



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK CONSERVATION COMMISSION MONDAY, DECEMBER 12, 2022 MEETING MINUTES

CALL TO ORDER -

A Meeting of the Conservation Commission was called to order on Monday December 12, 2022 at 6:30 pm in the Matthew Thornton Room.

Steve Perkins, Chair, presided:

Members of the Commission Present:

Michael Boisvert, Vice-Chair
Andy Hunter – Town Councilor
Ellen Kolb
Eric Starr
Cynthia Glenn
David Trippett, Alternate Member
Gina Rosati, Alternate Member

Members of the Commission Absent:

Michael Drouin. Alternate Member
Gage Perry

*Chair Perkins designated **Commissioner Rosati** to sit in as a voting member for **Commissioner Perry**.*

PUBLIC HEARINGS - None

NEW BUSINESS –

- **Review of Standard Dredge & Fill Application from NHDOT regarding the F.E. Everett Turnpike Widening Project. The project proposes to widen the roadway from two to three lanes in each direction with the addition of a northbound and southbound travel lane. The project begins approximately 0.2 miles north of Exit 12 (Bedford Road Overpass) interchange and continues north for approximately 0.9 miles.**

Chair Perkins explained this project is a stand-alone agenda item. This particular application is a dredge & fill permit. He explained that there is a similar item on the agenda to be discussed later in the meeting. He noted the deadline is today if the

Commission is going to identify any concerns or ask NHDES (NH Department of Environmental Services) for an extension. With the influx of these types of NHDES permit applications, it would be helpful to develop a strategy to deal with them. Some applications have tight and unique timelines and differ depending on the type of application. Chair Perkins highlighted three important documents that the Commission should have received electronically.

Chair Perkins briefly explained the Commission got a notification that they had until today December 12, 2022 to comment or state their intention to comment. The information was thoroughly vetted and also received by the Conservation Commissions in several neighboring towns for their review and comment.

Chair Perkins asked if there were any concerns with the application. Commissioner Glenn noted that as of November 30, 2022 there is a new federally endangered species that possibly has habitat in the area of the project. When the application was completed, the species was not listed as federally endangered. She felt the application should be redone considering this new information. She continued that she didn't believe the Commission would get another chance to comment or review further after they submitted their initial review/comments. She believed work was probably being done to revise the application since the federal law had changed.

Chair Perkins asked which species was listed as endangered to which Commissioner Glenn replied the Northern long-eared bat. Chair Perkins recalled reading about the species in the application. Commissioner Glenn remarked it was discussed in the application however because it was not federally endangered at the time, there are different procedures that need to be followed. Chair Perkins noted he believes Dumpling Brook was identified as a potential habitat for the Northern long-eared bat and that Sonar testing was completed in August 2022. Commissioner Glenn agreed and said the applicant indicated they didn't think there were any bats in the area. She felt it would be a good idea to complete re-testing again closer to the time of the project, considering work won't begin until June of 2023. The project will include 11 acres of tree clearing. Chair Perkins commented this was a good example of feedback that could be provided to NHDES.

Commissioner Glenn said the application indicated widening Earth work would take place around June 2023 so she is guessing that means the clearing of trees. She noted that this time of year is nesting season for birds, squirrels, and turtles. She realizes the Commission is only an advisory group but noted that 11 acres is a sizeable amount of land. Chair Perkins added that a specific 36 inch culvert was mentioned and asked if that was the only area, or if the trees were also habitat for the bats. She responded the application only stated that the project is within the documented range of the bat and covers the amount of tree clearing to take place. Chair Perkins pointed out that the permit application cites four locations for the protected plant bird foot violet, and that

the application includes a plan to re-site two of the four plants. Commissioner Glenn reiterated that NHDOT may have to revise its plan due to the bats' "endangered" status. She suggested the applicant revise the plan to account for the endangered species.

Commissioner Kolb said that Commission jurisdiction is limited in evaluating wetlands applications to anything under RSA 482-A and the state administrative rules covering this information. She suggested submitting concerns, if there were any, to NHDES but that the Commission's jurisdiction may be more limited than they think. She requested that if such a response is made by the applicant following the submission of Commission comments, all Commission members be advised of the response. Chair Perkins will send comments regarding endangered species and potential soil contamination.

