



Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

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MERRIMACK CONSERVATION COMMISSION

FEBRUARY 1, 2016

MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, February 1, 2016 at 6:32 p.m. in the Merrimack Memorial Conference Room.

Chairman Tim Tenhave presided:

Members of the Commission Present: Matt Caron, Vice Chairman
Michael Boisvert
Gage Perry
Councilor Jody Vaillancourt
Gina Rosati, Alternate Member

Members of the Commission Absent: Cynthia Glenn

Also in Attendance: Don Laliberte, 5 Danforth Road
Mark Filien, Construction Bureau, Pennichuck Water Works
Steven Auger, Project Manager, Hayner Swanson, Inc.
Lt. Matt Tarleton, Merrimack Police Department
Scott Delibac, 6 Falcon Drive
Gerald Durst, 16 Walnut Circle

Commissioner Glenn was excused. Chairman Tenhave introduced Gina Rosati who has been appointed as an Alternate Member of the Commission.

The Commission currently has open positions; 1 full-time and 2 alternate. Individuals interested in serving on the Commission should contact Becky Thompson in the Town Manager's Office.

PUBLIC COMMENT - None

APPOINTMENTS

1. HHNP Sub-committee appointment

Commission to meet with Donald Laliberte. Don has asked to be considered for any vacancy on the sub-committee. The sub-committee has an open alternate position.

Chairman Tenhave informed the Commission of his receipt of a letter from Mr. Laliberte stating a desire to join the Horse Hill Nature Preserve (HHNP) Sub-Committee. The Sub-Committee has a single opening for an alternate member with a term to expire July 31, 2018.

Don Laliberte spoke of having participated in several of the work parties, and commented now that he is retired he has greater opportunity to participate. He has resided at 5 Danforth Road since 1984, and has always enjoyed the HHNP and its unique offerings for outdoor enthusiasts. He spoke of visiting the area at least 3 times a week, and of having done minor trail maintenance when the opportunity presents itself, e.g., downed limbs, etc. Mr. Laliberte commented on having a desire to provide assistance beyond the occasional work party, and of seeking out information on the application process after being informed of an opening on the Sub-Committee by Ms. Huffman.

Chairman Tenhave remarked Mr. Laliberte has been in attendance at the Sub-Committee meetings on a regular basis, and is an active participant. Mr. Laliberte commented when the proposed NED pipeline appeared to have a path that would take it right through the HHNP that troubled him, and made him more determined to help out in any way he could.

Councilor Vaillancourt thanked Mr. Laliberte for his willingness to serve in an official capacity. She commented one of the things discussed at the recent Town Council meeting was if anything good has come out of the proposed NED pipeline, it is that it has brought people forward to volunteer in this area. She added just because the preferred route is not intended to go through the HHNP, there is no guarantee that won't change.

MOTION MADE BY COMMISSIONER CARON TO APPOINT DONALD LALIBERTE AS AN ALTERNATE MEMBER OF THE HORSE HILL NATURE PRESERVE SUB-COMMITTEE WITH A TERM TO EXPIRE JULY 31, 2018

MOTION SECONDED BY COMMISSIONER BOISVERT

MOTION CARRIED

6-0-0

STATUTORY/ADVISORY BUSINESS

1. Hayner Swanson, Inc. (applicant) and Pennichuck Water Works (owner)

Review of an overflow outlet structure with a shoreland impact. The parcel is located along Manchester Street. Tax Map 1D, Lot 1-1.

Steven Auger, Project Manager, Hayner Swanson, Inc., spoke of an ongoing water main project and a proposed buffer encroachment. He displayed the Plan, which depicted the construction of a 36" main that runs from Manchester Street, across Pennichuck's property, and will eventually tie to a 42" water main in the vicinity of the treatment plant off Concord Street. Pennichuck is in the process of completing construction on the 36" water main.

Currently the Concord Street treatment plant gets its raw water from two sources; the Merrimack River, which runs north of the site, infiltrates into Bowers Pond, and eventually finds its way into Harris Pond, and the other, Pennichuck Brook, which finds its way into the reserve system, and networks its way to the treatment plant.

Should the Harris Pond become contaminated, for whatever reason, it would put a stop to what the treatment plant is doing. This 36" main acts as a bypass/failsafe from any contamination that should happen in the pond. Currently about 7,400' of the line has been constructed (Phase I). Phase II will be the construction of an overflow structure, which will pipe down through a 3' x 4' concrete culvert, which would outflow from a headwall into a Riprap constructed along the edge of the shore. Both the 25' no touch buffer and the 40' building setback buffer were delineated on the plan, and highlighted for the Commission.

Mr. Auger remarked as part of the initial project a Shoreland Permit was filed with the State, and approval received. As they go through the second phase of the project the permit will be amended and filed with the State. The Application for a Special Exception for work within the buffers will be heard by the Zoning Board of Adjustment (ZBA) on the 24th.

Mr. Auger explained the concrete culvert is approx. 95' long. The area where it hits the headwall and Riprap is about 15' long. The project falls within the Aquifer Protection District.

Mr. Auger reiterated the overflow structure acts as a failsafe. Should the treatment plant not be able to handle the amount of water coming through the bypass line (has to shut down), it would all back up into this structure. It would provide pressure relief. If it should come out of the overflow structure then the water coming down the culvert would not just straight discharge into Harris Pond, would not erode the shore, but instead hit the Riprap and get some treatment.

Mark Filien, Construction Bureau, Pennichuck Water Works, commented the structure acts as a release valve for the 36" line should the water pressure cause it to back up. Commissioner Perry commented 90% of the time it would be dry. Mr. Filien responded it would, and added realistically the only time it would be used is during the summer months when they have to bypass everything. They ideally like to keep the normal flow, which is into Bowers Pond and through the reservoir system. Should there be an issue with the ponds, this would provide a true secondary source of raw water.

