



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

MERRIMACK CONSERVATION COMMISSION ANNUAL MEETING MONDAY, MAY 22, 2023 MEETING MINUTES

CALL TO ORDER -

A Meeting of the Conservation Commission was called to order on Monday May 22, 2023 at 6:30 pm in the Matthew Thornton Room.

Steve Perkins, Chair, presided:

Members of the Commission Present:

Michael Boisvert, Vice-Chair
Ellen Kolb
Michael Drouin, Alternate Member
Eric Starr
Gage Perry
Cindy Glenn
Andy Hunter, Town Councilor

Members of the Commission Absent

Gina Rosati, Alternate Member
David Trippett, Alternate Member

PUBLIC HEARINGS - None

NEW BUSINESS –

- **Review of Shoreland Permit Application from Sean Demers and Amanda Walsh**
- The proposal intends to raze the existing non-conforming primary structure and construct a more nearly conforming structure. Proposed parcel improvements include a replacement ISDS and existing gravel driveway modification/reduction. The parcel is located at 2 North Jebb Road. Tax Map 6A-2 Lot 172.
Chair Perkins asked if the Commissioner's had reviewed the application and associated plan. He mentioned possibly tabling the application and not acting on it. Commissioner Kolb noted she didn't know if they were in a position to table the application. The Commission has a limited time to act or send comments to trigger a 40 day hold of NHDE'S review pending the Commission's comments.

Commissioner Kolb read from the memo to the Commission from Community Development Department (CDD) Secretary Stefanie Brinn, dated November 22, 2022, outlining the Commission's role in reviewing shoreline permit applications. The Commission needs to submit any comments to the Community Development Department, which would then forward them to the NH Department of Environmental Services (NHDES). It is unclear whether comments would require a delay in consideration of the permit. Commission consensus is to leave that question to the CDD and NHDES.

Vice-Chair Boisvert said that as mentioned, everything in the application seems to be a slight improvement as far as the Commission is concerned. Chair Perkins commented that there was a reduction in the overall impervious surface should the application be accepted. He noted that if the Commission chooses not to act on the application, they should ask the applicants to update paragraph 7 on page 1 to state that no phosphorus fertilizer should be used since a portion of the property lies in wetlands setbacks. Commissioners agreed they could make this a condition.

Chair Perkins questioned if this property was served by Town Sewer. Commissioner Kolb noted that ISDS stands for individual sewage disposal system. Commissioner Perry then commented there is a setback for the well radius, so he would imagine they are not on Town water. Discussion continued regarding potential Commission recommendations regarding sewage and further review of the application. Commissioner Perry brought up concerns regarding sewerage. He spoke of how the application states that existing septic components and structures are unknown and do not have previous construction or operational approvals. Concerns over water going into the nearby Lake were also briefly touched upon.

Councilor Hunter clarified if these questions would be posed to the CDD before the Commission provided a response to NHDES. His concern was to make sure the process remained expedient. Commissioner Kolb to email CDD to note Commission concerns over the septic system and the use of no-phosphate materials.

- **Sklar trail naming - Submitted by Mike Drouin**

Commissioner Drouin shared a map with proposed trail names for the Sklar property. He referred to the map sharing that two trail names, Riverview and Eagle Bluff would stay the same. The connector trail between the South part of Eagle Bluff and Riverview trails would be the Ferry trail. Two more trails would be named as well. The first, Cottonwood trail, is currently existing, but is not maintained. The purpose of it would be to bypass the beginning of Eagle Bluff which at times floods due to run off from Greeley Street. Commissioner Perry questioned if the subcommittee intended to close that section of trail permanently. Commissioner Drouin said it is a possibility. The last trail is going to be named Bittersweet trail. It runs parallel to the parking lot and would give easier access to maintain the bittersweet plant in the area.

All names were well-received by the Conservation Commission except for “Bittersweet Trail.” Bittersweet is one of the most troublesome invasive plants on the site. By consensus of the Commission, “Heron Trail” was suggested to Commissioner Drouin as a substitute, which he accepted. Chair Perkins to notify the Town and the Nashua Regional Planning Commission (NRPC), who is completing official mapping of the Sklar property, about the newly-adopted trail names.

- **Public Works Department Liaison – *Submitted by Steve Perkins***

Commissioner Boisvert has been the liaison between the Conservation Commission and the Department of Public Works (DPW), however he is leaving the Commission at the end of his term on June 30 of this year. It’s helpful to DPW to work with one person from the Commission regarding project requests. Commissioner Drouin volunteered to succeed Commissioner Boisvert as DPW liaison.

Commissioner Kolb asked who requests should go to, Vice-Chair Boisvert responded typically requests should be emailed to Lori Halverson. Commissioner Perry said that DPW has a ticketing program for project requests (e.g. parking lot grading); he will check with Dawn Tuomala, DPW Director, to see if that system is still in use.

Commissioner Drouin suggested a mile marker on trails to help identify problem areas when DPW crews go out. Vice-Chair Boisvert will introduce Commissioner Drouin to a DPW representative. Commissioner Drouin to take on this role starting on July 1, 2023. Chair Perkins noted requests from all parcels should be collected and included on requests to DPW and that items should be prioritized in order of most to least pressing issues.

OTHER BUSINESS –

- **Feedback from 23rd Annual Seedling Giveaway – *Submitted by Gage Perry***

MCC purchased 310 seedlings, which was fewer than usual due to a purchasing issue. 17 seedlings were left, all sugar maples, so just above 94% of the seedlings were distributed to the public. The event was well attended this year with many new attendees, including young families, coming out to enjoy the event.

A suggestion to put a press release in a local newspaper before next year’s giveaway raised concerns about attracting out-of-towners to a project intended for Merrimack residents. Chair Perkins suggested that a message be put up at the transfer station when it’s time to publicize the 2024 giveaway. Commissioner Kolb thanked everyone who shared social media posts about this year’s event.

