



Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

MERRIMACK CONSERVATION COMMISSION

JUNE 17, 2019

MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, June 17, 2019 at 6:30 p.m. in the Merrimack Memorial Conference Room.

Chair Gage Perry presided:

Members of the Commission Present: Matt Caron, Vice Chair
Michael Boisvert
Cynthia Glenn (arrived at 6:37 p.m.)
Steven Perkins
Gina Rosati
Michael Swisher, Alternate member
Tim Tenhave, Alternate Member
Councilor Peter Albert

Members of the Commission Absent:

Also in Attendance: Rudy Bazelmans, 174 Naticook Road
Tucker McCarthy, Keach-Nordstrom Associates, Inc.

PUBLIC COMMENT - None

PUBLIC HEARINGS - None

APPOINTMENTS - None

STATUTORY/ADVISORY BUSINESS

- 1. Bazelmans Revocable Trust (applicant/owner)** – Review of NHDES Wetland Permit
Application to expand a dock. The parcel is located at 174 Naticook Road in the R-4 (Residential) and Aquifer Conservation Districts and Wellhead Protection Area. Tax Map 2B, Lot 281.

Rudy Bazelmans, 174 Naticook Road, stated he has a seasonal 6 x 24 dock permit. The proposed project would result in a dock size of 6 x 20 with an additional 6 x 10 at the end. The New Hampshire Department of Environmental Services (NHDES) has indicated an expedited permit could be done.

The NHDES did wish to be certain the dock could not be used to dock three boats. It was explained the shallow area where the expansion would be located would not permit enough depth for three boats.

Mr. Bazelmans spoke of a letter from the abutter indicating no concern with the request.

Chair Perry questioned if the permit would go before the Zoning Board of Adjustment (ZBA), and was informed Mr. Bazelmans has already spoken with the ZBA, and all that is required from the Town, at this point, is approval from the Commission.

Chair Perry noted the existing dock was suspended from a tree. Mr. Bazelmans stated that to be correct and added the dock has been in place for approx. 50 years (1" rusty cables hanging from a tree). That was cut out and a 6 x 20 dock was put in place.

Asked how the dock is currently supported, Mr. Bazelmans noted it has aluminum feet and post. It is brought in during winter months. Asked if the proposed dock would also be seasonal, he indicated it would.

Commissioner Tenhave questioned disturbance of the lakebed, and was informed it can be placed on top.

MOTION MADE BY COMMISSIONER TENHAVE TO AUTHORIZE THE CHAIR TO SIGN THE EXPEDITED PERMIT FOR THE BAZELMANS REVOCABLE TRUST INDICATING THE COMMISSION IS SATISFIED WITH THE PERMIT AS PROVIDED
MOTION SECONDED BY COMMISSIONER SWISHER
MOTION CARRIED
7-0-0

2. Robert Curry (applicant/owner) - Review for recommendation to the Planning Board for a two-lot subdivision. The parcel is located at 2 County Road in the R-1 (Residential, by map), Aquifer Conservation and Flood Hazard Conservation Districts. Tax Map 3A, Lot 065.

Tucker McCarthy, Keach-Nordstrom Associates, Inc., stated the proposal to be to sub-divide the property into two lots. The parent parcel (Tax Map 3A/Lot 065) would retain 6.232 acres. The new lot would be 3.12 acres or 136,000 sq. ft. of which slightly less than 36,000 sq. ft. is existing wetland. The required 100,000 sq. ft. of buildable area remains. The new lot has the required 250' of frontage, and leaves the parent lot with a little less than 515 sq. ft. of frontage. All zoning requirements are satisfied.

An existing jurisdictional wetland on the west side of the property falls within the parcel that would be subdivided off. There are setbacks from the Souhegan River. Being in the Shoreland Protection Area, an existing house is outside of the 250' setback. Mr. McCarthy stated he does not anticipate there will be any changes done within that area as part of the proposal.

