



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK CONSERVATION COMMISSION AUGUST 5, 2019 MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, August 5, 2019 at 6:30 p.m. in the Merrimack Memorial Conference Room.

Matt Caron, Chair, presided:

Members of the Commission Present: Steven Perkins, Vice Chair
Michael Boisvert
Cynthia Glenn
Gage Perry
Gina Rosati
Eric Starr, Alternate Member
Michael Swisher, Alternate member
Tim Tenhave, Alternate Member
Councilor Peter Albert

Members of the Commission Absent:

Also in Attendance:

PUBLIC COMMENT - None

PUBLIC HEARINGS - None

APPOINTMENTS - None

STATUTORY/ADVISORY BUSINESS - None

NEW BUSINESS

1. Commission to review its By-laws and see if any changes are necessary

Chair Caron spoke of the previous discussion around amending the By-laws to include the elected position of Secretary.

Asked how the rotating selection of alternate members is tracked, Commissioner Perry spoke of prior meeting minutes serving as a record.

The Commission engaged in a discussion of changes that would be required to create the position of Secretary as well as the duties of the position. The duties/responsibilities would fall upon the Chairperson and Vice Chairperson in the absence of the Secretary.

After some discussion, it was noted some of the duties could be specifically captured, elected members would be provided the opportunity to establish a routine that works well, and the Commission could consider amending the duties section of the By-laws at a later date.

2. Creating a Secretary position and electing a member

MOTION BY COMMISSIONER BOISVERT TO AMEND THE LAST SENTENCE OF ARTICLE III, SECTION E TO READ: "THE COMMISSION SHALL REVIEW THE BY-LAWS AND ELECT A CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY TO SERVE FOR THE FOLLOWING YEAR.", THE FIRST SENTENCE OF ARTICLE IV SECTION A TO READ: "THE CHAIRPERSON, VICE-CHAIRPERSON, AND SECRETARY SHALL BE ELECTED BY A MAJORITY OF FULLTIME, ALTERNATE AND EX-OFFICIO MEMBERS VOTING.", AND ARTICLE V SECTION A BY REPLACING "CHAIRMAN" WITH "CHAIRPERSON" AND BY ADDING "D THE SECRETARY MAY ASSUME ADMINISTRATIVE DUTIES DELEGATED BY THE CHAIRPERSON OR VICE CHAIRPERSON TO INCLUDE COMMISSION CORRESPONDENCE, TAKING OF NON-PUBLIC MEETING MINUTES, AND THE PREPARATION OF THE AGENDA AND MEETING MINUTES."

MOTION SECONDED BY VICE CHAIR PERKINS

MOTION CARRIED

7-0-0

Chair Caron called for nominations for Secretary of the Merrimack Conservation Commission for the 2019-2020 term.

**COMMISSIONER GLENN NOMINATED GINA ROSATI
SECONDED BY COMMISSIONER PERRY**

**VOTE ON ELECTION OF GINA ROSATI TO THE POSITION OF SECRETARY OF THE
MERRIMACK CONSERVATION COMMISSION FOR THE 2019-2020 TERM**

MOTION CARRIED

7-0-0

Commissioner Rosati declared Secretary of the Merrimack Conservation Commission for the 2019-2020 term.

OLD BUSINESS

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

2. Unpermitted removal of water from wetlands

Councilor Albert provided Commissioners with a copy of the NHDES Fact Sheet, which is referenced in State law, as well as an addendum that addresses intermittent water withdrawals from surface waters (copies attached).

Commissioner Perry commented the Fact Sheet itself does not address backflow devices where the addendum does state the requirement of a backflow device.

Commissioner Swisher added the Fact Sheet insinuates it is okay to withdraw from wetlands; however the information presented as NHDES rules states “Water withdrawals from vernal pools and wetlands, other than constructed fire ponds and farm irrigation ponds, are prohibited.”

Councilor Albert remarked everything he has read indicates you can’t draw from a wetland.

Commissioner Perry stated his belief the Fact Sheet refers to rivers and lakes.

Commissioner Tenhave stated his belief the area where water is being drawn from is private property. Commissioner Boisvert indicated water is being drawn from the west side of the guardrail where it flows under South Baboosic Lake Road into Baboosic Lake.