ANNUAL MEETING OF THE COMMISSION –

- **Priority setting, to include feedback from the subcommittees**

Commissioners and subcommittees were invited to submit their suggested priorities for the rest of 2023 and the coming year. Chair Perkins explained he reached out to

each Subcommittee asking where they needed support from the Commission as well as a few priority items they'd like to work on for the next year or so.

Horse Hill Nature Preserve –

Chair Perkins read an email submitted by Marc Gagnon, subcommittee chair: The Commission could provide more support in recruiting subcommittee members.

Commissioner Boisvert asked if volunteers who email the Commission are getting responses. Such emails coming in through the merrimackoutdoors.org website go to all Commissioners. Commissioner Kolb replied that she doesn't know if subcommittee liaisons forward the emails to their respective subcommittees or not, but she can start forwarding these inquiries going forward.

Commissioner Perry said that in the past occasional internal e-blasts about the Commission and subcommittee projects and events were sent. Perhaps this tool could be used again. Councilor Hunter said he would check with the Town Manager.

A reference document for Conservation Commission operations and orientation of new members would be helpful as well. The document would state how to facilitate meetings as well as general meeting guidelines. Chair Perkins suggested inviting subcommittee members to the NHACC's annual conference. Attendance would be at no cost to the members, since the Commission is a dues-paying member of NHACC.

The subcommittee seeks improved communication with the Conservation Commission on relevant topics. Chair Perkins suggested a possible quarterly newsletter. Commissioner Kolb noted one concern was beaver policy, she said she believes there is a written policy. However this concern, particularly for HHNP, has been ongoing. She stated sharing this information clearly may be helpful. Chair Perkins and Commissioner Perry said this information was on the Commission's website.

Commissioner Perry said he had previously been working with CDD on an email distribution list so information and updates could periodically be emailed out to the Commission and Subcommittees. Chair Perkins noted concerns over a meeting occurring via email if individuals started to reply to updates. Commissioner Perry suggested using the BCC email function to avoid this.

Sklar Waterfront Park –

Subcommittee Priorities were presented by Commissioner Drouin.

- 1) Repair the historical bridge, which he believed was previously left out of discussions with DPW. This was disputed by Commissioners who had been present with Commissioner Drouin at the June 20, 2022 special meeting of the Conservation Commission at Sklar. This meeting included the Director of DPW and the Town Manager. At that time, DPW's conclusion was that replacement of

the stone bridge would require a complete wetland permit application to be reviewed by NHDES. Councilor Hunter asked if there had been any follow-up since then; Commissioner Perry replied no, and added that it's up to the Commission to decide whether to pursue a permit.

Commissioner Drouin was unsure of the age of the bridge. Chair Perkins noted that if it was of particular historical interest, it may help the case to repair it. Commissioner Drouin asked if the Commission could stabilize the bridge. Commissioner Perry replied that DPW and NHDES could make an assessment, and that consulting Dawn at DPW would be a good starting point.

2) Entrance sign on Griffin Street. There is none at present.

3) Funding for maintenance. Mowing and removal of invasive plants is currently costing about \$50.00 per month.

4) Install a railing or rope to help people pull themselves up a steep and sandy spot along Ferry Trail, perhaps using 4x4 posts with ropes attached. Vice-Chair Boisvert noted that a request for materials would have to come to the Commission. Commissioner Perry asked if switchbacks were practical in the steep area; Commissioner Drouin replied that he would not know where to start. The biggest issue, in view of the deed, would be permission to dig. Commissioner Perry stated this would be good to confirm.

5) Sklar has too many volunteers. All subcommittee events and meetings are posted on Facebook so people hear about them. It would be a good idea to create a central email list to share Conservation Commission volunteer opportunities with interested people on a quarterly basis. Commissioner Perry said that Stefanie in the Community Development Department office can find out if the Conservation Commission website collects email addresses.

Wildcat Falls –

Subcommittee priorities were presented by Vice-Chair Boisvert.

1) Parking at Wildcat Falls is the biggest ongoing issue, especially on weekends. Some kind of solution or expansion is needed in the near future. Commissioner Kolb asked if DPW had seen the parking proposals presented to the Commission by subcommittee member Andrew Duane at an earlier Commission meeting. Commissioner Perry asked if the Town Center committee had any news about developing a trail that could link to Wildcat Falls, allowing parking for the trail closer to the town center. Councilor Hunter said that the Town has accepted a grant and have funded their percentage for a trail that would cross US 3 under the bridge near the central fire station. It could be part of a long-term solution for parking at the property.

- 2) Erosion on Falls Loop Trail. The subcommittee is working with the Town on getting riprap to prevent further erosion.

Grater Woods –

Subcommittee priorities were presented by Commissioner Perry.

The subcommittee will continue to apply appropriate protective material as needed to preserve and maintain trail structures like benches and overlooks. The Gateway Trail needs mowing; Vice-Chair Boisvert will send this request to Lori at DPW.

Priorities suggested by individual commissioners-

Commissioner Glenn - Noting that her term ends next month, preferred to hear from other commissioners.

Chair Perkins-

- 1) State property abutting Wildcat Falls (Tax Map 5C Lot 659): while the state did not accept the Town's proposal to do a land swap in lieu of a mitigation payment in one part of the Everett Turnpike widening project, we need to watch for dredge-and-fill applications for other parts of the project. We can keep reminding the state that conveying the land to the town will save the state money while giving the Town a 50 acre parcel adjoining Wildcat Falls.
 - 2) Maintain a punch list of projects to have ready when any organization or youth volunteer seek to assist the Commission.
 - 3) Seek further collaboration with the schools. As example, Chair Perkins cited a photography group from the Middle School that had taken photos in Grater Woods, and the UNH doctoral student who used Commission properties for a multiyear wildlife study. Vice-Chair Boisvert said that the Wildcat Falls subcommittee Chair is reaching out to students. Commissioner Perry said that working with the Merrimack School Board could encourage student participation.
- 3) Encourage more seedling projects, such as the one at Merrimack High School last year.

