

MERRIMACK CONSERVATION COMMISSION

JULY 15, 2013

**MEETING MINUTES**

A meeting of the Merrimack Conservation Commission was held on Monday, July 15, 2013 at 6:36 p.m. at the Merrimack Memorial Conference Room.

Chairman Tim Tenhave presided:

Members of the Commission Present: Matt Caron, Vice Chairman  
Ron Davies  
Thomas Lehman  
Gage Perry  
Councilor Thomas Mahon

Members of the Commission Absent: Simon Thomson  
Robert Croatti, Alternate  
Lauren Kras, Alternate

Also in Attendance: Roger Blais, President, New Hampshire Right Riders ATV Club

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Chairman Tenhave informed the viewing audience of a special meeting scheduled for 6:00 p.m. on Monday, July 22, 2013.

PUBLIC COMMENT

Roger Blais, 4 Peaslee Road, President, New Hampshire Right Riders ATV Club

Spoke of the establishment of a Stewardship Sub-committee for Grater Woods, and stated his belief it is of great importance that the Right Riders ATV Club (Club) has a voting member on the committee. He volunteered to serve in that capacity.

He stated the Club has been working on the goals of building and maintaining trails since the Horse Hill Nature Preserve Master Plan was being developed. He read into the record a statement dated August 4, 2003: "The committee recognizes that there are residents who enjoy ATV use. It is therefore additionally recommended that the appropriate Town authorities revisit this recommendation if the following occurs: 1) a State recognized ATV club is formed by Merrimack residents to work with the Merrimack Conservation Commission to evaluate all town land for suitability for ATV use." He stated the Club has complied with what the Town has requested by forming the Club and keeping it active all of these years. He remarked Grater Woods is the only piece of land in Town managed by the Merrimack Conservation Commission (MCC) that allows ATV use; therefore, it is of great importance to the Club. He stated the Club has been the most active group of all potential users for Grater Woods. Therefore, he feels the Club has earned the right to hold a voting seat on the Sub-committee.

APPOINTMENTS - None

STATUTORY/ADVISORY BUSINESS

**1. Public Hearing for the consideration of a donation of real property at 283 Continental Blvd.**

The Commission will hold a public hearing pursuant to RSA 36-A for acquisition of real property at 283 Continental Blvd, Tax Map Parcel 2B, Lot 358-1. After the public hearing, the Commission may take action to go forward with the donation/acquisition.

Chairman Tenhave displayed a map of the property in question. The donation is offered by the owner, Edna Patterson and her Daughter, Martha who are interested in the property being held in its current state as much as possible and not be developed.

Wetlands on the property make it difficult to develop if at all possible. The parcel, at one time, was much larger, but was broken up with realignment and the installation of Continental Boulevard. The parcel is located on Continental Boulevard and is directly across from where Naticook Road joins Continental Boulevard. It was noted the State of New Hampshire Department of Transportation (NH DOT) owns parcels on either side of the property as well as the adjacent triangular shaped parcel.

Commissioner Perry remarked the area is near where the outflow is from the dam. Councilor Mahon commented about a year ago the Town was invited to meet with Pennichuck Water Works regarding other parcels owned by Pennichuck along Continental Boulevard. Because of the fragility of the ecosystem in the area, there was concern with how much of the property would be potentially developable and the amount of funds expended in attempts to mitigate the runoff from Pennichuck Square and other properties in the area. He stated his understanding an arrangement has been made with an entity that will manage the properties and look to protect that entire area. Accepting the donation of this property would tie into efforts to protect the brook, which leads into one of the main water supplies. Vice Chairman Caron remarked it was the Society for the Protection of New Hampshire Forests (Society) that bought a few easements on a good many of those properties as a means of keeping the property from being developed. They are creating stewardship plans on all of the parcels.

Commissioner Lehman noted there is a cost involved in accepting the donation (no more than \$5,000). Commissioner Perry stated the cost to be associated with legal fees. The Commission, during previous discussions, agreed to expend up to \$5,000 during the donation process. Commissioner Lehman commented he does not want to get into the mindset of the Commission has money sitting around and can take on a lot of different properties. He sees this parcel as a property that cannot be developed, bordered by State owned properties on both sides, and one which has the involvement of the Society with easements on the properties to ensure development does not take place. He questioned why the Commission should expend funds to accept the donation, which increases its liability with regard to wetlands and associated issues. He suggested there to be another group that could take control of the parcel and maintain it in its current state. He is not in favor of expending funds to acquire the parcel, and questioned whether consideration of acquisition is in line with the goals of the Commission.

