



## Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

### MERRIMACK CONSERVATION COMMISSION

APRIL 5, 2021

### MEETING MINUTES

A meeting of the Merrimack Conservation Commission was held on Monday, April 5, 2021 at 6:31 p.m.

Steven Perkins, Chairman, presided:

Members of the Commission Participating: Michael Boisvert, Vice Chair  
Gina Rosati, Secretary  
Cynthia Glenn  
Gage Perry  
Eric Starr  
Michael Drouin, Alternate Member  
Tim Tenhave, Alternate Member  
Councilor Peter Albert (arrived at 6:43 p.m.)

Members of the Commission Absent:

Also Participating: Marc Gagnon, Horse Hill Nature Preserve Sub-committee  
Seth Fragala, 1 Spaulding Drive

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Due to the COVID-19/Coronavirus crisis, and in accordance with [Governor Sununu's Emergency Order #12](#) pursuant to [Executive Order 2020-04](#) (extended by Executive Order 2021-05), this Commission is authorized to meet electronically.

As stated on the agenda, the meeting was aired live on Merrimack TV (Channel 20). Telephone access was available for members of the public wishing to provide comment; 1-312-626-6799 US / 1-929-205-6099 US (Meeting ID: 938 4880 0515).

Also identified on the agenda was the opportunity for public comment to be submitted leading up to the start of the meeting via email to: [CommDev@MerrimackNH.Gov](mailto:CommDev@MerrimackNH.Gov).

In accordance with [RSA 91-A:2 III](#), Each member of the Commission was asked to state, for the record, where they were, why their attendance in person was not reasonably practical, who, if anyone, was with them, and whether or not they were able to hear the proceedings.

**Chair Perkins**

Stated he was participating electronically from his office, attendance in person was not reasonably practical due to COVID-19, he was alone in the building, and could hear the proceedings.

**Commissioner Glenn**

Stated she was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, she was alone in the room she was in, and could hear the proceedings.

**Commissioner Rosati**

Stated she was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, she was alone in the room she was in, and could hear the proceedings.

**Vice Chair Boisvert**

Stated he was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, he was alone in the room he was in, and could hear the proceedings.

**Commissioner Starr**

Stated he was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, he was alone in the room he was in, and could hear the proceedings.

**Commissioner Drouin**

Stated he was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, he was home with two young children, and could hear the proceedings.

**Commissioner Tenhave**

Stated he was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, he was alone in the room he was in, and could hear the proceedings.

**Commissioner Perry**

Stated he was participating electronically from home, attendance in person was not reasonably practical due to COVID-19, he was alone in the room he was in, and could hear the proceedings.

*Chair Perkins designated Commissioner Drouin to sit in for Councilor Albert.*

**PUBLIC COMMENT** - None

**PUBLIC HEARINGS** - None

**APPOINTMENTS** - None

**STATUTORY/ADVISORY BUSINESS** - None

## **NEW BUSINESS**

### **1. Wetlands located on 33 Peaslee Road**

Chair Perkins stated he and Commissioner Rosati have had the opportunity to speak with Mr. Fragala, abutter to the property, regarding concerns associated with the wetlands on the parcel. The Commission received information on the Commission's prior experience with this parcel as part of the agenda packet (copy attached).

#### **Seth Fragala, 1 Spaulding Drive**

Stated he has been in Merrimack for 15<sup>±</sup> years; nearly 3 in his current residence. During that time he has become familiar with the abutting property. In 2004, an incomplete application for a Dredge & Fill permit for this property was before the Commission and ultimately withdrawn. This is the same situation that exists today. Mr. Fragala wished to make the Commission aware of what is occurring with the property, and a situation that has gone from proposed accepted plans by NHDES to now rejected plans by NHDES, because the proposal does not meet the wetland setback.

Wetlands have been known to be on this property for many years and seem to constantly be omitted from paperwork seeking permits. It is clear the same property owner has owned the lot for many years, been denied by the Wetlands Bureau and resubmits applications without pertinent wetland delineation on the premises to try and get around the system to get permits. He received septic approval from NHDES without delineated wetlands. Since that time, 3 certified environmentalists have delineated wetlands on the property and now the permits have been revoked.

Mr. Fragala remarked, if an application is completed in accordance with requirements and goes through the proposal approval channels, then the result is what it is. However, the process is not being followed appropriately. He has reached out to Town entities that he believes would have an interest in this matter. Had the application included the required wetland information, it would have gone before the Commission as part of the approval process.

Vice Chair Boisvert requested additional clarification and was informed the permit application was approved by NHDES, abutting neighbors appealed that decision based on an incomplete application, and NHDES later revoked the application.