Commissioner Kolb – Now that the Commission knows the boundaries of the Fields Farm property, it's time to look at development of a parking area and access. This may be the time to form a subcommittee.

Councilor Hunter – Endorsed the idea of a punch list of projects, noting that the Town Council gets requests as well.

Commissioner Starr - Did research a couple of years ago into options for parking at Wildcat Falls and found that some expansion (possibly by 50% capacity) - but

not a lot - could be done without encroaching on wetlands. He likes the idea of more school involvement. He also proposed an internship program for interested students a couple of years ago but no feedback resulted.

Commissioner Drouin - Have more events, such as for Earth Day, plantings, and litter cleanup. Highlight the work that volunteers undertake may also be helpful in attracting new members. Work on public education, such as how to identify and eradicate invasive plants may also be useful.

- **Review Conservation Commission Rules of Procedure**

The Rules of Procedure (ROP) were last updated in June 2022. Chair Perkins said they should think about article IV, Membership: can one of the Commission's alternate seat be earmarked for a high school student, for a one-year term? Chair Perkins to follow up with CDD about this. Vice-Chair Boisvert suggested bringing the idea before the school board; Councilor Hunter commented that they need to make sure the Town Charter allows this.

Motion by Councilor Hunter to table review of MCC Rules of Procedure until the June 12, 2023 Conservation Commission meeting.

Seconded by Commissioner Perry

Motion Carried

7-0-0.

- **Annual election of Chairperson, Vice Chairperson, and Secretary**

Motion by Commissioner Glenn to nominate Steve Perkins for Chair. Chair Perkins accepted the nomination "for one more year."

Seconded by: Commissioner Perry

Motion Carried

6-0-1

Abstained: Chair Perkins

Motion by Chair Perkins to nominate Eric Starr for Vice-Chair. Commissioner Starr accepted the nomination.

Seconded by Commissioner Glenn

Motion Carried

7-0-0.

Motion by Commissioner Glenn to nominate Ellen Kolb for Secretary. Commissioner Kolb accepted the nomination.

Seconded by Chair Perkins

Motion Carried

7-0-0.

- **Subcommittee Appointments**

Grater Woods:

Motion by **Commissioner Kolb** to appoint Gage Perry as MCC Representative with a term to expire 6/30/2024; Mike Boisvert as full member with a term to expire 6/30/2026; Amy Woods as full member with a term to expire 6/30/2026; and Paul Labrie as a full member with a term to expire 6/30/2024.

Seconded by **Chair Perkins**

Motion Carried

7-0-0.

Horse Hill:

Motion by **Commissioner Kolb** to name Ellen Kolb as MCC Representative with a term to expire 6/30/2026; Lynne Wenz as full member with a term to expire 6/30/2026; and Timothy Adams as an alternate member with a term to expire 6/30/2024.

Seconded by **Chair Perkins**

Motion Carried

7-0-0.

Sklar Waterfront Park:

Commissioner Glenn requested that nominees not be voted on as a group.

Motion by **Commissioner Kolb** to name Michael Drouin as MCC Representative with a term to expire 6/30/2024.

Seconded by **Chair Perkins** for discussion.

*Items Commissioner Glenn referred to in the discussion are attached below.

Commissioner Glenn said she will vote no on Commissioner Drouin's reappointment as the MCC Representative. She's concerned that Commissioners Drouin and Trippett are not acting in accordance with RSA 36-A:2 and their oaths as commissioners in terms of protecting wildlife and the Sklar property. By not adhering, the Town is at the risk of legal action. She said the Commission made decisions about Sklar property that are not being followed by the Subcommittee. This did not reflect on the work of the subcommittee's volunteers or time they spent working on the property, which she appreciated.

Parking and driving near the river are problems. She felt in order to follow her oath, she had to bring up these issues. She cited a unanimous MCC vote from April 4, 2022

to approve blocking off vehicle access near the river. The discussion continued at other meetings. On June 20, 2022 at a special meeting at Sklar with the Town Manager and the DPW Director present, the issue was discussed. The Town Manager suggested having Town Legal Counsel review the deed. After review on July 11, 2022, it was stated that the attorney had reviewed the deed and advised that it was his interpretation that vehicle parking and boat trailer parking at Sklar would violate Section 1 Page 3 of the deed. Therefore, the April 4, 2022 vote was reconsidered on July 11, 2022 and the Commission voted to rescind the decision.

Commissioner Glenn pointed out that Commissioners Drouin and Trippett were both present and voted at the July 11, 2022 meeting and voted in agreement that the parking could not be used for river access. On April 12, 2023 Commissioner Glenn saw a Facebook post from Sklar Waterfront Park showing cars parked by the river. She noted Commissioner Trippett is actually shown in one of the photos, so it is encouraging people to use this area for parking. This was after the Commission, Town Manager, and Legal Counsel said it was not allowed. There was also a posting below the one she was referring to saying “you can pull down now, sweet” which is not correct, but is attracting attention. Additionally, she also saw a post on May 13, 2023 which shows cars parked in the parking lot area which has not been blocked. This post had a comment saying “nothing like parking next to the Merrimack River”.

She stated she knows there were some seedlings planted, 100 in all, which is wonderful. However, she is not sure why these were not used to revegetate the parking area. Commissioner Drouin stated he would like to comment if he could. Chair Perkins asked if everyone else could share any comments they had first to be fair. Commissioner Drouin said he felt there was an important piece of information that would clarify everything. Chair Perkins said he could tackle this briefly.

