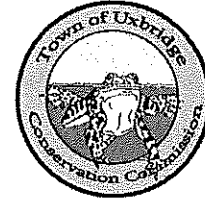




Town of Uxbridge
Conservation Commission
21 South Main Street
Uxbridge, MA 01569
508-278-8600 x 2020



Conservation Commission Meeting Minutes
Monday, April 29th, 2019
Lower Town Hall, Uxbridge Town Hall

Present: Chair Andrew Gorman, Vice Chair Jim Hogan, Treasurer Russell Holden, Clerk Jeff Shaw, and Member Lauren Steele, and Agent Holly Jones

Absent: Member Brad Allspach, and Member Dale Bangma

Also Present: Barbara McNamee, Chair of Northbridge Conservation Commission, and David Pickart, Northbridge Conservation Commission Agent

It being 6:30 pm, the meeting being properly posted, duly called and a quorum being present, the Chair called the meeting to order.

Whitin Pond/Mumford Watershed Discussion

Discussion:

Mr. Gorman noted presence of algal blooms and water chestnuts in Whitin Pond and the surrounding watershed. He summarized some ideas about how the town could work toward mitigating those conditions. The town has recently done a title search and found that Whitin Pond is owned by the heirs and successors of Sydney Covich. Uxbridge ConCom has interest in pursuing grants for mitigation within this watershed.

Ms. Steele noted that the owners of the pond would mostly likely not have interest in owning the pond, based on one of the attorneys who volunteered that information to us. The Uxbridge ConCom can't easily pursue grants because the pond is under private ownership. Mr. Pickart noted that Linwood and Meadow Pond and Arcade Pond are all impacted in Northbridge from similar conditions; every year aquatic plants get worse. Riley Pond which is owned by Northbridge has been permanently closed for cyanobacteria. It is dammed and the dam may need repairs so there are discussions of breaching the dam.

Ms. Steele noted that the state has been interested in doing that in several places. Mass Audubon and the Department of Ecological Restoration encouraged Northbridge to pursue breaching the dam. The majority of Commissioners want to do something about it and agreed that a watershed approach makes the most sense. This may also be more appealing in the grant submission process.

Ms. Trahan-Liptak, a volunteer with the Blackstone River Watershed Association, is interested in being involved. They have a monitoring station right across from Northbridge Middle School and may have data Conservation can draw from. Mr. Gorman noted that he would be interested in coordinating with the BOH or state to test Whitin Pond. The Commission would also like to explore removing part of the dam.

Mr. Pickart noted that a study could be done to qualitatively look at flow, impacts, and assessment. Mr. Gorman noted that we do currently contract with Solitude Lake Management for herbicide application at Pout Pond. It was also mentioned that there's a new herbicide being used in New Hampshire that is effective and has very few potential adverse effects. However, MA might need a new filing with MEPA to be able to use that herbicide. A winter drawdown may be another effective strategy.

Ms. Jones contributed that water chestnuts in particular typically require mechanical and hand harvesting for 8-12 years. There is one new herbicide that can be used but the lengthy survival of the water chestnuts many traditional aquatic herbicides are less helpful. Mr. Gorman proposed working toward a study for Linwood and Whitin Pond. Ms. McNamee asked about further up, the condition of the Mumford in Douglas and further up the Mumford watershed. Mr. Holden noted that Lackey Pond is essentially the headwaters of the Mumford.

Mr. Pickart contributed that Northbridge has GIS programs and could potentially map the watershed. Ms. Jones had a grant suggestion from the MA Environmental Trust. Mr. Gorman noted that the diagnostic seemed like a good approach. He suggested locating target areas, getting a concrete assessment of the watershed, and looking for bigger grants or funding sources. He suggested a map charting the flow of the Mumford until it joins the Blackstone. Mr. Pickart noted that a thorough understanding of the problem before jumping in would pay for itself. Mr. Holden suggested that getting a group together with several canoes and

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doing some hand-pulling could easily be organized without needing too much information, but could give people a chance to participate and get to know the pond better.

The BRWA expressed interest in helping with a handpulling operation for water chestnuts. Mr. Pickart noted that getting a high school class involved could be helpful as well. Mr. Pickart noted that this could be packed into the MVP program; particularly undamming the river. It was noted that the algal blooms may be a result of climate change as well. Mr. Pickart offered to create a map and look into Water Quality Grants from the EPA. Mr. Pickart offered to contact somebody at MRPC to ask about grant opportunities.

