



## Town of Merrimack, New Hampshire

Community Development Department

603 424-3531

6 Baboosic Lake Road

Fax 603 424-1408

Town Hall - Lower level - East Wing

[www.merrimacknh.gov](http://www.merrimacknh.gov)

Planning - Zoning - Economic Development - Conservation

### MERRIMACK CONSERVATION COMMISSION SEPTEMBER 21, 2020 MEETING MINUTES

A meeting of the Merrimack Conservation Commission was held on Monday, September 21, 2020 at 6:35 p.m.

Steven Perkins, Chair, presided:

Members of the Commission Participating: Gina Rosati, Secretary  
Michael Boisvert  
Cynthia Glenn  
Gage Perry  
Michael Swisher  
Michael Drouin, Alternate Member  
Tim Tenhave, Alternate Member  
Councilor Peter Albert

Members of the Commission Absent: Eric Starr, Alternate Member

Also Participating: Christopher Ross, 401 Daniel Webster Highway  
Joel Sikkila, Synergy Self Storage, 403 Daniel Webster Highway  
Nathan Chamberlin, Sr. Civil Eng., Fieldstone Land Consultants

---

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: 970 7440 4947). 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.

#### **Chair Perkins**

Stated he was traveling for business, attendance in person was not reasonably practical given his location, 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 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 Glenn**

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 Swisher**

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.

**Councilor Albert**

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.

**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.

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

**PUBLIC COMMENT** - None

**PUBLIC HEARINGS** - None

**APPOINTMENTS** - None

## **STATUTORY/ADVISORY BUSINESS**

- 1. Christopher Ross, LLC (applicant/owner)** - Review for recommendation to the Planning Board for the conversion of current retail space into 12 multi-family residential units including building additions totaling approximately 848 square feet. The parcel is located at 401 Daniel Webster Highway in the C-1 (Limited Commercial), Aquifer Conservation and Elderly Housing Overlay Districts. Tax Map 4D-3, Lot 083.

Christopher Ross, (applicant/owner), stated the property (run down red barn) was purchased in 2002 with the desire to reinvent the property. It was rehabbed into a retail building, and has serviced many businesses. The property had been a source of great pride. The amount of use it has received has caused it to deteriorate back to the state it was in when originally purchased.

Having had the opportunity to keep retail in place, he monitored the site noticing the amount of issues related to parking. Synergy Self Storage requires about 4-5 parking spaces. When you mix in all of the uses, it turns into a backlog of vehicles. Vehicles are parking on the side of the driveway, which upsets Community Development and the Fire Department as they don't want vehicle traffic on the driveway. Also noticed has been cars backed up on D.W. Highway during peak times for the businesses.

He and Joel Sikkila have run Synergy Storage for about 7 years and have noticed a lot of their customers are looking for a short term property to move into while in transition, e.g., home sales. There is an abundance of uses where individuals are looking for a 1-11 month lease, and most places require a one-year lease. They came up with the idea of stripping the building inside and out, and converting it into 12 small short-term apartments, and connecting that building to Synergy, and its video cameras, software, etc., to provide a solution for their customers.

They would be able to add on a few small additions (not for additional space); addressing what should have been done architecturally. There are two farmer porches on the front of the building with storefront glass. The right way to do that is to connect the two porches on the side and wrap it around the south side, where all of the utilities are located, and hug the barn. That is the addition being proposed. The end result will be a building with a new skin, roof, windows, trim, siding, etc. The building would be maintained (in and out) by Synergy's maintenance personnel. That would eliminate heavy foot traffic and result in ensuring the building is maintained in a more protective state.

Commissioner Tenhave questioned if the roof line would be changed (beyond porches). Joel Sikkila responded what is seen from the road will essentially remain the same. On the back side of the building there is an existing shed roof that will be converted into a gable roof. Asked how water is handled currently, and if it would change with the change of use, he stated any runoff is collected in traditional rain gutters and goes into the existing water treatment system. There would be no change. The addition on the side of the building is 8' in length and is to cover the unsightly view seen when coming north on D.W. Highway.

Mr. Ross added when traveling north on Route 3, the view of that side is unsightly; large telephone pole in the middle of the lawn. The desire is to move that closer to the street. The gutters drain into PVC pipes that plug into the drainage system. Asked if the amount of impervious surface would be altered, Mr. Sikkila stated the three small additions include 2 small additions on the north end of the building and a longer one on the south end. The two on the north end would be on top of an existing concrete surface (no additional impervious) and a slight change on the south end where that addition is. However, on the east side of the building there is an existing sidewalk and playground that will be removed. The net result would be an increase to pervious.

Commissioner Tenhave questioned if the residents would be parking in the lower lot near the Synergy building,

and was informed that would be the case.

Mr. Ross commented when everything was in operation, every parking space on the property was utilized as well as the sides of the driveway, etc. With the proposal, that situation is resolved, and more than sufficient parking would be available. The waivers that are in place are no longer needed.

Commissioner Perry noted reference on the plan for an Alteration of Terrain (AoT) permit. Mr. Ross stated his belief that was left over from a plan used for work being done on the back side of the Synergy project. The engineers used the same dataset. That mark should be removed as it does not apply to this particular project. The parking lot will be left as is.

