



# Town of Merrimack, New Hampshire

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Planning - Zoning - Economic Development - Conservation

## MERRIMACK CONSERVATION COMMISSION MAY 20, 2019 MEETING MINUTES

A regular meeting of the Merrimack Conservation Commission was held on Monday, May 20, 2019 at 6:31 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  
Steven Perkins  
Gina Rosati  
Michael Swisher, Alternate member  
Tim Tenhave, Alternate Member  
Councilor Peter Albert

Members of the Commission Absent:

Also in Attendance:

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**PUBLIC COMMENT** - None

**PUBLIC HEARINGS** - None

**APPOINTMENTS** - None

**STATUTORY/ADVISORY BUSINESS** - None

### **NEW BUSINESS**

#### **1. Sklar Park Vandalism**

Commissioner Boisvert stated some of the larger rocks that had been strategically placed to prohibit vehicular access have been moved. Tracks of a 4 x 4 vehicle can be seen by the river. He questioned if the Town could be asked to put the rocks back in the original location and perhaps add to the number of rocks.

He questioned the will of the Commission relative to filing a police report. He noted an email he sent to Tim Thompson, Director, Community Development Department, was forwarded to the Police Department.

Councilor Albert stated he would make the Town Manager aware of the situation with the hope Police presence will be increased.

With regard to the clean-up day, Anheuser Busch is looking to finalize the date and time; possibly Wednesday, June 5<sup>th</sup>. Once the date/time has been finalized, the Town will be informed, and coordination of litter removal addressed.

Vice Chair Caron noted Fidelity will have two simultaneous projects on June 5<sup>th</sup>, World Environment Day; beach clean-up at Wasserman Park and trails restoration at Twin Falls Park. He suggested the Commission consider what large projects might be earmarked for volunteer efforts during Earth Day and World Environment Day.

## 2. 2019 Bike Demos at Horse Hill Nature Preserve (HHNP)

Vice Chair Caron noted Cycles Etc, Manchester, has requested the use of the Horse Hill Nature Preserve (HHNP) for a bike demo. on June 23<sup>rd</sup>.

Asked about liability, Chair Perry stated the group is not selling anything; providing the opportunity for individuals to ride the bicycles. It was noted individuals riding the bicycles sign a waiver accepting liability for any damage to the bike.

Vice Chair Caron noted Cycles Etc has offered to conduct a trail project or something similar. He spoke of a project needed along the loop they typically ride; clogged culvert on the Blodgett Hill Trail, past the large Scout bridge. The culvert will have to be pulled out, cleaned, and a new entry set with rocks. Asked if they would be willing to conduct the project without mechanical equipment, Vice Chair Caron stated they would. The project will not be an easy one absent large equipment. Vice Chair Caron will be present.

*The consensus of the Commission was to grant the request to utilize the HHNP for the bike demo.*

*The Commission was also supportive of the proposed culvert project as a volunteer effort.*

Chair Perry spoke of two instances of E-Bikes on Commission property. In both instances, individuals cited the State recognizes Class 1 E-Bikes, and were informed the Commission recognizes them as motorized vehicles.

Councilor Albert questioned the concern with E-Bikes on Commission property. Chair Perry stated there to be a number of classes of E-Bikes. When getting up into the higher-powered ones, they can reach speeds of 25-30 mph.

Vice Chair Caron spoke of having attended many meetings at the State level, and his belief the State will be re-thinking its position given concerns raised. Councilor Albert stated a desire to obtain a copy of any information used by the State when considering a change to its current position. Vice Chair Caron stated his belief some states passed regulations quickly given the lobbying power behind the manufacturers selling these bikes. Many are now rethinking their positions.

Commissioner Tenhave commented the biggest issue is that volunteers take care of these trails, and volunteers have decided they don't want to repair that kind of damage. Currently, there is no group identified that is willing to do that kind of work.

## **OLD BUSINESS**

### **1. Chapter 111 Update**

Commissioner Tenhave spoke of having gone through all of the properties the Commission determined could be in Chapter 111. Information on each of the properties, including known deed restrictions, was compiled on a spreadsheet (copy attached).

Recommended categories (groupings) of properties:

1. None - do not include in Chapter 111
2. Major Property - restrictions appropriate for large properties
3. Major Property + Wasserman - same as Major Property but also limit the discharge of firearms and passive recreation only (in Wasserman Restrictions)
4. River + Brook - restrictions appropriate for properties that lie in a River, along a River or Brook, or are part of a wetland complex that leads into a river or brook
5. Well Property - a parcel that either contains an MVD well, a future MVD well, or abuts an MVD well property

Commissioner Tenhave highlighted the four (4) properties he suggested be classified as "None":

- 283 Continental Boulevard; located across from the intersection where Naticook Road meets Continental Boulevard. The area is fenced and not easily accessed. There have been no issues with this property.
- Dahl Road; back lot, contains Old Kings Highway
- 49 Dahl Road; back lot, contains Old Kings Highway
- 37 Greens Pond Road; located on Robert Milligan Parkway (near Camper's Inn), partially fenced in, and has been left to be a wetland.