Councilor Albert noted Kyle Fox, Director, Public Works Department (PWD) has indicated, under NHDES rules, there is the need for permission from the riparian landowner. If drawing it from the road, the Town is the riparian landowner. Legal counsel has opined “Withdrawals are allowed within the parameters provided on the NHDES Fact Sheet. Landowner permission is required, but only where the Town is the fee owner of the road or land abutting the waterbody. On some roads, we might have an Easement or Right-of-Way, but an abutter or two actually own the fee, which is the underlying land. In that case, the permission must be obtained from the abutter or landowner.” Counsel indicated the Town Council can adopt an intermittent temporary surface water withdrawal permission that incorporates the NHDES Fact Sheet, but cannot deny any request unless it fails to meet the State requirements. Counsel recommended this could be amended under the Zoning Ordinance, Section 2.02.7 Wetlands.

Commissioner Perry remarked “it is wetlands”, and the business needs to find somewhere else to draw water from.

Councilor Albert volunteered to meet with the Town Manager and Chairman of the Town Council to discuss the matter and the information obtained by the Commission so that reporting and investigating methods can be put in place.

Commissioner Swisher questioned the responsible party for enforcing NHDES rules and regulations, and was informed the Commission looks to the Director of Community Development to follow-up on such matters. Asked how such situations are handled, he explained the response is dependent on the offense/inquiry. This situation could be resolved by simply contacting the business and making them aware.

Chair Caron noted Article I of the Commission’s By-laws states “The purpose of the Merrimack Conservation Commission (“Commission”) is to assist in protecting the natural resources and watershed resources and to make recommendations on wetland permits to the NH Wetlands Board pursuant to RSA 36-A:2.” He questioned if the Commission should be making a recommendation as to how to address such situations. Councilor Albert noted there have been occasions where the Town Council has been asked for permission to withdraw from other bodies of water. This particular situation came before the Commission as a complaint.

Commissioner Boisvert stated he resides on Beebe Lane. A neighborhood Facebook page includes comments from individuals who have witnessed a truck drawing water from the area and are questioning whether it is a legal activity. Commissioner Perry reiterated it is not permitted in a wetland and requires permissions when drawing from other water bodies. He reiterated it is likely simply an issue of providing notification to the business.

Councilor Albert reiterated the legal opinion and the citation related to the zoning ordinance. That makes the Town responsible for those issues under the Ordinance.

Chair Caron questioned what the remedy would be, e.g., posting of signage indicating no drawing of water. That would address that one location. When the new ramp at Naticook Lake was installed, similar signage was erected as there was concern contractors would back down the ramp and draw water from the lake thereby increasing the likelihood of introducing Milfoil back into the lake.

Councilor Albert questioned the will of the Commission regarding a recommendation to the Town Manager and Town Council.

Commissioner Perry stated the desire to forward to the Council the information obtained regarding distinctions between withdrawing from a wetland or vernal pool versus river or lake, and that the particular business be made aware.

Councilor Albert noted the Town Manager has been copied on all communications, and suggested the Community Development and other Town departments be made aware to be able to address any future inquiries/complaints.

Commissioner Swisher commented on the category of properties related to bodies of water in Chapter 111, and questioned if any of this language should be added there as an additional point of reference. It was suggested language could be as simple as “Water can only be withdrawn in accordance with NHDES guidelines.”

Councilor Albert will follow-up with the Town Manager and Town Council.

The Commission returned to the regular order of business.

1. Chapter 111

Commissioner Tenhave stated the process to be at the point of identifying categories for the properties to be placed into. During previous discussions, the Commission identified restrictions for each of the categories.

Although the Commission had considered amending/eliminating the heading of “Major Property & Wasserman”, noted was that the Wasserman Conservation Area does not permit hunting/discharging of a firearm, which distinguishes that property from other major properties.

Based on legal opinions received, Commissioner Tenhave stated his belief it would not be wise to try to limit the use of firearms on properties that don’t have that restriction included as part of the Deed. It can be done, but could be challenged. Commissioner Perry spoke of the signage the Commission, as the property owner, placed in Grater Woods; “No Target Shooting”.

Chair Caron suggested the category of Major Property could have the restrictions of “no target shooting and passive recreation meaning no snowmobiles, ATVs, OHRVs, dirt bikes.” Councilor Albert questioned why the heading of Major Property & Wasserman, and was reminded Wasserman is more restrictive in the Deed language. Because there are other properties that could have the same restrictions, the title was not limited to simply “Wasserman”.

The Commission was of the opinion “no target shooting” would be encompassed under “All”. There is a distinction between “target shooting” and “hunting”. As the property owner, the Commission has taken the position of no target shooting on all of its properties.

Chair Caron noted hunting is permitted in Watkins Forest and not permitted in Mitchell Woods. Mitchell Woods would fall under the category of Major Property & Wasserman. Commissioner Tenhave remarked it is noted that way in Chapter 111, and being considered is changes to Chapter 111.