Asked where the footprint would be for a structure on the new lot, Mr. McCarthy responded it is not shown because there is no developer as part of the proposal. The newly created lot would be sold. The Building Inspector would not issue a building permit without knowing the building was being built outside of the setback. There would be no zoning relief given as part of that. Asked if the new site would be on Town water, he indicated it would. As part of the sub-division, it is likely the existing home would also be connected to Town water.

Asked where the septic area is for the existing home, Mr. McCarthy was uncertain as it was not outlined on the plans. He commented it may be on the area of the proposed lot. Chair Perry stated he would be surprised if the lot were permitted to be subdivided if the leach field and septic were in the other lot. Mr. McCarthy stated they would have to construct a new septic before being able to do anything on the other lot.

Asked if there are any other proposed changes for the existing lot, Mr. McCarthy stated his belief the only one would be connecting the existing house to Town water.

Chair Perry spoke of the proposed curb cut in the location of the anticipated driveway. Mr. McCarthy remarked there is not much in the way of space given the wetland setback. He suggested it is likely the house would be built on the back of the lot, and noted the floodplain.

Commissioner Tenhave stated his only comment to be that any improvement in the flood zone be such that it would not increase the potential for water to move onto the existing lot.

Mr. McCarthy restated you would not want the driveway to impound the parent lot. Commissioner Tenhave stated that to be correct. Chair Perry clarified, any improvements on the new lot.

NEW BUSINESS

1. Site Plan Regulations - Draft

Chair Perry spoke of the information received from the Planning Board regarding the re-writing of the Site Plan Regulations.

Commissioner Tenhave noted the addition of language relative to use of low-phosphate, slow release nitrogen fertilizer and comments regarding Green SnowPro certification.

The Planning Board is receiving public comment at this time. Noted was the Commission's recommendation for "no phosphate" on properties within the Aquifer Conservation Districts and Wellhead Protection Areas. That is also the case when the property is immediately adjacent to water bodies where it could drain into a river or stream that would then dump into a pond or lake. It was suggested the Commission recommend no phosphate in those areas.

Chair Perry commented there would likely be some pushback relative to "adjacent to water bodies", e.g., what size, running water, stagnant, ponds, vernal pools, etc. Commissioner Tenhave stated his opinion knowing the baseline will be low phosphate, the Commission can continue to take the action of evaluating each property, and when believed necessary, could make the recommendation for no phosphate.

Chair Perry suggested, if the public comment extends beyond it, the Commission could continue the discussion at its July meeting.

OLD BUSINESS

1. Chapter 111 Update

Draft language was proposed to address restrictions for each of the categories:

Noted was the desire not to include items already covered under State law.

- **All Properties**

No camping, no ATVs, no dirt bikes, no Cars/Jeeps, no OHRVs, no removing trees, plants, shrubs. All trash to be removed or “carried out”, no fires.

Chair Perry commented on the restriction of ATVs, dirt bikes, etc. within the restrictions listed for “all” properties, noting properties such as Grater Woods where sections are designated for such use. Including that as a restriction on all properties would be a big change.

Councilor Albert noted the designation of a portion of Grater Woods to allow such uses was done by the Commission. Commissioner Tenhave stated it was done as part of the Stewardship Plan. Asked about the usage, Commissioner Boisvert stated those areas are only used to access areas they are not supposed to be in. Chair Perry commented there are a few that treat it correctly. Vice Chair Caron stated, within the past two years, it has gone from some use to almost no use. When it is being used, it is not done properly. Councilor Albert remarked if looking at it from a view of prosecuting, if you eliminate the use then you also eliminate a violator indicating an uncertainty he/she was out of bounds.

Chair Perry reiterated his belief it would be a hard sell. There is the balance to consider, e.g., recreation/conservation. The Commission would get the full support of the Sub-committee, but he believes it would be a tough sell to the public and the Town Council.