Chairman Tenhave questioned the type of velocities expected to come out of the pipe before hitting the Riprap. Mr. Auger responded there is the potential for full discharge of the pipe (numerous gallons/minute), which would be the worst-case scenario. He noted Fay, Spofford & Thorndike, LLC is the design engineer on this project. They have factored all of that in and the worst-case scenario is what has been identified on the plans.

Commissioner Boisvert questioned if this would be utilized during heavy storms. Mr. Auger responded "Absolutely not." He added, the only time is if the secondary source of water were used; pumping directly from the Merrimack to the treatment plant and essentially bypassing the ponds. In the event that the treatment plant could not use that amount of water and had to shut it off at a relatively rapid rate, this would act as a relief valve and the water would come through this structure.

Chairman Tenhave questioned what portion of the structure would be within the Shoreland area. Mr. Filien displayed a plan that depicted the headwall and Riprap in greater detail. He indicated the area where the headwall would be constructed and the Riprap placed. Grading would be done to restore the land to tie it into the headwall.

Vice Chairman Caron questioned if the 42" pipe comes straight from the Merrimack River. Mr. Filien stated currently water comes from the Harris Pond. There is a 72" steel pipe that comes from the Harris Pond that directly feeds, via the 42", into the treatment plant. That is fed by gravity. The proposed will bypass that and tie directly into the 42".

Commissioner Rosati asked for clarification the treatment plant gets water from the Merrimack River and Pennichuck Brook, and the treatment plant treats the water we drink. Mr. Filien stated that to be correct. Commissioner Rosati questioned if residents are drinking Merrimack River water. Mr. Filien stated there to be two sources of water; the main source is from the Pennichuck stream system, which is the series of ponds. The secondary source; they can pump Merrimack River water into the ponds. The 72" pipe comes from the Harris Pond. The proposed pipe would pump directly in from the Merrimack River.

Commissioner Rosati responded the new structure being proposed would be able to pump water directly from the Merrimack River. Mr. Auger stated that to be correct; the new 36" pipeline would bypass the pond.

Commissioner Rosati questioned why it is that they all of a sudden want to do this. Mr. Auger stated it would provide a truly secondary source of raw water. If something were to happen to the reservoir system, e.g., contamination, without this, they would be out a source of raw water. Commissioner Rosati questioned why this was not addressed 20 years ago. Mr. Auger stated he could not answer that question. That concern is why it is being addressed at this time.

For the benefit of new members and the viewing audience, Chairman Tenhave noted the applicant was seeking the Commission's input to the ZBA. Within 25' of a wetland is a no disturb buffer, which really means no disturb. If you are going to do something you have to obtain relief from the ZBA.

Commissioner Perry noted the flap gate on the pipe (outlet), asked if it would be opened and closed by pressure, and was told that is correct. Vice Chairman Caron asked if Harris Pond were to overflow, if water would be able to get back up into the pipe. Mr. Auger responded no; Harris Pond is set at a certain elevation, and once it gets to that elevation it flows over the dam into Supply Pond.

Chairman Tenhave questioned if fertilizers would be utilized as part of re-stabilizing the bank. Mr. Auger stated they would not be using fertilizer. He clarified typically stabilization is by some type of fabric with mulch, etc.

Councilor Vaillancourt commented the timing of this is interesting given the proposed NED pipeline project. She questioned what was expected of the Commission with regard to the proposed project. Chairman Tenhave responded the Applicant is looking for relief from the ZBA. There is no mechanism in the Town subdivision rules or zoning rules, as far as he knows, that says they have to come before the Commission. The ZBA could have requested the project come before the Commission and for the Commission to provide a recommendation with regard to whether it believes it appropriate for the rules to be changed to allow the Applicant to conduct the work it is seeking permission to conduct. The ZBA has the authority to override the rules. Beyond that it is not part of the normal work of the Commission.

Commissioner Vaillancourt asked for confirmation the Commission would simply be making a recommendation as it does with other projects. Chairman Tenhave stated his belief Pennichuck is looking for the Commission to provide some level of support or a positive recommendation to the ZBA. She questioned how the Chairman wished to proceed.

Mr. Auger commented in other municipalities whenever they work within a wetland buffer and have to get a special exception it is always standard practice to go before the Conservation Commission first and introduce the project. With regard to stabilization they are going to work within the disturbance of the buffer to restore it as natural a state as possible without the use of fertilizers or other materials that would contaminate the waterbody. That would be contrary to the purpose of the project. He commented that is absolutely the last thing they would want to do.

Mr. Auger remarked usually most wetland disturbances or buffer disturbances have to do with attempts to gain access to your property for development where there is a thumb of wetland that runs through, and that is where you are going to put your service road or something like that. That is a lot more typical of the type of projects that go before the ZBA for a special exception. This is sort of a rarity because of the type of construction projects Pennichuck does.

Vice Chairman Caron questioned the number of Merrimack residents who utilize this water supply. Councilor Vaillancourt stated there to be a few hundred households that get their water from Pennichuck, but they are using the water now without this project. The project would not result in increased capacity to Merrimack households. Mr. Auger commented Pennichuck also provides to Anheuser Busch. Chairman Tenhave noted BAE Systems is serviced by Pennichuck as well as a number of other businesses in that vicinity of town.

Commissioner Rosati commented at one point the Merrimack River was pretty polluted, and questioned the current water quality of the Merrimack River. Mr. Filien responded although he is not the water quality expert for Pennichuck, what he is told is the water quality is very similar to Pennichuck Brook.

Commissioner Rosati questioned if the water from Pennichuck runs towards the Merrimack River, and was informed it eventually does. Where it is taken for the treatment plant is prior to discharging into the Merrimack. Commissioner Rosati questioned what would occur if the proposed NED pipeline project were to come to fruition and resulted in some sort of water contamination in both the Merrimack River and Pennichuck Brook. Mr. Auger responded that is a tough scenario to analyze. He is unsure of how the mechanics of that would happen.

