



## Town of Merrimack, New Hampshire

Community Development Department

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Planning - Zoning - Economic Development - Conservation

### MERRIMACK CONSERVATION COMMISSION

FEBRUARY 8, 2021

### MEETING MINUTES

A meeting of the Merrimack Conservation Commission was held on Monday, February 8, 2021 at 6:32 p.m.

Michael Boisvert, Vice Chair, presided:

Members of the Commission Participating: Gina Rosati, Secretary  
Gage Perry  
Eric Starr  
Michael Drouin, Alternate Member  
Tim Tenhave, Alternate Member

Members of the Commission Absent: Cynthia Glenn  
Steven Perkins, Chair  
Councilor Peter Albert

Also Participating:

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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](#), 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: 916 3310 7565).

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).

Commissioners were participating via Zoom. 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.

#### **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 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.

**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.

**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 alone in the room he was in, 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.

It was acknowledged all members participating electronically could be heard. The Commission was reminded all votes would be taken by Roll Call.

*Vice Chair Boisvert designated Commissioner Drouin to sit in for Commissioner Glenn and Commissioner Tenhave for Commissioner Perkins.*

**PUBLIC COMMENT** - None

**PUBLIC HEARINGS** - None

**APPOINTMENTS** - None

**STATUTORY/ADVISORY BUSINESS** - None

**NEW BUSINESS**

- Souhegan River Trail Project

*Noted was a communication received from Kyle Fox, Director, Public Works Department, requesting the item be tabled until the Commission's March meeting.*

Commissioner Tenhave remarked he discussed this with Director Fox following the Commission's last meeting. Director Fox will move forward with the recommendation of the Commission relative to the potential of utilizing one of the Commission properties with a strong conservation easement as the mitigation for the

Souhegan River Trail project. If that is not an option that is approved, he would look to see if there is a way they could provide funding for the Commission to continue with one of its projects.

*There being no objection, the item was tabled.*

- Grater Woods Sub-Committee

Commissioner Rosati spoke of the requirement, should a quorum of that body be present, for public notice to be made in accordance with the Right- to-Know Law.

*In order to ensure notice requirements are adhered to, the discussion was postponed.*

Commissioner Perry will reach out to the Chair of the Sub-committee to arrange for attendance at the Commission's next meeting.

- 2021 Membership Donation – Society for the Protection of New Hampshire Forests

**MOTION BY COMMISSIONER ROSATI TO RENEW THE ANNUAL MEMBERSHIP TO THE SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS IN THE AMOUNT OF TWO HUNDRED FIFTY DOLLARS (\$250.00). FUNDING SOURCE IS THE GENERAL OPERATING BUDGET**

**MOTION SECONDED BY VICE CHAIR BOISVERT**

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

Yea: Vice Chair Boisvert, Commissioner Rosati, Commissioner Starr, Commissioner Perry,  
Commissioner Drouin, Commissioner Tenhave

6

Nay: 0

**MOTION CARRIED**

- 2021 Maintenance Plan – Beaver Solutions, LLC

Commissioner Perry stated the invoice to be for the yearly maintenance contract. Beaver Solutions invoices the Commission and the Town for maintenance done on the respective properties. He spoke of the mitigation efforts that have occurred over the past few years, and the desire to continue with the yearly maintenance. The beaver deceivers that have been put in place have worked well and proved to be a worthwhile investment.

**MOTION BY COMMISSIONER ROSATI TO APPROVE THE 2021 MAINTENANCE PLAN WITH BEAVER SOLUTIONS, LLC AND AUTHORIZE THE PAYMENT OF ONE THOUSAND TWENTY DOLLARS (\$1,020.00). FUNDS ARE AVAILABLE IN FUND 53**

**MOTION SECONDED BY COMMISSIONER PERRY**

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

Yea: Vice Chair Boisvert, Commissioner Rosati, Commissioner Perry, Commissioner Starr,  
Commissioner Drouin, Commissioner Tenhave

6

Nay: 0

## **MOTION CARRIED**

- Review of how Funds 51 and 53 were created

Commissioner Tenhave spoke of having had a discussion with Paul Micali, Assistant Town Manager/Finance Director, last spring when the Commission was addressing the issues that were experienced at Wildcat Falls. At the time, there was discussion around the Commission contributing towards the costs of addressing the issues, and of which particular funds (Fund 51 or Fund 53) the monies would be allocated from.