Commissioner Drouin replied that there have been two workdays this year at Sklar to move boulders to block a portion of what is now being used as a parking lot. On two separate occasions they moved boulders to block the access, but they need to have another workday to finish the work. The subcommittee hasn’t had the chance or the resources to do more. He said that the remaining boulders onsite are covered in knotweed, and moving them may risk it spreading. He also pointed out that the subcommittee’s work has stopped vehicular traffic on trails within Sklar. They also planted seedlings and blocked off ruts on the property with chicken wire to prevent ATV access near the river.

Commissioner Perry asked if people were still parking down near the river despite the area being blocked. Commissioner Drouin said they don’t have signs, aside from the ones at the entrance of the road, but these get ignored. Commissioner Glenn said she visited over the weekend and you can drive straight through the property. She said this is clearly what’s being shown in the pictures she saw and what is being encouraged by posting the photos. She said you may not be able to block off the parking lot, but you could definitely block off the circle. She continued that

Commissioners Drouin and Trippett had advocated for this circular turn around at many meetings, but is an area that could easily be blocked. This issue had been addressed at many previous meetings, and it had been a year since they last discussed it. She doesn't understand why the behavior is being encouraged and feels that neither Commissioners Trippett nor Drouin are performing their duties.

Commissioner Perry said he is concerned about the fact that the Commission has been told the deed says they can't park there. To him, this means it is an enforceable event. If they are seeing cars near the river, they should be calling the police. He does not want to have to say the Commission is doing things against the law on purpose. He believes Tim Thompson from Community Development should be notified so that he can work with the Police Department to have these issues addressed directly.

Chair Perkins said that at a minimum, additional signage is needed to discourage parking. Commissioner Perry noted that if worse comes to worse, two posts and a chain could be used for an interim period of time to discourage parking.

Commissioner Kolb asked Commissioner Drouin who manages the Sklar Waterfront Park Facebook page. He said he does, and is the sole administrator. She asked if anything went onto the page without him knowing it to which he responded, no. She has managed social media for non-profits before and noted that when you want to encourage something, you post pictures of it. She is however puzzled by the parking issue. Seeing these pictures of cars parked by the river made her wonder what she had missed. She said they all agree that the Sklar property is an asset to a Town and that the volunteers have done an amazing job. She noted Commissioner Trippett has brought up concerns about making sure the Commission provided access to the property for people with limited mobility. She would rather this be considered in an integrated way with the rest of the Sklar property.

She would like to clarify if they are talking about access for those with limited mobility or access for cars. She is afraid it comes down to cars parking by the river. She feared that the recent Facebook posts showing cars along the river was undermining the efforts of the Commission to abide by the deed.

Vice-Chair Boisvert said he appreciated the courage of his fellow Commissioners. He said the things they were sharing were part of the reason why he left the Sklar subcommittee as their representative. He noted he had a lot of mixed feelings, and would abstain from voting on the motion.

Commissioner Perkins said he had been embarrassed by the resignation of three members of the Sklar subcommittee. When he tried to keep them on, he was saddened by their feedback that the culture is one that may be divisive. He feels there has been an adversarial relationship between the Commission and the Subcommittee. He said these are volunteers with huge hearts, and he doesn't want to place blame on the Subcommittee as a whole, but it is hard to get this negative feedback.

Commissioner Starr said he had been unaware this issue was coming; he is not on Facebook and is unfamiliar with Sklar posts. There's legal risk to violating the deed, so something has to be done. He doesn't know enough about the situation to vote one way or another, so he would abstain from voting on the motion.

Councilor Hunter said that Commissioner Perkins's phrase "adversarial relationship" summed up the situation. He believes the issues Commissioner Glenn brought up are symptoms of a larger issue which is the relationship between the two groups. He does think that Commissioner Drouin, though he is not solely responsible, has played a large part in this attitude. Commissioner Drouin should abide by the position of the Commission and honor their decision however, Councilor Hunter did not feel this had always happened. He said he would not support the motion.

Commissioner Drouin responded "I can assure you that we are a team. We get things done. We're basically a family" He spoke of the Subcommittee going to the Tomahawk Tavern in December. He said each member is treated well and all participate and brings their ideas and honor. He also stated that he was recently re-elected as Chair while Commissioner Trippett was re-elected as Vice-Chair which says something about their leadership.

He said the subcommittee is not a hostile workplace. As for the boulders at Sklar, he said that people keep moving them without subcommittee permission. Larger boulders are required to block off areas; chains and posts won't be adequate. The subcommittee can only do what resources allow as they rely on volunteer labor and machines. He feels he has led the group successfully as it is the only Subcommittee that meets monthly and the only one with a waiting line to join it. They try to do what the Conservation Commission directs them to, but they can't block the parking area until they get the resources to do so.

He said he has gone above and beyond, and has had excellent attendance and participation on MCC and the Subcommittee. He has worked with the Merrimack River Watershed Council and a local church on Sklar projects. He continued that the Commission could not say he was ineffective or bad. He claimed he had never been the MCC Representative to the Sklar Subcommittee, there hasn't been one since Vice-Chair Boisvert resigned. Commissioner Glenn commented she had the minutes showing he had been elected as the MCC Representative. He said he was not aware of this.

Councilor Hunter said he understands the struggle for resources, but the relationship between the Sklar Subcommittee and Conservation Commission was not something he could get over. His problem was that when the Commission voted, the spirit of the vote was not taken back to the Sklar Subcommittee. He doesn't doubt the effort put in, but he is not sure Commissioner Drouin has upheld his oath to the Commission.

Commissioner Drouin commented that in the past he had been made aware that there were issues, but he had toned down over the last year.

He stated there have not been any issues this whole year. Commissioner Perry said except for illegal parking. Commissioner Drouin responded there is nothing he can do about that. Commissioner Perry said he could not park there. Commissioner Glenn added the behavior was being encouraged through social media posts. Commissioner Drouin said the picture taken by the river has been posted many times throughout the years which is just showing the property can be used.