Commissioner Perry questioned if it is typical to issue the plan and then issue an addendum. Mr. Auger stated the construction was going to be by two different types of contractors; the water line would be the typical utility contract whereas this overflow structure and the connection are geared more towards a specialty contractor. That is why they had originally broken it out. Should the valve have to be shut down there would be a tremendous amount of pressure, and they have been analyzing the best way to handle that. At one point, they were going to tie it directly into the 72" steel pipe, but that was put in in 1890 so they were a little concerned with doing that. They have been working on the connection portion for the past year or year and a half trying to identify the best method.

Commissioner Perry remarked this is a pumped pressurized pipe. If there is a valve shutoff at the treatment plant the pumps shut down too, and this would just flow for however much volume of water is in the pipe. Mr. Auger stated that to be correct. He remarked once it gets up off Manchester Street it is pretty much gravity at that point. It will be on low pressure.

When asked, Chairman Tenhave stated his belief a consensus of the Commission is all that is required.

Commissioner Boisvert stated the project is worthwhile, and he is supportive of it. Commissioner Perry remarked the ability to have a second source of raw water would be beneficial. Vice Chairman Caron commented it was alluded to, but not stated, as you travel between exits 8 and 10 on the F.E. Everett Turnpike, it is Bowers Pond that is underneath the highway. Commissioner Boisvert commented the potential is there for an incident to happen. Councilor Vaillancourt remarked the timing is suspect to her. She is all for clean drinking water. She is not opposed to the project, but does not want her name identified as being in support of it. She stated she does not understand the impacts to the buffer or why this is being proposed at this time.

Mr. Filien stated he has been with Pennichuck for two years, and they started this project, as far as the basic concept, about a year and a half prior to his arrival. When he started here that was one of the main projects being worked on with regard to design, location, etc. The project has been ongoing for the past 3-4 years. Mr. Filien

commented this has been in the back of people's minds, as far as a true secondary source of raw water, for much longer than that.

Chairman Tenhave asked for clarification the Shoreland Permit has been approved. Mr. Auger stated the Permit for the original plan was approved. It will be amended and re-submitted.

MOTION BY COMMISSIONER TENHAVE THAT THE COMMISSION HAS REVIEWED THE PROJECT AND HAS NO CONCERNS IT FEELS IT NEEDS TO ADDRESS WITH THE ZONING BOARD OF ADJUSTMENT ON THIS PROJECT
MOTION SECONDED BY COMMISSIONER CARON

ON THE QUESTION

Chairman Tenhave remarked the timing isn't an issue for him. It is an appropriate project. He understands why it is being done, and he feels better to have this in place than to risk having a pipe break or damage due to outflow.

MOTION CARRIED

4-1-1

Councilor Vaillancourt voted in opposition
Commissioner Rosati abstained

OLD BUSINESS

1. Update on Police Patrols at Grater Woods

Commission to review the Police patrols (statistics, issues, details, etc.) that occurred in 2015 on Grater Woods and discuss with Lt. Tarleton his impressions of the patrols.

Lt. Tarleton stated patrols were mixed between Saturdays and Sundays early to late morning and early to mid-afternoon in four-hour blocks. The patrols totaled 40 hours (1.5 at the onset while on a Fish & Game detail).

The patrols averaged 10-15 miles per patrol. They would ride as much as they could, and the areas that could not be accessed with a four-wheeler were walked. Somewhere in the vicinity of 50 public contacts took place. They were a mix of hikers, bikers, joggers, and walkers. As far as any contact with individuals participating in unauthorized ATV use, trespassing, etc., they had none. Total cost to the Commission was \$1,770.96 (patrol overtime function).

Lt. Tarleton commented he had hoped to be able to conduct additional patrols. With regard to a need for additional patrols in the coming year, that is a matter for the Commission to decide. The point was to correct the problem of unauthorized ATV and dirt bike use. The numbers are not there for that. He commented it is not to say that the unauthorized activities were not occurring, but they did not witness them during the times they were patrolling.

Commissioner Boisvert commented those activities are occurring now. Lt. Tarleton responded there had been talk of maybe holding off on patrols during the winter time. But they can start them up again if problems are being noticed. Vice Chairman Caron commented he was out there this weekend, and the nice part about this time of year is you can follow them home as the tracks are there. Lt. Tarleton commented it would help identify who the individuals are. He stated he could start scheduling the patrols to start up again, if that is the desire of the Commission. He noted the patrols would be on the main trails with four wheelers.

Councilor Vaillancourt questioned if it would be advantageous to have a member of the Commission identify where the trails are and where they lead. Vice Chairman Caron commented they tried to do that, and it just really never worked. He commented the hope was to have a lot more non-motorized patrols, and it doesn't seem like there is much interest from staff to do that. Lt. Tarleton responded they could get out there and ride. For them the four-wheeler was the easiest thing because you get more bang for your buck; cover more ground in less time. If they ran into a situation where they encountered someone on a dirt bike or four-wheeler and they take off, if the officer is on foot or on a mountain bike it makes it more difficult to track the individuals down.

If they are out there now and there are tracks leading to people's homes or backyards, they may not even need to get out there; if they find out where the tracks are leading they can drive directly to the residence and have a chat. That is another option. Chairman Tenhave asked if the tracks are good enough to lead to a backyard, and was told they are.

Councilor Vaillancourt stated her support of that type of an approach. She commented the police presence sends a message to people. However, they will figure out when you are out there, and they will avoid the area at that time. Some of the two-wheel motorized use is happening on trails that cannot be accessed on a four-wheeler. If there are tracks and it is really obvious she is all for sharing that information with the Police Department, and letting them drive a cruiser up to the front door. Vice Chairman Caron stated he would share some addresses with Lt. Tarleton. Lt. Tarleton responded he had no idea that was going on, but if it is an issue, that is what they are getting paid for, and they have no problem following up on that.