He had requested Director Micali work with staff to uncover the language around the creation of the Funds.

### **Fund 51**

The following is an excerpt from the meeting minutes of the Annual Town Meeting conducted on May 14, 1981:

*“ARTICLE 22: TO SEE IF THE TOWN WILL VOTE TO RAISE AND APPROPRIATE THE SUM OF FIVE HUNDRED (\$500.00) TO ESTABLISH A CONSERVATION FUND AS AUTHORIZED BY N.H.R.S.A. 36-A:5 TO BE ADMINISTERED BY THE MERRIMACK CONSERVATION COMMISSION SUBJECT TO THE APPROVAL OF THE BOARD OF SELECTMEN, FOR THE PURPOSE OF PROMOTING THE BETTER UTILIZATION OF OUR NATURAL RESOURCES: AND TO FURTHER AUTHORIZE THE WHOLE OR ANY PART OF UNEXPENDED CONSERVATION COMMISSION BUDGET APPROPRIATIONS BE ALLOWED TO ACCUMULATE IN THE CONSERVATION FUND FROM YEAR TO YEAR, AND TO BE EXPENDED FOR THOSE PURPOSES SET FORTH BY STATUTE. (NOT RECOMMENDED BY THE BUDGET COMMITTEE)*

*MOTION was made by Nancy R. Gagnon and seconded by David L. Jordan to adopt Article 22 as read.*

*Mrs. Gagnon yielded the floor to Elizabeth Hummel, Chairman of the Conservation Commission. Mrs. Hummel made a short statement showing the need for the fund but wished to amend the article.*

*MOTION was made by Elizabeth Hummel and seconded by Nancy R. Gagnon to amend Article 22 as follows:*

*TO SEE IF THE TOWN WILL VOTE TO ESTABLISH A CONSERVATION FUND AS AUTHORIZED BY N.H.R.S.A. [36-A: 5](#) TO BE ADMINISTERED BY THE MERRIMACK CONSERVATION COMMISSION SUBJECT TO THE APPROVAL OF THE BOARD OF SELECTMEN, FOR THE PURPOSE OF PROMOTING THE BETTER UTILIZATION OF OUR NATURAL RESOURCES: AND TO FURTHER AUTHORIZE THE WHOLE OR ANY PART OF UNEXPENDED CONSERVATION COMMISSION BUDGET APPROPRIATIONS BE ALLOWED TO ACCUMULATE IN THE CONSERVATION FUND FROM YEAR TO YEAR, AND TO BE EXPENDED FOR THOSE PURPOSES SET FORTH BY STATUTE.*

*Discussion ensued involving residents John Segedy; Mrs. Hummel; Robert George, Budget Committee Chairman and Chairman Ahrens. Town Counsel, Robert Bossie, made a short statement which concerned the legality-first with the amendment omitting the dollar amount and second concerning the establishment of the fund in relation to the next article on the warrant, Article 23.*

*Moderator Schaumann called for a vote on Article 22 as amended which PASSED in the Affirmative and so declared.”*

Commissioner Tenhave explained, within the budget of the Community Development Department, are line items/allocations associated with the Conservation Commission (typically totaling around \$4,000). That

budgeted amount is intended to cover costs associated with education, subscriptions, memberships, etc. At the end of the fiscal year (June 30<sup>th</sup>), any funds remaining in that account are transferred to Fund 51, and permitted to accumulate year over year. That is the funding mechanism.

RSA 36-A:5 reads in part: "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."

36-A:4 reads in part: "(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."