Next steps include:

- reaching out to BRWA,
- seeing if the town can take ownership of Whitin Pond.
- Potentially establish a Mumford River Watershed Group so long as the group is a spokesgroup that are sending representatives and thus not losing volunteers. Similar to CMRPC.
- Reaching out to the Blackstone Chamber of Commerce, to explore getting businesses involved.
- Both towns are working on OSRPs.
- Mr. Holden will coordinate volunteers to pull chestnuts at the beginning of August.
- Mr. Gorman and Ms. Jones will liase with Sutton and Douglas to involve them and reach out to Ms. Trahan-Liptak, as well as speaking to Uxbridge Town Planner Mike Gallerani.
- Mr. Pickart suggested speaking with DCR and the National Park Service, since they want to partner in things (maybe the Blackstone Heritage Corridor in particular).

Deborah Drummond, an abutter, noted that she had lived there for years 25 feet from the water and had noticed the lack of wildlife lately, less turtles, fish, dead fish, no snapping turtles or migratory birds. Doesn't see migratory birds anymore. She believes it's been a decline over the last seven years markedly. She also mentioned that potentially a "paddle club" might be interested in helping with the effort to pull water chestnuts.

Wetland Bylaw Workshop/Discussion

Discussion:

Fee Schedule:

FinCom mentioned that the Commission could explore implementing a fee schedule. A fee schedule approved by the BOS addressed some admin fees such as CoC requests. Some towns create a standalone fee structure in their bylaw. Rehoboth is one that does. A concern is that some activities could potentially result in a double charge of the applicant, such as ANRADs. A certain level of skills that the agent doesn't have requires the applicants to pay a third party to review, so the Commission is cautions that they do not wish to have applicants pay twice to get a third party to review anyway.

Mr. Hogan noted that the fees should match the BOS fee schedule that is already established unless there is a good reason for deviating from it. The fees currently go into the general fund, and we don't have a good sense of how much money is generated from these fees. The goal of the fee schedule is to cover routine requests, not problem sites. Some project categories that require more bandwidth from the Conservation Agent may be targets for higher fees. The fee charged currently is listed by category in the WPA and the town gets 50%+\$12.50 and the state gets 50%-12.50. Mr. Hogan says that an appropriate fee schedule for large projects could be advisable if we have data about how to do that.

Appeals:

Section 15 is the appeals section and it received criticism from a resident and former Commissioner that a different review process is created to take the Commission to Superior Court. Where the Bylaw exceeds general law it is reviewable in Superior Court but where it is on the merits of the WPA it can be appealed to the DEP. Chilmark, on Martha's Vinyard, creates an internal review process. That review board is a super committee of the Selectman, Planning, and Zoning Board which hears evidence and then determines by majority vote whether the activity is likely to have a significant impact on the wetland resources. This gives a different opportunity for appeal. They would have to make a decision that the Committee erred in the application of the Bylaw. Mr. Hogan expressed serious concern over other permitting boards in town interpreting the bylaw and interpreting the WPA that they don't know well.

Mr. Holden asked, "what if we allow an arbiter"? And noted that as a resident, he disagrees that we need to have an internal appeal and believes that going to Superior Court is acceptable. Currently appealing to DEP is less strenuous than going to Superior Court. The fee to appeal to DEP is about \$100. The fee to appeal to Superior Court is unknown. A legal representative would have to be retained. Superior Court is more rigorous process than DEP appeal is. They review the bylaw as written and how it was applied. Superior Court would potentially take more time. There was discussion of the meaning of a "de novo" review and whether the appeal would be a de novo review or not. Mr. Gorman suggested looking at an appeals case that has gone to superior court

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from the Blackstone Valley. Mr. Holden notes that there has been very few superseding Orders of Conditions and that it's rare and that very few projects have been denied. Ms. Steele noted that we should understand the appeal process well though to explain to public. Mr. Hogan asked the agent to ask the DEP circuit rider how many orders from Uxbridge have been appealed and how many have had superseding Orders of Conditions issued.

Values of the Bylaw:

Climate change or carbon sequestration could be added to Wetland bylaws. Mr. Holden mentioned including language that is included in the coastal characteristics such as DO or invertebrates that might affect a water body. The Needham Bylaw includes carbon sequestration. Ms. Steele pointed out that drought mitigation. Mr. Gorman suggested beefing up Section 1 to enhance discussion of values of wetlands. During the original town meeting where the bylaw was considered, Mr. Baghdasarian noted that he had trouble with "resource area" since it is a very monetized term. The Commission agreed to highlight the public values of wetlands to overcome the prejudice of the verbiage. It is important to note that everybody benefits from healthy wetlands; they perform biological functions that directly contribute to everybody's quality of life. This could be phrased as eco-system services.

