

OFFICIAL CONSERVATION COMMISSION MEETING MINUTES

July 27, 2015

S. Couture called the meeting to order at 4:00 p.m.

Attendance: Steve Couture, Chair; JoCarol Woodburn, member; Phil Fitanides, member; Deborah Miville, Alternate; David Hess, member; Cindy Robertson Vice-Chair; David Ross, Town Council Rep (4:20pm); Mila Paul, Conservation Easement Intern

Public Input

None.

Meeting Minutes

J. Woodburn motioned to approve the meeting minutes for July 9, 2015. Seconded by P. Fitanides. Motion passed. D. Hess and C. Robertson abstained.

Election of Chair & Vice-Chair

S. Couture: This is our annual election.

C. Robertson nominated S. Couture for Chair. Seconded by P. Fitanides. Motion passed.

S. Couture nominated C. Robertson for Vice-Chair. Seconded by J. Woodburn. Motion passed.

a. Appointments

S. Couture: We have Dan Tatem from Stantec with an update on the Merrimack Riverfront Project.

D. Tatem: I took the outline of the project status summary we did on July 9th and I added red text so you could see the changes. The first thing to discuss is the map. There's been a lot of discussion regarding the trail section that parallels the river and connects to the southernmost portion of the field. We had in depth discussion with Fish & Game and we did a site walk with them and Chris from Audubon. We originally had a 12-foot wide trail in that location. When they said they wouldn't support it, we thought about a nature trail to cut limited trees instead of the full trail. After the site walk, which included one of our representatives, they decided that a better potential option is the section of blue trail further to the east than the original trail. To be

honest, the section of trail that has been eliminated from this map would have been the hardest section of trail to build. The railroad bed is very thick with vegetation. This proposed trail will require no clearing at all. A third of the trail is through the existing field. There will be two sections of trail on the field paralleling each other, but it will give you a second access out there without going across that wetland. As far the Commission goes, you need to decide if that's what you want to do. If you want it closer to river, you can extend the permitting process, but if not we can go with this and make Fish & Game happy.

D. Hess: I have some questions. When I discussed this with Audubon two years ago when we were buying the project, they told me that only one eagle siting had occurred on the island. Is there new evidence to show that has changed since then? Recently I saw an email circulating that said it was eagle habitat. As of two years ago, I knew of no evidence there was an eagle "habitat." What was the evidence that led Fish & Game and Audubon to suggest it was an eagle habitat?

D. Tatem: According to Fish & Game and Natural Heritage Bureau, it's an eagle wintering area. It's not a habitat as there is no nest site. Because the power plant is up the river, it makes that section of river warmer than other areas.

D. Hess: They've been documented on the west side of the river.

D. Tatem: Yes, and now that a lot of those trees are cut down there and the Scarpetti development has been approved, they are now saying the island is going to get even more use. Their records say that that island is a prime wintering area and due to the loss of habitat elsewhere, they think this may be good area for a nesting site in the future.

D. Hess: Was that the only reason Fish & Game opposed the riverfront walking path?

D. Tatem: That is the only reason they gave us.

D. Hess: That Merrimack power station is going to shut down in the next five years, so that part of the river will freeze over just like the rest of the river. Was there any discussion of putting in that foot trail and then closing that trail in the winter?

D. Tatem: Yes. Closing the trail in the winter, or any seasonal closure of trails, is impossible to enforce according to Mike Marchand at Fish & Game. If you build a trail there, whether they are closed or not, people will use them. We tried to push for the nature trail, and even at DES it was strongly opposed. One thing that was interesting is that Mike Marchand is a volunteer in an organization that has something to do with endangered species and they actually donated some money towards the purchase of the property.

D. Hess: There is no endangered species organization that donated money to the property. There are some private foundations that donated.

D. Tatem: I should have written it down, but he told me he was part of that organization that donated some money towards the purchase of the property, so his questions was why would we want to put a trail there that would further endanger an endangered animal when they could put it somewhere else. It seemed he was against it because of the donation for endangered species.

D. Hess: I have never heard his name associated with that. We got private donations from McIninch and others, but those are not endangered species groups.