Chairman Tenhave stated it to be a desire to educate folks. He remarked if they really want to use the property they should be asked to participate in the work of the Commission and its sub-committees in figuring out the right places for those types of activities; be part of the solution.

Lt. Tarleton commented on having accessed the property where the shooting had been occurring (parcel recently purchased by the Commission). During their time there they witnessed debris, although it can be difficult to ascertain how fresh it is. The people they did have contact with were appreciative of the Police presence, and some mentioned that presence was believed a deterrent. Vice Chairman Caron spoke of the dry summer and commented finding a track of someone being where they are not authorized was a bit more difficult. However, he does believe the unauthorized use dropped significantly over the summer. Unfortunately, this winter it has picked right back up.

Councilor Vaillancourt commented she shared the proposed target shooting ordinance with Chief Doyle who stated he would forward it to Lt. Tarleton. She questioned if he has had the opportunity to review it, and was informed he has. Chairman Tenhave commented he did not have the opportunity yet to share the email Lt. Tarleton sent to him earlier in the day. Lt. Tarleton stated he spoke with the Chief, and was asked to hold off on commenting on it. The Chief would like additional time to it, digest it, and figure out what, if any, impact it would have on the Town and the Police Department specifically from an enforcement perspective. He does have it, and is going to look at it.

Chairman Tenhave questioned if the reactions received from users of the property were generally positive. Lt. Tarleton responded all of them were positive. A lot of people were surprised and happy to see the Police presence. Some were aware of the problems, and felt their presence was a good thing. Commissioner Boisvert noted he received a few comments from people he ran into who said they met a Police patrol and were glad to see them out there.

Chairman Tenhave questioned the will of the Commission. Commissioner Boisvert reiterated the activity is occurring now that the snow is gone and the mud is starting to appear. Councilor Vaillancourt commented you wouldn't want the Police out there on four-wheelers during mud season. Vice Chairman Caron spoke of having been on the recently purchased parcel the previous day, and having seen about 25 boxes of shotgun shells in the road. They are shooting from the road. Lt. Tarleton stated he is not aware of the department having handled any shooting complaints up there recently. He stated they have talked to the neighbors at the bottom of the hill (access road), and have asked that they contact the department if they witness someone driving up and down the road. They haven't had those calls come in. He questioned how accessible the road is right now, and was told it is very accessible. Chairman Tenhave noted the end by Wilson Hill has all been redone. Vice Chairman Caron stated a cruiser could get to the area of the shooting pit without difficulty. The first 300' of the road has been improved. Lt. Tarleton stated it is a matter of the will of the Commission.

When asked if he had any recommendations for the Commission with regard to additional actions that could be taken, Lt. Tarleton responded signage always helps the department from an enforcement perspective. Without signage you will run into individuals stating they were not aware they were not allowed in the area. Signage allows the department to enforce from a trespassing perspective. However, he is aware signage is being damaged. When asked about a wildlife camera, Lt. Tarleton commented you would find out when they are out there, etc. It is an option.

Chairman Tenhave questioned the will of the Commission. Councilor Vaillancourt stated if it is physically possible to get a cruiser up to the area where shooting is taking place she would like that to be done now. She does not support ATV traffic on Grater Woods during mud season. Commissioner Perry noted people are asked to stay off the trails during mud season. Councilor Vaillancourt commented perhaps the best that could be hoped for right now would be the sharing of addresses and follow-up by the department to provide the education piece.

Vice Chairman Caron spoke of parking in the Grater Road parking lot on Saturday and running into three trucks with ramps off the back. When he got back they happened to be loading up. He started talking with them and discovered they were from Nashua. He commented it was the first he has heard of people trailering in to go riding. They said they were out scouting for locations for tree stands for the next hunting season. Chairman Tenhave commented the Commission is looking to declassify part of South Grater Road and gate it.

Lt. Tarleton commented some of those riding in areas where they are not authorized are people that have been in town for a while, that was their piece to ride on, and they feel they are entitled to ride out there. He reiterated if there are tracks leading to residences the department is more than happy to go knock on doors and work on that education aspect. He commented the nice thing about the patrols is it allows the officers to patrol uninterrupted for a four-hour block. Chairman Tenhave stated the desire for the details to resume, but not during mud season. In the meantime, the Commission will work on posting the property. Lt. Tarleton stated he would follow up with Vice Chairman Caron on the addresses.

1. Target Shooting Ordinance

Commission to review the final draft of the proposed ordinance and see if it is ready to present this to the Merrimack School District and Town Council.

Chairman Tenhave commented the Commission was provided with an amended draft, which incorporated items that came out of the last discussion of the proposed ordinance. Given Town, Commission, and School District property would be impacted, a request will be made that the Commission be placed on an agenda for the School Board in the March timeframe. It is hoped input will have been received from the Police Department prior to that time.

Councilor Vaillancourt spoke of the need to bring the ordinance before the Town Council. Chairman Tenhave noted there will be the need for a Public Hearing on what is believed to be the final product. It was suggested a request be made of the Council for the matter to be placed on a March agenda for them as well.

Commissioner Perry questioned if the draft could be forwarded to both entities seeking input. Chairman Tenhave commented what could be expected is receipt of comments from individual members of the School Board, and that they would not be acting as a body. The Commission was in agreement with sending the draft document along with a request to be placed on a March agenda noting feedback from the Police Department is forthcoming.

There being no objection, the Commission went out of the regular order of business to take up the first item under New Business.

1. Request to tap Maple trees on Wasserman Conservation Area

Commission to discuss a request by a Merrimack resident to tap maple trees on Wasserman Conservation area. Commission to then make a recommendation to the Town Council for their action on the request.