Commissioner Boisvert commented if the Commission believes in such a move, it should consider it. Chair Perry agreed, noting the Commission is the responsible party for maintaining the property.

Chair Perry spoke of the Horse Hill Nature Preserve (HHNP) where the Master Plan indicates the use is permitted, and questioned what such a change would mean when there is a specific group cited. Commissioner Tenhave remarked the HHNP Definitive Plan indicated if a State recognized club was to take care of the areas designated for potential ATV use then that use could be allowed to go forward. No State recognized group has come forward indicating they would install and maintain those trails.

If a State recognized group came forward, the Ordinance could be amended. He agreed there would likely be some pushback; however, the fact is no State recognized group has come forward.

Commissioner Swisher stated agreement with the proposal to exclude the usage. Commissioner Boisvert commented all of the properties will, as time goes on, have more and more passive usage. He agrees with excluding that usage.

Councilor Albert spoke of the public hearing process and the opportunity for the citizenry to be made aware of the proposed changes and given opportunities to provide feedback.

Commissioner Glenn suggested the additional restriction of “no trapping”. Currently there is a requirement to seek permission. In her time on the Commission, there have been no such requests. Commissioner Boisvert questioned how to address the possible exception of trapping beavers.

Councilor Albert commented most people understand the need to obtain property owner permission prior to any such activities. “No trapping” could be posted at the kiosks.

Commissioner Swisher noted other areas where there are exceptions called out for maintenance, etc. He did not think there would be the instance of trapping of beaver within Commission property.

Chair Perry suggested there could be an overarching note that addresses exceptions for maintenance performed by the Commission, etc.

Vice Chair Caron requested “no fires” be added before “no camping”.

Councilor Albert questioned whether “no target shooting” should be added. Commissioner Tenhave recommended legal counsel be consulted. He commented the Commission attempted to do that. A vote was taken regarding no target shooting on Commission properties and, as the owners of the properties, the Commission posted them that way. The Town Council was asked to make it an Ordinance for all Town properties including conservation properties, and the recommendation came that they were uncertain they could legally control the use of firearms on the properties. The State has explicitly, in RSA, stated they have the authority to restrict the use of firearms. The Town Council, as the legislative body, can enact an Ordinance. If someone were to take it to court, legal counsel has indicated it may not hold up. The only place the State has restricted it is in compact areas.

The Commission, as a property owner, has the right to say no to almost anything. The Town Council and Commission, as property owners took the action to say we do not allow target shooting on our properties. There is currently a posted rule that says it is not permitted.

Individuals target shooting could be determined to be violating other laws, e.g., trespassing, littering, disorderly conduct.

Commissioner Tenhave questioned the will of the Commission relative to any changes to the existing language regarding all properties. The current language covers six (6) of the Commission’s properties.

The consensus of the Commission was to remove the language relative to times of use, amend the second rule by simply stating “There shall be no fires on conservation areas.”, remove the rule “no person shall bring or carry any glass containers....”, remove the restriction “use, consume, bring or carry any alcoholic beverages or unlawful drugs.....”, and remove the language regarding domesticated animals being “controlled by the use of a leash or rein or is within a cage.”.

The question was posed of whether the rule “No person shall discharge any air-powered or spring-powered gun, any type of bow or any firearm within any conservation area” prohibits hunting, and therefore should not be under the category of restrictions for “all” properties.

The question was also raised of whether prohibiting hunting would impact the Bowman 3D shoots conducted on Commission property.

The suggestion was made that the language be amended to indicate hunting is not permitted except legal hunting during season according to NH Fish & Game rules.

Asked if E-bikes should be included in the language. Commissioner Tenhave noted some of the Deeds require that restriction. He questioned the will of the Commission relative to all properties having that restriction. Chair Perry noted they are viewed as motorized vehicles.

Language regarding prohibiting E-bikes to be added to the restrictions regarding vehicles in conservation areas.