D. Tatem: I have no problem corresponding with him further and getting the name of that organization to you.

D. Hess: If the Commission agrees with me not to agree with this, I will contact Fish & Game directly. Just as an observation, this is the Merrimack Riverfront Project and there is not one trail that is on the riverfront.

C. Robertson: I missed the last meeting, but I want to make sure I understand the map. What are the pink dotted lines? That is the area that will not exist as a trail?

D. Tatem: The two dotted lines that parallel, one is the trail and one is the Shoreland setback. We're really just designing this for you. You can proceed with whatever you want. A thought may be to let that section of trail go for this period of time and when the power plant closes and the river freezes and the eagles are gone, then add the trail in. Or you can go for it now, but if you do that our concern is that the \$50,000 grant from DRED will need to be extended. Because we have such a tight window of time to get this done, we need to consider if it's possible to extend that grant. The deed talks about the protection of rare and endangered species which requires NHB, and then NHB says you have to deal with Fish & Game, so it's a loop that takes you back to Fish & Game.

D. Hess: There's a trail about one-third of the way up there that's already in existence. There weren't many trees in 4-inch diameter that you wouldn't be able to cut.

P. Fitanides: What was it you said about Fish & Game making the decision? What is their authority?

D. Tatem: The easement on the property has a paragraph that discusses protecting rare and endangered species and it says if some are found, you need to work with NHB to protect those

species. Because they had an eagle in the database, you have to deal with Fish & Game. You have legal rights to use your property but they are just saying they want the trail moved. It's not as cut and dry saying they are eliminating your rights to the property, but they may be infringing on them due to the endangered species.

D. Hess: Another option that occurred to me is if you go the field across from the island and cut a trail across the railroad, what would be the reaction to that? That would give you a nice loop in that field. You can walk that field now anyway. That would provide at least some riverfront access. There's no riverfront access as this is designed.

D. Tatem: That option was not discussed. Mike's point is once you get to that field you can go north or south, however you want, from the field to access to the river. It's ok as long as you don't create a trail there. At DES we talked about the nature trail. They said get it approved without the trail and you could put it in next year.

S. Couture: On the site walk was Chris Martin from Audubon, Mike Marchand from Fish & Game, Sean Moriarty from Stantec, Deb and Carolyn. As far as timing and funding, it's part of our grant for DRED. If we don't get our permits, we don't get our money. Timing is a little bit of an issue. We could get it extended, but that is a gray area.

D. Tatem: We are trying to give our contractor two months to construct that bridge and if we wait or we don't get the permits in time, we can't do it past December 31st.

D. Ross: Would it be possible to get permitted for some of it?

S. Couture: Yes. If you want to move forward with permitting, though, you want to make sure you permit for the whole trail mapped in yellow.

D. Tatem: It's the most cost effective way for you guys, too. We are trying to keep this as streamlined as possible. It doesn't seem to make sense to have two trails right next to each other. My thought is that you come back in one or two years, do some research on the eagles, and get that section of trail done under another permit.

D. Hess: How difficult would it be to get a little trail across the southern end to the river?

D. Tatem: They were very adamant. I could run it by them, but my thought is that Mike will fight you on this no matter what and that will slow this down.

P. Fitanides: What are the chances that we wait two years and then the regulations become more stringent?

D. Tatem: That could happen; or they could disappear altogether, or there could be so many eagles they are off the endangered list. Who knows? Anything can happen in two years.

D. Ross: When it comes to the issue with eagles, the state is notorious. Look what they did to the bridge at the airport. They moved it because of the eagles. I would say forget about it.

D. Miville: Can I address Dave's question? I was on the site walk and they pointed out pine trees on the island and there were several along the shore. The other thing they said is that the shoreline has potential for erosion, so the more you use it the more potential there is for things to fall into the river at the shoreline. The third thing is, we did walk the railroad bed and it just wasn't walkable. There were also woodcocks in the understory on those railroad tracks.

D. Hess: No one ever proposed the railroad bed as a trail, so I have no idea where they came up with that.

D. Miville: That was the impression we got.

D. Hess: My thought is to go along the river right outside of the 50-foot easement, not on the railroad bed so I don't know where they got that idea.