Commissioners were provided with a copy of the land donation agreement signed by Mrs. Patterson. The agreement identifies the parcel of land and the Town's agreement to pay legal and recording fees as well as other costs associated with the land transfer (not to exceed \$5,000). The Town will cover the property taxes on the property (\$13.00). The property value is in the area of \$1,200. It is noted there are utility, drainage, and slope easements on the parcel. Chairman Tenhave spoke of additional language that could be added regarding the potential for a conservation easement. The Warranty Deed currently speaks to the fact there are some easements on the property and its location. There are no other restrictions on the property. He questioned the will of the Commission with regard to the addition of conservation easement language into the Deed, and provided an example of language utilized previously.

Commissioner Perry spoke of the attributes of the property and a desire for conservation restrictions in perpetuity. When asked for clarification of the action of the Commission to date, Chairman Tenhave stated the Commission voted to move forward with the process of the land donation and to approve up to \$5,000 to be expended for fees, etc. Should the Commission choose to recommend acceptance of the donation, a Public Hearing would be required as well as acceptance by the Town Council.

Commissioner Lehman stated a desire to learn of the opinions of other Commissioners and to understand why the Commission would move forward with acceptance of the donation rather than allowing another entity to do so. Vice Chairman Caron stated the Society is not interested in protecting the particular parcel because it is not a forest. The property falls under the classification of wetland, which falls under the Commission's purview as the natural resource/watershed protection body in Merrimack. Commissioner Lehman suggested the property could be acquired by Pennichuck. Councilor Mahon questioned whether Pennichuck would consider acquiring the property given its current corporate status. He stated his impression the corporation is trying to get out from under the cloud the prior corporation created by developing other parcels around the edges of the watersheds. Councilor Mahon remarked he is not making statements with any knowledge; however is aware monies gained by the NHDOT through legal and legislative swapping of roads will run out in 2015, and he is of the impression there may be an interest on the part of NHDOT to divest themselves of some of those properties. There may be additional opportunities to acquire contiguous pieces to the parcel. He reiterated he was not saying anything of that nature would occur; however, given the way the finances for that department there may be seen a legislative mandate to move in that direction.

Commissioner Lehman noted the discussion is that of a parcel which is being offered for donation, which may be available to another entity in the same manner. He suggested the parcel's attributes may be attractive to Pennichuck. He added as the parcel is located in an area that is sensitive because of its proximity to the water system, any environmental impacts that may occur on the parcel would be the liability of the property owner. He

suggested there to be other entities that would benefit more from ownership of the parcel and would not develop it.

Commissioner Davies stated his agreement with the position stated by Commissioner Lehman, and remarked there are other properties to consider, and, although \$5,000 does not sound like a lot of money, it is. Commissioner Perry questioned whether it is known if the current property owners would be interested in donating the parcel to an entity other than the Town. Chairman Tenhave responded the parcel came before the Commission previously with a proposal for sale. At that time, there was no interest expressed by Pennichuck. He is of the belief the Town and Pennichuck are the only entities the property owner has discussed the parcel with.

When asked if there has been any type of wildlife assessment performed, Chairman Tenhave stated the owners have not had any assessments performed on the property. Commissioner Perry noted the parcel is open to a rather large wooded area and questioned whether the Forester should be asked to walk the property and report back. He agreed with prior comments ownership of the parcel may be more of an advantage to other entities. Commissioner Lehman remarked one of his biggest concerns is the added liability for what the Commission is trying to achieve. He reiterated his belief the property would not be developed regardless of ownership.

Chairman Tenhave stated a water parcel falls under the charge of the Commission (RSA 36-A). He stated his appreciation of the offer and the ability to incorporate language, etc. He is of the belief the parcel fits within the Commission's charge and the expenditure of a few thousand dollars is justified. He noted the Commission owns the parcel across the street from this property and easements on the parcels above it that support the sewer system. He added the water resource of that parcel is important.

Councilor Mahon suggested consideration be given to the fact if another entity were to acquire the property they may not go to the lengths the Commission could go to by way of protecting the property given the issues in the legal description. Ownership would potentially provide a higher level of protection for the property. He spoke of the ever increasing importance of having a protected water supply. He added another aspect of the consideration is that the property is being offered as a donation where it was previously offered for sale.

Commissioner Davies commented both Chairman Tenhave and Councilor Mahon make good arguments for acceptance of the donation. When asked, Chairman Tenhave stated it to have been his intent for the Commission to come to a decision on whether or not to accept the donation; however, if not prepared to do so at this time, a decision could be postponed. Councilor Mahon noted the Town Council would not meet again until the middle of August.

