



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

JUNE 1, 2015

MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, June 1, 2015 at 6:32 p.m. in the Merrimack Memorial Conference Room.

Vice Chairman Matt Caron presided:

Members of the Commission Present: Michael Boisvert
Cynthia Glenn
Gage Perry
Kristi Bradshaw, Alternate
Councilor Jody Vaillancourt

Members of the Commission Absent: Tim Tenhave, Chairman
Robert Croatti, Alternate

Also in Attendance: Madi Choueiri, 480 D.W. Highway

PUBLIC COMMENT - None

APPOINTMENTS - None

STATUTORY/ADVISORY BUSINESS

1. Madi Choueiri (applicant/owner)

Review for recommendation to the Planning Board of a site plan for a restaurant located at 480 D.W. Highway in the C-1 (Limited Commercial), Elderly and Town Center Overlay and Aquifer Conservation Districts. Tax Map 5D-3, Lot 046c.

Vice Chairman Caron noted the site plan is associated with the proposal for a restaurant to be located at 480 D.W. Highway; the site of the former Pizza Man restaurant. The building is located in the Aquifer Conservation Districts.

Vice Chairman Caron questioned what, if any, changes were being proposed to the existing rear parking lot. Mr. Madi Choueiri responded the existing rear parking lot has to be paved and striped. Also proposed is placement of flashing in the entrance area (two entrances off Church Street).

When asked if the number of parking spaces would increase, Mr. Choueiri stated it would not. Mr. Choueiri noted his neighbor is accessing his driveway from the same parking lot; however, his driveway comes from the side. When the rear parking lot is re-paved it will be lined to clearly delineate the entrance to the residence.

Commissioner Perry noted the plan provided includes several dates, and questioned if it would be updated. Mr. Choueiri stated he used the Plan of Record as a cost savings measure. Commissioner Perry questioned the railroad ties shown across the front of the property. Mr. Choueiri stated those were related to prior use. Commissioner Perry questioned what other items were associated with the prior use that are not being proposed. Mr. Choueiri passed around a photograph of what the property is intended to resemble.

Commissioner Boisvert questioned if the intent is to utilize the existing footprint and renovate the structure, and was told the appearance of the structure would not be changed.

Commissioner Perry questioned if the front paved area would be ripped up. Mr. Choueiri responded the paved area would not be touched. The only area of disruption would be in the vicinity of the stone wall, which would be covered (wood) for the summer months to accommodate outdoor seating. Commissioner Perry questioned if plantings would be located in the front of the building, and was told there would be. He noted the pavement runs the full length of the front of the building. Mr. Choueiri stated there used to be parking in the front of the building. The Town no longer allows parking in that location. In the area of the existing retaining wall, the steps would be built up, the stone wall constructed, and plantings placed. Commissioner Perry questioned if the pavement would be removed. Mr. Choueiri responded the partial pavement would remain, and all work is being done inside the property.

Commissioner Perry questioned if seating for 40 includes the area of the porch. Mr. Choueiri provided a plan detailing the appearance of the inside of the structure. He commented he may or may not be able to utilize the porch area. That is dependent on weather. The intent will be for the appearance to be that of a porch. The name of the restaurant will be La Terrasse, French for the terrace. The restaurant will serve Lebanese and French foods.

Commissioner Bradshaw questioned if the intent is for the existing covered porch to become more of a glassed enclosure. Mr. Choueiri stated the front of the building would be glass, which, during times of good weather, would be opened.

Vice Chairman Caron questioned the area of snow storage. Mr. Choueiri stated that to be on the left side of the parking lot. He spoke of a grass area in the corner at the end of the parking lot where snow from the driveway would be pushed. In the event of a winter such as last, snow would be taken offsite. Vice Chairman Caron questioned how the surface would be treated. Mr. Choueiri stated there would be the need to ensure safe passage for patrons. Vice Chairman Caron stated the Commission's preference for sand to be utilized as opposed to a salt product. He noted one of the reasons the application was before the Commission was its location within the Wellhead Protection District.

Mr. Choueiri stated he would follow whatever is requested of him by the Commission. He spoke of Swiss road pavement, which is more porous, and suggested that type of material could be utilized. In doing so, snow and/or ice would not be on a flat surface. Sand could then be placed on the parking lot.

When asked about the timeline, Mr. Choueiri stated he would be doing most of the work himself. He would gain direction from the Town on what is required. He would likely utilize outside contractors for HVAC, plumbing, electricity, etc. It is hoped the restaurant could be completed in 4-5 months.

OLD BUSINESS

1. NED Pipeline

Commission to have a general discussion on the NED project and any immediate actions it may wish to take. Particular items to be covered include initial thoughts on questions to be raised during scoping meeting(s) with FERC.

Vice Chairman Caron stated the only update received was from the Ecologist. He noted June is the timeframe during which a great deal of the surveying is conducted.