Chairman Tenhave stated the desire to frame the discussion by reaching an understanding of what the Commission believes its role to be when it comes to this activity. The Wasserman Conservation area is the property where Mr. Delibac is proposing to tap Maple trees. It is a parcel the Commission manages, but does not own. It was purchased by the Town from the Wassermans back in the early '90s. Not the park side, but the other side was purchased with LCIP money, which comes from the State and includes Covenants and restrictions as to what can occur on the property. Those Covenants and restrictions augment the restrictions that the Wassermans placed on the property as part of the land sale.

The role of the Commission is that of a management body. The Commission has been managing the property much more actively in the past few years than in years past, but at the end of the day the Commission would only be providing a recommendation to the owners of the parcel. He informed Mr. Delibac regardless of the recommendation received from the Commission, there remains the requirement to go before the Town Council for approval.

Mr. Scott Delibac stated he started the process with the Parks and Recreation Department. They directed him to the Town Council who in turn directed him to Tim Thompson, Director, Community Development Division, and the Commission. He and Director Thompson have been discussing the Covenants, etc. He stated he was before the Commission to answer any questions.

Chairman Tenhave spoke of having forwarded to the Commission information provided by Mr. Delibac as well as information received from the Town's counsel. The Town's counsel has indicated there is no language within the Covenants that restrict this activity. Yet there are general Covenants that make the decision not as easy.

Mr. Delibac stated he started sugaring about 4 years ago; started small with a turkey fryer in the driveway and the trees in his backyard. As time went by he started doing more of it. Once people learned he makes maple syrup he started receiving more and more requests for it. His struggle has been in locating more trees. He has acquired other spots in Town through neighbors, friends, etc. He has a decent amount of trees now, but has also built a big evaporator and his own shack in the backyard. He is able to take on more, and would like, for at least one season, to see if the volume is worth putting the time in. He commented on the need to collect sap daily, boil it every other day, etc. He would like to see if it is feasible for him to do or if it would be too much.

Chairman Tenhave asked for clarification he was not proposing to run lines or anything like that. Mr. Delibac stated there would be no lines; he would either use buckets or sacks. When asked what would be done with the syrup, he stated he has been asked to sell some, and has given a good deal away. Based on the current volume it is necessary to purchase a lot of firewood. He is not looking to make money, but if he could break even he would be pleased. If not, that is simply the risk he has taken by taking on this hobby.

Commissioner Perry questioned the number of trees that would be tapped. Mr. Delibac stated his assumption it is a half-acre plot and likely 50-60 trees in the area, some 3-4' in diameter. He commented on having researched, and learned trees the size of those in Wasserman can take 4 or 5 taps. He would likely put 2-3 at most on any of the largest trees. The greatest number of taps he would do is 50, which is the amount of equipment he has put aside that could be used for it.

Commissioner Rosati commented on having reviewed a Cornell website that indicated the maximum you should do is 3 and that would be for a tree 25" in diameter.

Mr. Delibac remarked the season is basically about a month from now, but people are already starting because of the unseasonal weather we have been experiencing. He commented he may have already have missed his window if we don't get back to the cold.

Commissioner Perry commented if making a product selling it only makes sense. However, he questioned how to address an individual utilizing Town property for that purpose. Commissioner Boisvert agreed there are concerns there. Chairman Tenhave responded luckily it is not a matter for the Commission to decide. Councilor Vaillancourt commented it does set a precedent, and it is difficult because tapping maple trees and making syrup is a very New England thing. She would normally love to support someone wanting to have a small operation, but is concerned with setting precedent, which could result in unintended consequences down the road. She commented you don't want to tell people no, but at the same time you don't know what you are opening the door to. Commissioner Perry stated his concern to be with people not asking. If people see it being done they could simply think it is allowed and do it themselves. Mr. Delibac commented on having seen that over at Reeds Ferry. After showing up at the field for softball practice one day they saw milk jugs hanging off of every tree Maple tree behind the field, and you know they didn't ask the school for permission.

Councilor Vaillancourt reiterated there is nothing in the Covenants that say you cannot have this activity taking place, but it isn't black and white. She remarked to her it is a matter of conservation, wildlife, to leave it in its natural state, and she is not certain this is synonymous with or supports the intent for the use of the land. Chairman Tenhave commented when he was reading the language and trying to discern what the intent was by the owners when they did this, the words preserve and natural state come out in a number of places, and the impression he gets is they are very specific about the uses that they did want to allow, which leads him to believe everything else is not intended.

Mr. Delibac questioned the uses that are allowed. Chairman Tenhave provided him with a copy of the information provided by the Town's counsel. Commissioner Perry stated allowed uses to be passive recreational use, e.g., no motorized vehicles, no hunting, no building of any kind, etc. Chairman Tenhave commented the last time the Town Council addressed this issue, they created a license agreement. He noted there is concern with liability. Mr. Delibac remarked he spoke with Ms. Thompson in the Town Manager's Office regarding that, and she had stated it could be handled, and we would deal with whatever paperwork was necessary. Chairman Tenhave provided a copy of the agreement that had been drafted by the Town's attorney the last time the issue was addressed.

Commissioner Boisvert noted Covenant B reads: "No trees, shrubs or other vegetation on the Property shall be cut, removed or destroyed, except that the Declarant may perform such cutting, pruning, mowing and removal as shall be dictated by sound forestry and wildlife management practices, may keep existing trails clear, and may take any other action with respect to the Property as shall be consistent with the purpose of these covenants and restrictions."

Commissioner Rosati stated she believes it to be a great idea and applauded Mr. Delibac as he must really love maple syrup to go through all of these hoops and red tape. She stated her concern is in the setting of precedent.

Mr. Delibac commented on having done research and of learning there are a number of towns that will lease out parcels of land for this purpose or write agreements stating for X number of years you can do this, but you are responsible to ensure the grass is cut, etc. It certainly would not be unique for Merrimack to do something like this. He noted having the conservation label attached is something he is not as familiar with.