In the interest of full disclosure, Mr. Fragala stated although he was not part of the appeal, he has been involved in the process to understand where we are at today and has had many discussions with the property owner offering to purchase the land. The number he was prepared to pay would justify a vacant lot that is unbuildable/wetlands.

In the summer of this past year, the property was put on the market for sale (at a significantly higher value) after applying for a permit that was initially approved by NHDES. When neighbors became aware of the listing, they researched the sale information and learned that a septic design was approved. At that point, abutting neighbors filed the appeal noting the wetlands were not delineated or present on the approved septic design plans.

Asked if the owner is looking to sell the lot as a buildable lot, Mr. Fragala stated the property owner has been trying to sell the lot since long before he moved into the area. The abutters who filed the appeal have been deeply involved in this situation for some time. Mr. Fragala spoke of having a land developer who is also a

friend of his, who indicated to him that the only way the property owner could build a house on the property would be to put the septic on his property.

Commissioner Drouin commented should the property owner sell the property as a buildable lot when it is not, his actions would be unlawful.

Mr. Fragala stated his desire to ensure it is handled properly. If the lot is buildable, it would have to meet setback requirements from wetland banks and vernal ponds, would have to install two culverts through two streams to get to the property, etc. If determined a buildable lot and the application handled appropriately, then there is nothing that can be done about it. He stated concern with a lack of documentation on some of these prior conversations with the Commission and some of the findings that have identified wetlands on the property.

Chair Perkins noted this discussion would become part of the official record of the meeting. Asked, Mr. Fragala stated he has not spoken with the neighbors to discuss how it was handled, but his understanding is that NHDES has highly encouraged the owner to rescind his own permit before it goes into some type of hearing to officially deny it.

Commissioner Perry spoke of the comment made that other wetland scientists have delineated the property. Mr. Fragala stated the last time this information was brought before the Commission was 2004 with the same intent of developing the land. At that point, a wetland scientist was involved. In the past 6-8 months, 3 separate wetland specialists have delineated the wetlands on the property. NHDES also hired their own firm to come out to do that, and the property was flagged with wetland markers.

Commissioner Perry commented if NHDES has hired their own wetland scientist to delineate the property, that is now information they have documented.

Commissioner Tenhave questioned how much of the record exists in the Community Development and/or Planning Department. Chair Perkins responded the information that was shared with the Commission includes minutes from the discussion that took place in 2004. Commissioner Tenhave stated the Planning and Community Development departments each have their own records. The Planning Department has their set of records on all properties and permits applied for. If an actual septic design and building permit was applied for on this property, the department would likely have a folder somewhere with that information. The same is true in the Community Development Department; they keep a folder on every tax map parcel. They also color code their folders, e.g., green folders represent parcels that have had some sort of a Conservation Commission item related to them, etc. The level of detail in each is different.

Commissioner Tenhave commented since there was an interaction with the Commission in 2004, there was a wetlands permit applied for, there should have been a folder somewhere that indicates the potential for wetlands on the property. He questioned if Chair Perkins was aware of the level of detail that might be available in Town offices. Chair Perkins stated the Community Development Department had little information. He has not reached out to the Planning Department to ascertain what they might have.

Asked if he had any input, Mr. Fragala stated the Building Department did not have much information about current and prior activities related to this property. That is why he felt the need to bring this forward. He has spent time with both departments and put forward the request to come before the Commission to increase awareness. What he did find was the Building Department approved a permit based on the approved septic that was presented. The builder was scheduled to come pick up the permit. Had he paid for and picked up the

permit, according to the Town, he would be able to build on the lot. This occurred as recently as two months ago, while this was all ongoing.

Commissioner Tenhave stated the Commission could request Community Development update the conservation folder to include the 2004 meeting minutes as well as the information Mr. Fragala has provided to ensure it is all available should this issue come up again in the future.

Now that it is clear NHDES is aware a wetlands permit is required for the application, that permit would come before the Commission for review and input. The Commission would likely ask many of the same questions that were asked back in 2004, e.g., how water is being handled, delineation of wetlands, soil types (poorly drained soils are terrible for septic). He is hopeful it would be of comfort to the abutters that the Commission would be part of the process and would be able to comment to NHDES. Although the role of the Commission is to provide comment, NHDES takes Conservation Commission inputs very seriously.

Chair Perkins stated he would follow up with Community Development to ensure updated information is included in the file.

Commissioner Glenn questioned if the property remains listed for sale and was informed the listing was removed when it went under contract with a developer.