Councilor Vaillancourt remarked the information provided stated there is habitat in the proposed right-of-way, which was expected. The other comment made was with regard to the number of vernal pools on the Horse Hill Nature Preserve (HHNP). There was notation of bringing in an expert to assist with the bat study. Vice Chairman Caron commented the one other piece was related to toads that are of interest in the State, which Mr. Littleton had not expected to find.

Although not a detailed account, there was notation of a few items Mr. Littleton was surprised to see this early, e.g., turtle nesting habitat and the Fowler's Toads.

Councilor Vaillancourt remarked at the May 28th Town Council meeting a correction was noted to the number of affected land owners. Kinder Morgan has cited 61 affected landowners. However, 152 have been identified. She noted some are common land owners on Whittier Place. When asked, Councilor Vaillancourt stated the Town identified the 152. The Town Manager is in discussions with the Environmental Attorney regarding the best means of presenting the information, in a timely fashion, to the Federal Energy Regulatory Commission (FERC).

Also during the May 28th meeting was continued discussion of the agreement to survey, which has gone through a series of amendments. The most recent request for amendment came from Kinder Morgan. Councilor Vaillancourt stated she would look to provide the Commission with an updated copy. One of the proposed changes was to amend the following language: "The Town shall receive and have reasonable opportunity to review and comment upon any report or other documentation of the results of TGP activities under the Agreement prior to submission to the FERC." The request made was to delete the words "review and" and "prior to submission to the FERC". Legal counsel took great exception to this, and strongly advised the Council to insist upon that requirement.

As of this time, there is no survey agreement in place between the Town and Tennessee Gas Pipeline (TGP). Commissioner Perry questioned if the Town's efforts in this regard are looked upon favorably by FERC. Councilor Vaillancourt responded that is what our legal counsel is advising us. There are differences of opinion with regard to that, e.g., some interpret allowing a survey to mean you are in favor of the pipeline, which is not the case. She commented if it goes that far, the Town would be able to state it has attempted to negotiate a reasonable survey agreement.

Commissioner Glenn questioned if the Commission had received information on why orange flags were located in the HHNP. Councilor Vaillancourt stated her recollection the Chairman had intended to ask Mr. Littleton, and suggested, if there were reason for concern the Commission would have been notified. She stated she would follow up with the Chairman.

Commissioner Glenn commented, despite her efforts earlier in the day and the prior day, she was unable to gain access to the FERC website.

Councilor Vaillancourt commented the only other item related to the pipeline would be the request of the Chairman for the Commission to continue brainstorming on questions to be posed at a scoping meeting. She stated her understanding there is a good possibility Kinder Morgan's final application is not going to be presented in September. The FERC has forwarded to TGP some 45 pages of questions requiring response. Commissioner Perry commented they are questions that require more than a single response, e.g., questions containing several sub-parts also requiring response.

Councilor Vaillancourt reiterated with the time that will be required to respond to the questions posed, it is not likely the final application will be submitted by September. That is part of the process for which the scoping meetings depend. Until the process proceeds, there will be no news on when and where scoping meetings will be conducted. In the meantime, the opportunity exists to identify good meaningful questions, and to be prepared for the next step.

Commissioner Bradshaw asked for clarification of the types of questions the Commission would pose. Councilor Vaillancourt responded no one has actually discussed who will ask what formally, but the way she imagines it is that each department would have the opportunity to pose questions related to the work they do. She would expect the Commission to pose conservation type questions pertaining to the conservation land it manages. Commissioner Bradshaw asked if the type of questions that should be posed at a scoping meeting is limited to those that are environmental in nature. Commissioner Perry stated it to be the scope of the project; any area where we feel, as a Town, that will have an impact either on the Town or the way we conduct business should be posed. The Commission is looking at the project from its viewpoint, e.g., migration of animals, mitigation of wetland impacts, etc., the Public Works Department would view it from a differing point of view, as would other departments. The need is to ensure such questions are included in the discussion so that they have to be answered as part of the application process. That will provide an aspect of accountability with regard to the provided responses.

Commissioner Bradshaw spoke of other conservation commissions having asked similar questions on other pipeline projects, and suggested the Commission could refer to those and tailor them to our situation. Vice Chairman Caron remarked in some cases there will be the ability to be broad, but there will be some areas where very specific information can be provided. He provided the example of the path going through Long Pond and the HHNP, which is our biggest Heron nesting area, the impacts the proposed project would have, and what TGP would propose in the way of mitigation.

Councilor Vaillancourt spoke of the desire to be prepared, and suggested each agenda include this subject matter.

NEW BUSINESS - None

OTHER BUSINESS

- Beaver Management and water control activities, Steps to create updated Beaver Policy

Commissioner Perry stated one of the last tasks of GZA GeoEnvironmental, Inc. (GZA) is to generate a fact sheet on the properties that are impacted, a good many of which are not under the auspices of the Commission. He provided a copy of the rough draft for review and feedback by the Commission. He spoke of adding links pertinent to Merrimack.

The intent is for the plan to be available to anyone having questions regarding beaver management. He commented the Commission is close to the point of handing out the plan town-wide and beginning work on the actual implementation of the Management Plan. Councilor Vaillancourt stated her pleasure with the fact sheet; particularly that it includes something in writing that states dam removal is generally a poor management choice.