With regard to the category of "Well Property", Commissioner Tenhave commented wells have a defined radius in regard to what activities can occur. He suggested the Commission communicate with the Merrimack Village District to understand if they would like to provide recommendations with regard to use, restrictions, etc.

Properties suggested to fall into the category of "River & Brook" either have Baboosic Brook, Souhegan River or the Merrimack River abutting them, going through them, they are an island in the middle, or a wetland complex that feeds those.

Under the heading of Major Property + Wasserman, those listed are Wasserman Park (Commission portion; Parks and Recreation portion is covered under Chapter 142 and has different covenants), Blueberry Island (middle of Naticook Lake), and a few parcels owned by the Commission that abut the Wasserman Conservation Area (all the way out to Greens Pond Road), the Gilmore Hill Memorial Forest (similar use restrictions), Middle School property (easement is similar in uses), and the Wildcat Falls Conservation Area, which has no Deed restrictions, but current use in Chapter 111 is similar. The Deed states the property was purchased from the State for \$1 for a park or other recreational uses.

The restrictions come in through Wildcat Falls and the current Chapter 111, which was adopted in 1995 (when Town Meeting form of government was in place; voted on by the Town).

Commissioner Tenhave suggested, if the Commission agrees with the basic categories, the next step would be to determine the restrictions to put in an Ordinance for the categories, and then re-evaluate if the properties are in the correct categories.

Under Major Properties are the HHNP, a portion of the White Pine Swamp, Grater Woods Conservation Area and parcels that abut Grater Woods, Mitchell Woods, and Fields Farm, which may have to shift as it may be identified for passive recreation. Chair Perry commented the Commission discussed placing a boat ramp in there. A discussion ensued regarding possibly changing the category for this parcel. There is not a hunting restriction on the parcel.

Commissioner Tenhave spoke of the potential limitations for each of the categories. Added is a new category "All". He questioned the desire of the Commission to have general rules in Chapter 111 that impact all properties. By doing that, it may be there are less categories as properties would be covered under the "All" category. The potential limitations were suggested as:

- 1. All:** 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 questioned if "All" would encompass the properties categorized as "None". Commissioner Tenhave remarked, the suggestions made were only intended as a way to begin the discussion. The recommended categories and the associated limitations will be determined based on the will of the Commission as a whole.

Commissioner Tenhave spoke of the "no motorized" limitation noting, presently, there are no motorized groups assisting in the maintenance of trails. There could be restrictions around removal of trees, plants, shrubs. A clause could be added similar to "except for maintenance or conservation purposes".

Commissioner Tenhave commented on the possibility of including additional items under the category of "All", e.g., no baiting, no trapping. Some of the activities can only occur with landowner permission. The ordinance could simply re-state what is already in law, but may be more visible if incorporated in the ordinance.

Councilor Albert remarked the only issue he can foresee pushback on is prohibiting hunting. He is concerned with hunting occurring in an area utilized for passive recreation. Commissioner Tenhave commented that discussion has occurred many times over the years. What the Commission has found is that as properties become more popular, hunting stops. The restriction of no hunting, under major properties, is written into the deeds.

He noted, in his conversations with legal counsel, he has learned that although the State dictates the municipality cannot govern certain activities, if the restriction is included as part of the Deed and the way the land was provided (in perpetuity), that is an overriding factor. He suggested the Commission obtain a current legal opinion before proceeding with the no hunting restriction.

Chair Perry suggested adding "no dumping" to the list of restrictions.

Commissioner Boisvert questioned if codifying the rules provides additional enforcement capabilities, and was told that is the intent; to create an enforcement capability. Whether used or not is up to the discretion of the incident and officers involved. There is likely some sort of judgement call made as to how deliberate the activity was.

It was noted, in the current Chapter 111, § 111-1 Rules of Conduct, section H reads: “No person shall discharge any air-powered or spring-powered gun, any type of bow or any firearm within any conservation area.” With regard to including the language under the category of “All”, it was noted if permitting hunting you should also permit the discharge of a bow or firearm.

*Chair Perry spoke of the desire for the language to be included with the addition of “with the exception of hunting as allowed per .....”* That would cover the “no target practice” restriction.

2. **Major Property:** E-Bikes allowed as defined as “??????”. No duck blinds, no baiting of animals, no hunting along trails (we should check current F&G rules),
3. **Major Property + Wasserman:** add discharge of firearms and passive recreation meaning no snowmobiles, ATVs, OHRVs, dirt bikes, no hunting or trapping, are E-bikes allowed?
4. **River + Brook:** Passive recreation only
5. **Well property:** Passive recreation only, keep out areas, no hunting or discharge of firearms

Commissioner Tenhave reiterated his desire was to introduce the idea of the categories and potential permitted and prohibited uses. He requested the discussion continue at the second meeting in June so that the Commission can reach consensus on the categories and restrictions for each. Chair Perry noted the next agenda would also include discussion to allow for a quick update.

Commissioner Rosati questioned if the Commission wished to establish a rule relative to boats utilizing waterways being required to check for Milfoil before entering.