When asked if Pennichuck would likely maintain the land at the same level as the Commission could, Councilor Mahon spoke of public pressures that could be placed on the corporation, which could be the reason behind their transfer of properties; to gain a higher level of protected status. As a corporation regulated by the Public Utilities Commission, the corporation has to operate under different criteria. Vice Chairman Caron commented Pennichuck is actively looking for people to purchase easements and manage their properties so that they no longer have the liability. He noted easements on Pennichuck properties have been purchased by entities other than the Society as well. Councilor Mahon reiterated it is his belief the corporation's desire is to provide protections for the watershed to a higher level than they could as a corporation.

When asked if the area is a no salt area, Councilor Mahon stated it to be a low salt area. He remarked there have been whisperings the State may, as soon as they repave it, turn around and give it to the Town. However, he has been unable to receive written confirmation of such a desire. Commissioner Lehman remarked if Pennichuck has stated publicly that they have no interest and if that position has not changed, he would be agreeable to proceeding with the acceptance of the donation.

Chairman Tenhave reiterated that is what he was told. He is unaware of how publicly the statement was made. Commissioner Lehman remarked he would rather see Pennichuck in control of the parcel as it supplies their watershed, which they are responsible for.

**Chairman Tenhave declared the Public Hearing open at 7:21 p.m.**

*There were no members of the public in attendance.*

**Chairman Tenhave declared the Public Hearing closed at 7:21 p.m.**

*It was the general consensus of the Commission to amend the proposed language by eliminating #8 relative to hunting restrictions.*

**MOTION BY COUNCILOR MAHON THAT THE COMMISSION COMPLETE THE LAND DONATION AND MOVE FROWARD WITH PRESENTING IT TO THE TOWN COUNCIL AND THAT THE LEGAL CONSERVATION LANGUAGE BE INCLUDED WITH THE DEED UPON CLOSING  
MOTION SECONDED BY COMMISSIONER CARON  
MOTION CARRIED  
6/0/0**

#### OLD BUSINESS

##### **1. Beaver Activity at different Locations**

Commission to review current beaver activity at different locations.

Chairman Tenhave noted the Commission has discussed three areas of beaver activity, one of which is private property on Joey Road. The property owner most impacted by the increasing water level has taken the route of active control of the beaver dams in that area. A family member has performed manual removal of sections of the dam to lower the levels. The Town is actively managing around Town culverts going under the roadway. Property owners in the area are aware of who to contact should issues arise.

Commissioner Perry spoke of a set of plans provided to him by Adam Jacobs, Operations Manager, Public Works Department (PWD). The plans were generated by a local college where an in depth study of a device to defeat beavers and keep water levels at a very specific height was conducted. He offered to provide the information to the homeowner.

Commissioner Perry informed the Commission he has had conversations with Mr. Jacobs towards addressing the issues behind Madison Lane. Mr. Jacobs has arranged for someone to visit the area weekly and take down the impoundment. The water level is going up and down, which is having an impact on the septic systems and lawns in the area of Madison Lane. He visited the area prior to the meeting and found the water level to be down.

The beaver tubes and box on the Powderhouse dam are jammed. Mr. Jacobs is looking to make the box larger; however, with every rain the water is going over the top of the dam. There is 3-4' of head over the primary drain. Commissioner Perry stated the need for the Commission to determine a level for the Public Works Department to manage to. Chairman Tenhave agreed the need exists for the Commission to determine the level, and questioned what additional information Commissioners would require to reach such a decision.

Commissioner Lehman spoke of the engineering studies that were done in conjunction with the development constructed in the late '90s, and listed the water height, and suggested that assessment be adhered to. Commissioner Davies questioned whether an engineer should be requested to reassess the area and its current conditions. Commissioner Lehman suggested the Commission verify the level that was quoted when the development was constructed and see how it relates to current conditions. It was noted Mr. Jacobs contacted the Dam Bureau and received a vague answer; the current structure could support a failure of the beaver dam (as it was situated when the opinion was provided). Commissioner Lehman suggested an engineer be hired to address questions regarding the current situation. Commissioner Perry remarked someone is going to have to figure out what the manmade impoundment could support as that will determine how high the dam could be.

Chairman Tenhave stated he would look into the appropriate type of engineer and likely have to put out an RFP. Current policy requires quotes to be received for any expenditure in excess of \$1,000 and for the RFP process to be followed for expenditures in excess of \$10,000. Commissioner Perry agreed to contact Kyle Fox, Town Engineer, to seek direction. Chairman Tenhave suggested a decision could be made regarding next steps at the next regularly scheduled meeting.

##### **2. Commission Finances – Vision, Plan...**

Commission to continue this discussion. Specific plans and timelines to continue.