When asked, Mr. Delibac stated he has not researched other Town owned parcels. He has been a user of the park for the past 10+ years, and simply felt it would be a nice place for this particularly given the proximity of the trees, parking, etc. He spoke of being open to other suggestions. Chairman Tenhave remarked if the Town Council was to express a desire to move forward with a use like this, the Commission could review parcels, and make a suggestion for a parcel that would not come with the lineage that the Wasserman parcel does. He spoke of being pleased with the statement made by Mr. Delibac that he is willing to educate folks on this process. Mr. Delibac stated his plan, regardless of the outcome, to open it up to anyone who wants to come and see how the process is done. He would like to give something back to the Boy Scouts who could then raffle it off, etc.

Chairman Tenhave opened the floor to public comment.

No one from the public expressed a desire to address the Commission.

Chairman Tenhave questioned the will of the Commission. Commissioner Boisvert stated he could not recommend the activity on this particular property because of the Covenants and restrictions. He added there is concern with setting precedent. Councilor Vaillancourt stated her opinion the language in the sale of the property and the monies received from LCIP prevent the Commission from recommending the project. She stated her impression the intention of the family when they sold this land in memory of their Daughter leads her to believe this activity is something they would not have wanted.

Commissioner Rosati stated, although she could not recommend this particular parcel, she believes it would be fabulous if the Town had places people could lease for this purpose.

The consensus of the Commission was not to support the proposal at this location. However, should the Town Council wish to move forward with the activity at a different location, the Commission would be pleased to assist in the process of identifying an alternative location.

The Commission returned to the regular order of business.

1. NED Pipeline

Commission to have a general discussion on the NED project and any immediate actions it may wish to take. This discussion will include:

- Law firm to represent the Commission.

Chairman Tenhave questioned if Commissioners had the opportunity to review the information provided relative to the recommendation for legal counsel. Commissioner Perry commented the attorney has a pretty telling website. This is an issue she has been involved in for a while. If she is willing to represent the Commission he is in favor of that. Councilor Vaillancourt commented, unfortunately, anyone who is experienced with this type of work is taken and has a conflict. She stated she still believes the Commission, once we get further into the process and with the one particular piece of land it needs to defend, will need legal counsel. She spoke of the amount of funds the Town has spent, in conjunction with the Commission, in attorney fees relative to this issue, and stated she is hopeful these efforts don't require both bodies to continue in this way. She commented on having heard of this attorney when she first became involved in this process, and understands she is renowned. She stated her support of the recommendation and her gratitude to Commissioner Glenn for having conducted the research.

Chairman Tenhave stated his concern to be the attorney is located in DC. There will be the need for someone local as well. Commissioner Perry stated his impression the attorney was willing to work through a local avenue on behalf of the Commission, and his assumption it would fall upon her to generate that lead. Chairman Tenhave stated his hope that would be the case.

Commissioner Rosati questioned if the Town's counsel is from Portland, ME. Chairman Tenhave stated she works out of the Portsmouth, NH office, but Maine is her home State. He reiterated his biggest concern is the individual who will handle local issues and understanding what that really means. He questioned how members felt about reaching out to the Town Council to question, when it comes to this one particular parcel, could the Commission utilize the Town's attorney in conjunction with its own attorney. The issues the Commission could be faced with would be around eminent domain and appropriate easement and survey agreements.

Commissioner Perry questioned if the Commission would then be dealing with the Town's counsel as the Town's counsel or as the advocate for the Commission's attorney. Chairman Tenhave stated that to be the issue; if we involve the Town attorney, the Town attorney should be looking out for our interests on the parcel. Commissioner Perry remarked the reason the Commission is not using the Town's attorney now is the possibility of a conflict of interest. He questioned if the DC attorney's advocate would only be working on the Commission's behalf. Councilor Vaillancourt stated the Town's counsel made it pretty clear she could only serve one master. She commented not knowing how an advocate would be structured, she would question if the advocate has to be an attorney. She asked if anyone has had a conversation with the attorney regarding the potential for a local advocate. Chairman Tenhave stated his assumption this was the first time it was being discussed.

Chairman Tenhave stated there to be a need for the Commission to learn more. Councilor Vaillancourt suggested a conversation take place with the DC attorney prior to the Commission making any decisions.

The consensus of the Commission was to arrange for a non-meeting with counsel participating electronically. The Commission agreed the associated legal cost would be paid out of Fund 53.

- Update on our mitigation options given to TGP.

Chairman Tenhave noted the Commission received a response indicating they would look into the list of options provided. He made them aware of how to locate agendas, and offered time at any of the meetings should they make such a request.

Chairman Tenhave spoke of having requested to be placed on the distribution list of the New Hampshire Site Evaluation Committee, and of his receipt of a response indicating he would be placed on the list.

Commissioner Rosati stated her belief House Bill 1101, which is related to eminent domain, would be addressed the following day. The question is whether the pipeline would be grandfathered in as the project was proposed prior to the introduction of the Bill. Commissioner Perry commented it is also a matter of Federal versus State rights.

Chairman Tenhave questioned if anyone on the Commission wished to take on the task of monitoring SEC activities and keeping the Commission informed. Commissioner Rosati volunteered.

NEW BUSINESS

1. Education opportunities with Parks and Recreation Department

Commission to discuss partnering with the Parks and Recreation Department on educational opportunities.

Commissioner Boisvert spoke of having met with Matt Casparius, Director, Parks & Recreation Department, the prior week. The department is looking for suggestions from the Commission relative to family orientated programs that could be run on weekends. The programs could begin in the spring. However if programs were to require the hiring of help, funding would not be available until the summer timeframe. Volunteers are welcome.

Although Director Casparius is open to topics, he would like to cover Geocaching at some point. Commissioner Perry questioned the availability of the Function Hall at Wasserman Park. Councilor Vaillancourt stated it will be ready for use next winter. Commissioner Perry remarked Fish & Game has the Skating for Wildlife and the Speaking for Wildlife series, and they are often looking for places to hold them.