### **Fund 53**

The following is an excerpt from the meeting minutes of the Annual Town Meeting conducted on May 16, 1996:

*ARTICLE 20. TO SEE IF THE TOWN WILL VOTE TO DEPOSIT TWENTY-FIVE PERCENT (25%) OF THE REVENUES OF ALL FUTURE PAYMENTS COLLECTED PURSUANT TO RSA 79-A (THE LAND USE CHANGE TAX) IN THE CONSERVATION FUND IN ACCORDANCE WITH RSA 36-A:5 II AS AUTHORIZED BY RSA 79-A:25 II WITH THE CONCURRENCE OF THE BOARD OF SELECTMEN. (BY PETITION)*

*A motion was made by Dawn Golub and duly seconded to move the article with the phrase "with the concurrence of the Board of Selectmen" stricken. Dawn Golub noted that there are two goals for any money so collected. This money would be used to purchase open space and area near the town's wells. Selectmen Cote noted that he supports the intent of the article, but noted that there is no annual limit, nor any total limit. He noted that the Conservation Commission is not required to go to the voters to expend the money from the account. Eber Currier noted that in Nashua 100% of the money paid to remove land from current use is given to the Conservation Commission. He noted that the services needed for green space are lower than those needed for developed land. Tony Pellegrino noted that green space is needed and he urged the voters to support this article. Dawn Golub noted that the Conservation Commission would have the authority to expend the money, but the Board of Selectmen would need to approve the purchase. Selectmen Silva noted that this is a good place to start. He noted that there would be no immediate impact on the tax rate. David Johnsen questioned who holds the Conservation Trust and how is it administered. Dawn Golub noted that this would be a separate Conservation Fund and would be maintained by the town.*

*A motion was made by Selectman Cote and duly seconded to amend the petition to place annual cap on the fund of \$15,000. Dawn Golub noted that the average building lot in Merrimack cost between \$40,000 and \$60,000. Selectman Silva noted that this cap can be amended later if desired.*

*The amendment failed and was so declared.*

*The motion passed and was so declared.*

Commissioner Tenhave noted 36-A:5 II states: “ 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.”

Since its adoption, the rules as to how the Land Use Change Tax is applied to Fund 53 have changed a few times. Now that we are in a Town Council form of government operating under our own Charter, the legislative body of the Town is the Town Council. As such, the Council has the ability to change the rules governing this. The latest rule states Fund 53 is allowed to grow up to \$1 million, after which no additional funds would be allocated. Funds do currently go into the fund as it is below that threshold. When under that threshold funds from the Land Use Change Tax are allocated to the fund at a 50% rate.

Because allocations to Fund 53 are tied to the Land Use Change Tax dollars, there is the ability to review the potential for funds to come in. Most of the land that is under this RSA has already been converted.

Land Use Change Tax Definition – When land is taken out of current use a one-time 10% land use change tax (LUCT) is assessed based on the market value of the land in question at the time the use changes to non-qualifying. This may or may not be the selling price.

Commissioner Rosati questioned why the Commission would not have looked to utilize Fund 51 for the membership dues for the Society for the Protection of New Hampshire Forests. Commissioner Tenhave remarked there are a few strategies. Fund 51 is reimbursed by dollars remaining from the general operating budget. Fund 53 comes out of Land Use Change Tax dollars. The potential for Fund 53 to grow is much larger.

Commissioner Perry reiterated Fund 51 is funded through dollars gained through the Land Use Change Tax. As the community becomes built out, that revenue source will no longer be available. That fund is utilized to purchase and manage conservation properties.

Commissioner Drouin questioned if the percentage of the Land Use Change Tax to be allocated to the fund could be increased. Commissioner Tenhave spoke of the need to follow the process outlined in the Charter. He suggested to first take the request to the Town Council who has the authority to make such a change. The end result could be petitioning it for the warrant through the petition process.

Commissioner Tenhave stated his belief that, down the road, when that fund is dwindled, if there is the desire from the residents to allocate additional funds, there are a lot of different ways it could be funded, or a new fund created with a different funding mechanism.