- *Strategically pursue land acquisition for the protection of open space and natural resources.*

Commissioners Lehman and Caron were requested to work together to develop guidelines to be used when reviewing properties for potential purchase. Commissioner Lehman recommended consideration be given to acquiring the services of a broker who specializes in conservation purchases. He has requested names of individuals who provide those types of services from the New Hampshire Association of Conservation Commissions. He spoke of the intricacies associated with land acquisition and the inexperience of the current membership with the process. When asked whether the Town has someone on staff who could guide the process, the Town Manager did not indicate that to be the case.

Commissioner Lehman stated a desire to discuss, at the next regular meeting of the Commission, both criteria and specific properties and to run a few properties through the guidelines as a test. Chairman Tenhave stated discussion of the criteria and the potential to hire a broker should take place in public session whereas discussion of purchase strategies, etc. should take place in non-public session.

After a brief discussion the Commission determined the agenda for the special meeting on July 22, 2013 be amended to include discussion of the criteria. Commissioner Lehman committed to providing the draft list of criteria to the Chairman for inclusion in the Commission's information packet for the special meeting.

- *Maintain current and future conservation properties to:*
  - *expand recreational opportunities*
  - *protect and enhance wildlife habitats*
  - *protect and enhance water resources*
  - *ensure proper forest stewardship*

The Commission approved the creation of a form and process to be utilized by subcommittees in requesting financial assistance from the Commission.

At a prior meeting, Commissioner Lehman volunteered to compare the list of properties for which stewardship plans have been created against the Assessor's list of all property owned by the Town to ensure nothing has been missed. When asked if the list would be available for review at the August meeting, he stated the need for additional time. He intends to begin with an assessment of the American Tree Farm (ATF) properties as they require stewardship plans. He noted the need to meet with the Forester to gain a list of what properties are officially in the ATF. Chairman Tenhave committed to contacting the Forester.

Commissioner Lehman spoke of prior discussion around the creation of a single property inventory list inclusive of Deed language regarding the Commission's responsibilities to each property under its purview. He informed the commission time is not available to him to take on the task, and suggested consideration be given to hiring an individual to compile all existing property lists into the single inventory list. Chairman Tenhave requested Commissioner Lehman provide him with a detailed task description and noted he would ascertain the availability of staff to provide assistance.

- *Update plans, maps, and files to have a consistent and comprehensive documentation set for all properties.*

Chairman Tenhave stated his belief the Commission should come to a decision as to a minimum set of documentation desired. Once that is completed an assessment can be made as to the extent of that effort. Commissioner Davies agreed to compose a list to be considered as the minimum consistent comprehensive documentation set for the properties. The information will be in draft form and provided in advance of the September meeting.

- *Expand community education programs to include getting the student population outdoors.*

Commissioner Perry commented on the difficulty coordinating efforts while school is not in session. He noted he has begun work with a few teachers in the High School's biology department who wish to become involved in water testing, etc. He will continue working with the Science department in the middle school.

- *Maximize the prudent use of technologies to educate and expand information opportunities about our conservation properties.*

The request was made that responses to e-mail communications be copied to all members of the Commission thereby keeping members apprised and providing confirmation a response has been given.

Commissioner Perry spoke of prior discussion of use of wildlife cameras. With a good many animal sightings occurring around Town he questioned the interest of the Commission in utilizing such cameras. Information on sightings could be posted to the website. Councilor Mahon spoke of unintended consequences of utilizing such technologies, e.g., invasion of privacy, etc. Commissioner Lehman was acceptable to the idea of obtaining photos from the citizenry, but was not in favor of the Commission expending funds to purchase and maintain cameras. Chairman Tenhave stated a request could be put out on the website seeking photos. It was suggested students could become involved in such an activity.

### **3. Grater Woods Stewardship Plan and follow-on activities**

Commission to discuss what is next with the Stewardship Plan as it comes back from the Town Council and to discuss how it wants to implement the Plan. Discussion of a Charge for establishing a Stewardship Sub-committee will be included.

Chairman Tenhave informed the viewing audience of the Town Council's acceptance of the Grater Woods Stewardship Plan (Plan) as presented. He stated a desire to discuss the charge for a Grater Woods Forest Sub-committee as well as the direction to proceed in with regard to the five (5) items outlined in the Plan for initial implementation.

A copy of the charge used for the Wildcat Falls Sub-committee was provided as a starting point for discussion. Vice Chairman Caron stated the request would be for five (5) full-time members and three (3) alternate members. He stated his agreement with comments made by Mr. Blais relative to members being representative of those who utilize the property. Commissioner Perry remarked, to date, there have been three individuals who have volunteered. Chairman Tenhave informed the Commission of his receipt of e-mails requesting consideration. Vice Chairman Caron suggested those who have expressed interest be invited to participate in an interview process at the August meeting, and that the sub-committee be formed at that time. Chairman Tenhave stated the desire to first agree to the charge of the sub-committee. Commissioner Lehman stated his agreement the committee should be comprised of members of the major user groups, and suggested those groups to be hikers, mountain bikers, OHRV, and hunters. He recommended a representative from each of those groups serve as full members, that five may not be the correct number of full members, and that the subcommittee not be so formal that individual(s) wishing to participate periodically feel as though they cannot. He remarked if such an informal forum gets out of hand the core members can manage the meeting.