Mr. Fragala spoke of the comments regarding the wetlands and water table, which is a fear of his. He has invested a lot of his own money in his property and gone through the proper channels to obtain permits to renovate his home, which was inhabitable when purchased. One of his biggest concerns is the water table on the lot above him (the lot in question), and how development/displacement of that water could impact his home.

Commissioner Rosati questioned if any wildlife is seen on the property. Mr. Fragala responded there is a ton of activity. Last year he noted about 10 different species of frogs. There are a lot of snakes, frogs, salamanders, turtles, etc. The back end of the lot has a vernal pond located on it. There used to be a duck family that would travel through the stream on the lot. They have not been back in a few years because of drought.

## **2. Eversource tree work and trimming off Currier Road**

Commissioner Rosati stated Conner Tilton, Arborist working with Eversource, contacted former Commissioner Caron last year in late spring (May) concerning tree work on Town owned land off of Currier Road (Wildcat Falls Conservation Area). At that point, the turtles were already starting to nest. The work was delayed until September.

Mr. Tilton has reached out again indicating the need for additional tree work on the parcel and the abutting State-owned parcel to achieve the 25' specification on either side of the outer conducting wires of the transmission system.

Commissioner Rosati spoke of having looked to the NH Fish & Game website, and of learning turtles do not normally start nesting until mid-May. Mr. Tilton has requested access to the property on the 14<sup>th</sup> or 15<sup>th</sup> of April to conduct the necessary work to mitigate any potential tree related hazards to the power line.

Vice Chair Boisvert remarked he has not seen baby turtles. However, earlier this week he had a neighbor stop by who spoke of having witnessed newly hatched turtles on Beebe Lane.

Commissioner Perry commented on the weather anticipated in the coming week, and stated the desire to receive input from Jeff Littleton, Moosewood Ecological, LLC, before proceeding. Commissioner Rosati will put a call in to Mr. Littleton.

Commissioner Tenhave commented with it being below freezing even last evening, he is uncertain there would be a lot of turtle nesting occurring at this time. If the work is done in the next few days, it would likely avoid disturbing any bird nesting. It would be important if they could get it done in April, that they do it next week.

Although the Commission has no jurisdiction over the State land, access to that land is from Commission property.

Commissioner Glenn stated her belief there are likely grey squirrels that have not emerged yet. Commissioner Rosati commented on the ease of having the work done in the fall. Commissioner Tenhave agreed; however, noted Eversource has a legal right to do the work they need to do. It is nice that they are working with the Commission.

*The consensus of the Commission was to support the work being done on the 14<sup>th</sup> and 15<sup>th</sup> provided Mr. Littleton believes it to be an appropriate time.*

**OLD BUSINESS** - None

## **OTHER BUSINESS**

1. Discussion on communications or correspondence received concerning regulated Commission activities and any issues concerning Commission managed lands.

Commissioner Perry stated he contacted the State concerning the seedling order. It has been received, and he is awaiting notification of when to pick the order up.

Asked, Commissioner Perry stated approval has been received to conduct the event at the Currier Orchards on Saturday, May 8<sup>th</sup>.

### **2. Sub-Committee Updates**

- Joint Meeting with Horse Hill Nature Preserve (HHNP) Sub-Committee

Chair Perkins stated the sub-committees are not able to meet at this time. The suggestion was made that membership from the various sub-committees could be invited to participate in Commission meetings.

Noted was that Commissioner Starr has been appointed as the Ex-Officio member of the HHNP Sub-committee.

Marc Gagnon spoke of being appointed to the Sub-committee at the start of 2020, and of having had the opportunity to attend one meeting before the pandemic struck. Members continue to take it upon themselves to conduct trail clean-up following storms. Bridge monitoring and repair is a huge undertaking and one that 3 or 4 members have taken on. A stockpile of materials is available to use in addressing bridge repair. A good deal of work was done in the fall of last year. A major work party occurred on Halloween day during which the Abbie Lane Bridge was rebuilt.



Mr. Gagnon participated with the Eagle Scout project (boardwalk). He and Mr. Laliberte replaced another boardwalk in the southern/eastern end of the property. There are a few bridges that require major overhaul; particularly the one closest to the Watanic Bowmen property.

Mr. Laliberte resigned towards the end of last year, and the former Chair, Peter Mikolajczuk, has resigned. Mr. Gagnon spoke of the need for the Sub-committee to meet in one format or another and direction from the Commission regarding priorities, understanding funding is needed for some of the major projects.

Chair Perkins noted the intent to include the scheduling of sub-committee meetings as an item on the next agenda.