- Police Patrols at Grater Woods

Vice Chairman Caron informed the Commission he and Lt. Tarleton met last week to go over the areas of concern. Lt. Tarleton informed him the Police Department would be open to utilizing ATV, foot, and bicycle patrols. The department does not have a large number of officers trained on ATVs. Foot and bicycle patrols would be necessary to cover the area. Lt. Tarleton had believed ATV patrols would be best for all of the patrols; however, once able to view the areas, he realized there are some an ATV could not traverse. He is very open to mixed patrols. They have arranged to meet again.

Vice Chairman Caron passed around samples of the printed brochures. When asked if brochures would be placed in kiosks, he suggested they should be, and spoke of placement in the small mailboxes located at the HHNP. Commissioner Perry noted there is one located on the school kiosk. He offered to contact Matt Shevenell, Business Administrator, School District, to determine if he has any objections to placing brochures at that location.

Commissioner Boisvert questioned whether the Colman area has a box, and was informed it does not. Vice Chairman Caron commented the school area likely gets the most amount of traffic, followed by Conservation Drive, and then Beebe Lane. Councilor Vaillancourt questioned when the patrols would begin. Vice Chairman Caron stated his belief Lt. Tarleton is first looking to get a number of officers trained; a great deal of information was learned during the recent meeting, which resulted in a redesign of the training. It may take a week or two for training to be completed, which he has been asked to participate in. He stated his belief patrols would begin at some point in the month of June. The Commission will be kept apprised. Vice Chairman Caron informed the Commission he has recommended patrols begin at Wildlife Opening 1. From that location they could utilize both an ATV and a bicycle, and begin patrols from the center of the property.

- Who is planning to attend Wetland Assessment training:
http://www.nhacc.org/files/4614/2979/8898/wetlandassessment_NHACC_2015flyer.pdf

Commissioner Bradshaw questioned the procedure to be followed if interested in attending. Commissioner Perry responded workshops such as this are typically paid for by the Commission. The training is scheduled for June 26, 2015 from 1:00 - 4:00 p.m. at the Conservation Center located at 54 Portsmouth Street, Concord, NH. Anyone interested in attending should contact Chairman Tenhave via email.

Commissioner Bradshaw questioned if she could register online and seek reimbursement, and was told there will be an option online to identify payment by check. The check would come from the Town/Commission. Commissioner Glenn commented, although she would be unable to attend this session, she is attending one titled Off Trail: Outdoor Skills for Land Conservation, on Saturday, June 6th from 9:00 a.m. – 2:00 p.m. at Bear-Paw Regional located at 63 Nottingham Road in Deerfield, NH.

- Update on Environmental Impact Study for HHNP and Gilmore Hill Memorial Forest

Discussed under the agenda item for the NED Pipeline.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. May 18, 2015

The following amendments were offered:

Page 1, Line 54; replace "Commissioner Glenn" with "Councilor Vaillancourt"

Page 2, Line 8; replace "he" with "the"

Page 3, Line 15; replace "wedge" with "ledge"

Page 12, Line 16; delete "been"

**MOTION BY COUNCILOR VAILLANCOURT TO ACCEPT AS AMENDED
MOTION SECONDED BY COMMISSIONER PERRY
MOTION CARRIED**

5-0-1

Commissioner Bradshaw abstained

PUBLIC COMMENT

James Francis, 4 Klara Drive

States he does a lot of mountain biking in the HHNP, and offered to be of assistance if there are certain activities the Commission wishes to be made aware of. Commissioner Perry questioned and was told the stream goes behind Mr. Francis' residence. He noted that is one of the areas the Commission is monitoring for beaver activity. The area experienced problems early last year, which receded over the season as the beaver seemingly moved on. He requested Mr. Francis contact him if he witnesses unusual activity in the area.

COMMISSIONER COMMENTS

Commissioner Bradshaw noted she resides on Whittier Place, which has a pond in the center of the development that has beaver activity. She questioned if that should be brought to the attention of the Commission. Commissioner Perry questioned if the presence of beaver is causing a problem for the pond/residents. Commissioner Bradshaw stated it is not. Commissioner Perry stated the Commission has mapped areas of activity and areas that have great habitat for activity throughout town. The intent is to monitor the areas for problems that could arise. If there are problems, the Commission would like to be made aware, and if there is activity the Commission should look at monitoring what is upstream and downstream of the area as each year the beaver have litters, which reside within their community for a year or so before being kicked out. It is possible for activity occurring a few hundred yards downstream to become a problem.

Commissioner Bradshaw remarked she is aware there is activity, but has not been made aware of any problems associated with it.

ADJOURNMENT

**MOTION BY COUNCILOR VAILLANCOURT TO ADJOURN
MOTION SECONDED BY COMMISSIONER GLENN
MOTION CARRIED**

6-0-0

The June 1, 2015 meeting of the Merrimack Conservation Commission was adjourned at 7:24 p.m.

Submitted by Dawn MacMillan