Chair Perkins questioned how snow removal is addressed, and was informed O'Keefe Landscaping services the site (for the past 10 years). Mr. Ross stated he requires the entire site to be cleared. With every snow storm, a loader comes onsite and removes the snow off the pavement.

Asked how trash removal is addressed, he stated there is an 8 yard dumpster onsite. That will likely be maintained onsite. Asked about plantings, Mr. Ross stated there to be grass and green onsite. He would prefer to construct a planter that wraps around the new addition and allow a family member who is a lifelong gardener by hobby to do what he does best; annuals and perennials close to the building. Commissioner Perry noted the need to be cautious of invasive species.

***Chair Perkins will notify the Planning Board that the project came before the Commission, and that the plan was found to be acceptable.***

**2. John Flatley Company (applicant/owner)** - Review for recommendation to the Planning Board for a Site Plan to construct 100,000 square feet of research & development/warehouse in 3 proposed buildings and associated site improvements, per the requirements of the Flatley Mixed Use Conditional Use Permit. The parcel is located at 685 Daniel Webster Highway in the I-1 (Industrial) and Wellhead Protection Area. Tax Map 6E, Map 003-04.

Nathan Chamberlin, Senior Civil Engineer, Fieldstone Land Consultants, remarked Flatley has been working with the Town for a number of years with regard to the Conditional Use Permit (CUP). The apartments have already been constructed, and the project is moving forward with the industrial portion.

The industrial use is referred to as flex buildings (incubator space for small startup companies); open for both warehouse and light industrial uses. As part of the CUP, there is a proposed driveway opening onto D.W. Highway opposite the Webster Green driveway. Also proposed is an entrance onto the Saint-Gobain driveway. Flatley owns all other abutting property to the project. The parcel is approx. 45 acres (odd shaped). The project is on the front portion of the property along D.W. Highway. There are 3 buildings with a total square footage of 100,000 sq. ft. There will be loading docks in the back. The southerly building closer to the apartments, will have loading docks as will the central building. The long narrow building on the northern end will be drive-in loading in the back (at grade).

They met early on with NHDES. The site has been contaminated by Saint-Gobain. NHDES has taken any kind of infiltration off the table as they do not want to wash the pollutants that are in this soil downstream. They have directed them to utilize a filter. A large stormwater filter is proposed in the lower corner near the pond. All stormwater is collected in a closed drainage system and routed to the large sub-surface filter. NHDES also directed them not to analyze predevelopment runoff due to the proximity to the river; just do the post development and ensure it meets their requirements for a sub-surface filter (has been done and meets all

requirements).

The system has a large storage component; all storms can be stored in and released to the river. Everything runs through the filter and then releases to the pond (old fish hatchery). At the outfall, is a large riprap plunge pool. NHDES wanted it submerged although they did not want to take that approach. To avoid the need for wetland permitting, they kept it out of the wetland and put a large plunge pool (elevation of the water) so that it will discharge to the pond without causing any erosion.

The plan details future parking. They have met the requirements for warehouse parking, with some excess. If they have to go to the light industrial, they have 56 future spaces to get up to the required threshold.

Total disturbance for the project is just under 500,000 sq. ft. Total area of proposed additional impervious is 7.2 acres. The site is ideal for some kind of infiltration Best Management Practices (BMPs) or porous pavement. Unfortunately, they cannot utilize BMPs on this site.

Commissioner Perry asked, if not permitted to have onsite drainage, what will be done with regard to snow removal. Mr. Chamberlin responded there are several snow storage areas throughout the site (edge of parking areas). They are not doing anything for drainage; everything is collected in a closed drainage system, and routed to a sand filter in the lower southeast corner.

Asked if NHDES has commented on snow storage onsite, Mr. Chamberlin stated they have not; typically that is not a concern. The system has been designed for the 50 and 100-year storm. Asked if the parking areas, roadways, etc. have drainage into them and then piped to the treatment area or if it sheet flows across the property, Mr. Chamberlin stated there to be a closed drainage system and several catch basins. They have created low points so that runoff can drain to the low point, in the catch basin, and then piped over to that location. Asked if that includes all roof runoff, he stated all roof runoff is collected in the closed drainage system (have roof leaders piped into the system).

The first building (south side) adjacent to the pond; because of grades, is stepped so each pod (2 buildings per pod) steps up a foot. Along the front, it all flows down to the south and is then routed back to the filter. It gradually goes with the high end up towards the Saint-Gobain driveway. The closed drainage system has been designed to meet the Town's standards.

Councilor Albert questioned what would be used for snow and ice mitigation, and was informed no ice melt shall be used other than under extreme conditions, and for safety purposes. Councilor Albert questioned if he was aware that the Merrimack Village District is monitoring and does not want salt usage on sites. Mr. Chamberlin stated they are and have a note on the plan speaking to the requirement of a Green SnowPro Certified applicator.