Councilor Vaillancourt commented Director Casparius is starting several new programs many of which are tied to the summer day camp. One was relative to a park ranger type of program that kids can participate in. She had suggested to him if he had anything that was conservation related that he speak with the Commission about ideas before kicking off a program. Commissioner Boisvert commented he asked him if the intent was a program for a camp, and he indicated an interest in programs that could go on throughout the year.

Chairman Tenhave questioned if he was open to these types of activities taking place on Commission property, and not limiting them to Wasserman Park. Commissioner Boisvert responded Wasserman is one of the many areas of interest. He thought it would be a great idea to have something at each of the properties, that the sub-committees be involved, etc.

Commissioner Perry spoke of having set up a number of geocaches around Grater Woods in an attempt to get people out there back when the sub-committee was the Friends of Grater Woods. It was posted on the website, and participants came from all over. He stated a willingness to speak with the gentleman who spearheaded the events to see if he is still involved in those activities.

Chairman Tenhave spoke of a scout project; geocache challenge on the HHNP. He stated his belief it is posted on the website. When asked, he stated it is being done with the help of GPS coordinates. Commissioner Boisvert stated his belief the desire is to conduct it the old fashioned way. Commissioner Perry stated when it was done at Grater Woods it was with both a compass and a GPS course.

Chairman Tenhave commented the HHNP Sub-Committee has had several attempts at planned hikes with mixed success, but not enough for the event to continue. It was noted Director Casparius has offered to take care of advertising.

The Commission discussed having an item placed on the agendas for the sub-committees and inviting Director Casparius to attend a future meeting of the Commission to discuss this further.

Vice Chairman Caron suggested, and the Commission agreed, if Director Casparius has a program he would like to put on and it fits within the educational goals of the Commission, the Commission should look into funding the event. Chairman Tenhave commented when the Commission created its goals, education was certainly one of them. It has been part of the Commission's Charter to provide better education. If Director Casparius has a particular program he has been considering, particularly one that he might want to do during the school year, he should make the Commission aware. It was suggested the Raptor presentation the Commission has sponsored at the Middle School could be put on as more of a public event. The Commission funds something education related every year. Vice Chairman Caron commented on the offer made by Mr. Littleton with regard to vernal pool parties.

Commissioner Boisvert will make Director Casparius aware of the discussion of the Commission. He will extend an invitation to him to attend a future meeting to discuss the possibilities further.

OTHER BUSINESS

- Update on Annual Seedling Giveaway, affirm previously approved funds from Fund 53.

Commissioner Perry stated everything should be ordered. The event is scheduled for Saturday, May 7th at Currier Orchards from 9:00 a.m. - Noon.

- Land Donation; affirm previously approved funds from Fund 53.

Chairman Tenhave stated work continues on this front. Once the agreement is signed the Public Hearing can be scheduled.

Chairman Tenhave noted when the votes were taken for both the seedling giveaway and the land donation, the fund from which the associated costs would be paid was not identified.

Chairman Tenhave explained the Commission has three funds available to it. Fund 53 is an abbreviation for a long 6 or 7 digit number (53 being the first two numbers). Fund 53 was created for conservation per RSA 36-A:4. Revenue from Land Use Change Tax dollars funds that fund. Every time someone takes land out of current use and develops it a tax is paid. Currently there is approx. \$730,000 in Fund 53. Fund 51 was created many years ago, and is for conservation purposes. The Commission is the body that can expend those dollars. It has no flow of revenue with the exception of earned interest. If funds remain in the conservation line of the Town's budget at

year end, they lapse into that fund. Fund 51 has been pretty much left alone. The last fund is the HHNP Fund, which was created solely for the HHNP, and has a current balance just over \$1,000.

The Commission stated agreement Fund 53 would be utilized for costs associated with both the Annual Seedling Giveaway and the land donation.

- Beaver Policy and Water Control Activities.

Commissioner Perry stated there to be no update to provide.

- Discontinuance of a portion of South Grater Road

Chairman Tenhave spoke of having contacted the Town's attorney to look into what it would take for the Commission to discontinue a portion of South Grater Road. The Commission stated agreement with paying the associated legal fees (anticipated to require a few hours' time).

- Old Kings Highway

Commissioner Perry spoke of having been approached by a resident who lives in close proximity to one end of Old Kings Highway (Home Depot area). The individual enjoys walking that trail and would like to be part of resurrecting it through Town all the way down to the HHNP and potentially beyond. They have been trying to collect data on what has occurred in the past, where the road is, historical references, etc. to look to generate interest towards resurrecting that trail.

Chairman Tenhave noted the Heritage Commission was doing something with it. Commissioner Perry stated that to have been in the 2004 timeframe, which unfortunately did not generate as much traction as they wanted as a few homes were built right over the Old Kings Highway.

- Canoe/Kayak Entrance Near Seaverns Bridge

Chairman Tenhave spoke of having attended a meeting the prior Friday with Jim Taylor, Assistant Director, Wastewater, Kyle Fox, Deputy Director, Public Works Department, George May, Chairman, Souhegan River Local Advisory Committee, and Dr. Paul Indeglia, Amherst Conservation Commission/Souhegan River Local Advisory Committee regarding the canoe/kayak put-in by Seaverns Bridge. There is concern around erosion. The Town replaced a culvert in that area when it was discovered the pipe had a hole in it, and it was sinking. The Souhegan River Local Advisory Committee would like to do a project in combination with the Town's Capital Improvement Plan (CIP) project in that area.