Commissioner Glenn noted that the application mentioned since this project will make a permanent impact on the wetlands, it looks like the Town will be receiving \$100,000 in mitigation funds from the applicant. She suggested seeing if there are any projects the Commission can use this money for. She mentioned having GZA involved since they had worked with the Conservation Commission in the past on these types of projects.

The commissioners would like to learn more about this. Commissioner Glenn believes the applicant met with the public and possibly the Town Council in 2016 & 2018. At the time, no projects were presented so the money will most likely go into a general town fund. If possible, they should use these funds for any Commission projects. The discussion continued touching on maps provided by GZA and parcels as well as their values. The documents covered several locations to complete specific projects and identified wetland restoration targets. Commissioner Glenn added that if the Commission doesn't use the mitigation money, it will go into a state fund. Chair Perkins said he could dig into this to try and get more answers.

Commissioner Rosati said that the Commission, in other cases, has recommended that projects be timed to avoid the May-June nesting season, especially as it affects Blandings' Turtle populations. She questioned if NHDOT should be held to the same standard that has been used in other cases. When Flatley came before the Commission, they were asked to make sure that they kept any soil potentially contaminated with PFAS on site. She pointed out on page 2 of the application, on a question regarding whether there are contaminants on site, the "no" box was checked off by the applicant.

Given the proximity to Dumpling Brook which is close to Saint-Gobain, there is the possibility of PFAS contamination. She thinks that before the applicant starts digging, they need to take soil samples to confirm that the soil onsite is not contaminated. If it is, then any contaminated soil will need to be kept onsite. Chair Perkins stated he will check on this as well, but assumes they may have already done baseline soil testing. Commissioner Rosati said that if the testing was done and came back clean, it was a

moot point. However, she felt it was important to be consistent. Chair Perkins will report back with his findings.

- **Request from HHNP Subcommittee to approve installation of two interim signs to point out Amherst Road parking lot and Field Farms properties.** – *Submitted by Ellen Kolb*

Commissioner Kolb said that while Fields Farm does not yet have a subcommittee, trails have been established on the property by users, mainly bicyclists. There is no marked parking, and that is a safety concern if users park along Amherst Road. The purpose of the signs would be to direct Fields Farm users to park at the HHNP lot on Amherst Road. Subcommittee member Marc Gagnon would make the signs, which would be an interim measure only, pending formal action on Fields Farm by the town.

When the subcommittee spoke about this, they looked at it from the angle of safety and trying to encourage those using the property to park in the already established lots. She stated the signs may acknowledge that use of the property is happening, but everyone that lives in the area knows this already.

Vice-Chair Boisvert felt that while the signs are a good idea, he wondered if they encourage people to break the law by accessing Fields Farm property via private property. The HHNP subcommittee considered that, but concluded that safety issues were paramount. The subcommittee wants to keep people from parking along Amherst Road.

Vice-Chair Boisvert recalled there being one trail that crossed private property and asked if this trail had been blocked off. Commissioner Kolb mentioned she was unsure, but that Marc Gagnon on the HHNP Subcommittee had completed a site walk recently and would have a better idea. These signs would indicate Amherst Road only to try to divert people over to the HHNP parking lot. Vice-Chair Boisvert asked where the signs would be placed. Commissioner Kolb said she didn't have a map, but that the subcommittee knew where the signs needed to be placed.

Chair Perkins said that the Community Development department continues to work on resolving questions regarding the deeds to property around Fields Farm. He mentioned there was a lot of research involved so it may take some time.

Commissioner Kolb noted this is why they were requesting the signs as an interim measure. Commissioner Starr showed a map he had. He pointed out one spot down towards the Southern end of the farm along Amherst Road that is frequently used for parking where signs could be placed.

Vice-Chair Boisvert asked if the sign would be an official Town sign. Commissioner Kolb said they wanted to avoid using the word official at this point. If the subcommittee needs to provide more information, they would be happy to. They would take the sign down as soon as it was no longer required.