Asked what occurs with materials excavated during the construction process, Mr. Chamberlin stated they would have to do a detailed plan to store the material. They are in the process of working that out with NHDES. They will have to place containment around the earth piles. Asked if being proposed is that there will be earth piles that will remain after the site has been built out, he stated that is not the plan. Asked what will happen with the material, he stated it would be stockpiled onsite until all of the cuts and fills are completed. After that something will have to be done with it. Asked what that would be, he indicated they have not gotten into the details in regard to how much excess material there will be.



Commissioner Tenhave suggested a concern be raised with the Planning Board regarding material leaving the site and where it would be headed as well as material stored on the site; how do we know it is being contained in a manner that won't further propagate any issues with PFOA, PFCs, etc.

Councilor Albert commented when the condos. were going in, there was a lot of discussion, but not a lot of transparency on how the topsoil was moved/stored. There was a lot of consternation with the Town Council as well as many members of the community. It sounds as if there is no plan in place and everything seems fairly ambiguous. He is starting to think we may be faced with the same issue as was the case with the apartments.

Mr. Chamberlin remarked when the apartments were approved this whole PFOA thing was not known and not a concern. It happened half way through the construction process. At this point it is known, and will be looked at thoroughly through NHDES. They are working through NHDES not only for the AoT permit, but also on the PFOA issue. They have to address the concerns before proceeding. A detailed plan on how to handle all excavation and surplus will be created. The planning phase is what is being gone through at this time.

Asked if the sand filter is existing, he stated it is not. It is part of the proposal. Asked how deep it runs and the amount of soil that would have to be removed to accommodate it, he stated the whole section is approximately 10' thick. There is a stone reservoir at the bottom with a collection system, then a 24" filter, another stone layer, and then a chamber system on top. It is the largest chamber you can purchase. Then there is another stone layer on top of that. It is all detailed in the plans. The material will be dug out and the filter and components put in. Asked if the filtration system requires a maintenance plan, he indicated there will be a detailed maintenance program; several inspection ports mandated on the system to gain access. The first two rows are an isolator row (forebay/sediment bay) to trap any sediments that come into the system. The other four rows are storage for the clean runoff. The first flush goes into the isolator row where the majority of sediments are captured. That is maintained through two manholes where you can get a vac truck in and flush it out. The rest of the system is accessed through ports. The other end is also accessed by manhole. A very detailed design has been put together for that, and the maintenance plan will be given to the facility manager. It is required to be inspected twice a year.

Commissioner Tenhave questioned if there would be any control of stormwater along the road such as under the new entrance/exit. Mr. Chamberlin stated the driveway pitches up a little from the road and then pitches down to the site. Most of the runoff from the driveway is coming onto the site and will be captured in the system. The same is true for the other end (Saint-Gobain driveway). There is existing runoff coming down that existing driveway going across where the proposed driveway is. That will continue. The rest will go into the site.

Asked if anything special is being done with runoff from the area along the roadway itself; elevations near the proposed entrance across from Shelbourne Road down towards the pond area (change in elevation), Mr. Chamberlin stated the area along D.W. Highway will stay as it is. There is currently a swale in the area, which will not be disturbed. A small section of the driveway may go into that swale. The remainder will come onsite. On the other side of the driveway is an existing low area, which will be brought into the system.

Commissioner Tenhave questioned if the increased amount of water that will end up in the brook, for the 10-year, 25-year, or 50-year storm, has been determined, and was informed it has not.

Commissioner Tenhave noted the brook leaves this portion of the site and crosses into another parcel before entering the river. Mr. Chamberlin stated it flows through the Flatley land and under their railroad tracks into the river. Asked if it flows through another parcel not owned by Flatley before entering the river, Mr. Chamberlin stated uncertainty; there may be some Town owned land on the other side of the railroad tracks. Commissioner Tenhave questioned if any calculations have been done to determine if there would be any

disruption or damage to the Town property (between river and railroad tracks). The response was that there has not. Commissioner Tenhave stated concern with the need to control the water and not further disrupt that property, and the desire to see data that shows that there will not be any damage or identifying what will be done to control velocities, etc.

Mr. Chamberlin stated it is discharging to the pond, which is working to do that. Commissioner Tenhave remarked once leaving the pond, because water level will be high enough, it will be a change. Without doing an analysis we don't know. He would not want to find out that all of a sudden there is a major erosion problem on property owned by the Commission and one which the Commission is potentially looking to improve upon. Commissioner Swisher spoke of the email chain from NHDES relative to high-volume events. Noted is a focus on "qualitative" measures not quantitative measures. The impression is if a storm is too large and cannot enter the system to be qualitatively handled then it is not being handled at all; completely bypassing and not being treated on its way to the river. Mr. Chamberlin stated 99% of pollutants come off in the first inch of rainfall. The qualitative portion of the treatment is only in the smaller storms. In a flood stage event, all of the pollutants are already gone. When they talk about qualitative, they are only focused on a one inch - two-year storm (3").

For this project, there is a subsurface system that needs to be able to handle that 50-year storm without blowing the top off the catch basin. It has to pass that large storm and has to treat the small storm.