S. Couture: I've walked that area you are talking about and at some point it gets pretty overgrown. I concur with you, but they'll fight that.

P. Fitanides: Can I address something Dave was talking about? It seems like a railroad bed would be grandfathered to use as a trail. Are there any old trails there to the piers on the water where old docks were for loading cargo? Aren't there any old piers there?

D. Hess: No, there are granite bastions from the railroad crossing at Brown Brook, but there's nothing else in the water that I'm aware of.

S. Couture: No, there are no old piers. My recommendation at this point is to go full speed ahead with the yellow trail because all agencies are on board with that. Dan will be coming back August 10th with, I'm assuming, almost a complete packet for us to review and sign off on. In the interim, we will have a conversation with Fish & Game and communicate that to Dan as soon as we know something. Does that sound reasonable?

D. Tatem: Sure.

S. Couture: We did get an invoice with the summary.

D. Tatem: Yes, I'll go over that with you. Under RTE Recommendations, the long-eared bat is the new item on the list of species we need to be careful about. Rather than locating specific trees, if we affect less than a percentage of the property by tree clearing then it's not an issue and we are well under that threshold. We will clear them after October when they migrate, so they're not there and when they come back they can roost in the other trees. We have the Phase 1B report and there is no further action needed. The state will waive your Shoreland fee, which is the most expensive fee you had, and the review period will be five days. For the DES wetland permit, they want us to submit a major permit because there are prime wetlands there. A major permit requires that you mitigate all permitted impact. There are 3 or 4 crossings to repair and that counts as mitigation. We will throw as much at that mitigation as we can. We are going to propose that the upgrades to the crossings are the mitigation. I'm more concerned about the time of the review rather than the costs. They know that we aren't cutting any corners; we are being very sensitive to the property. We need to talk about the grating of the bridges and whether you want snowmobiles because that will affect the design. We did our geotechnical drilling and we didn't find anything bad. We need a certain height for the bridges that would allow small animals to walk under but also aren't high enough that they require handrails.

D. Hess: Once we have the permit, how much do we have to build to be grandfathered?

S. Couture: For our grant we need to build it all and expend all the money within the calendar year.

D. Tatem: This is the most expensive piece of the trail system. Keep in mind that construction costs are rising as time goes on. The conservation easement requires that you notify the holder. You emailed them, but we recommend that you send a memo by certified mail with receipt so we can show that they have been notified. We don't need any waivers for the wetlands permit. They will do expedited review and will not require a public hearing. That's where we are now. We have the survey done and we are going to start designing everything. Steve called me last week and said that you reached a tentative agreement with a farmer. We need to talk to them. I left a voicemail for him today. We need to figure out what crossings he needs built to continue farming. You need bigger equipment if you want to hay the fields and that need access. We would need an agreement with your abutter for temporary access from Merrimack Street. I had a discussion with Dave Therrien a couple times. Your Right of Way is the woods between the two properties, not his driveway.

S. Couture: I think we could work with Mr. Therrien to get agricultural access and possibly construction access.

D. Tatem: I've spoken with him and he's very reasonable. The one thing he said is that he won't give an easement.

S. Couture: If you could follow up with him and Green Gold Farm that would be good. If Carolyn can, she should meet with Green Gold too.

D. Tatem: I will meet the guy from Green Gold and talk to him. If you decide you want to build your own access on your own land, you would want a boundary survey done. If Dave Therrien is OK with a temporary construction easement, I have a template drawn up that I can send you. If he won't put it in writing, I would discuss it with the Town Attorney because we don't want him to back track if he gets angry about something when we are halfway through the process.

D. Hess: We should have a surveyor put the pins in on the southern end of the property as well.

D. Tatem: I'll get that easement to you tomorrow.

D. Hess: I just want you to know that this map is not accurate. Our property line extends up to the wood line.

D. Tatem: If you send me the survey map, we can fix that.

S. Couture: While Dan is here let's process his invoice for Project Administration, RTE Survey & Report, and Preliminary Design. The charge is \$3,974.72.

C. Robertson motioned to approve payment of an invoice from Stantec dated July 17, 2015 for project administration, RTE survey and report, and preliminary design in the amount of \$3,974.72 from the Conservation Fund. Seconded by D. Hess. Motion passed.