Commissioner Rosati spoke of a Merrimack resident, Angie Merrill, who was before the Commission at the March 1<sup>st</sup> meeting seeking permission to install a Little Free Library in the parking lot to the HHNP. Ms. Merrill has received approval for the project from the Town Council.

Commissioner Tenhave touched on usage noting this past Saturday, the parking lot was overflowing.

Commissioner Tenhave spoke of how near and dear the HHNP is to him having been part of the original committee and then Chair of the committee for many years. He volunteered to assist with the re-start of the Sub-committee. Asked, he remarked there is no guidance from the State relative to re-starting in-person meetings. The Town and Town Council have been setting the rules on this and keeping an eye on proper COVID protocols.

Mr. Gagnon spoke of maintenance items that should be discussed such as signage. Councilor Albert stated he would bring the issue up at the next Town Council meeting.

Vice Chair Boisvert spoke of two individuals interested in becoming members of the Grater Woods Sub-committee. He will reach out to the individuals and look to schedule interviews for an upcoming meeting.

Asked about the start-up of the Fields Farm Sub-committee, Commissioner Tenhave noted the extra parcel has a legal problem with the Deed that is being worked on. Once that is complete, the Commission will have all 108 acres.

Commissioner Rosati commented on being asked about river properties. She directed the individual to the Sklar Waterfront Park. She asked if Fields Farm is being used at this time. Commissioner Tenhave noted abutters are using the property, but, at this point, there is no established parking area. There are existing trails.

Commissioner Rosati stated she was also asked about the Gilbert's Crossing property. It looks like they have their own trails. Commissioner Tenhave stated there is a Heritage Trail, but it starts near the Bedford line. There may have been folks who extended it further south towards the Hilton neighborhood area. Some of that would be going across private property and some of it our property as the Commission owns a few parcels along that section of the river.

Commissioner Drouin stated he came on the Commission about a year ago to be on the Sklar Waterfront Park Sub-committee. He still has not been able to meet with that committee. Commissioner Tenhave remarked we are almost there.

Vice Chair Boisvert stated he was reaching out to NH Fish & Game regarding funding associated with improvements to river access.

### **PRESENTATION OF THE MINUTES**

Merrimack Conservation Commission. . . . . [March 15, 2021](#)

*The following amendments were offered:*

Page 3, Line 22; replace “existing” with “existed”

Page 5, Line 32; replace “NNHP” to “HHNP”

Page 7, Line 21; insert “- None”

Page 7, Line 44; insert “0”

### **MOTION BY COMMISSIONER ROSATI TO ACCEPT, AS AMENDED MOTION SECONDED BY COMMISSIONER GLENN**

*A Viva Voce Roll Call vote was taken, which resulted as follows:*

Yea: Chair Perkins, Vice Chair Boisvert, Commissioner Rosati, Commissioner Glenn,  
Commissioner Perry, Commissioner Starr, Councilor Albert

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Nay:

0

### **MOTION CARRIED**

*Councilor Albert Abstained*

### **PUBLIC COMMENT** - None

### **COMMISSIONER COMMENTS**

Regarding the request from Eversource, Commissioner Starr commented on having notes from last year, which included observing painted turtle mating behavior on May 19, 2020. That typically precedes nesting by a couple of weeks.

Commissioner Drouin spoke of having visited the Sklar Waterfront Park property. The water is quite high; river has made its way into the tracks that remain from the illegal off-road riders. There is quite a bit of new erosion occurring, including around the boat ramp. Asked for clarification of the cause of the increased erosion around the boat ramp, he stated it to be the result of the water level.

Commissioner Drouin expressed concern with the possibility of losing the interest of members of sub-committees given the inability to meet.

Commissioner Tenhave expressed his gratitude to Councilor Albert for his service to the Town and Commission.

Councilor Albert spoke of having enjoyed the experience. One of his takeaways from his time on the Commission is that the Town’s conservation lands are in good hands.



**TABLED**

1. Discussion and vote to re-treat the invasive Knotweed that is taking hold again on property off of Brookside Drive. This will require a licensed applicator.

*Tabled 9-21-20*

**ADJOURNMENT**

**MOTION BY CHAIR PERKINS TO ADJOURN  
MOTION SECONDED BY COMMISSIONER PERRY**

*A Viva Voce Roll Call vote was taken, which resulted as follows:*

Yea: Chair Perkins, Vice Chair Boisvert, Commissioner Rosati, Commissioner Perry, Commissioner Starr, Councilor Albert, Commissioner Glenn

7

Nay: 0

**MOTION CARRIED**

The April 5, 2021 meeting of the Merrimack Conservation Commission was adjourned at 7:48 p.m.

Submitted by Dawn MacMillan