## **NEW BUSINESS**

*There being no objection, the Commission went out of the regular order of business to take up Item #9.*

9. Request from Michael Soucy, Merrimack High School Director of Athletics, for track teams to use Wildcat Falls Conservation Area (currently closed) for practice and two meets. Discussion and recommendation for Town Council if requested.

Chair Perkins noted the email communication received by the Commission. The Commission has received a request from the Town Council for a recommendation. He stated his opinion as long as Wildcat Falls is closed to residents living in the Currier neighborhoods, it would feel wrong to give permission for others to utilize it. The School Board has expressed concern relative to steep grades and access to the site from the high school.

Councilor Albert remarked the Commission can consider itself asked to provide a recommendation to the Town Council, and spoke of his desire to hear the opinion of the Commission regarding the opening of Wildcat Falls.

Commissioner Rosati commented when it was closed it was closed to everyone. When members of the sub-committee wished to gain access for a clean-up day, permission had to be obtained. Prior to the closure, the sub-committee approached Mark McLaughlin, Superintendent, Matt Shevenell, Assistant Superintendent for Business, and Merrimack Police asking if signs could be posted and parking directed down to the high school. The police had concerns that motorists would ignore the signage around parking while school is in session and the school district was concerned with liability (trail terrain). There is a second trail that is overgrown. The teams would have to go in through the high school as they would not be able to park at Currier Road. They would have to go down one of the trails and enter on the State land. From the State land they could access the Town property, if the Town Council were in favor of allowing use of the property.

Councilor Albert explained resident only parking was approved for the Currier Road neighborhood (seasonal; mid-May to mid-September). The Town Council has decided to wait for the posting of the residents only signs until spring. The proposal for parking on one side of the street did not pass. Asked if the Council is considering

re-opening, Councilor Albert stated the desire is for that to occur soon. He wished to understand the position of the Commission.

Commissioner Rosati suggested the property be opened. Commissioner Tenhave suggested opening in November after the leaves fall. Councilor Albert stated his belief the temporary no parking signage could be utilized should the issue re-occur.

Asked if the resident only parking in the spring is for the street or the street and the lot, Councilor Albert stated it is for the street. The Council was told only a certain number of spaces could be set aside as residents only in the lot. Asked if there was no interest in doing that, Councilor Albert stated there is the desire for additional discussion. He spoke of being in favor of the potential for a footbridge from the ballfields across to Wildcat Falls. That could solve a lot of the parking issue. It may be cost prohibitive (initial estimate \$1.1 million). He spoke of funding anticipated for the Merrill's Marauder's footbridge, and his hope those funds could be diverted to a footbridge by the ballfields. That is being looked at as well.

Commissioner Tenhave commented funding for the Merrill's Marauder repair is being requested as part of the next Ten-Year Transportation Improvement Plan (TIP) funding. Kyle Fox, Director, Public Works Department (PWD), has put that in. The Nashua Regional Planning Commission (NRPC) will be reviewing that and providing a recommendation. Every year the State allocates funding to add projects to the Ten-Year Plan. There weren't enough projects submitted to expend all of the funding, which means there is another \$3 million that hasn't been earmarked to a project. Right now is an opportunity to put in another pedestrian related project. Councilor Albert stated he would reach out to Director Fox.

Commissioner Rosati noted the request is for the track team to be permitted access to Wildcat Falls (crossing through State land onto Town owned land that is currently closed). They wish to conduct practices and two meets.

***The consensus of the Commission was that if the residents of Merrimack cannot utilize Wildcat Falls then no one else should be allowed to.***

Councilor Albert stated he could relay that recommendation to the Town Council and Town Manager.

Councilor Albert suggested reaching out to the Superintendent regarding a joint effort to address trail work. Commissioner Tenhave noted the Commission owns a 1-acre parcel near the high school entrance. Chair Perkins and Commissioner Rosati spoke of walking the parcel to have a better understanding of the land that would have to be traversed to gain access to Wildcat Falls from the high school.

Commissioner Perry noted Grater Woods already has a few cross country routes mapped into it from the middle school. There is ample parking as well.

***The Commission returned to the regular order of business.***

#### **1. 2020 Annual LCIP Survey of Wasserman Conservation Area**

As a requirement of funding received from the State's LCIP Program when the property was purchased, there is a need to conduct an annual survey of the property and complete and submit required paperwork to the State.

***The walk was scheduled for Sunday, November 1, 2020 beginning at 9:00 a.m. at the resident lot.***



## 2. 50<sup>th</sup> Annual NHACC Conference

The 50<sup>th</sup> Annual New Hampshire Association of Conservation Commissions (NHACC) Conference is scheduled for Saturday, November 7, 2020 (Zoom); 8:00 a.m. – 12:00 p.m.

Chair Perkins requested those interested in participating make that desire known by the time of the next meeting.

## 3. Review updated meeting schedule for remainder of 2020

Meetings dates were identified as October 19<sup>th</sup>, November 16, December 7<sup>th</sup>.

Chair Perkins spoke of the desire for meetings to be able to be conducted with some members participating in person and others via Zoom.

