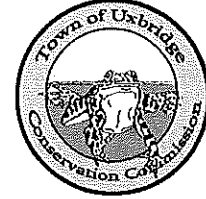


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**Conservation Commission Meeting Minutes
Monday, October 29, 2018
Board of Selectman's Room, Uxbridge Town Hall**

Present: Chair Andrew Gorman, Clerk Jeff Shaw, Treasurer Russell Holden, and Members Lauren Steele and Brad Allspach

Absent: Vice Chair Jim Hogan and Member Dale Bangma

It being 6:36 pm, the meeting being properly posted, duly called and a quorum being present, the Chair called the meeting to order and led the Pledge of Allegiance.

Wetland Bylaw Workshop/Discussion

1. Update on Draft

Discussion: Mr. Gorman spoke generally about incorporating the Commission's comments on the updated draft from the July 30, 2018 discussion. The only change that was not included was the additional language for Section II.A, not out of disagreement but out of an interest to clarify beyond the citation provided.

2. Public Input

Discussion: Michael Potaski, 24 Church Street, attended the meeting and provided the following input on the draft:

(1) Mr. Potaski expressed concern about requiring an applicant to prove a negative, referencing Section XIV and other locations where the bylaw places the burden on the applicant to prove that work proposed will not result in adverse impacts. Mr. Gorman referenced the way in which the burden of proof is explained in the Wetlands Protection Act and associated regulations; Mr. Potaski stated that the burden should be on the Commission and agreed to provide potential language in the future as an alternative for the Commission to consider.

(2) Mr. Potaski discussed the idea of levying fines and explained that Town Meeting opted not to adopt non-criminal disposition several times in the past.

(3) Mr. Potaski also noted that this bylaw does not provide an administrative appeal process (Section XV), and applicants aggrieved by the Commission's decisions based on the bylaw would need to appeal through superior court. The Commission discussed the appeal process to DEP and superior court, and whether or not there is an adequate mechanism to provide administrative appeal under the bylaw, such as to the Selectboard. Ms. Steele explained that project proponents would have the ability to appeal to DEP under certain circumstances, and Mr. Holden discussed that DEP would not have any authority to review decisions under the framework of the bylaw.

Ms. Steele left the meeting and the chair called for a five minute recess.

The Commission agreed to explore the administrative appeal process further and potentially reaching out to Town Counsel for clarification.

(4) Mr. Potaski discussed potential ambiguity with parsing the words 'habitat protection' and how potential habitat is defined. Mr. Gorman referenced the wetland regulations 310 CMR 10.60 where habitat characteristics are listed, and discussed whether or not that definition could be incorporated into the bylaw.

(5) Mr. Gorman asked if there was anything in particular that Mr. Potaski felt was effective about the draft, and Mr. Potaski discussed the need for the Commission to be attuned to what is going on in active project sites and the revised language for the 50' setback area.

Conservation Commission Meeting Minutes continued – Monday, October 29, 2018

2. Discussion of Sections XII - XVII

Section XII – Definitions The Commission discussed the following:

- (1) The updated text provides an opportunity for ornamental pruning under the “alter” definition
- (2) The term “bank” should include references for streams in the first sentence. The Commission also read the definition for stream from 310 CMR 10.04 and agreed to include it in this section.
- (3) Splitting “Competent Source” and “Qualified Professional” into separate definitions.
- (4) Whether or not to remove the 10,000 square foot reference in the “pond” definition which is in the model bylaw.
- (5) Mr. Allspach and Mr. Holden considered why the definition for “rare species” makes reference to a particular site, but the Commission agreed to leave the definition as is because no additional priority habitat is created in the bylaw.
- (6) The Commission agreed that subdefinitions of “potential vernal pool” and “documented vernal pool” could be included under the “vernal pool” definition. There is no current definition provided for “potential vernal pool”.

Section XIII – Financial Assurance The Commission discussed the following:

- (1) Changing the title to Security as it is referenced in the model bylaw.
- (2) The Commission considered whether or not it would be helpful to have regulations which establish criteria where a bond would be appropriate.

Section XIV – Burden of Proof The Commission discussed the following:

- (1) The Commission generally agreed that, similar to the state regulations, the burden of proof would be placed on the applicant. Mr. Gorman provided an example where an applicant currently needs to demonstrate that they meet certain performance standards set forth under the state regulations. The burden of proof would rest with the Commission in certain situations like enforcement. The Commission will review this section further.

Section XV – Appeals The Commission discussed the following:

- (1) The Commission reviewed Mr. Potaski’s concerns from earlier in the meeting and agreed that this matter would need further investigation. Mr. Holden considered whether or not it would be possible to allow abutters to participate in the bylaw appeal process. Mr. Allspach asked for clarification on bylaw appeals versus appeals to DEP, and Mr. Gorman explained that they are separate regulatory frameworks. Mr. Shaw stated that it would be helpful to contact Counsel to discuss the appeal question.

Section XVI – Relation to the Wetlands Protection Act No changes recommended.

Section XVII – Severability No changes recommended.

General Bylaw Discussion

- (1) The Commission reviewed the minor activity exceptions which have now been incorporated into the draft from 310 CMR 10.02(2)(b).
- (2) Mr. Gorman stated that two next steps could include inviting the new agent to offer comments and also reviewing the new draft up against mock projects as an exercise.

ADJOURNMENT-NEXT MEETING SCHEDULED FOR November 5, 2018

Motion: Mr. Allspach moved to adjourn the October 29, 2018 meeting of the Conservation Commission. Ms. Holden seconded, and the motion passed by vote of 4-0-0.

Conservation Commission Meeting Minutes continued – Monday, October 29, 2018

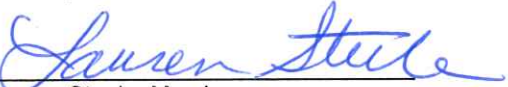
Respectfully submitted,
Andrew Gorman



Andrew Gorman, Chairman

Absent

Jim Hogan, Vice Chair



Lauren Steele, Member

Brad Allspach, Member

January 22, 2019

Date


Jeffrey Shaw, Clerk
Russell Holden, Treasurer

Absent

Dale Bangma, Member