Vice Chairman Caron remarked it falls upon the Chairman to be the facilitator of the meeting, and reminded the Commission of instances where Chairman Tenhave has allowed members of the public to actively participate in meetings. He stated his belief the sub-committee would operate in the same way. He stated his opinion 5 full members is appropriate and three alternate members would ensure a full complement is present for all discussions/votes. Commissioner Lehman suggested the need for alternate members to also be representative of each of the major user groups so that each group is ensured equal representation at all times.

Councilor Mahon stated the proposed language requires revision. He remarked what was being suggested as the way to fill the positions is not how the process typically works, e.g., if trying to ensure every constituency is represented the number of members will increase far beyond five. He also noted the statement under Purpose, Mission & Charge which reads "Implement and/or oversee any improvements or alterations made to the conservation land", which seems to contradict a statement under the area of Charge which reads "Final approval of all recommended activities, alterations, improvements, plans, ordinances, or policy changes, additions or deletions rests with the Conservation Commission." He suggested the language in the first statement include, at the end, the words "as directed by the Conservation Commission". Commissioner Lehman questioned if the charge could simply be to "Administer the Grater Woods Stewardship Plan". Councilor Mahon responded it could be; however, there could be unintended consequences as it is the Commission who has the responsibility for expenditure of funds. He suggested, without clarity, there will be those who assume more authority than was intended or be limited by a lack of direction.

Chairman Tenhave opened the floor to recommendations for amendments. Commissioner Lehman stated a desire to streamline the language. He noted language that states an alternate member has to be a Merrimack School District representative. Chairman Caron clarified the language states a representative of the school district should be given priority consideration. Although the school district may choose not to be represented, he

is of the opinion that group should be given priority consideration as they are neighbors to the property. Commissioner Lehman stated his belief such individuals should not be given voting power, which would occur if an alternate had to fill in for a full member.

Chairman Tenhave stated his personal opinion singling out specific user groups would be the wrong approach. He suggested five residents of the Town of Merrimack be sought. If those individuals happen to be a member of one of the major user groups that is simply the way it is. He recommended the discussion on membership be postponed until agreement is reached on the charge. He questioned the will of the Commission with regard to continuing the discussion at the August or a September meeting. Commissioner Lehman stated his desire to postpone the discussion until September.

When asked if there are other sub-committees formed by the Town with proven boilerplate language that could be looked to, Councilor Mahon suggested a review of the Economic Development Citizen Advisory Committee Charge or that of the Town Center Committee. Commissioner Perry noted what was presented is pretty close to that which was approved for the Wildcat Falls Sub-committee, which the Commission was agreeable to. He stated a desire for a template that can be followed, and remarked in the past sub-committees have been formed with the first five volunteers. Councilor Mahon commented that may be where the Commission has to end up. Vice Chairman Caron stated a desire to come to resolution so that a sub-committee could be formed in the August timeframe. Commissioner Lehman noted the items identified in the Plan can continue to move forward in the absence of a sub-committee; they can be done by the Commission. Councilor Mahon stated his opinion some language suggestions could be provided in time for the September meeting.

***It was the consensus of the Commission to postpone discussion on the charge of the sub-committee until the August meeting. Recommendations should be forwarded to Vice Chairman Caron and Councilor Mahon who will ensure all members have the opportunity to view all input provided. A draft will be forwarded no later than August 5<sup>th</sup>.***

It was noted information not available in time to be incorporated in the draft could be presented at the August 5<sup>th</sup> meeting and considered at that time.

Chairman Tenhave brought forward the discussion of the five priority infrastructure items to be addressed; the Red Maple Trail, which will be discussed at the July 22<sup>nd</sup> meeting, Gateway Hill and the two other washout areas on the trails, the bridge by Beebe Lane, and the gates on South Grater Road.

Commissioner Lehman stated his understanding of the need to avoid back and forth communications via e-mail; however, stated he would find it helpful if the Chairman were to make Commissioners aware of potential discussion items in advance of meetings. Chairman Tenhave acknowledged not all areas of discussion were called out on the agenda. Commissioner Lehman suggested the agenda could be very general if possible discussion topics were relayed via e-mail. He noted members can provide information to the group, as a whole, relative to his/her position on a matter. What cannot occur is back and forth discussion of the content. Chairman Tenhave reminded members information provided becomes public. Commissioner Lehman stated he would make a public announcement of information contained in an e-mail communication during a public meeting.