Commissioner Rosati read a communication received from Robert Price, Planning & Zoning Administrator, Community Development Department:

*“It is my understanding that the question of a hybrid meeting has come up throughout the day. Staff has concerns with both the legality and logistics of a hybrid meeting. Therefore, the discussion at Monday’s meeting about how future meetings should be handled needs to be limited to in-person or virtual only, per the Governor’s Emergency Orders.”*

In accordance with NH RSA 91-A:2 III (b), “Except in an emergency, a quorum of the public body shall be physically present at the location specified in the meeting notice as the location of the meeting.”

Should the Commission choose to resume in-person meetings, members could continue to participate electronically as long as a quorum of the Commission is physically present.

Commissioner Boisvert stated he would be comfortable participating in-person if participants wore masks. Chair Perkins and Councilor Albert stated a willingness to meet in-person. Commissioners Perry, Swisher, Drouin, Glenn (prefer Zoom), and Rosati also stated a willingness for in-person meetings. Given space constraints, Commissioner Rosati suggested the Commission could ensure a quorum is physically present for each meeting without requiring all members to participate in-person.

The Commission discussed the possibility of utilizing the Matthew Thornton Room for in-person meetings. The School Board meets in that room on the 1<sup>st</sup> and 3<sup>rd</sup> Mondays of the month.

***The consensus of the Commission was to table the discussion until additional information on options for returning to in-person meetings could be provided.***

## 4. Discussion regarding 2021 meeting schedule

Chair Perkins will work with the Community Development Department to draft a meeting schedule. In prior years, the Commission has met on the 1<sup>st</sup> and 3<sup>rd</sup> Monday of each month; typically one meeting in the months of February, July and September.

***The consensus of the Commission was to continue with its typical meeting schedule. A proposed schedule will be provided for the next meeting.***

**5. Current volunteer opportunities for Scouts, individuals, and/or small groups**

Chair Perkins spoke of creating a list of potential projects. He suggested a Scout could consider building a few Rocket Boxes; four-sided bat houses. Commissioner Swisher suggested the sub-committees be asked if they have projects. Commissioner Drouin suggested, given the water level, that the streams that have dried up be looked at in regard to cleaning activities.

**6. Discussion and vote to add a water leveling device to property off of Brookside Drive**

Commissioner Perry received a call from a resident on Brookside Drive regarding a new beaver kit that is enforcing the dam. He visited the area and did some work on the dam. He was able to drop the water level about 2' over the course of approximately 6 hours. He visited the site the next day and found the beaver had already fixed it. The properties in the area drop off quite steeply into the pond. It is an area that could be managed at this time, but if it is allowed to get much deeper, there could be issues with some of the property lots. He questioned the will of the Commission with regard to installing a water leveling device.

Commissioner Rosati questioned the cost, and was informed the one installed previously did not exceed \$3,000. Most were \$1,500 - \$1,700. A few of the larger ones were a bit more expensive if requiring additional work to be installed. They have been successful.

**MOTION BY COMMISSIONER ROSATI TO APPROVE THE EXPENDITURE OF AN AMOUNT NOT TO EXCEED THREE THOUSAND DOLLARS (\$3,000.00) FOR THE PURCHASE AND INSTALLATION OF A WATER LEVELING DEVICE AT PROPERTY LOCATED OFF OF BROOKSIDE DRIVE. SOURCE OF FUNDING IS FUND 53**  
**MOTION SECONDED BY COMMISSIONER GLENN**

**ON THE QUESTION**

Commissioner Rosati spoke of the concern should flooding occur. Commissioner Boisvert asked for clarification should the water level increase it could encroach on the property of some of the neighbors, and was informed given the steepness of the area it would have to come up a few feet before becoming a problem, but it is already there.

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

Yea: Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn, Commissioner Perry,  
Commissioner Swisher, Councilor Albert, Chair Perkins

7

Nay: 0

**MOTION CARRIED**

**MOTION BY COMMISSIONER ROSATI TO APPROVE THE EXPENDITURE OF FUNDS TO COVER THE COST OF ATTENDANCE AT THE NHACC CONFERENCE FOR ALL CONSERVATION COMMISSION MEMBERS WISHING TO ATTEND. SOURCE OF FUNDING IS THE TRAINING LINE IN THE TOWN BUDGET**  
**MOTION SECONDED BY COMMISSIONER GLENN**

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

Yea: Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn, Commissioner Perry,  
Commissioner Swisher, Councilor Albert, Chair Perkins

7

Nay: 0

**MOTION CARRIED**

7. 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.

Commissioner Perry spoke of the Commission's property along Brookside Drive. The property was treated in September of 2014, and has started to become once again overgrown with Knotweed. Bay State Forestry was the company that addressed this issue the last time. A quote can be sought.

Commissioner Boisvert commented on the prior instance that involved the Knotweed encroaching on a neighboring property. Commissioner Tenhave stated that neighbor has since moved on. There are bee keepers in the area, and there is the need to provide notification of any spraying.

*The item was tabled pending additional information on associated cost.*

8. Town Council Retreat Update – Councilor Peter Albert

A question posed to the Council was the level of guidance sought in the management of all Town properties. The Council was appreciative of the recommendations provided by the Commission with regard to the issues at Wildcat Falls. When any areas of concern arise with Town owned properties, they would be looking for the input of the Commission. They would like to see the Commission's direction move less in locating and purchasing property and more towards development/management of existing properties.