Vice Chair Caron commented NHDOT looks to treat Class I E-bikes (pedal assist) as bicycles, on the roadways. They can travel at 26 mph.

Commissioner Tenhave questioned if the existing language around removal of trees, shrubs, etc. is preferred. *The consensus was to retain the existing language.*

Commissioner Boisvert requested removing the word “flower”. He cited concern with confusion over removal of berries.

Commissioner Swisher suggested if including “alter” and “gates and barriers” it could address concerns regarding rock barriers being moved.

The Commission agreed with the addition of that language.

Commissioner Swisher questioned if there is a restriction for removal of fauna.

The Commission agreed with the addition of language indicating no harassment or removal of wildlife except through legal hunting and fishing.

Noted was that the language recommended for “all” properties addresses the concerns raised regarding the other categories of properties.

- **Major Property**

No duck blinds, no baiting of animals, no hunting along trails (we should check current F&G rules)

Vice Chair Caron commented members of the HHNP Sub-committee desire more duck blinds; used as bird viewing blinds.

Given that hunting is not strictly prohibited, there is the need for some of the suggested language. However, “along trails” is ambiguous.

Chair Perry commented people throwing bird seed are baiting animals. It was suggested the language regarding hunting should indicate no baiting for hunting purposes. It was noted the issue of baiting is covered in other areas.

Councilor Albert commented if a problem has been reported it should be addressed. If not, perhaps it is not necessary to specifically address.

Councilor Albert spoke of the concern raised relative to deer hunting season occurring while fall hikers are enjoying the HHNP. If there are other properties that are less traveled with formal trails, perhaps those are properties where hunting is permitted.

Chair Perry suggested the category name could be changed to reflect highly utilized properties with a restriction of no hunting. The remainder of the suggested restrictions are covered under the category of “All”.

Councilor Albert questioned the number of incidents that have occurred between hunters and hikers since establishing the HHNP in 2002. Commissioner Tenhave responded there have been a few where people have been alarmed by finding a hunter on the property, but there have been no formal complaints to the Police Department that he is aware of.

Vice Chair Caron commented on having come across target shooters, which he did not report.

Commissioner Rosati spoke of the seriousness of such an incident should it occur. Commissioner Tenhave commented on the number of hunters in the HHNP declining over the years. With the increased activity on the property, the wildlife is simply not visibly present. Commissioner Glenn commented on coyote hunting being permitted year-round.

Councilor Albert questioned if the best approach would be to publicly advertise that the Commission is considering prohibiting hunting. Commissioner Tenhave remarked it has been a number of years since, but when this was discussed during discussions of the Master Plan in 2003-2004 and again during the Definitive Plan in the 2006-2007 timeframe, there were a number of public hearings conducted that were dedicated to the issue of hunting. The result was the language that is included in the Definitive Plan, which allows legal hunting.

Councilor Albert spoke of the work done at that time, which included public input and the fact that there are currently no formal reports of incidents, and suggested the hunting rules remain as they are.

Commissioner Glenn commented the hunting population is approx. 5% of the population in the State, and questioned if that small percentage of the population gets to dictate the rules on all of the Commission's major properties. Commissioner Tenhave noted not all of the major properties allow hunting, e.g., Wasserman Conservation Area, Gilmore Hill Memorial Forest, Wildcat Falls Conservation Area.

Councilor Albert questioned how other conservation commissions throughout the State handle the topic. Chair Perry stated they have the same issues; for areas that are publicly accessible and heavily used, they try to limit such activities and educate users where hunting is permitted.

Commissioner Swisher commented there are some properties where hunting is prohibited and others that, due to their size and hunting laws, would not permit hunting. Few will remain. He suggested the next breakdown under the "All" category would include Wasserman Conservation Area, leaving the water specific properties remaining.

Commissioner Glenn questioned if there is a restriction on hunting on the Sklar Waterfront Park. Deed language was reviewed and indicated the restriction of discharging of any weapons.