S. Couture: It's been an incredible effort so far, moving ahead quickly with some obstacles. For our DRED grant, the agreement will be signed August 12th. We have to find out when we can start charging to the grant. Within our grant budget we have money for the Shoreland permit, but now that that's being waived, we need to find out from DRED if we can use those funds for other permits.

a. Merrimack Riverfront Trail System Project

S. Couture: We had the Open House at Robie's on Saturday. Carolyn, Cindy and Deb helped out with it. It was a pretty good turnout.

C. Robertson: The president of the Rowing Club showed up and had a lot of questions on the project. We told her that we would keep her up to date and told her where to find our meeting

minutes. Steve had a conversation with another member of the Rowing Club who loved the idea of the trails.

S. Couture: We definitely need to hold a public meeting when we get further along and have more details about when the construction will occur.

i. Schedule Public Informational Meeting on Merrimack Riverfront

S. Couture: We need to invite abutters, neighbors and the Rowing Club because we really need a public meeting to inform everyone. Also, we will be pursuing an LCHIP grant for crossings for the agricultural use of the property. We want it to pay for the crossings that the farmer will use to hay the fields.

b. Update on Conservation Easement Internship

M. Paul: I've been really happy to do this work and I'm grateful for the feedback and the opportunity. This may be my last meeting unless you invite me back in the future, so thank you for having me.

S. Couture: Thank you so much for all your work.

M. Paul: I have the Voss order forms for you to fill out to order the medallions. There are four of them, one of which I am still working on. There are only a few bits and pieces for me left to do in regard to the monitoring. We have the monitoring forms on file and you have access to everything. Feel free to ask me questions. My contract ends in the beginning of August.

S. Couture: Are there any updates on the Clay Pond gates?

M. Paul: I have identified all the potential property owners and it may need a little further investigating. Mr. Sweeney from Blue Ribbon is looking for specific information on the gates' locations. I flagged all the locations, but it may need to have some wiggle room if Mr. Sweeney finds it needs to be moved a couple of yards. I made a "to do list" for each property. (*See attachment*)

S. Couture: Mila, thank you so much for your efforts.

c. Clay Pond Gates Update

S. Couture: We discussed this. We still have work to do, but we have a potential donor, we have locations, and we have a lot of background research so we are getting close.

d. Other business: Invoices, Correspondences, Etc.

S. Couture: We received the opinion of title on the Heroux property. The Council already signed off on the Purchase and Sale Agreement. We will be accepting the Manchester Sand & Gravel easement property at the next Town Council meeting. We got a notice for the Annual Conservation Conference and we are on the postcard! There was a wetlands violation at the

Lambert's Garage property with dumping. On Zapora Drive there was a wetlands violation that was corrected. Ridgeback Self-Storage got their permit for wetlands and AOT. We got an email from NHACC to see if we'd like to present at their conference. It's November 7th at Pembroke Academy. The Annual Report went in. We also will be sharing a booth at Old Home Day with Bear-Paw.

C. Robertson motioned to adjourn at 6:10pm. Seconded by D. Ross. Motion passed.

Respectfully submitted,

Carolyn Cronin

Assistant Planner/Conservation Commission Staff Support

• Determine first level process of dealing with breach of easement:

-A surveyor needs to verify the boundary line where there is a question of breach. This happens before the residents are informed of any breach of easement. Then the process with abutters or any other people involved can proceed.

-Within 2 weeks of verification, a letter goes to introduce topic of easement boundary and resident use of easements. Awareness of the boundary may not be high, so don't expect the neighbors to know what or where an easement is.

-Ask the landowner to fix the problem if it's from their parcel and action. In the case of a grass heap, ask them to disperse it thinly over the easement area, and make sure they know further heaping isn't permitted in terms of the easement. In the case of big objects, make sure they are removed by the ones who added it to the easement. If the people can't be located, then the town is responsible for removal. As for damaged trees, that is a property damage case, and timber should be harvested as soon as possible.

-Inform the landowner that a visit will be made to inspect the breach item within 2 weeks of the notice to determine if it's been dealt with properly.