No disturb vs. no construction area

The Commission considered whether the bylaw would pass more easily with a smaller 'no build' area? The 50 foot-buffer is not a no disturb, just a no impermeable structure rule, and a variance process is provided. Twenty five feet is the no touch. Major differences from MGL are streams, vernal pools, and setback rules, as well as the ability to assess fees and protect added values such as DO and water temperature. Adding temperature and chemical stability of water could allow us to require applicants to consider those factors.

Streams and Rivers

Ms. Jones noted that adding water itself as a resource area to be protected might be helpful. Mr. Hogan noted that the bylaw draft doesn't cover the streams and Mr. Gorman noted that the Land Under Water is covered and that Section 12 covers streams. Mr. Holden noted that we should specifically protect Cold Water Fisheries and treat any Cold Water Fishery as a perennial stream. Mr. Gorman noted that would have a significant impact and suggested looking at a map of Cold Water Fisheries.

Mr. Shaw joined the meeting

Mr. Gorman agreed that we should have performance standards for Cold Water Fisheries but was unsure if the Rivers Act protections should be triggered. There are many Cold Water Fisheries in Uxbridge. The perennial designation is based on the topographic map and then using streamstats to look for watershed size. Some towns on the Cape require calculating stream size using hydrocad. These regulations would only apply going forward after the bylaw was passed.

Ms. Jones noted that some towns use newer numbers for storm water calculations i.e. Cornell or NOAA numbers and stepping away from TR 55. However, Mr. Gorman noted that at a storm water committee meeting that suggestion was not well received. Some towns also indicate that some portion of storm water must be managed through not only stormwater basins. Mr. Holden noted that we should consider moving toward retention basins rather than detention basins since they are designed to hold some water for a period of time. Ms. Steele noted that it is beneficial to recharge water into groundwater and keep it locally rather than putting it into a river.

The way the Stormwater Bylaw is written as requiring a separate and distinct permit from the planning board when a project contemplates disturbing over an acre of land. We regulate storm water from a WPA perspective but don't necessarily need to get bogged down if the storm water committee is working on it.

Enforcement:

The enforcement section is the same as what was previously proposed. It was moved to the back. Mr. Holden asks if we could break it out for commercial vs. residential. A large commercial facility would be less worried about a \$50 fine. The last paragraph is flawed in its language and needs more words and fewer commas.

For a single residential lot a fine of \$50/day makes sense but for a commercial lot perhaps \$300. Could depend on seriousness or responsiveness of applicant. Mr. Holden asked if this would limit the state's ability to fine. Mr. Gorman responds that in an off the record conversation, a DEP official noted that DEP is more likely to fine if the town is not able to fine on its own. They are not limited by policy, however. A situation where nobody responds rapidly would accrue fees from leaving it for a long time. Mr. Holden notes that a massive violation may still need a large fine even if the applicant is responsive.

Section 13 gives us the opportunity to hold bonds which will also be helpful in protecting wetlands and ensuring wetland replication. This allows us to hold on to a certain amount of money until the wetland replication is done. We could talk about setting the bond with Town Counsel; ours is also Douglas's Town Counsel so it seems he would have a good sense of how to do this. Mr. Hogan notes that even threatening to pull the bond often encourages compliance. Mr. Holden notes that we would have to consider what

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the resource areas are. Mr. Hogan requested putting on the agenda for next meeting to request counsel and he could draft a request.

Open Space and Recreation Plan

Discussion: A new census is coming soon which will give us updated numbers. It is a draft which needs more work. We may want to get interns to help georeferenced wetland edges on plans in order to create a new wetland layer. Mr. Holden noted that there should be a section addressing town owned parcels; some would be excellent as open space, while others would be good for other uses. Mr. Hogan asked if the list contains the Uxbridge owned parcel in Douglas. Ms. Steele noted that she would like an update on the dog park.

ADJOURNMENT-NEXT MEETING SCHEDULED FOR May 6, 2018


Motion: Mr. Hogan moved to adjourn the April 29th, 2019 meeting of the Conservation Commission. Ms. Steele seconded, and the motion passed by vote of 5-0-0.

Respectfully submitted,
Holly Jones



Andrew Gorman, Chairman

Jim Hogan, Vice Chair



Lauren Steele, Member

absent

Brad Allspach, Member

Date



Jeffrey Shaw, Clerk



Russell Holden, Treasurer

absent

Dale Bangma, Member