It was noted the Sklar Waterfront Park was not currently identified in the correct category (should be Major + Wasserman).

The consensus of the Commission was to leave the category and remove the restriction language.

- **Major Property + Wasserman**

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

Commissioner Tenhave spoke of snowmobiles noting they are not ATVs or OHRVs. He questioned the will of the Commission relative to allowing them on Commission properties except where restricted by Deed.

Currently the HHNP specifically permits snowmobiles. By absence of discussion, they are allowed in Grater Woods. Chair Perry commented driving snowmobiles on sticks and rock rips up the undercarriage; you want to be on top of snow. Given the time of year, noise is typically not a concern (windows closed). Vice Chair Caron remarked he has not heard of any issues related to snowmobiles. Councilor Albert recalled issues of people from the Parker Drive area accessing Grater Woods. Vice Chair Caron responded the same individual that was entering the area with a quad had a snowmobile. The reasoning provided for why he could go in there on the quad was because he could go in during the winter on the snowmobile. It was noted the legal definition of OHRV excludes snowmobiles.

Under this category there are deed restrictions related to snowmobiles.

A more suitable category name will be identified.

- **River + Brook**

Passive recreation only

Councilor Albert questioned what bodies of water the Commission has authority over. Commissioner Tenhave stated the Commission has no authority. There is authority over the properties that abut rivers and streams or the islands that are in a river (own 3 in the Merrimack River).

Commissioner Tenhave remarked he is not certain there is an issue; however, suggested disallowing gas powered vehicles. There is the boat launch to consider, where there is abuse occurring.

Asked about Fields Farm, Commissioner Tenhave stated it abuts the river. Chair Perry noted the Deed language restricts motorized.

Commissioner Rosati questioned if it is understood that dumping of yard waste, e.g., lawn clippings, is prohibited under the no dumping rule.

- **Well property**

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

Commissioner Tenhave questioned the will of the Commission relative to inviting the Merrimack Village District to provide input.

The Commission agreed feedback should be sought from the MVD.

OTHER BUSINESS

1. Sub-committee Updates

Horse Hill Nature Preserve

Vice Chair Caron informed the Commission Cycles Etc is conducting work on the Blodgett Hill Trail. He stated the desire for trail hardening material, e.g., stone, and questioned if the Public Works Department (PWD) could be asked about availability/delivery.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. [June 3, 2019](#)

The following amendments were offered:

Page 1, Line 39; insert “which” before “disrupted”

Page 3, Line 49; replace “there” with “lot” following “parking”

MOTION BY COMMISSIONER ROSATI TO ACCEPT, AS AMENDED

MOTION SECONDED BY COMMISSIONER GLENN

MOTION CARRIED

5-0-2

Vice Chair Caron and Councilor Albert Abstained

PUBLIC COMMENT - None

COMMISSIONER COMMENTS

Vice Chair Caron noted the next meeting of the Grater Woods Sub-committee is scheduled for Tuesday July 9th at the Outdoor Classroom located behind the Middle School.

Commissioner Rosati spoke of a shell casing discovered at Wildcat Falls. Chair Perry noted the Commission was in receipt of the email provided as was the Police Chief. The Police Chief is also in possession of the shell. Councilor Albert stated his belief the Chief looked at the casing and is of the belief it is a caliber from a handgun.

Commissioner Boisvert expressed gratitude to Mark Twardowski, the volunteers from Anheuser Busch, and the PWD for their efforts in the clean-up event at the Sklar Waterfront Park property.

ADJOURNMENT

MOTION BY COMMISSIONER GLENN TO ADJOURN

MOTION SECONDED BY VICE CHAIR CARON

MOTION CARRIED

7-0-0

The June 17, 2019 meeting of the Merrimack Conservation Commission was adjourned at 9:11 p.m.

Submitted by Dawn MacMillan