Commissioner Kolb noted a Facebook comment from May 13, 2023 saying “nothing like parking next to the Merrimack River and fishing with like-minded people”. This picture showed at least four cars. Discussion continued with Commissioner Drouin speaking about how he cannot control parking at that area. Other Commissioners noted that the behavior could be discouraged.

Commissioner Glenn said he could still clean trash on the property as he frequently does, he just won’t be the MCC Representative if the Commission did not vote for him to be. Commissioner Drouin commented he didn’t want to be the MCC Representative and did not ask for it. Commissioner Glenn said that was what was currently being voted on.

Commissioner Kolb asked for clarification. Commissioner Drouin responded he did not want to be the MCC Representative, he only wanted to renew his term on the Subcommittee. Commissioner Glenn then clarified if Commissioner Drouin was looking for a vote to name him as a full time member to which he responded, yes. After Commissioner Drouin said “I never wanted to be the MCC Representative,” Commissioner Kolb withdrew her motion out of respect for his wishes.

Commissioner Drouin said the motion could be made to restore his original term as a three year term, since it was changed for some reason last year. Chair Perkins said everything the Commission was provided said Commissioner Drouin’s term ended in 40 days.

Discussion proceeded onto the remaining motions. Commissioner Glenn stood by the points she made earlier in the discussion of Commissioner Drouin’s nomination when discussing a motion for Commissioner Trippett’s reappointment. Councilor Hunter, Commissioner Kolb, and Commissioner Perry expressed concern about social media posts made by Commissioner Trippett. At the request of Commissioner Perry, Commissioner Boisvert will check to see if DPW has barriers that can be used at Sklar.

Motion by **Chair Perkins** to appoint Michael Drouin as a full member of the Sklar subcommittee for a term to expire 6/30/2024.

Seconded by **Councilor Hunter**

Motion Denied

0-5-2

Abstained: **Commissioners Starr and Vice-Chair Boisvert**

*Following this vote, Commissioner Drouin left the meeting at approximately 8:16pm

Motion by **Commissioner Glenn** to appoint David Trippett a full member of the Sklar subcommittee for a term to expire 6/30/2024.

Seconded by **Chair Perkins for discussion**

Motion Denied

0-5-2

Abstained: **Commissioners Starr and Vice-Chair Boisvert**

Motion by **Commissioner Glenn** to appoint Karen Maillet to the Sklar subcommittee as a full member with a term to expire 6/30/2026; Alison Mitchell to Sklar subcommittee as an alternate member with a term to expire 6/30/2026; and Derek Trippett to Sklar subcommittee as an alternate member with a term to expire 6/30/2024.

Seconded by **Chair Perkins**

Motion Carried

7-0-0.

Motion by **Vice-Chair Boisvert** to table the assignment of an MCC Representative to the Sklar Subcommittee until the June 26, 2023 Conservation Commission meeting.

Seconded by **Chair Perkins**

Motion Carried

7-0-0.

- Member assignments to subcommittees for 1 year term

APPROVAL OF MINUTES –

Motion by Commissioner Kolb to approve the April 10, 2023 Conservation Commission minutes with the following amendment.

Page 3, Line 110 – Change vote to “6-0-1” to reflect a vote that was abstained

Motion Seconded by Commissioner Glenn

Motion Carried

7-0-0

ADJOURNMENT –

Motion to Adjourn by Commissioner Glenn

Motion Seconded by Commissioner Perry

Motion Carried

7-0-0

The May 22, 2023 meeting of the Conservation Commission was adjourned at 8:24pm.

TITLE III

TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

Chapter 36-A CONSERVATION COMMISSIONS

Section 36-A:1

36-A:1 Method of Adoption. – Any city by vote of its city council, and any town at any duly warned meeting, may adopt or rescind the provisions of this chapter.

Source. 1963, 168:1, eff. Aug. 20, 1963. 2008, 317:1, eff. Jan. 1, 2009.

Section 36-A:2

36-A:2 Conservation Commission. – A city or town which accepts the provisions of this chapter may establish a conservation commission, hereinafter called the commission, for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town. Such commission shall conduct researches into its local land and water areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. It shall keep an index of all open space and natural, aesthetic or ecological areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the state or lands owned by a town or city. It shall keep an index of all marshlands, swamps and all other wet lands in a like manner, and may recommend to the city council or selectmen or to the department of natural and cultural resources a program for the protection, development or better utilization of all such areas. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the annual town or municipal report. The commission may appoint such clerks and other employees or subcommittees as it may from time to time require.

Source. 1963, 168:1. 1973, 550:1, eff. Sept. 3, 1973. 2017, 156:14, I, eff. July 1, 2017.

Section 36-A:3

36-A:3 Composition of Commission. – The commission shall consist of not less than 3 nor more than 7 members. In a town which has a planning board, one member of the commission may also be on the planning board. In a city which has a planning board, one member of the commission may be on the planning board. In cities, the members of the commission shall be appointed by the mayor subject to the provisions of the city charter, and in towns the members of the commission shall be appointed by the selectmen. Alternate members may be appointed in a like manner and when the alternate serves in the absence or disqualification of a regular member, the alternate shall have full voting powers. When a commission is first established, terms of the members shall be for one, 2, or 3 years, and so arranged that the terms of approximately 1/3 of the members will expire each year, and their successors shall be appointed for terms of 3 years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. Members of a conservation commission shall be residents of the city or town which they represent. Members of a conservation commission also may serve on other municipal boards and commissions, including, but not limited to a historic district commission established under RSA 673:4, and a heritage commission established under RSA 673:4-a.

Source. 1963, 168:1. 1973, 550:2. 1974, 44:2. 1987, 318:1. 1995, 138:1, eff. July 23, 1995. 1997, 31:1, eff. June 27, 1997.