Commissioner Perry informed the Commission he is in receipt of an original quote from a local contractor to address the stone and washout on Gateway Hill, and offered to work with the contractor to prepare a presentation on what is being proposed and how it would work.

Commissioner Davies stated his understanding the bridge project would become an Eagle Scout project. Vice Chairman Caron noted the scout is ready to proceed once the project is approved by the Eagle Scout Board.

The recommendation for the wet area at the bottom of Gateway Hill was that of a culvert. Commissioner Lehman noted the Plan speaks to professional planning and the potential for contracted services being required to address the issue. It was suggested further discussion be conducted at the next meeting where the opinion of the Forester could be gained.

***Chairman Tenhave stated the five items, their current status, and direction will be discussed at the August meeting.***

NEW BUSINESS

**1. Gate and activity at Mitchel Woods**

Commission to review and possibly approve a quote to replace the gate at Mitchell Woods and discuss other activity that is happening on the property.

Chairman Tenhave informed the Commission Mr. Jacobs has provided a quote for replacement of the gate at Mitchell Woods. He is also in receipt of an e-mail from the Merrimack Village District (MVD) requesting the opportunity to participate in the September meeting to discuss Mitchell Woods, testing they have performed, and their thoughts for the property.

***The Commission agreed to postpone action on the item until after meeting with the MVD.***

**2. Invoices to be processed**

Commission will discuss various invoices that have come to the Commission for approval for payment. The current set of invoices include:

- Payment for 12 months of web hosting for the [www.merrimackoutdoors.org](http://www.merrimackoutdoors.org) website.

An invoice has been received from JR Computer Associates in the amount of \$120.00. JR Computer Associates is the company that hosts the Commission's website. The cost for hosting the website on their servers for the following year has not increased over last year's cost (\$10/month for 12 months).

**MOTION BY COMMISSIONER PERRY TO AUTHORIZE PAYMENT OF THE INVOICE FROM JR COMPUTER ASSOCIATES IN THE TOTAL AMOUNT OF ONE HUNDRED TWENTY DOLLARS (\$120.00). FUNDS ARE AVAILABLE IN THE CONSERVATION FUND (FUND 51)**

**MOTION SECONDED BY COMMISSIONER CARON**

**MOTION CARRIED**

**6/0/0**

- Payment for the Lay Lake Monitoring done by the UNH Cooperative Extension.

Chairman Tenhave stated the Commission budgeted \$200 for this service. The invoice came in at \$1,688. Although historically budgeted for \$200.00, actual invoices have been above that amount for the past several years, which was not clear at the time the Commission last discussed the matter. During its discussion of the last invoice, the Commission came to the decision to submit payment in the amount of \$200 and request a representative attend a meeting to provide an explanation of the increased cost. Although attempts were made to have a representative attend either the November or December meeting, they were not fruitful. Having not heard from the group after that time, an assumption was made the \$200 payment was made. He has since learned the Community Development Department paid the entire invoice (\$1,688).

A request has been made that the Community Development Department not pay the current invoice. Chairman Tenhave noted the FY13 unexpended fund balance will roll over to Fund 51. He questioned the will of the Commission.

**MOTION BY COMMISSIONER LEHMAN TO AUTHORIZE PAYMENT OF TWO HUNDRED DOLLARS (\$200.00) TO THE UNH COOPERATIVE EXTENSION FOR LAY LAKE MONITORING AND THAT CONSIDERATION OF PAYMENT OF THE REMAINING INVOICE AMOUNT WOULD ONLY TAKE PLACE AFTER AN EXPLANATION OF SERVICES IS PROVIDED DURING A PUBLIC MEETING OF THE COMMISSION**

**MOTION SECONDED BY COMMISSIONER PERRY**

ON THE QUESTION

Commissioner Perry questioned how the Commission arrived at the \$200 figure for budgeting purposes. Councilor Mahon stated his recollection the amount has been set at that figure for some time and an increase has not been requested. When asked if the service is required, Councilor Mahon stated it is not. He remarked it is something that has been going on for some 20 years at least at Naticook where attempts are made to maintain a

record of the water quality. In order to keep the costs to a minimum residents take the water samples and send them to UNH for testing. Commissioner Perry stated a desire to learn more about the process.

**MOTION CARRIED**

**6/0/0**

**3. Annual meeting of the Commission**

Commission will hold its annual meeting in accordance with its By-Laws Article III.E.