Discussed at the Retreat was the desire of the Commission for linking some of the properties. Councilor Albert informed the Council the Commission would likely continue to look for those opportunities, e.g., purchasing smaller pieces to create that connectivity.

Commissioner Tenhave noted the property acquisition philosophy in place has been to go after property in a manner that satisfies the Ten-Year Master Plan put in place by the Planning Board. If changing direction for some of the funding, we should be aware that is a change in potentially the Master Plan. We have known there would come a time where we would go after as much of the property that we could get our hands on, and then go into maintenance mode. We are mixing maintenance and property acquisition right now.

10. FEMA Grant potential

*Building Resilient Infrastructure and Communities (BRIC) pre-disaster mitigation grant program* - FEMA's new HMA grant program that makes federal funds available for pre-disaster mitigation activities to reduce, minimize, or eliminate potential damages to property and infrastructure from natural hazard events available to State, Local, and Tribal Governments for pre-disaster mitigation activities. The BRIC program guiding principles are supporting communities through capability- and capacity-building; encouraging and enabling innovation; promoting partnerships; enabling large projects; maintaining flexibility; and providing consistency.

*Flood Mitigation Assistance (FMA) grant program* - makes federal funds available to State, Local, and Tribal Governments to reduce or eliminate the risk of repetitive flood damage to buildings and structures insured under the National Flood Insurance Program (NFIP).

Councilor Albert commented when reading the information provided what first came to mind for him was Watson Park. He intends to speak with the Town Manager and Director Fox to see if funding would be available to address erosion.

Commissioner Perry commented on erosion occurring on the Sklar Waterfront property.

## **11. Review use of E-bikes on Conservation property**

Councilor Albert commented when E-bikes were first discussed he was unfamiliar with them. Having had a chance to ride an E-bike this summer he did not see it as something that would be destructive to trails. He has spoken with some residents who would like the opportunity to utilize them on Commission properties. He does not see a concern for Class I E-bikes.

Commissioner Perry stated one of the greatest concerns expressed at the time of the original discussion was people who are taking E-bikes and riding them uphill at speed. The closure rates on hill climbs cause some pretty decent accidents. Commissioner Boisvert spoke of the narrowness and sightlines on some of the trails. Commissioner Perry remarked, when first discussed, the classifications of bikes were not as broad as they are now. It was difficult to identify a way to address non-motorized vehicles. E-bikes are motorized vehicles.

Councilor Albert commented on mountain bikes used in the trails and the speed with which a user can climb/ride. Commissioner Tenhave stated there to be some parcels where the Deeds state no motorized access. E-bikes would not be able to be permitted on all parcels, e.g., Wasserman Conservation Area. The other properties where it is prohibited are covered in Chapter 111, e.g., Wildcat Falls, Mitchell Woods, Hitchin Post Lane, Riverside Park. He would be open to looking at the idea of E-bikes again; however there is the need to be cautious as Class I is the lowest class. You can get to 20 mph. He is more concerned about ensuring the other classes or the homemade bikes would not be appropriate. For \$69 you can convert a mountain bike into an E-bike and get 1,000 watts, which is more than a Class 1, and a thumb throttle drive to end up with basically a minibike with an electric motor. We might run into issues where people bring the wrong class of bike on the trail and we then have to try to enforce that. Commissioner Boisvert sees this as a future headache if going down this road.

Commissioner Swisher commented even the Class I bike is not silent. For those who like a quiet walk in the woods, you would be hearing a motor. E-bikes are heavier than a standard bike, typically have slightly wider tires, and a lot are marketed towards people who want to regain access that they lost due to mobility issues or age; those who are not necessarily the greatest controllers of a big heavy motorized vehicle on a thin rocky trail. Inevitably the trails start to widen over time with users going off the existing trail. He is in favor of increasing access to public lands, but these properties are intended to be preserved as wild places to the extent possible.

Commissioner Glenn commented on the delicate balance between bikers and walkers on some of the properties. If the bikes start coming faster than they normally would, that might increase those types of issues. Although good to continue to discuss, she does not believe this to be the time for a change.

Commissioner Tenhave noted the average speed for a rider on the road is about 13 mph. If you get below 5 mph it is hard to maintain balance. You are optimally riding, even on a trail, somewhere between 5-9 mph,

which is the same speed as someone moving swiftly or running through the trails in the single tracks. Out on the wider trails, where logging or other activities have occurred, you could easily go 13-15 mph.

Councilor Albert stated appreciation for the discussion, and his understanding the Commission is not in favor of a change at this time.

Commissioner Tenhave stated his belief there is a place on Commission properties where E-bikes could and would be appropriate, he just does not believe it is all the properties. That use would have to be looked at to determine where it makes the most sense, and then properly indicate the use is allowable.

Councilor Albert suggested the Commission utilize time over the next year to identify which property might be appropriate. Commissioner Perry stated a willingness to discuss this; however, there is the need to be very mindful of where such an activity would be permitted. It will be difficult to enforce.

