

**ACTON CONSERVATION COMMISSION  
MINUTES  
July 1, 2015  
7:15 PM  
TOWN HALL - 472 MAIN STREET  
ROOM 204**

**COMMISSIONERS PRESENT:** Andrew Magee, Acting Chairperson, William Froberg, Tom Arnold, Amy Green, Jim Colman, Paula Goodwin

**NATURAL RESOURCES DIRECTOR & RECORDING SECRETARY:** Tom Tidman

**VISITORS:** Bettina Abe, Natural Resources Assistant

**7:15 Request for Determination of Applicability: 4 Nash Road**

Request for Determination of Applicability filed by ABC Cesspool for the replacement of a failed septic system at 4 Nash Road, Acton (Atlas plate G-2, parcel 127). Work will occur within 100 feet of wetlands.

Neither applicant nor representative was in attendance. Meeting was rescheduled for July 15, 7:30 PM.

**7:30 Request for Determination of Applicability: Robbins Mill Pond and Ice House Pond**

Filed by the Natural Resources Department of the Town of Acton for the removal of a non-native invasive aquatic species, *Trapa natans* (water chestnut), from both Robbins Mill Pond (Town atlas C-5, parcel 51) and Ice House Pond (Town atlas G-4, parcel 27).

Tom Tidman opened by presenting a history of removing water chestnuts (*Trapa natans*) from Robbins Mill Pond (RMP) in 2011 and from Ice House Pond (IHP) beginning in the mid 1990's when Natural Resources worked for 18 months to obtain permits to dredge and dewater IHP, which had become completely overgrown with water chestnuts. He explained that since 2011, approximately 150 volunteers have worked to hand pull the weeds from both IHP and RMP and, if not for the citizen volunteer workday efforts, these ponds would be covered with water chestnuts. Through the Community Preservation Act, the Natural Resources Department received at April 2015 Town Meeting \$12,000 per year funding for 3 years to hire an environmental company to deploy a mechanical harvester on the two ponds to collect the water chestnuts.

Mr. Colman stated that, since this was a restoration project, he felt an NOI would be necessary and an RDA was not sufficient. Mr. Tidman stated that filing an NOI now would preclude hiring the environmental company this summer, and the ponds would get even more infested because the rate of plant growth is exceeding the volunteers' ability to keep up.

Mr. Colman said he felt that Town of Acton Staff were asking for special approval that other contractors, citizens or developers might not get. The Commission discussed what is meant by "alter" and "nuisance" plants. Mr. Colman stated that this is clearly a project

designed to remove nuisance vegetation, thus requiring an NOI filing. Mr. Tidman countered that the removal of a non-native invasive species from an aquatic ecosystem is far more serious than simply removing nuisance plants. Mosquitoes are a nuisance, but in the instance of mosquitoes carrying West Nile virus, measures to control them supersede the Wetlands Protection Act, and they are no longer considered simply a “nuisance.”

Mr. Tidman stated that Mary Ann Di Pinto from the DEP told him that there was not a specific regulation yet for water chestnut removal in Massachusetts, but that the tendency was for water chestnut removal projects on waterways where the removal area would be greater than 5,000 square feet to be required to file an NOI. Ms. Abe stated that she had spoken to Tim Simmons, Restoration Ecologist at the Massachusetts Natural Heritage and Endangered Species Program (NHESP). Mr. Simmons told Ms. Abe that an RDA with a negative determination would be appropriate for the mechanical harvester’s removal of water chestnuts because it was such a “gentle method.” Mr. Simmons told Ms. Abe that requiring an NOI would de-incentivize people from “doing the right thing” because the process is so laborious and expensive, fewer folks statewide would undertake water chestnut removal activities. Ms. Abe stated that she had also spoken with Amber Carr of the SuAsCo Cisma who was not able to state specifically what WPA filings she and her colleagues have customarily been submitting for their work in the National Wildlife Refuge with mechanical harvesters.

Mr. Magee asked what purpose an NOI serves in this situation. He proposed that an RDA be allowed this year, but next year and in future the Commission would require an NOI, showing evidence of whether or not there had been any adverse impact from the mechanical harvester removing water chestnuts from either pond.

Ms. Green stated that the Town of Littleton has an NOI from the 1980’s that they continually renew for water chestnut removal. She suggested that the Town of Acton create a long term management plan going forward.

Mr. Froberg stated that the lack of clarity on the regulations regarding “nuisance plant” is disturbing because, through his work with OARS (Organization for the Assabet, Concord and Sudbury Rivers), he believes that the constant volunteer efforts to remove water chestnuts from the 3 rivers would not continue if NOI filings were required due to the many sites, people and equipment performing the removal of plants. He felt that requiring NOIs for folks would incur a harsh impact. Mr. Froberg stated further that he would have no problem defending this precedent/decision to a developer or another applicant because it is distinctly clear that this process of mechanical harvesting is ultimately beneficial to the wetland.

Mr. Arnold disagreed with Mr. Froberg, stating that, for example, during the Assabet River Rail Trail hearings, the commissioners were careful to stipulate how much light would be allowed to plants below a particular boardwalk component of the project. Mr. Magee stated that in every hearing the commissioners listen and make judgments based on their personal and professional knowledge and training about how a project will impact vegetation, affect water quality, fisheries, shellfish, or change water temperature. Ms. Goodwin pointed out that Mr. Tidman and Ms. Abe had sought guidance from DEP, NHESP and Cisma but were not given clear, definitive instruction.

Mr. Colman said that an NOI should be required because some ways of remediating a problem could be either benign or destructive to the very resource they are trying to protect. Mr. Magee suggested that the Natural Resources Department write a letter to DEP asking them to explain the regulations in this situation, as they seem to prohibit necessary restoration, and clarification is needed.

**Decision:** William Froberg moved that a Negative 2 determination be issued, that is said work described in the Request is within an area subject to protection under the Act, but will not remove, fill, dredge, or alter that area. Therefore, said work does not require the filing of a Notice of Intent.

This is conditioned on the following: a mandatory work report of impacts must be prepared daily during the removal process. The Commission recognizes that there will not be alteration of the stream by the act of removing vegetation. Going forward, an NOI will be necessary along with a maintenance plan. Ms. Green seconded. The motion passed with 4 yeas (Ms. Green, Ms. Goodwin, Mr. Froberg and Mr. Magee) and 2 nays (Mr. Arnold and Mr. Colman).

MINUTES: June 3, 2015 Pending

June 17, 2015 Pending

**Meeting adjourned: 8:30**



Terry Maitland  
Chairperson

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