During the annual meeting, the Commission will take up any proposed changes to its By-Laws and will hold an election for the offices of Chairperson and Vice-Chairperson.

Commissioners are encouraged to bring any proposed changes to the By-Laws to this meeting for action by the Commission.

Bylaws

Commissioner Lehman suggested the Bylaws be amended in Article VII, Section B to read: "If a Full-time or Alternate member misses three (3) consecutive meetings this shall be evidence of inability to commit to the designated position. The Commission may vote to recommend to the Town Council that the member be removed from the Commission.

When asked if the intent was that a member missing three consecutive meetings, with notice, would be subject to removal, Commissioner Lehman stated such an occurrence would result in a vote being taken. The individual would have the opportunity to provide an explanation for his/her absences. If the majority of the Commission were of the belief the reason for the absence was valid the member would not be voted out.

Councilor Mahon noted, under normal meeting conditions, three consecutive meetings would only be a timespan of a month and a half. He spoke of language in the Bylaws of other committees where, with the Permission of the Chair, members can be absent for an extended period. He questioned whether the Commission has experienced a problem with non-attendance. Commissioner Lehman stated his opinion there is a problem. Chairman Tenhave questioned if Commissioner Lehman wished to request a vote be included on a future agenda. Commissioner Lehman spoke of the importance of attendance at meetings and the need for members to have a thorough understanding of matters being voted upon. Councilor Mahon questioned whether that situation has occurred. Chairman Tenhave noted the Commission would make a recommendation to the Town Council, which is the body that has the authority to remove a member.

**MOTION BY COMMISSIONER LEHMAN TO AMEND THE BYLAWS IN ARTICLE VII, SECTION B BY REPLACING THE WORDS "FIVE (5)" WITH THE WORDS "THREE (3)", DELETING THE WORDS "WITHOUT NOTICE" AND REPLACING THE WORD "NON-INTEREST" WITH THE WORDS "INABILITY TO PERFORM THE DUTIES OF THE POSITION"**

***The motion did not receive a second.***

Chairman Tenhave stated he was not supportive of the motion as he is of the opinion the entire paragraph should be removed given the Commission does not have the authority to appoint/remove members.

**MOTION BY COMMISSIONER LEHMAN TO AMEND THE BYLAWS BY DELETING ARTICLE VII, SECTION B IN ITS ENTIRETY**

**MOTION SECONDED BY COMMISSIONER TENHAVE**

ON THE QUESTION

Vice Chairman Caron commented removing the language takes away some control of the Commission, and he does not believe inclusion of the language is detrimental. Councilor Mahon commented if before the Council requesting removal of a member, the Council would expect to be provided with reasoning for such a request. He suggested if a member had contacted the Chair and made him/her aware of the reason for the absence, he is of the belief the Council would be reluctant to remove the individual. Commissioner Lehman stated his preference would be, as an individual member, to contact the Town Council with a concern and allow the public discussion to take place at that level. Commissioner Perry stated his opposition to the motion, and his opinion inclusion of the language identifies the responsibility of attendance and possible consequences for lack of attendance. Commissioner Lehman suggested if the language is to remain, the Commission should take action when such issues arise. Commissioner Perry agreed.

**MOTION FAILED**

**1/4/1**

*Commissioners Caron, Davies, Perry and Councilor Mahon voted in opposition. Commissioner Lehman abstained.*

Chairman Tenhave remarked if a member wishes to bring forth for consideration action on Article VII B, he/she should make the Chairman aware so that the item could be placed on a future agenda. Councilor Mahon suggested language be included in the Bylaws that would allow for amendments to take place at a time other than the Annual Meeting. Chairman Tenhave stated his opinion lack of such language does not preclude the action from taking place.

Elections

Chairman Tenhave called for nominations for Chairman of the Merrimack Conservation Commission for the 2013-2014 term.

**COMMISSIONER CARON NOMINATED COMMISSIONER TENHAVE**

Chairman Tenhave stated he would accept the nomination for one more year. Vice Chairman Caron and Commissioner Lehman stated their pleasure with the performance of Commissioner Tenhave in his position as Chairman.

**VOTE ON ELECTION OF TIM TENHAVE TO THE POSITION OF CHAIRMAN OF THE MERRIMACK CONSERVATION COMMISSION FOR THE 2013-2014 TERM  
MOTION CARRIED**

**5/0/1**

*Commissioner Tenhave abstained*

Chairman Tenhave called for nominations for Vice-Chairman of the Merrimack Conservation Commission for the 2013-2014 term.