Section 36-A:4

36-A:4 Powers. –

- I. Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.
- II. No commission, its members, or designee shall enter private property to gather data about the property for use in a wetlands designation, prime wetlands designation, natural resource inventory report or map, or natural heritage map without first obtaining permission of the property owner or agent, or a lawfully issued warrant. Such permission may be oral or written, provided that record is made of oral authorization. If consent for entry is denied, the conservation commission, or designee, may obtain an administrative inspection warrant under RSA 595-B.
- III. Prior to requesting permission, the commission, its members, or designee shall notify the landowner of the purpose of the data gathering, the specific features that will be evaluated, the manner in which the data collected will be recorded and distributed, and possible known consequences of the data collection.
- IV. No data gathered by entering property without the permission of the landowner or an administrative warrant shall be used for any purpose other than law enforcement purposes authorized by statute.
- V. The conservation commission, in reviewing an application to provide input to any other municipal board, shall not require submission of an application for or receipt of a permit or permits from other state or federal governmental bodies prior to accepting a submission for its review or providing such input.

Source. 1963, 168:1. 1973, 550:3. 1995, 138:2, eff. July 23, 1995. 2008, 317:2, eff. Jan. 1, 2009. 2012, 202:2, eff. June 13, 2012. 2013, 270:4, eff. Sept. 22, 2013.

Section 36-A:4-a

36-A:4-a Optional Powers. –

- I. The legislative body of a city or town may vote at an annual meeting to authorize the conservation commission to:
- (a) Expend funds for the purchase of interests in land outside the boundaries of the municipality, subject to the approval of the local governing body; and
- (b) Expend funds for contributions to "qualified organizations," as defined in section 170(h)(3) of the Internal Revenue Code of 1986, for the purchase of property interests or facilitating transactions relative thereto to be held by the qualified organization, when such purchase carries out the purposes of this chapter. Because such contributions further the protection of the state's natural resources, they are hereby declared to be a public purpose.
- II. A vote under this section may be taken simultaneously with the adoption of this chapter or any time thereafter. If the vote is taken simultaneously with the adoption of this chapter, a separate question shall be placed on the warrant.
- (a) The wording of the question under subparagraph I(a) shall be: "Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(a) to authorize the conservation commission to expend funds to purchase interests in land outside the boundaries of our municipality, subject to the approval of the local governing body?"
- (b) The wording of the question under subparagraph I(b) shall be: "Shall the town vote to adopt the provisions of RSA 36-A:4-a, I(b) to authorize the conservation commission to expend funds for contributions to 'qualified organizations' for the purchase of property interests, or facilitating transactions related thereto, where the property interest is to be held by the qualified organization and the town will retain no interest in the property?"
- III. The provisions of this section may be rescinded by vote of the legislative body.

Source. 2008, 317:3, eff. Jan. 1, 2009.

Section 36-A:5

36-A:5 Appropriations Authorized. –

I. A town or city, having established a conservation commission as authorized by RSA 36-A:2, may appropriate money as deemed necessary for the purpose of this chapter. The whole or any part of money so appropriated in any year and any gifts of money received pursuant to RSA 36-A:4 may be placed in a conservation fund and allowed to accumulate from year to year. Money may be expended from said fund by the conservation commission for the purposes of this chapter without further approval of the town meeting.

II. The town treasurer, pursuant to RSA 41:29, shall have custody of all moneys in the conservation fund and shall pay out the same only upon order of the conservation commission. The disbursement of conservation funds shall be authorized by a majority of the conservation commission. Prior to the use of such funds for the purchase of any interest in real property or for a contribution to a qualified organization for the purchase of property interests under RSA 36-A:4-a, I(b), the conservation commission shall hold a public hearing with notice in accordance with RSA 675:7.

III. In the municipality that has adopted the provisions of RSA 79-A:25, II, the specified percentage of the revenues received pursuant to RSA 79-A shall be placed in the conservation fund.

Source. 1963, 168:1. 1973, 550:4. 1987, 318:2. 1988, 120:1, eff. June 18, 1988. 2008, 317:4, eff. Jan. 1, 2009.

Section 36-A:6

36-A:6 Commissioner of Resources and Economic Development. – The commissioner of the department of natural and cultural resources may establish a program to assist, at their request, the cities and towns which have adopted the provisions of this chapter, in acquiring land and in planning of use and structures as described in RSA 36-A:2.

Source. 1963, 168:1, eff. Aug. 20, 1963. 2017, 156:14, I, eff. July 1, 2017.

Councilor Hunter mentioned that he would like to see the approved Sklar plan used as a guideline when the subcommittee comes before the Commission in the future with funding requests. This would assist in making sure requests support the subcommittees long range goals. He also suggested updating the plans introduction to state that the subcommittee would take a vote of the item. If the subcommittee voted to approve, then the subcommittee's ex-officio member would bring it to the Conservation Commission for consideration.

Discussion covered duties of an ex-officio subcommittee member. There was one question regarding whether or not ex-officio members had veto power or not and whether ex-officio members could prevent motions from being brought up to the Conservation Commission. Vice-Chair Boisvert and Commissioner Perry explained ex-officio members do not have veto power and can't stop anything from being brought up for a motion. Ex-officio members are only one voice, the group as a whole makes the decision based on the results of a motion.

Commissioner Drouin mentioned invasive plants on the Sklar property. The discussion then returned to which Sklar plan the Conservation Commission wanted to accept. Councilor Hunter asked for clarification on Plan #2. He stated the original drawing showed the barrier of boulders in a North/South line but Plan #2, as revised, shows the boulders going in an East to West direction which is the most accurate depiction of the proposed boulder placement. Commissioner Perry asked if the layout plan would need to go before the Town Council for a vote to which Councilor Hunter responded that Town Manager Paul Micali would let them know if there was a reason the plan needed to be approved by the Town Council.