Commissioner Glenn asked if there are more walkers or bikers. Commissioner Kolb & Vice-Chair Boisvert said it was mostly cyclists. She questioned the traffic increase possible from this. Commissioner Kolb said most likely it would include people parking their trucks and unloading their bicycles. Commissioner Rosati asked if there was a legal access to Fields Farm that does not involve crossing private property.

Commissioner Starr & Vice-Chair Boisvert are almost positive that there is an entrance to the property leading directly onto Conservation land at the Southern end of Fields Farm. Commissioner Rosati asked if it was an actual trail or if it required bushwhacking. Commissioner Starr stated he wasn't sure because he hasn't been there himself. Members concurred with Commissioner Rosati's suggestion that a Fields Farm site walk would be appropriate next year. Commissioner Kolb noted these signs would be provided by the subcommittee.

Motion by Vice-Chair Boisvert to allow HHNP subcommittee to post two signs, one at HHNP and one along Amherst Road at the Fields Farm access point, indicating that parking is available at the HHNP lot on Amherst Road

Motion Seconded by Commissioner Rosati

Motion Passed

7-0-0

- **Request from HHNP Subcommittee to allow New England Mountain Bike Association (NEMBA) to groom property trails during snow cover next season on a volunteer basis. – Submitted by Ellen Kolb**

Commission consensus is to allow this, noting that the grooming benefits all trail users. The Commission has accepted volunteer work from NEMBA before. A single track groomer called a SnowDog would be used on some of the trails in HHNP. Commissioner Kolb explained that most grooming would likely occur down at the Watanic Bowman end of the property and all work would be done with NEMBA equipment. NEMBA's insurance certificate should already be on file in the Community Development Department since it was submitted for an earlier project.

Vice-Chair Boisvert noted that NEMBA has performed the same service on Grater Hill trails in the past. Chair Perkins felt it was important to approach the topic this way since they would be granting NEMBA an exception to the Chapter 111 rules. In the past the Commission has discussed this and if there is not an objection, they let the Town Manager Paul Micali know. If the Town Council would like a presentation, the Commission can go before them to explain the importance of the work. Chair Perkins will advise the Town Manager that the Commission has granted permission to NEMBA for the grooming. Commissioner Rosati questioned if this was something they would like to do every year. Chair Perkins remarked it was probably a good idea to discuss yearly.

- **Trail signs, review need and raw materials purchase** – *Submitted by Mike Boisvert*
Vice-Chair Boisvert is working with a volunteer who will make trail signs for Conservation properties, and now is the time for subcommittees to submit requests for signs. He noted the HHNP subcommittee had expressed interest in several signs and that the existing signs had made a big difference so far. Once those requests are in, hopefully by the next Commission meeting, a vote can take place on providing funds for the amount of material needed.

- **Annual seedling purchase, in preparation for the 22nd annual seedling giveaway, May 13, 2023** – *Submitted by Gage Perry*

Chair Perkins reported that the catalog from the state nursery will not be provided in electronic form this year, and a hard-copy catalog is on the way to the Commission. He noted the orders in the last few years have been consistently around \$450.00.

Chair Perkins suggested authorizing representatives to place the order and mentioned Commissioners Glenn, Rosati, and Perry may be the most interested in this task. The Commission should place their order as soon as possible to ensure they can get the desired seedlings, and this might require action before the next scheduled Commission meeting.

Motion by Commissioner Kolb to authorize Commissioners Glenn, Perry, and Rosati to place a seedling order with the state nursery, for a total amount not to exceed \$500.00 out of fund 53.

Seconded by Commissioner Starr

Motion Passed

7-0-0

- **Expedited Wetland Permit application review procedures** – *Submitted by Steve Perkins*

Chair Perkins brought up a slideshow that a Bow Conservation Commissioner created that goes over the process for Expedited Wetlands Permit Applications and explained only certain projects fit into this category and are able to get this fast track review. He explained many of these are projects are municipally or state coordinated projects, or replacements of existing infrastructure that impacts wetlands. He went on to explain there were several various applications.