**COMMISSIONER PERRY NOMINATED COMMISSIONER CARON**

*Vice Chairman Caron stated his willingness to accept the nomination.*

**VOTE ON ELECTION OF MATT CARON TO THE POSITION OF VICE CHAIRMAN OF THE MERRIMACK CONSERVATION COMMISSION FOR THE 2013-2014 TERM  
MOTION CARRIED**

**5/0/1**

*Commissioner Caron abstained*

OTHER BUSINESS

- Holding a special meeting later in July for accepting a Bid for the Red Maple Trail project.

Chairman Tenhave stated a special meeting would be conducted on Monday, July 22, 2013. The Commission will also discuss the RFP for a beaver trapper and related services.

He informed the Commission of his receipt of an e-mail from a Cub Scout Den Leader seeking a project to perform on one of the properties for about an hour and a half on Tuesday, July 30, 2013. As no members of the Commission stated an availability to work with the group during daytime hours, the decision was made to offer the opportunity to the Horse Hill Nature Preserve Sub-committee to see if they could support the request.

Councilor Mahon informed the Commission the Rotary would be before the Town Council for acceptance of the Pavilion, and questioned whether the Commission's bulletin board has been installed. Vice Chairman Caron commented the pavilion appears to be very different than what was presented. Chairman Tenhave stated his impression the structure is presently in a pentagon shape without walls or a kiosk. He remarked the structure is not as complete as he had anticipated it would be at the point of acceptance. Councilor Mahon remarked he had questioned whether acceptance was required given the project has already been approved. Chairman Tenhave

questioned whether the Council had ever accepted the Commission's donation and if that was required. Councilor Mahon was unsure.

Councilor Mahon informed the Commission an ad has been created for the position of Director of Parks & Recreation. He noted the desire to gain a broader range of programming for all age groups in the community and a higher reliance on a revolving recreation fund, establishment of which would have to be approved by the voters.

Chairman Tenhave stated the coverts program conducted by the UNH Cooperative Extension is scheduled for September 18<sup>th</sup> through the 21<sup>st</sup> at the Barbara C. Harris Conference Center in Greenfield, NH. The application deadline is fast approaching. Vice Chairman Caron and Commissioner Perry stated an interest in attending.

PRESENTATION OF THE MINUTES

Merrimack Conservation Commission. . . . . May 20, 2013

**MOTION BY COMMISSIONER PERRY TO ACCEPT AS WRITTEN  
MOTION SECONDED BY COMMISSIONER LEHMAN  
MOTION CARRIED**

**3/0/3**

*Commissioners Lehman and Davies and Councilor Mahon Abstained*

Merrimack Conservation Commission. . . . . June 3, 2013

*The following amendments were offered:*

Page 1, Line 51; replace the word "Marion" with the word "Madison"

Page 1, Lines 46 and 56; replace the word "Lisa" with the word "Lesa"

Page 1, second to last paragraph; replace the first two sentences with the following language: "He commented, after a recent storm, the water level in the culvert that comes out of Lesa Drive was up over a foot higher than he has ever seen if before. Commissioner Perry observed that something must have occurred overnight, and it has since receded."

Page 2, last paragraph; amend the 4<sup>th</sup> sentence to read: "Chairman Tenhave spoke of he and Commissioner Perry visiting the site and cleaning the culverts."

Page 4, Line 40; add the word "dam" between the words "manmade" and "is lower"

**MOTION BY COMMISSIONER CARON TO ACCEPT AS AMENDED  
MOTION SECONDED BY COMMISSIONER PERRY  
MOTION CARRIED**

**4/0/2**

*Commissioner Davies and Councilor Mahon Abstained*

Merrimack Conservation Commission. . . . . June 17, 2013

**MOTION BY COMMISSIONER LEHMAN TO TABLE  
MOTION SECONDED BY COUNCILOR MAHON  
MOTION CARRIED**

**6/0/0**

PUBLIC COMMENT - None

COMMISSIONER COMMENTS

Vice Chairman Caron informed the Commission of his attendance at a recent meeting of the Wildcat Falls Sub-committee during which a discussion took place regarding fencing. The sub-committee is questioning when the fencing will be completed. Chairman Tenhave stated the information received from Mr. Jacobs is that the project will be placed on the schedule when possible.

Vice Chairman Caron stated the sub-committee is seeking funding to construct a trail and a bridge. He spoke of completing a draft of the form to request funding in time for consideration at the next meeting. Commissioner Perry suggested the draft be sent out via e-mail for review in advance of the meeting.

ADJOURNMENT

**MOTION BY COUNCILOR MAHON TO ADJOURN  
MOTION SECONDED BY COMMISSIONER LEHMAN  
MOTION CARRIED  
6/0/0**

*The July 15, 2013 meeting of the Merrimack Conservation Commission was adjourned at 9:38 p.m.*

Submitted by Dawn MacMillan