- Sklar access and parking

Vice Chair Boisvert spoke of having contacted Director Fox. Access to the area is on Town land. Everything we do there is tied with the Town. Director Fox spoke of preliminary plans for creating access into the area. A grant was applied for through New Hampshire Fish & Game for improvements to the boat ramp. It is uncertain if that will come to fruition.



Director Fox noted the need for the Commission to discuss its wishes with the Town Council. Improving access seems to be a larger project than anticipated. There is the question of what the Commission might be willing to contribute to improve the access.

Vice Chair Boisvert requested feedback from Commissioners. He suggested the location near the kiosk would make for a nice parking area. Hiking trails could be created out to the Thornton's Ferry site, the boat ramp could be improved along with access, etc.

Commissioner Perry stated his belief grant funding had been obtained to be utilized toward that project, but was never acted on.

Commissioner Tenhave spoke of State funding tied to Fish & Game and a Town meeting conducted regarding the matter. However, he did not believe it was ever acted on. He was uncertain of the reasons why.

Commissioner Perry remarked the Commission had a discussion with Director Fox on this, and he had indicated there was a different location for a boat ramp that he thought would be a better fit. He asked if Director Fox brought up other locations during the discussion. Vice Chair Boisvert responded he had not. He commented on having heard the one by the treatment plant had fallen through. Commissioner Tenhave stated he had heard that as well.

Commissioner Tenhave suggested it is a matter of someone proposing a project and then research being done to identify what grants are available. Most grants require a match of some sort. The Commission could provide part or all of the matching dollars depending on the size of the project. In the absence of an identified project, discussions cannot move forward. He suggested reaching out to Director Fox to determine how far along the project plans are.

Director Fox has stated that approval from the Town would be required for him to go any further down this road. Commissioner Tenhave remarked it is doable, and simply a matter of someone championing the cause and running with it.

***The consensus of the Commission was to push forward towards a project plan.***

## **OLD BUSINESS**

### **1. 2021 Annual Seedling Giveaway**

Commissioner Perry provided a document detailing the types of seedlings purchased from 2013 through 2020 and proposed purchases for 2021 (copy attached).

The website for the [New Hampshire State Nursery](#) includes a disclaimer: “Due to unprecedented volume of orders, many seedling species and packages are sold out and selling out quickly. Be aware, that species may be sold out by the time your order is received.”

It was suggested the Commission move quickly in placing its order, and be prepared to receive alternate choices. The suggestion was made that fruit bearing plants be requested as alternates, should substitutions be necessary.

***The consensus of the Commission was to move forward with the proposed selection.***

**MOTION BY COMMISSIONER ROSATI TO APPROVE THE EXPENDITURE OF AN AMOUNT NOT TO EXCEED FOUR HUNDRED FIFTY DOLLARS (\$450.00) FOR THE PURCHASE OF PLANTS NEEDED FOR THE MAY 8, 2021 SEEDLING GIVEAWAY, AND AUTHORIZE COMMISSIONER PERRY TO IDENTIFY ALTERNATE SEEDLINGS AS DEEMED APPROPRIATE. SOURCE OF FUNDING IS FUND 53**  
**MOTION SECONDED BY COMMISSIONER TENHAVE**

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

Yea: Vice Chair Boisvert, Commissioner Rosati, Commissioner Perry, Commissioner Starr,  
Commissioner Drouin, Commissioner Tenhave

6

Nay: 0

**MOTION CARRIED**

## **2. Horse Hill Nature Preserve Ex-officio**

With the departure of Michael Swisher from the Commission, the position became vacant. The sub-committee typically meets on a quarterly basis. The Ex-Officio member acts as the liaison between the sub-committee and the Commission.

*The Commission will take up the matter of appointing an Ex-Officio member at its next meeting.*

## **3. Chapter 111**

Commissioner Tenhave stated his belief the item was placed on the agenda as Councilor Albert wished to discuss whether the Commission is ready to move forward with the Town Council.