Titles used in the discussion were simply intended as a tool when placing properties into categories of permitted uses. They are not intended to be included in the Ordinance.

Councilor Albert questioned if an individual wishing to conduct an event in one of the properties having restricted hours could come before the Commission seeking an exception. Commissioner Perry responded, if a restriction is codified in the Ordinance, requests would have to go before the Town Council. Commissioner Tenhave added the hope would be that the Council would seek a recommendation from the Commission.

Councilor Albert spoke of the benefit of the police department having the ability to enforce a time limit when situations called for it.

During the discussion of restrictions for the Fields Farm Conservation Area, Commissioner Glenn stated support for restricting hunting, although not included in the Deed language. She spoke of trails that will be created resulting in an increase in use by walkers/hikers. She commented on the close proximity of the Horse Hill Nature Preserve (HHNP) (largest property at 563 acres) and Grater Woods (500+ acres). Commissioner Swisher commented on NH Fish & Game rules relative to setbacks established in regard to distance from trails that must be observed when hunting.

When discussing the Grater Woods Conservation Area, Commissioner Perry noted one of the Deeds (Map 5A/Lot5) stated the requirement to maintain a protective no hunting area. Commissioner Tenhave indicated his belief that restriction only applied while the property was under the ownership of the Grater family. The Deed will be researched so that the discussion can continue at the Commission’s next meeting.

The Commission discussed placement of the Old Kings Highway properties under Major Properties & Wasserman given the desire to restrict hunting, motorized use, and removal of plant species.

Noted was that hunting is not currently permitted in the Riverside Park parcel. Asked if the parcel should be listed under Major Property & Wasserman, Commissioner Tenhave responded if the desire is to maintain the current restrictions, it would. The property should have the hour restriction as well.

Woodward Road and Hitchin Post Lane are currently in Chapter 111, which means they currently have hour restrictions.

The Commission agreed the parcels that are wetland complexes around and in the area of Baboosic Brook would be listed as River and Brook (same as All).

With regard to the islands and small slivers of land along the Merrimack River (off D.W. Highway), the Commission agreed the properties should be listed under River & Brook (same as All).

For Town property that abuts the Sklar property (Griffin Street) (includes boat launch), there would need to be an exception. There could be a stipulation such as no motorized vehicles off-road. It was suggested the recommendation could be made to the Town that this property and the Sklar property be managed by one (perhaps by Park and Recreation).

The following category placements were recommended:

All

No camping, no ATVs, no dirt bikes, no cars/jeeps, no target shooting, no OHRVs, no removing trees, plants, shrubs. All trash to be removed or “carried out”, no fires, no dumping.

- Horse Hill Nature Preserve
- White Pine Swamp
- Wilson Hill Road
- Grater Woods Conservation Area
- Wilson Hill Road (should be included as part of Grater Woods)
- Marty Drive (should be included as part of Grater Woods)
- Edna Patterson Donation (behind Pennichuck Square)
- Leatherleaf Bog
- Woodward Road
- Hitchin Post Lane
- Griffin Street (boat launch)

Hours Restricted

No camping, no ATVs, no dirt bikes, no cars/jeeps, no target shooting, no OHRVs, no removing trees, plants, shrubs. All trash to be removed or “carried out”, no fires, no dumping. Hours restricted to Dawn to Dusk.

- Wildcat Falls Conservation Area

Major Property & Wasserman

Add discharge of firearms and passive recreation meaning no snowmobiles, ATVs, OHRVs, dirt bikes, no hunting or trapping.

- Wasserman Conservation Area
- Blueberry Island (no hunting restriction not included in Deed. However, parcel believed to be located within the 300' restriction cited in State law)
- Greens Pond Road (no hunting restriction not included in Deed)
- Old Kings Highway
- Riverside Park
- Sklar Property

River & Brook

Passive recreation only.

- Properties identified on the Excel spreadsheet

Well Property

- Mitchell Woods (Dick Drive)
- Profile Drive

Passive recreation only, keep out areas, no hunting or discharge of firearms

Commissioner Tenhave will complete the update of the Excel spreadsheet and distribute to the Commission. A final draft will be available for the Commission's next meeting. The goal of the next meeting will be to prepare for a public hearing in the September timeframe.

OTHER BUSINESS

Chair Caron spoke of having received a request for an additional bike demo at the HHNP. The requested date is August 31st. The event would be similar to the last one. Asked if they would be looking to conduct additional work on the property, Chair Caron remarked that was not discussed; however, the request is into the PWD for material (crushed stone), and both bike shops could work to get the material to the locations needed. Commissioner Perry volunteered to follow-up.