Commissioner Swisher noted the one loop in Grater Woods that could be used. Commissioner Boisvert stated that will likely change soon.

### **OLD BUSINESS**

#### **1. Motion to Nominate Michael Swisher to position of Vice Chair**

Chair Perkins called for nominations for Vice Chairperson of the Merrimack Conservation Commission for the 2020-2021 term.

#### **COMMISSIONER ROSATI NOMINATED MICHAEL SWISHER SECONDED BY COMMISSIONER PERRY**

#### **VOTE ON ELECTION OF MICHAEL SWISHER TO THE POSITION OF VICE CHAIRPERSON OF THE MERRIMACK CONSERVATION COMMISSION FOR THE 2020-2021 TERM**

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

Yea: Chair Perkins, Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn,  
Commissioner Perry, Commissioner Swisher, Councilor Albert, Commissioner Drouin,  
Commissioner Tenhave

9

Nay: 0

#### **MOTION CARRIED**

*Commissioner Swisher declared Vice Chairperson of the Merrimack Conservation Commission for the 2020-2021 term.*

#### **2. Merrimack Hike Club**

Commissioner Drouin stated hikes started a few weeks back. A 3<sup>+</sup> mile, 2-hour hike was conducted at the Horse Hill Nature Preserve with 15 participants. This past weekend 20 individuals participated in a hike at the Sklar Waterfront Park. Members of the Historical Society were on hand and spoke with participants. This coming weekend a hike is planned for Wasserman Park. The hikes include a short trail and a long trail to accommodate all participants.



Commissioner Rosati commented on the great job The New England Mountain Bike Association volunteers have done in maintaining trails.

### 3. Sklar Waterfront Park – Subcommittee and Charter approval

Commissioner Boisvert stated his belief there are 5 individuals currently wishing to participate as members of the sub-committee; Commissioner Drouin and himself being 2 of the 5. He spoke of individuals who have expressed interest, over the past few months, in serving on a sub-committee of the Commission, and stated a willingness to reach out to those individuals.

He asked, if the Charter is accepted and a sub-committee officially formed, can the sub-committee meet outdoors? Chair Perkins noted the Commission was informed sub-committees could not meet. However, that was several months ago. He will follow up.

Commissioner Drouin stated the fall period to be very valuable for trail maintenance and the like. He would not want to see that season go by, and is hopeful the sub-committee could meet in October. He spoke of an issue with off-road riders. Having encountered one last weekend, he took down the license plate and made a police report. The police response was that they contacted the individual and informed them not to do that again.

Knowing the chances of getting caught are not very likely, the activity will continue. He suggested a request be made for stronger response when a report is made. Chair Perkins spoke of the Commission's efforts to cultivate a relationship with Conservation Officer Sean MacFadzen of NH Fish & Game. They have the resources for this type of enforcement. Officer MacFadzen requested the Commission narrow down days of week and times when the greatest number of violators are seen. He has demonstrated a willingness to go down there and has stated he has issued citations.

Councilor Albert questioned if it was the choice of the officer not to press charges when informed of the violation. Commissioner Drouin stated he was on the trails doing cleanup and a jeep came in in front of him. He ran up to it, took a photo, and informed the individual he needed to leave. He went to the police station and provided the photo, completed the required form, and went on his way. About 10 minutes later the officer contacted him and informed him he called the individual and told him not to do it again, and that was it. There was no option to press charges, etc.

Councilor Albert stated there is an option to press charges if so desired. If believing there was sufficient concern to press charges, the officer should be asked why that was not the action taken. He suggested the Commission sit down with the Town Manager and Police Chief to discuss the issue of when we would and would not file charges. Knowing that a report has been filed, if the individual is caught again, having been warned, he would believe charges would be forthcoming.

Councilor Albert stated the position of Conservation Officer will be discussed during the budget process.

**MOTION BY CHAIR PERKINS TO APPROVE THE PROPOSED MAKEUP AND CHARTER OF THE SKLAR WATERFRONT PARK SUBCOMMITTEE**  
**MOTION SECONDED BY COMMISSIONER PERRY**

### ON THE QUESTION

Commissioner Tenhave questioned if the desire were to move forward with 7 members and 3 alternate members. Commissioner Boisvert stated it to be nice to have the option to have a sub-committee of that size.

Commissioner Tenhave spoke of concern with being able to obtain a quorum to meet. The Charge doesn't dictate what a quorum is. It was suggested the Charge be amended to identify a quorum as more than 50% of membership.

Commissioner Tenhave commented while it is great to put a new sub-committee together and get out onto the property to make improvements, if the intent is to begin building bridges, routing trails, etc., that activity needs to be approved at the Commission level.

The consensus was that it is understood a quorum is a simple majority.

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

Yea: Chair Perkins, Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn,  
Commissioner Perry, Commissioner Swisher, Councilor Albert

7

Nay:

0

**MOTION CARRIED**

**MOTION BY COMMISSIONER PERRY TO APPOINT COMMISSIONER BOISVERT AS THE EX-OFFICIO MEMBER OF THE SKLAR WATERFRONT PARK SUB-COMMITTEE  
MOTION SECONDED BY CHAIR PERKINS**

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

Yea: Chair Perkins, Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn,  
Commissioner Perry, Commissioner Swisher, Councilor Albert

7

Nay:

0

**MOTION CARRIED**

Commissioner Rosati stated the need to post the opening for membership on the sub-committee. She believes the Commission would need to meet with and approve of members. Commissioner Perry commented although individuals are generally asked to appear before the Commission, it is not a requirement. The Commission can simply approve membership.