The Commission worked on Chapter 111 leading up to the COVID-19 shutdown of activity. It was about this time last year when Commissioner Tenhave was preparing for a presentation to be placed on the agenda for a Town Council meeting to discuss the Commission's recommendations. At that time, he had suggested postponing the presentation until after the April elections so that the new Town Council would be seated.

When meetings became virtual and the elections were delayed, the suggestion was to postpone the discussion further. The proposed changes are not so substantial that he believed them to be urgent. The year progressed on and meetings returned to in-person. He was asked if he wanted to present, and was not personally comfortable going into a meeting understanding the time required for the presentation and discussion.

We are now into February of 2021. His situation has not changed. Until he is able to be vaccinated, he is not comfortable attending a meeting for that long a time. Chair Perkins is open to the idea of presenting. There would be the need for some preparation time.

Commissioner Tenhave reiterated he does not believe the matter of addressing Chapter 111 is urgent, and stated a willingness to make the presentation later in the year. He is also willing to meet virtually with any member of the Commission to prepare them to make the presentation. Although he has informed the Commission of his decision to leave the Commission at the end of his term (June); he committed that he would see this through.



Vice Chair Boisvert expressed his gratitude to Commissioner Tenhave for his willingness to see the process through to completion.

*The consensus of the Commission was to postpone the presentation.*

### **OTHER BUSINESS**

1. Discussion on communications or correspondence received concerning regulated Commission activities and any issues concerning Commission managed lands.
2. Sub-Committee Updates

Commissioner Rosati noted there would not be a moonlight snowshoe walk at Wildcat Falls this year.

Vice Chair Boisvert stated the duck boxes at the Horse Hill Nature Preserve and Grater Woods were cleaned, and new ones placed where needed.

### **PRESENTATION OF THE MINUTES**

Merrimack Conservation Commission. . . . . December 7, 2020

**MOTION BY COMMISSIONER ROSATI TO TAKE FROM THE TABLE AND APPROVE, AS PRESENTED, THE MEETING MINUTES OF THE DECEMBER 7, 2020 MEETING**  
**MOTION SECONDED BY COMMISSIONER TENHAVE**

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

|      |  |   |
|------|--|---|
| Yea: | Vice Chair Boisvert, Commissioner Rosati, Commissioner Starr, Commissioner Drouin,<br>Commissioner Tenhave | 5 |
| Nay: |  | 0 |

### **MOTION CARRIED**

*Commissioner Perry Abstained*

Merrimack Conservation Commission. . . . . January 25, 2021

*The following amendments were offered:*

Page 3, Line 24; replace “Sno-Pro” with “SnowPro”  
Page 4, Line 49; correct the spelling of “Patterson”  
Page 9, Line 16; replace “Plasic” with “the Class 6”

**MOTION BY VICE CHAIR BOISVERT TO ACCEPT, AS AMENDED**  
**MOTION SECONDED BY COMMISSIONER PERRY**

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

|      |  |
|------|--|
| Yea: | Vice Chair Boisvert, Commissioner Rosati, Commissioner Perry, Commissioner Starr,<br>Commissioner Drouin, Commissioner Tenhave |
|------|--|

Nay:

6  
0

**MOTION CARRIED**

**PUBLIC COMMENT** - None

**COMMISSIONER COMMENTS**

Commissioner Drouin informed the Commission he is working towards his realtor license, and suggested that may be of use to the Commission.

Commissioner Tenhave reminded users of the trails to be diligent in heavy snow; be mindful of the time and equipment required for the trails being utilized in such conditions.

**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 COMMISSIONER PERRY TO ADJOURN**  
**MOTION SECONDED BY COMMISSIONER TENHAVE**

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

Yea: Vice Chair Boisvert, Commissioner Rosati, Commissioner Perry, Commissioner Starr,  
Commissioner Drouin, Commissioner Tenhave

6  
0

Nay:

**MOTION CARRIED**

The February 8, 2021 meeting of the Merrimack Conservation Commission was adjourned at 7:40 p.m.

Submitted by Dawn MacMillan