of the Deed for the Wasserman Conservation area was included in the agenda packet. The Commission had previously discussed both properties having the same permitted uses and restrictions.

Commissioner Tenhave spoke of having reviewed the Deed for the parcel the Commission recently acquired, and noted it simply conveys the property to the Commission. It was not conveyed with any specific conservation easements or other language that has been utilized for the past several years on other Commission properties. The Deed does indicate that the property has on it a number of easements, e.g., PSNH, a roadway easement, etc. There are no true deeded restrictions beyond the utility type easements. He stated his belief the Commission is free to take whatever action it wishes, and not be controlled by a Deed.

The protective covenants for the Wasserman Conservation Area property are actually mentioned in the Deed transfer process, and were also put in place as part of the LCIP activity.

Commissioner Tenhave stated his belief it would be fitting for the 20+ acres the Commission recently acquired to have the same permitted uses and restrictions as the nearly 80 acres that make up the Wasserman Conservation Area. The idea is to keep the land in its natural state; only sound forestry and wildlife management practices. Trails are permitted. No snowmobiles or all-terrain vehicles would be permitted. No hunting or trapping would be permitted on the property. It could be used for a public water source if deemed necessary.

Chairman Perry noted the language under Section 3 (d) which reads in part: "No soil, loam, peat, gravel, sand, rock or other mineral substance shall be placed, stored or dumped on the Property..." He stated his assumption that excludes materials needed for building trails given trails are permitted. The Commission agreed that would be excluded. Placement/storage of materials onsite for that purpose would be temporary in nature. Commissioner Tenhave noted the language of the paragraph ends with: "dumped or permitted to remain thereon."

The property could be identified as Wasserman Conservation Area with both parcel IDs identified. It could be added to Chapter 111 of the Town Code.

Commissioner Tenhave volunteered to incorporate the appropriate language into a standalone document for the property in question, and provide it to the Commission for consideration at its 2nd meeting in May.

Vice Chairman Caron commented there are a good many people utilizing the property for hunting. The Commission will likely have to sign/post the property stating hunting is not permitted. It was noted it is always an option to not post, and simply address each issue as it comes up. The suggestion was made that the Commission begin by notifying the owners of the three tree stands currently located on the property as well as the local Fish & Game Officer.

Having the item appear on multiple agendas informs the community-at-large of the discussion taking place and the opportunity for members of the public to make their wishes known.

OTHER BUSINESS

- Nashua Regional Planning Commission (NRPC): Maps

Vice Chairman Caron informed the Commission he forwarded the trimmed down trail descriptions for Grater Woods to Ryan Friedman, Sr. GIS Planner, NRPC. Mr. Friedman's initial response was that the descriptions required additional trimming. Vice Chairman Caron questioned the will of the Commission in terms of the information that should be included on the map.

Chairman Perry commented there will come a time when there is not ample space for the descriptions. Commissioner Tenhave remarked he is about to work with the Wildcat Falls Sub-Committee on their trail descriptions, and had some questions relating to the desired style. Descriptions on the HHNP map do not indicate where trails start, end, or connect. They simply state trail conditions or what it is suitable for. With Wasserman and Grater Woods there is a lot of information pertaining to where trails start, how they are accessible, and where they intersect. He suggested if that information is removed, and the information is concentrated on the trail conditions or the intended use for the trail, someone viewing the map can identify the intersections. Vice Chairman Caron noted the request for the trail information came from user input.

Commissioner Tenhave commented users may have been looking at the map in one location and the descriptions in another. When you combine the two into one document, it is more easily identified.

Chairman Perry questioned if the user request was for the information to be included on the map or on the website. He suggested if the downloadable map is on the website it can be reviewed, and an expanded version can be located on the website; if you really want to know the flora and fauna and where it goes, then you have to look to the website for that information.

The Commission was in agreement two versions is the best approach. A trimmed down version could be included on the map, e.g., could simply explain this trail is for an experienced hiker, very steep, etc.

Vice Chairman Caron suggested the beefed up version could be the stewardship plan version of the trail, and have that little piece of the stewardship plan available as a hyperlink. Commissioner Tenhave commented that is in place for Grater Woods; a link to the trail section.

Both Mr. Friedman and Sara Siskavich, GIS Manager, NRPC, will be present for the Commission's next meeting, and will present the last of the maps. Vice Chairman Caron commented on all of the properties there are permitted uses and restricted activities. At a meeting of the Grater Woods Sub-Committee, the subject of campfires came up. Campfires are restricted at the HHNP, but are not listed as restricted. Campfires are also restricted in Grater Woods. Also at Grater Woods there was a request for calling out the school property and adding a school property restrictions area.