-Inspect until breach is remedied, deal with the legal process if needed.

-If constructed items (swimming pools, woodshed, other buildings) are a breach in easement, town code enforcement may need to be involved.

- **Begin marking easement boundaries with survey and materials such as paint and medallions.**
- **Involve the schools in use of the easements as much as possible.**
- **Consider management plans and Tree Farm status for woodlots and wooded areas in and around easements.**
- **Monitor annually, review all monitoring forms separately from the regular commission meetings so individual decisions can be made about any breach in easement.**

Other easement tasks:

Glencrest Drive:

to be monitored

- Medallions

Pike Industries

To be monitored

- Medallions

Beaver Brook

To be monitored in 2016

- Medallions

Carriage Hill :

to be monitored

- Medallions

Burbank

- Verify with surveyor about logging debris within easement.
- Have any breach material removed.
- Map trails/logging roads.
- Medallions.

Farwood Drive

- Annual Monitoring
- Map of trails
- Follow-up with JoCaroll and her neighbor about annual monitoring, make sure it's done thoroughly each year
- Medallions

Dalton Brook

- With fairly minimal maintenance, Dalton Brook easement can be used as a great relaxation and educational resource.
- Wildlife signs found close to pond trail: beaver lodge, turtles, fish, birds, deer. Education about the wildlife would raise awareness in the neighborhood.
- Medallions

Merrimack River West

- Inquire about timeline for drainage installment, permits.
- Medallions.
- Include in a pine barrens study with the schools?

University Heights

- Grass heaps at the easement strips on the western side. Heaps are just at the edge of property and easement boundary. Removal and disposal, education of residents.
- Facebook blurb about grass and brush heaps.
- Trails at abutting new Head's Pond easement GPS-ed and mapped.
- Medallions

79 Whitehall Road

- Locate and mark, paint and monument the boundaries of the easement
- Contact landowners about breach activity
- Ask for cooperation about protecting the easements
- Conduct cleanup
- Medallions
- 1) Invasives removal: weed wrenches, hauling truck, mapping of completed activity if appropriate
- 2) Yard waste removal: waste containers, truck, rakes, loppers, chainsaw

Dube's Pond

- Communicate with landowner about reduction in value of girdled timber.
- Discuss safety issues that will be prevented and timber quality that will be retained in sooner harvest.
- Determine which party is responsible for payment for tree removal. Accurate Tree Service in Hooksett might be a good company to contact about removal of the girdled trees. (603)-235-6799
150 Londonderry Turnpike Hooksett, near the intersection of Londonderry Turnpike and Wayne's Way accuratetree.com
- Signage about history of the site, activities encouraged, and activities discouraged or disallowed.
- Resurvey Dube's Pond, re-do the boundary description, new survey map.
- Medallions

Hooksett Middle School

Boundary description, survey map, consider tree farm there or elsewhere in Hooksett, (Quimby, or Pinnacle?) Map trails, boundaries, mark monuments, medallions. Publish map.

Clay Pond

- Gates installation (timeline?), including landowner notification and permits if any needed
- Donation acceptance process
- Trash removal at N Candia and Hall Mountain Rd crossroads
- Fill and gravel in trash site, road re-grade. (Required: Excavator and backhoe/bucketloader from Parks and Recreation, truck for hauling)
- Site Signage design, location, installation ASAP
- Town Medallions

Gates can be donated or funds can be raised (try Stonyfield Yogurt?). A donation of four gates was discussed with Blue Ribbon Fencing. If they can offer gates that are strong and heavy enough, with concrete footing, the cost may prohibit all four in one year. Two gates installation per year is a good alternative.

Brush hogging, other trail maintenance can begin as soon as Parks and Recreation know which trails are workable. The hilltop area on Hall Mountain Road is ready as soon as the equipment can navigate the hillside trail. As soon as ATV use is limited by gates, that access trail will not be crushed by recreational vehicles, and so completely unmaintained. According to Parks and Recreation, gravel may need to be added to that trail for tractor access. The black birch on the hilltop are dense and numerous, and likely will eclipse the vista within 7-10 years unless they are managed. Other areas might be chosen to manage with rotary mower/brush hog while it is at Clay Pond Area.