Commissioner Starr requested clarification regarding whether the subcommittee preferred a specific plan. Commissioner Drouin stated that Plan #1 was created primarily from the subcommittees input. Vice-Chair Boisvert clarified that Plan #1 was only truly created from two subcommittee members input. Chair Perkins added that he got the sense that there is a general appreciation that the Conservation Commission is doing their best to get the plans that work best for property from an environmental perspective while staying within the guidelines of the Sklar property deed.

MOTION BY VICE CHAIR BOISVERT TO ACCEPT SKLAR LAYOUT PLAN 2, TO BE REVISED WITH BOULDERS MOVED FROM EXISTING NORTH/SOUTH TO PREFERRED EAST/WEST AT END OF THE PARKING LOT BY RIVER, AND OTHER BOULDERS TO BLOCK SOUTH RAMP ONTO TOWN PROPERTY BY THE BOAT RAMP TO BE APPROVED BY TOWN MANAGER.

MOTION SECONDED BY COMMISSIONER GLENN

MOTION CARRIED

7-0-0

NEW BUSINESS

- Bridge restoration

This was an informational discussion and no vote was taken.

The old bridge just downstream of the culvert near the entrance to the property needs attention in order to prevent further deterioration of the bridge and further erosion of adjoining land. The bridge is part of a path approximately 8 feet wide and is not intended for use by vehicular traffic. It is being affected by water flowing down the path from the parking lot.

DPW Director Fox suggested that the New Hampshire Department of Environmental Services might need to delineate the area wetland before any work is done. Commissioner Perkins will contact DES.

Town Manager Micali suggested that the Commission contact GZA Contractor to evaluate the bridge and to suggest possible remediation strategies. Commissioner Perry will contact GZA. Questioned by Commissioner Kolb, Town Manager Micali agreed that no material for bridge remediation shall be delivered until a permittable remediation plan is in place.

- Positioning of large rocks in Sklar property

This was an informational discussion and no vote was taken.

Large rocks have been placed around the Sklar property at the direction of the subcommittee, with the goal of keeping motorized traffic off of the property's trails and the bank of the Merrimack River. Signs prohibiting motorized traffic have been torn down repeatedly. Town Manager Micali stated that he, DPW Director Fox, and Town Operations Manager Lori Barrett had looked at the property and determined that operators of motorized vehicles are avoiding the currently-placed rocks by using the riverbank as a shortcut.

Town Manager Micali suggested moving the rocks to the trail next to the brush pile (south of where the picnic table is currently located), leaving a walkway between 4 and 5 feet wide. He acknowledged that any driver with a truck and a winch could move rocks without authorization. Commissioners Trippett and Hunter suggested arranging the rocks in an "L"-shaped arrangement to control traffic flow and to protect the riverbank. Mark Twardoski said he could provide more rocks as needed and authorized.

Town Manager Micali pointed out that consultation with an attorney may be needed in order to determine the best use of the Sklar property that is consistent with the Sklar deed and protection of the river. Does the deed permit any motorized use of the property? Commissioner Perkins will send the town manager an email requesting that the town attorney look at the deed.

A master plan is needed for Sklar; Commissioner Drouin said that the subcommittee is working on that and expects to complete it by the end of July 2022. DPW Director Fox advised that the property is in a shoreline protection area, and therefore NH DES controls legality of any tree-cutting, which must be taken into consideration in any master plan.



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

603 424-3531

Fax 603 424-1408

www.merrimacknh.gov

Planning - Zoning - Economic Development - Conservation

MERRIMACK CONSERVATION COMMISSION ANNUAL MEETING MONDAY, JULY 11, 2022

A meeting of the Merrimack Conservation Commission was held on Monday, July 11, 2022 at 6:30pm in the Matthew Thornton room.

Steve Perkins, Chair, presided:

Members of the Commission Present:

Mike Boisvert, Vice-Chair
Michael Drouin
Ellen Kolb
Andy Hunter
Eric Starr
David Trippett

Members of the Commission Absent:

Cindy Glenn
Gage Perry
Gina Rosati

Also Participating:

Marc Gagnon, Danforth Road, Horse Hill Nature Preserve Subcommittee Chair

Chair Perkins designated Commissioners Drouin and Trippett to sit in as voting members.

PUBLIC COMMENT - None

PUBLIC HEARINGS – None

STATUTORY/ADVISORY BUSINESS - None

NEW BUSINESS -

- Purchase of materials to construct a 12-foot bridge at Wildcat Falls Conservation Area on North Loop trail

Vice-Chair Boisvert presented this item on behalf of Andrew Duane, Wildcat Falls subcommittee chair. Reeds Ferry Lumber provided the subcommittee with a quote of \$275.85 for materials. However, Mr. Duane is seeking a limit of \$325.00 for the project to account for

Commissioner Kolb brought forward an announcement on the town website, dated April 2022, regarding Eversource work off Peaslee Road, which did not specify HHNP. She pointed out that while Eversource might have done all it was legally obliged to do to give notice of the project, the Commission was left in the dark about the project's effect on HHNP. Mr. Gagnon said that the Eversource work might provide opportunities for improvements within HHNP, but without better communication, no one from the town knows what to expect.

Chair Perkins and Vice-Chair Boisvert brought up previous work completed a few years ago at Grater Woods and HHNP. He commented that at the time there had been ample communication between Eversource and the Conservation Commission. Mr. Gagnon remarked that the first phase of the project at HHNP had been in an area where there were not trails or many wetlands, so the work had minimal impact on the Conservation Commission.

He mentioned the work previously completed had been good, but now it has started to affect the most popular trail on the property and a work schedule would be helpful. He spoke of a few places that Eversource may use to access the middle sections of the property, but stated that it's hard to plan ahead for trail maintenance and access without more information.