The Commission was in agreement with adding that information.

Chairman Perry commented something similar was done at Wasserman Park where there is a noted section of property managed by others. Something along those lines could be done for Grater Woods and the school property. Vice Chairman Caron commented Mr. Friedman is currently working on the Parks and Recreation managed property identification. Commissioner Tenhave noted a similar situation exists at Wildcat Falls where there is the Town parcel and the State parcel, which is called out.

Chairman Perry requested a set of draft maps be provided for the next meeting.

- Update on Grater Road bypass road design & construction

None available at this time.

- Website Upgrade

Commissioner Tenhave stated Wetherbee is beginning the quarterly maintenance. He has provided them a list of things to work on. Changes that will be seen to the website include the addition of a sub-committee page for each of the major properties; HHNP, Wildcat Falls, and Grater Woods. They will be skeleton pages that the sub-committees can review and provide input on. They were also asked to create a sub-committee page for Fields Farm and Wasserman Conservation Area that simply state something along the lines of "Coming Soon". He stated his desire to see the Commission put together a sub-committee for the Wasserman Conservation Area in 2017 and for Fields Farm in 2018. The launch pages will include information on how to contact the Commission if desiring to serve on the sub-committee.

In addition, work will be done on the gallery; a separate page for photographs to be viewed. He spoke of the data impact when information is downloaded onto a users' device. The thought was to create a gallery page that indicates the page is data intensive. Wetherbee is looking for more photos.

- Sub-Committee updates

Vice Chairman Caron spoke of an incident at the Grater Woods property where a quad entered one of the non-motorized trails. They ripped down the no motorized sign and rode right past it to get around one of the gates. When asked, he stated there was no representation from the Right Riders present at the meeting.

When asked if it was believed to be a single incident, Vice Chairman Caron responded those that are used to going where they used to go now have an obstacle, and they are still going to go there. He replaced the sign. In addition, mud season signs were placed on the gates.

- Plantings

Commissioner Tenhave spoke of an email received from Amy Casparius, Community Development Division, regarding an individual interested in doing some plantings. He questioned if there was an update available. Vice Chairman Caron stated he was unable to reach the individual, but would reach out via email and telephone the following day. When asked if he had any suggestions, Commissioner Tenhave commented at one point he tried to place plantings around the sign at the entrance to Wildcat Falls. Someone who regularly mows that mowed them down. It may be that rocks or another obstacle could be placed around plantings to protect them.

Commissioner Glenn spoke of the flower patch that Lynne Wenz maintains at the HHNP, and remarked Ms. Wenz would appreciate some help with that; particularly with watering.

Vice Chairman Caron stated his impression what was being proposed was something similar to an Earth Day event where the entire company would spend a day volunteering.

The HHNP Sub-Committee will meet on Monday, April 10, 2017 at 7:00 p.m. in the Matthew Thornton Room.

- Meeting Minutes

Commissioner Tenhave commented on having received a reminder from the public that the Commission was not doing a good job handling the draft minutes for the sub-committees. He stated appreciation for the sub-committees stepping up and addressing that.

- Vernal Pool Party

It was noted the Vernal Pool Party is scheduled for the morning of April 29, 2017.

- Seedling Giveaway

The Seedling Giveaway will take place at Currier Orchards on Saturday, May 13, 2017.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. March 20, 2017

The following amendments were offered:

Page 2, Line 53; replace "Facebook page" with "website"

Page 4, Line 20; delete the "," after "permitted"

MOTION BY COMMISSIONER CARON TO ACCEPT AS AMENDED

MOTION SECONDED BY COMMISSIONER BOISVERT

MOTION CARRIED

5-0-1

Commissioner Glenn Abstained

PUBLIC COMMENT - None

COMMISSIONER COMMENTS

Commissioner Tenhave requested Commission Glenn pass along to the HHNP Sub-Committee the Commission's gratitude for their support of Mr. Laliberte and Mr. Adams in the work they did on the property.

The Commission thanked Councilor Mahon for his work on the Commission, and his service to the community.

ADJOURNMENT

MOTION BY COMMISSIONER TENHAVE TO ADJOURN

MOTION SECONDED BY COUNCILOR MAHON

MOTION CARRIED

6-0-0

The April 3, 2017 meeting of the Merrimack Conservation Commission was adjourned at 8:29 p.m.

Submitted by Dawn MacMillan