#### Animal Waste

Chapter 119, §119-4 Duty to Dispose of Waste, states: “It shall be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any sidewalk, street or other public area. It shall further be the duty of each person who owns, possesses or controls a dog to remove and dispose of any feces left by his/her dog on any private property neither owned nor occupied by said person.”

§119-5 Violations and Penalties, states in part: “In addition to and in accordance with New Hampshire RSA 466:31-a, Penalties, impounding a dog found at large or in violation of this chapter, any law enforcement officer may issue in the name of the owner or keeper of such dog a notice of violation. Such notice shall impose upon the owner or keeper of such a dog a forfeiture of \$25 for the first offense and \$50 for the second offense. Third and subsequent offenses shall be handled in the 9th Circuit District Division, Merrimack Court.”

Commissioner Rosati spoke of the issue being raised on the Merrimack positive forum. One of the suggestions that came about as a result of the online discussion was placement of trashcans about 300’ down the trail from parking areas. Commissioner Rosati noted Wildcat Falls has a trashcan. She spoke with Commissioner Glenn about the HHNP. She was not in favor noting the Public Works

Department (PWD) does not do pick up at that location. Chair Perry remarked when last asked about removal, the PWD indicated they could not commit to a reliable pick-up. The question can be asked again. It would only be emptied if at the trail head. Commissioner Tenhave noted at the HHNP, the Commission had to obtain a wetland permit to put the trail in because it was constructed through a wetland. Any dumping of anything off the side of the trail is dumping in a wetland.

Councilor Albert questioned if dog waste bags are provided at entrances. That option was discussed several times. To purchase cheap plastic is very inexpensive, but if left on the property would take 10-15 years to degrade. The biodegradable bags/dispensers are expensive.

Commissioner Rosati stated another suggestion to have been to create a lot near the entrance, but away from the trail, and populate it with dung beetles. Direct people to relocate their dog poop there (not in bags) and the beetles will do the rest. Another individual questioned if there is a study on introducing an invasive beetle species to NH climate.

A question was posed relative to whether there is any scientific evidence that dog feces leads to water contamination. Commissioner Rosati provided several sources in response.

Another question was raised relative to why the waste of other animals is not an issue when dog waste is. Commissioner Rosati responded noting the harm caused by medications dogs may be on, etc.

Chair Perry noted other animals are not consuming processed foods like domestic animals.

Commissioner Glenn commented on considering how to better communicate the law at the HHNP. Councilor Albert suggested signage. Commissioner Tenhave stated that kind of signage has been posted on the kiosk for years.

### Scouting Update

Life Scout Jack Elliott's Eagle Court of Honor will take place June 1, 2019. A statement of appreciation will be prepared to be read at the event.

### 19<sup>th</sup> Annual Seedling Giveaway

Commissioner Perkins spoke of the success of the event; approx. 80 participants. Commissioner Glenn provided information on the order in which the items ran out. Many participants were aware of the offerings in advance of the event having learned about them on Facebook and through the garden club's Facebook page. Out of the 425 seedlings, there remained 3 Cedar, 8 Black Walnut, and 8 Pussy Willow.

The Commission spoke of the generosity of Currier Orchards. A recommendation was made for biodegradable bags for future events.

## **OTHER BUSINESS**

### **1. Sub-committee Updates**

#### Grater Woods

Vice Chair Caron stated the July 9, 2019 meeting will be conducted at the Outdoor Classroom.

At its recent meeting, the Sub-committee discussed the Vernal Pool Party and trail creation for the new trail.

Wildcat Falls

Commissioner Rosati spoke of scheduling conflicts. The next meeting is scheduled for August.

**PRESENTATION OF THE MINUTES**

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*The following amendments were offered:*

- Page 2, Line 2; make “resident” plural
- Page 2, Line 46; replace “a” with “in”
- Page 3, Line 3; replace “2” with “12”
- Page 5, Lines 17 & 18; replace “paired” with “pared”
- Page 5, Line 25; insert “prior to going” ahead of “before”
- Page 5, Line 32; replace “affect” with “effect”
- Page 6, Line 14; insert “sq. ft.” following “100,000”

**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**

Commissioner Tenhave commented on the number of participants that arrived at the Seedling Giveaway prior to and at the opening of the event. He suggested the time period could be compressed to 3 hours.

Commissioner Swisher commented on having seen a hydroseeding truck in Town. He believes it to have been sucking up water out of one of the wetlands off South Baboosic. Commissioner Boisvert stated he too has witnessed that. Commissioner Swisher questioned the appropriateness. Chair Perry stated agreement that would not be an acceptable practice. Commissioner Swisher took photos, and will make Director Thompson aware.

Commissioner Swisher spoke of having participated in the New Hampshire Coverts Project, which is primarily designed for large landowners so they can manage their wood lots both to maximize timber value and wildlife value.

**ADJOURNMENT**

**MOTION BY COMMISSIONER GLENN TO ADJOURN**

**MOTION SECONDED BY VICE CHAIR CARON**

**MOTION CARRIED**

**7-0-0**

*The May 20, 2019 meeting of the Merrimack Conservation Commission was adjourned at 8:13 p.m.*

Submitted by Dawn MacMillan