

OSSIPEE LAKE REPORT

LAKE HOST PROGRAM WRAPS UP FIRST SUMMER SEASON

As part of a program co-sponsored by Broad Bay Alliance, hundreds of boaters putting into Ossipee Lake at the public ramp on Route 25 this summer received a first-hand lesson on the importance of preventing the spread of milfoil in the state's lakes and waterways.

The information was provided courtesy of the Lake Host program, created and funded by the New Hampshire Lakes Association and managed

locally by BBA, Ossipee Conservation Commission and the Green Mountain Conservation Group.

The Ossipee ramp was one of dozens of sites in the state that were staffed on weekends and holidays, many for the



Alliance officers David Smith and Susan Marks flank members of the Lake Host team from GMCG and Ossipee Conservation Commission.

first time. The Lake Hosts distributed printed information, conducted free boat inspections and disposed of any milfoil they discovered.

Milfoil is a damaging plant species that

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MARINA ISSUES MOVE TO STATE COURT

With neither side in the Ossipee Lake Marina case satisfied with the rulings of Freedom's Zoning Board of Adjustment (ZBA) the issues surrounding the expansion of the Broad Bay business are headed to state Superior Court.

On September 13th Broad Bay Alli-

ance joined two groups of Freedom property owners in an appeal to the state that says serious errors of fact and law were made by the town in granting "after the fact" special exception approvals for marina accessory uses on residential Lot 42,

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which is adjacent to the Marina property.

On July 9th the ZBA granted two “after the fact” approvals for the Marina to use the bathrooms and parking lots its owner illegally constructed on the land between 1998 and 2001.

The board’s ruling came just five weeks after it denied the same uses on the property. On May 28th the board ruled that the applicant had failed to meet all of the criteria required by the ordinance, including demonstrating that the proposed uses would not have an adverse impact on the nature and character of the surrounding area.

Testimony given by Broad Bay property owners and environmentalists at the ZBA’s March and May hearings cited adverse impact in the proposed uses and stated that the use of Lot 42 posed a significant threat to the environment because of the area’s highly transmissive soil. The Marina is located directly above the state’s largest stratified drift aquifer and is within a state-designated Source Water Protection Area, a primary source of drinking water in Freedom’s fastest growing residential area.

In its appeal of the July ruling the Alliance said that the ZBA made a procedural error and violated state law when it ruled on new proposals that were “not materially different” from what the board had previously denied. State law prohibits resubmission of applications for special exceptions that are essentially the same as what has been denied.

According to Alliance executive director David Smith “the bathrooms and parking lots approved in July were the same as the ones denied in May because they already exist.” In both instances the Marina was requesting “after the fact” special exceptions to the law.

The attorney for the Marina, Randall Cooper, argued successfully, however, that the new applications were materially different because they were being presented as “individual applications” instead of part of the “global” expansion plan that the board rejected on May 28th. The rejected plan also proposed merging the Lot 42 land with the pre-existing Marina property and constructing new boat storage buildings.

In a rebuttal to that argument Smith noted that Freedom Town Counsel Peter Malia had instructed the board at both the March and May hearings that it had the authority to approve any individual aspects of the application while denying other parts.

The Alliance contends that when the board rejected the application in its entirety on May 28th, state law prevented the board from considering the same uses on Lot 42 in new applications.

In addition to making a procedural error the ZBA also erred in interpreting the zoning ordinance, according to the Alliance’s legal brief.

In their filing with the state, BBA attorneys Fay Melendy and Glen Graper said the July 9th decision to grant special exceptions for marina “accessory” uses on Lot 42 violates

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the ordinance because the law requires that such uses be accessory to the property's "primary" use.

Since the ZBA in May specifically rejected the use of Lot 42 for "marina" use the town cannot legally approve marina accessory uses on the property, according to the attorneys.

On August 19th the ZBA convened a hearing to consider the Alliance's appeal of the Lot 42 decisions and the board concluded that its rulings on July 9th were legally sound. The hearing lasted less than 15 minutes.

Alliance attorneys Melendy and Graper protested that the board did not allow them to present oral legal arguments although the board allowed the Marina's attorney to do so at the previous hearing in July.