OLD BUSINESS -

- Rock/Barrier placement at Sklar Waterfront Park

Following the Commission's special meeting at Sklar on June 20, 2022, Chair Perkins asked the town's attorney to review the deed to the property in order to clarify whether a proposal for work at Sklar is in accordance with deed restrictions. The attorney advised that it is his interpretation that vehicle parking and boat trailer parking at Sklar would violate Section I, page 3 of the deed. Further, the driveways and parking area would require soil disturbance, which would arguably violate section E on page 2 of the deed.

After getting feedback from the Town Attorney, the Conservation Commission probably overstepped on the expansion of the parking lot. The deed also outlines that any of the access road the Commission had contemplated would also be inconsistent with the deed. Chair Perkins mentioned the first thing to do would be to make a motion to reconsider the original motion which passed and had accepted Layout plan 2 for Sklar. Anyone who voted on it originally can also vote to reconsider the motion. Commissioner Drouin asked if it's not possible to expand the parking lot, would individuals still be able to park in the parking lot. Chair Perkins mentioned he thinks this should be part of the motion reconsideration discussion.

MOTION BY COMMISSIONER PERKINS TO RECONSIDER THE COMMISSION'S APRIL 4, 2022 VOTE ON THE FOLLOWING MOTION, WHICH ON THAT DATE WAS APPROVED 7-0-0 AND STATED: "ACCEPT SKLAR LAYOUT PLAN 2, TO BE REVISED WITH BOULDERS MOVED FROM EXISTING NORTH/SOUTH TO PREFERRED EAST/WEST AT THE END OF THE PARKING LOT BY RIVER, AND OTHER BOULDERS TO BLOCK SOUTH RAMP ONTO TOWN PROPERTY BY THE

Commissioner Drouin asked about re-vegetating the existing Sklar parking lot after it's blocked off. He commented that the soil there is unfit for growth. Discussion touched on possible plants that could be placed on the site. Chair Perkins said that when the Commission places their annual seedling order from the state nursery in November, seedlings for Sklar could be part of the order.

MOTION BY COUNCILOR HUNTER TO APPROVE A PLAN TO MOVE THE ROCKS TO THE SOUTH SIDE OF THE SKLAR PARKING LOT TO BLOCK ACCESS TO THE FOUR ENTRANCES INTO THE TRAILS, TO MOVE ROCKS TO BLOCK THE NORTH BOUNDARY OF THE PARKING LOT ON THE PROPERTY BOUNDARY, AND TO PURSUE A DISCUSSION WITH TOWN OFFICIALS ON USING TOWN PROPERTY FOR PARKING.

SECOND BY CHAIR PERKINS

MOTION CARRIED

7-0-0

- Grater Woods Blanding's Turtle project

Chair Perkins stated the research project, which took three years, has been completed. The Commission previously authorized up to \$5,000 for this project. They recently made the last payment installment. There were three turtles that couldn't be found last year, however, the last two transmitters have been found and removed by the researcher. Going forward, the Commission made a motion to cease funding the research project. Chair Perkins briefly went over feedback received from the researcher.

ANNUAL MEETING OF THE COMMISSION -

- **Review Merrimack Conservation Commission rules of procedure**

The Commission looked at a draft of Rules of Procedure, presented by Chair Perkins. Chair Perkins gave a brief background and explained that there were previously rules called By-Laws, which will now be called Rules of Procedure. The changes to existing procedures are being proposed to bring MCC procedures into line with Rules of Procedure adopted by the Planning and Zoning boards. This document is more robust and provides clarification to some areas of the by-laws that were vague. A few changes were highlighted in the Commission's discussion.

Article I was largely unchanged. Article II included a lot of new language and provides clarity regarding the Commission's mission, annual reporting and open space. Article III covers the procedure and requirements for a site visit or anytime the Commission is doing something on private land.

Regarding Article III:G (3), Commissioner Perkins noted that timelines for responding to wetlands permit applications might require special meetings of the Commission. He noted that Article IV:E prevents an alternate Commission member from being seated in place of the ex-officio from Town Council in the latter's absence.

changes to procedure going forward. Discussion covered which votes needed to take place. Commissioner Perry stated the subcommittee by-laws may need to be updated to reflect voting members and term length.

Grater Woods Subcommittee –

Motion by Chair Perkins to reappoint Gage Perry through June 30, 2023, Steve Marble through June 30, 2024 and Jeffrey LeCours through June 30, 2025.

Second by Commissioner Perry

Motion Carried

6-0-0

Horse Hill Nature Preserve Subcommittee –

Motion by Chair Perkins to approve a new term for Ellen Kolb through June 30, 2023.

Second by Commissioner Trippett

Motion Carried

6-0-0

Sklar Subcommittee –

Motion by Chair Perkins to appoint Katie Little term expiring June 30, 2025 and Karen Maillet expiring June 30, 2023, and Kareen Dunn through June 30, 2024 as full members to the Sklar subcommittee.

Second by Commissioner Trippett

Motion Carried

6-0-0

Motion by Chair Perkins to appoint Anita Creager from full member to alternate member through June 30, 2024, Alison Mitchell as an alternate through June 30, 2023, and Derek Trippett as an alternate through June 30, 2023.

Second by Commissioner Trippett

Motion Carried

6-0-0

Motion by Chair Perkins to extend the terms of Michael Drouin through June 30, 2023 and Mark Twardoski through June 30, 2025.

Second by Commissioner Trippett

Motion Carried

6-0-0

Wildcat Falls



Sklar Waterfront Park

April 12 · 🌐



Life returns to Sklar!

Glad to see the shore lined with people again.

Sklar Waterfront Park sub-committee will be meeting at Sklar tonight at 6pm for our monthly meeting. Public is always welcome to attend and help us make this place better.

Agenda:

1. CALL TO ORDER... [See more](#)



9



2



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Fred Powers

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Sklar Waterfront Park

May 13 at 11:15 PM · 🌐



Nothing like parking next to the Merrimack River and fishing with like minded people.

 10

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