Stefanie in the Community Development office wrote a helpful memo dated 11/29/22 summarizing the proper procedures. Chair Perkins explained the Commission has an obligation to review wetlands permit applications as highlighted in their Rules of Procedure. Commissioner Kolb will ask Stefanie to send all commissioners an electronic copy of the slide deck prepared by the Bow Conservation Commission on the same topic. There are various deadlines for different permit types, and some of the deadlines will not allow projects to be considered at regularly-scheduled Commission

meetings. The Commission needs to designate a commissioner who can review permits and determine whether an emergency meeting or an extension of the review period is warranted.

Chair Perkins questioned if the group would like to name a representative to review the applications and make a decision, or if they would like to schedule a special meeting each time an application is received. Chair Perkins noted the whole group would not need to meet for a special meeting, only a quorum. Commissioner Kolb remarked if someone accepts and something goes wrong, the individual could always rescind. Chair Perkins noted not the Commission has not received any objections for these applications in the past.

Commissioner Kolb questioned if someone in Community Development was checking the NHDES queue for applications available online and if the Commission's representative would be a second set of eyes. Chair Perkins said they hadn't been receiving many applications until recently. He continued that the decision would need to come from someone on the Commission and stated that there are narrow grounds to file an intervention notice. An example would be an MVD wellhead not represented on an application. The Commission could intervene in this case and make sure proper mitigation strategies were made a part of the plan. Other things that may require intervention notices could be the size of a project, improper wetland delineation, or the type of project.

Commissioner Kolb commented that anyone named as the representative to complete initial review of the application could complete a site walk. However if a quorum of the Commission did a site walk, it would be considered a meeting and proper notice would need to be posted. Chair Perkins also noted it was important to be careful about ensuring the whole Commission be notified if a site walk was going to take place. He believes a special meeting would need to take place before a site walk could occur and would need to be coordinated with property owners.

Commissioner Kolb will request all slides be sent to the whole Commission. Commissioner Rosati said she didn't know enough about it currently to take it on herself, but was willing to learn more about it. Commissioner Kolb agreed. Commissioner Starr volunteered for this task and was accepted by consensus of commissioners. Councilor Hunter noted if he was reading the information correctly, the only two permits involving the Commission are the Standard Dredge & Fill permits and the Expedited Minimum permit.

All the other permit types don't have statutory requirements for the Commission to be involved. The two application he mentioned need to be signed by the Commission before they get submitted and Commission signature would mean waiving their right

to intervene. He believes they are only talking about the standard dredge & fill permit. Chair Perkins noted that a project could be delayed if the Commission did not sign off on the application. Councilor Hunter agreed but remarked that applications cannot be submitted without the Commission's signature. Chair Perkins mentioned that an expedited permit would most likely be one they would always need to meet to review. Chair Perkins felt Commissioner Starr was well suited to handle the task. He will notify him anytime Community Development receives a new application for review.

OTHER BUSINESS –

- **Reminder to ask the Town to grade the Old Kings Highway access to HHNP parking** – *Submitted by Ellen Kolb*

On behalf of the HHNP subcommittee, Commissioner Kolb requests that the Commission remind the Town of MCC's earlier request to grade the Old Kings Highway access to the HHNP parking area. She believes it has been done yearly in the past.

APPROVAL OF MINUTES –

Motion by Commissioner Kolb to approve the November 28, 2022 Conservation Commission minutes with the following amendments:

Page 2, line 46: remove apostrophe from "its"

Page 2, line 47: remove "s" from the end of stations

Page 2, line 63/64: get rid of "a" and fix spelling of last name "Rucker"

Page 2, line 68: change "presented" to "presenting"

Page 2, line 75: revise sentence to say "stormwater will be captured, treated, and detained"

Page 2, line 77: change "mean" to "meant"

Page 4, line 148: capitalize "A" in "group A soils"

Page 4, line 163: capitalize "D" in duck and "B" in boxes

Page 5, line 188: change "next" to "nest"

Motion Seconded by Vice-Chair Boisvert

Motion Carried

7-0-0

ADJOURNMENT –

Motion by to Adjourn by Commissioner Rosati

Motion Seconded by Commissioner Glenn

Motion Carried

7-0-0

The December 12, 2022 meeting of the Conservation Commission was adjourned at 7:27pm.