The attorneys also noted for the record that the board made its decision without public discussion of one of the two legal arguments contained in their written brief, the argument that the board's decision violated the ordinance in the matter of accessory uses.

Equally as unhappy with the ZBA for different reasons is the Marina's principal owner, Kevin Price of Londonderry, who has also filed an appeal with state Superior Court.

When the ZBA rejected the Marina's expansion plan on May 28th it ruled that that additional boat storage buildings on the pre-existing Marina



The state-mandated restoration of the Marina's wetlands finally commenced in August as a result of the Alliance's lobbying with state and local officials.

property would be an impermissible expansion of a non-conforming use, meaning additional buildings could not be approved. The board upheld that ruling after hearing the Marina's motion for an appeal in July.

In its new appeal to the state court, the Marina claims that the language of the town's 1997 approval of a special exception to construct two boat storage buildings on the property implies the board's approval for other buildings to be constructed at a later date.

In the 1997 ruling the town set an outside limit of 225 boats that can be stored on the property. According to Marina attorney Cooper, since that number cannot be accommodated by the existing boat storage buildings combined with the two new buildings, the ZBA must have meant that additional buildings could be constructed at some point in the future until the outside limit of 225 is reached. The ZBA rejected that interpretation at the July 9th hearing.

Alliance attorneys protested that the ZBA did not allow them to present oral arguments at the August 19th hearing and failed to deliberate one of the two legal issues presented in the written brief.

BBA HOSTS DES PRESENTATION ON SOURCE WATER PROTECTION

Each year New Hampshire's Water Supply Land Conservation Grant Program provides up to \$1.5 million in grants to help defray the cost of acquiring land or establishing conservation easements to protect community drinking water supplies in state-designated Source Water Protection Areas, known as SWPAs.

The program's applicability to the Ossipee Lake area, which includes a

number of SWPAs, was detailed at a meeting in Madison on August 29th hosted by Broad Bay Alliance, Green Mountain Conservation Group and the Friends of Trout Pond.

Approximately 50 people, including representatives of the Trust For Public Lands, heard Sherry Godlewski of the New Hampshire Department of Environmental Services describe the program and the requirements for the current round of funding.

Community governments and non-profit organizations with water supply as a principal mission are eligible to receive state grants covering 25% of the land or easement cost. The applicant must obtain the remaining 75% from other public and private sources.

The way in which the state defines SWPAs depends on whether the water source is groundwater or surface water and whether the area is residential or non-residential.

Protection areas are based on the



NHDES representative Sherry Godlewski chats with Broad-Leavitt Bay Association officer Sheila Jones at the BBA-sponsored presentation on Source Water Protection Areas.

amount of water pumped from wells on a daily basis and other information about the geologic formation from which the water is taken.

Many people in the Ossipee Lake region first became aware of SWPAs at the hearings on Ossipee Lake Marina's application for special exceptions to Freedom's zoning ordinance to expand their business. The Marina is situated over the state's largest stratified drift aquifer and falls within a significant SWPA that provides drinking water to one of Freedom's fastest growing residential areas.

At the zoning board hearings the Alliance and Green Mountain Conservation Group detailed the potential threat to the SWPA posed by the Marina's expansion application, including its request for "after the fact" approval of three dirt parking lots illegally constructed between 1998 and 2000 on residential land directly along the shoreline of Broad Bay.

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Many people in the Ossipee Lake region first learned about Source Water Protection Areas at the hearings on the Marina expansion.



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can clog boat engines and choke out an entire lake over time. It can be controlled by hand harvesting and other manual means but there is no absolute method of eradicating it. Preventing it from being spread from lake to lake on boats is the objective of the current program.

In the Ossipee Lake system variable milfoil has been documented for the past decade on Broad Bay and in the channel between upper and lower Danforth Ponds. This summer North Broad Bay Association considered



At the public boat ramp on Route 25, Lake Host Yolanda Buchikos talks with two Ossipee Lake boaters about identifying milfoil and preventing it from being spread.

and rejected a proposal for chemical treatments of the milfoil in its area but voted to continue to assess options during the next 12 months.

The Lake Host program on Ossipee Lake was staffed by Wolfeboro's Appalachian Mountain Teen Project.