Commissioner Tenhave suggested those interested in serving be asked to forward to the Commission a written notification of that desire and that it includes some information to allow the Commission to learn more about the individuals. He reminded the Commission, when a sub-committee meets they must follow the requirements of the Right-to-Know Law (NH [RSA 91-A](#)), e.g., publicly notice meetings, prepare meeting minutes, etc.

***The names will be provided and the agenda for the October meeting will include appointments to the sub-committee.***

#### **4. Chapter 111 Update**

Commissioner Tenhave stated, due to the amount of items before the Town Council at its September 24<sup>th</sup> meeting, the Chapter 111 update has been postponed until the October 22<sup>nd</sup> meeting.

He provided the Council with a copy of the plan the Commission put together back in 2018; on how it would accomplish the update for Chapter 111. It is a three-phased plan with multiple steps. It is now in Phase II, Step 11, which is seeking the Town Council's feedback on the progress made to date to ensure the Commission is heading down the right path. The third phase is all about enacting the Ordinance or the update, which entails ensuring the legal wording is correct, etc.

The Council was also provided a brief outline of the proposed changes to Chapter 111. Should the feedback be to move forward, the next step would be to craft the legal language. Once the language is drafted, the Council may wish to provide additional feedback or it could be that language is provided by the Council to be used in crafting the legal language of the Ordinance, which may eliminate the need for an additional review.

Commissioner Tenhave stated his understanding there will be some discussion around motorized and non-motorized use as there are some proposed changes to that. There has also been language added relative to target shooting, which is not addressed in the existing ordinance. There are proposed changes in regard to which parcels the Commission recommends hunting be prohibited on.

In question are 62 parcels (each single legal entity, e.g., Grater Woods consists of 10 parcels). Commissioner Tenhave stated his belief by the time the process reaches the point of enacting the update to the Ordinance (likely 2021), it will be up to 65 parcels. There are newer parcels that are now part of Grater Woods that came through the Chestnut Hill Development process. The Tomasian property is in process.

Commissioner Tenhave spoke of questions posed to him by Councilor Albert. A response will be prepared and will be shared with the Commission as a whole.

**OTHER BUSINESS** - None

**PRESENTATION OF THE MINUTES**

Merrimack Conservation Commission. . . . . [August 17, 2020](#)

*The following amendments were offered:*

Page 4, Line 19; replace "is" with "if"

Page 5, Line 16; insert "Relative to Girl Scout Sarah Hardy's proposed project,"

Page 5, Line 45; insert "it" before "is"

Page 7, Line 29; capitalize "Scouts"

Page 8, Lines 26-27; replace "Conservation Area" with "Park area" and insert "managed" following "Commission"

Page 10, Line 33 and Page 11, Line 1; replace "Commissioner Swisher" with "Chair Perkins"

Page 13, Line 2; replace "Commissioner Boisvert" with "Chair Perkins"

**MOTION BY COMMISSIONER ROSATI TO ACCEPT, AS AMENDED  
MOTION SECONDED BY CHAIR PERKINS**

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

Yea: Chair Perkins, Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn,  
Commissioner Perry, Commissioner Swisher, Councilor Albert

Nay: 0

**MOTION CARRIED**

**PUBLIC COMMENT** - None

**COMMISSIONER COMMENTS**

Commissioner Boisvert questioned whether additional boulders were available for the Sklar Waterfront Park. If delivered, could a volunteer move the boulders to the desired location? Commissioner Perry stated his belief it is the intent of the Commission to utilize the boulders to prohibit trespassing, and the Commission would welcome the willingness of a volunteer to address that.

Commissioner Tenhave stated the boulders are sitting on the property that is about to become that of the Commission. It would be a matter of arranging their retrieval and delivery through the PWD. Commissioner Tenhave will look to ensure there is no objection to their removal at this time.

Commissioner Swisher requested the Chair, in his discussion of the desire for sub-committee meetings to start back up, note the meetings are not required to be taped and that most groups meet outdoors.

Commissioner Tenhave reminded the viewing audience that deer hunting season is approaching. Users of the trails should be reminded to wear hunter orange (themselves and pets) and be mindful of the activity while on the trails.

**ADJOURNMENT**

**MOTION BY COMMISSIONER PERRY TO ADJOURN**

**MOTION SECONDED BY COMMISSIONER GLENN**

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

Yea: Chair Perkins, Commissioner Rosati, Commissioner Boisvert, Commissioner Glenn,  
Commissioner Perry, Commissioner Swisher, Councilor Albert

7

Nay: 0

**MOTION CARRIED**

The September 21, 2020 meeting of the Merrimack Conservation Commission was adjourned at 9:42 p.m.

Submitted by Dawn MacMillan