The consensus of the Commission was to support the activity/event.

Commissioner Rosati spoke of a request received from Anita Creager relative to the Commission speaking at an upcoming Eagle Scout Court of Honor on behalf of Harrison Faust, Troop 424.

The prepared language reads as follows:

"The Merrimack Conservation Commission extends our appreciation and gratitude to Eagle Scout Harrison Faust for his contributions to our Town; especially for Harrison's Eagle Scout project honoring Admiral Forrest Sherman at Veteran's Park. We wish Eagle Scout Faust much success at the U.S. Naval Academy and in all of his future endeavors."

Chair Caron spoke of having worked shoulder to shoulder with Harrison on a number of Eagle Scout projects in Town.

1. Sub-Committee Updates

Wildcat Falls

Commissioner Rosati noted the Sub-committee membership information posted on the Town's website is out-of-date. She will provide Commissioner Tenhave with updated information to be posted.

The next meeting is scheduled for Tuesday, August 13th at 6:30 p.m. in the Merrimack Memorial Conference Room.

Commissioner Rosati informed the Commission all members of the sub-committee are interested in continuing to serve.

MOTION BY COMMISSIONER ROSATI TO RE-APPOINT ANDREW DUANE, KAREN LABONTE, AND ELIZABETH PETRIDES AS FULL MEMBERS OF THE WILDCAT FALLS SUB-COMMITTEE FOR TERMS TO EXPIRE JULY 31, 2022

MOTION SECONDED BY COMMISSIONER PERRY

MOTION CARRIED

7-0-0

MOTION BY COMMISSIONER ROSATI TO APPOINT THE FOLLOWING INDIVIDUALS AS EX-OFFICIO MEMBERS FOR THE 2019-2020 TERM: GINA ROSATI TO THE WILDCAT FALLS SUB-COMMITTEE, CYNTHIA GLENN TO THE HORSE HILL NATURE PRESERVE SUB-COMMITTEE, AND GAGE PERRY TO THE GRATER WOODS SUB-COMMITTEE

MOTION SECONDED BY CHAIR CARON

ON THE QUESTION

Commissioner Perry stated a willingness to continue to serve in this capacity; however, offered the opportunity to any other members wishing to fill that role.

Commissioner Swisher volunteered to assist in whatever way deemed helpful to the Commission.

AMENDED MOTION BY COMMISSIONER ROSATI TO APPOINT THE FOLLOWING INDIVIDUALS AS EX-OFFICIO MEMBERS FOR THE 2019-2020 TERM: GINA ROSATI TO THE WILDCAT FALLS SUB-COMMITTEE, MICHAEL SWISHER TO THE HORSE HILL NATURE PRESERVE SUB-COMMITTEE, AND GAGE PERRY TO THE GRATER WOODS SUB-COMMITTEE

MOTION SECONDED BY CHAIR CARON

MOTION CARRIED

7-0-0

Horse Hill Nature Preserve

Commissioner Glenn commented, during the last meeting, the Sub-committee discussed setting up a budget to address needs of the property (three-year plan). A garden located near the road appears to have had plantings dug up, and that herbicide has been used by the sign. Commissioner Swisher commented on the likelihood dogs are the cause of the issue by the sign.

The next meeting is scheduled for September 30, 2019.

Grater Woods

The next meeting is scheduled for September 10, 2019.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. July 15, 2019

The following amendments were offered:

Page 2, Line 7; replace the comma with a period following “it did not”, capitalize “On”, and place a comma following “section”.

Page 2, Line 30; replace “closet” with “closest”

Page 2, Line 38; replace “grade” with “graded”

Page 3, Line 17; replace the question mark with a period and have the comma follow “not” rather than “If”

Page 3, Line 27; replace “DES” with “NHDES”

Page 4, Line 27; replace “Commissioner Caron” with “Chair Caron”

Page 6, Line 18; replace “Commissioner Caron” with “Chair Caron”

**MOTION BY CHAIR CARON TO ACCEPT, AS AMENDED
MOTION SECONDED BY COMMISSIONER GLENN
MOTION CARRIED**

7-0-0

PUBLIC COMMENT - None

COMMISSIONER COMMENTS - None

ADJOURNMENT

**MOTION BY COMMISSIONER GLENN TO ADJOURN
MOTION SECONDED BY COMMISSIONER PERRY
MOTION CARRIED**

7-0-0

The August 5, 2019 meeting of the Merrimack Conservation Commission was adjourned at 9:07 p.m.

Submitted by Dawn MacMillan