Chairman Tenhave stated during the discussion he brought up the idea of having a put-in spot located in the area of the Ireland property/Fields Farm (300 yards downstream of the location that was being discussed), which has been kicked around for some time. That property is more level, access is likely better, and, if so desired, a parking lot could be considered deeper into the property with access to Amherst Road where a real take-in/take-out could be done. It could include picnic tables, etc. That could result in the put-in/take-out by the bridge go away. Mr. May was not in favor of that one going away. Commissioner Boisvert commented there are rapids just down from that bridge. Chairman Tenhave commented if you go much further you run into an area where you have to get out of the river unless you are a more experienced kayaker.

He questioned the will of the Commission with regard to considering such a project. Commissioner Perry commented the area they are considering improving is the same area they said no to when the Eagle Scout wanted to construct a set of stairs. He remarked material has been added to the area a number of times. They put rock down to stop erosion and it now just eddies there. It ate away at the bottom side of the bank. They will lose a car there. It is not a parking lot, and people are using it like a parking lot.

Vice Chairman Caron commented there will likely be different types of folks that would want the put-in one place over another. If it were placed just past the old foundation area it would be a hike to get to (few thousand feet), and if carrying a canoe it becomes even more difficult. Chairman Tenhave suggested that to be why he believes there is the need for a deep access point, e.g., constructing a road. He suggested it may be able to be combined with a forestry project to take care of blown down, etc. on that property.

Chairman Tenhave commented although a large project, the canoers and kayakers are a very active community. If a project were planned for 2017/2018 it may be that the necessary volunteers could be found. He suggested the possibility some of the outdoor businesses would help support a project like that. He questioned if a member of the Commission would be interested in volunteering to spearhead such a project as part of developing the Fields Farm property. Vice Chairman Caron and Commissioner Perry stated a willingness to donate whatever time they can to participate in conceptual discussions.

- Snowshoe Race

Vice Chairman Caron stated he has not yet seen any information on the race that was scheduled to take place on Sunday. However, he does not feel it is something the Commission can allow to occur. In the past, they have made the decision a few days prior to the event that it would be run without snowshoes. As the weather forecast does not show a day expected to have temperatures below 40 degrees between now and then, he does not feel the Commission could allow the 100 people who have pre-registered to run the trails.

Although understood there will be the need to refund monies received, the Commission does not have the infrastructure to support a race on mud. Chairman Vaillancourt spoke of other weather related events that are being cancelled as a result of the recent unseasonal weather.

The consensus of the Commission was for the Chairman to send a letter to 3C Race Productions, copying the Sub-Committee, informing of the Commission's position.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. January 11, 2016

The following amendments were offered:

Page 3, Line 24; replace "send" with "sent"

Page 3, Line 59; insert "pond" after "beaver"

Page 4, Line 3; insert "be" before "for"

Page 5, Line 5; insert "in" before "his"

Page 6, Line 15; insert "which is not the intent of the revised ordinance." After "hunting," and delete the remainder of the sentence.

Page 7, Line 28; insert "and" before "hold"

MOTION BY COMMISSIONER BOISVERT TO ACCEPT AS AMENDED

MOTION SECONDED BY COMMISSIONER TENHAVE

MOTION CARRIED

4-0-2

Councilor Vaillancourt and Commissioner Rosati Abstained

PUBLIC COMMENT

Gerald Durst, 16 Walnut Circle

Stated Vice Chairman Caron invited him to attend to get a feel for what the Commission is all about. As a user of the Wasserman Park, Grater Woods, and the HHNP he would like to be able to give something back to the community.

Chairman Tenhave commented the Commission requests only that applicants have a desire to serve. If willing to learn, the Commission will provide training. The Town Council is the body that approves appointments to the Commission. He requested Mr. Durst reach out to Becky Thompson in the Town Manager's Office.

Councilor Vaillancourt remarked, as the Council Liaison to the Commission, she would welcome the opportunity to answer any questions regarding the Commission, the time commitment, type of work, and the different sub-committees.

Mr. Durst remarked he moved into Town about a year ago. He grew up in Connecticut in a town much smaller in size than Merrimack. He stated appreciation for the opportunities to serve.

Chairman Tenhave commented the Commission tries to exploit and use everyone's strengths and then divide and conquer.

COMMISSIONER COMMENTS

Vice Chairman Caron stated the area of the powerlines on the side of Grater Woods through the Commission's new parcels was cut this past week. Not much disturbance occurred, but compared to what the Commission saw when walking the area three weeks ago, it looks completely different. Some good sized trees were cut down on the margins, and a lot of hardwood was left behind. Councilor Vaillancourt questioned what the Commission decided to do with regard to the survey denial form. Chairman Tenhave stated the decision reached was not to do anything at this time. If believed necessary at a later date, one will be drafted and sent.

Councilor Vaillancourt stated the Town hasn't crafted a denial because it was the intent of the Town Council to allow access for surveys. They were actively trying to seek out an agreement that would allow Kinder Morgan to survey Town owned property. That agreement has not come to fruition. Kinder Morgan is not allowed on Town property in the absence of an agreement.

Councilor Vaillancourt stated the Town's position was different than that of the Commission with regard to its piece of land. She commented Kinder Morgan takes the absence of survey denial to mean it is allowed. Although the Commission, as a public body, met with representatives from Kinder Morgan and informed them, during a formal meeting, that the Commission is not interested in allowing access, she is unsure if that is sufficient. She stated her opinion if that is the intent of the Commission written notification, stating permission to access the property for the purposes of surveying is denied, should be sent. She requested Commissioners give that consideration.

Commissioner Boisvert noted he continues to await a response from the Piscataquog Land Conservancy. Chairman Tenhave stated the next meeting of the Commission is scheduled for February 22, 2016 in the Matthew Thornton Room.

ADJOURNMENT

MOTION BY COMMISSIONER ROSATI TO ADJOURN
MOTION SECONDED BY COMMISSIONER CARON
MOTION CARRIED
6-0-0

The February 1, 2016 meeting of the Merrimack Conservation Commission was adjourned at 9:11 p.m.

Submitted by Dawn MacMillan