SOURCE WATER PRESENTATION

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The soil in this area is documented as being highly transmissive, meaning foreign materials such as gas and oil can be rapidly accelerated into the groundwater.

Given the environmentally sensitive nature of the land, BBA and GMCG testified that use of Lot 42 for commercial purposes posed a potential threat to the environment that should be studied and resolved prior to granting special exceptions.

Although the ZBA denied use of the land on May 29th, in part because of the potential for adverse impact, it reversed itself on July 9th and ap-

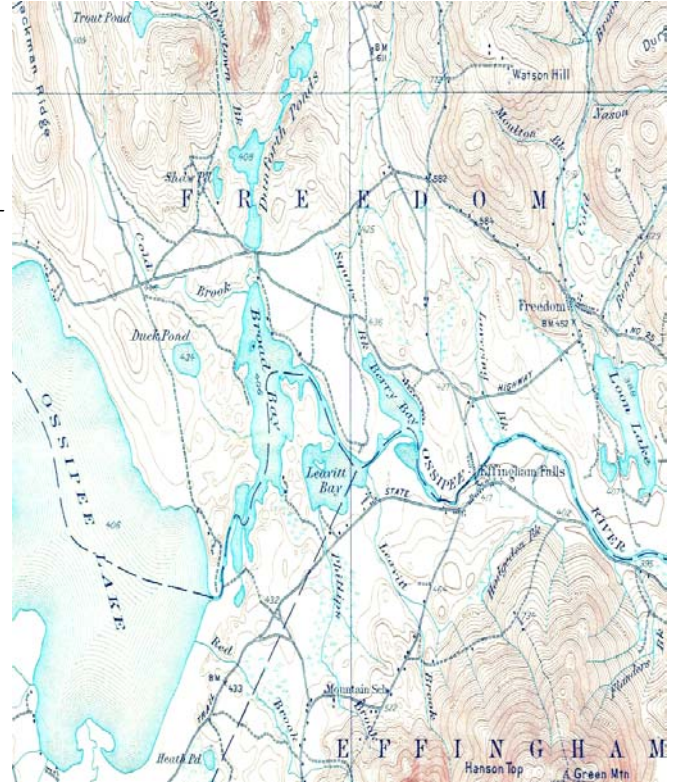
proved the parking lots and bathrooms without requiring evidence that there would be no harm to the environment. BBA has appealed the ruling to the state.

“The DES presentation was a timely reminder of the fragility of the environment that sustains Ossipee Lake and its bays,” according to Susan Marks, the Alliance’s director of development.

“While our organization is too new to participate in the Source Water Protection Program at this point, we are prepared to assist GMCG and the Friends of Trout Pond with their goals if they apply for state funding this year or next.”



Broad Bay Alliance was formed in February, 2002, to seek enforcement of the state and local laws that protect the quality of our natural environment, the quality of our lives and the value of our property. In partnership with environmental groups, non-profit organizations and homeowner associations, the Alliance is exploring how best to help ensure the long-term integrity of Ossipee Lake, its bays and the surrounding areas.



BROAD BAY ALLIANCE LOOKS BACK, AND AHEAD TO 2003

When BBA was formed seven months ago we hoped it would evolve over time to help fill the larger need of a permanent organization dedicated to the long-term protection of Ossipee Lake, its bays and the surrounding waters as one of New Hampshire's significant natural resources.

We are gratified by how quickly we are moving toward that goal. This summer we were joined by three long-standing homeowner groups with strong commitments to environmental and land use issues: North Broad Bay Association, Broad-Leavitt Bay Association and Berry Bay Association.

We also established close ties to local environmental groups, including Green Mountain Conservation Group, Ossipee Conservation Commission and the Friends of Trout Pond, to work jointly on educational and activist issues.

We have been privileged to work closely with the directors of YMCA Camp Nellie

Huckins, one of the country's foremost girls' summer camps, and we have enjoyed getting acquainted with Danforth Pond property owners who are planning to establish their own homeowners' association.

BBA is a small organization but it has made a name for itself in the lake community and has already had an important influence on local environmental and land use decisions. You are the key to our success - your letters, your attendance at hearings, your ideas and suggestions and your willingness to spread the word and get involved.

In the coming year BBA will take a number of significant steps to develop the organization, the membership and the financing required to become a permanent force for the protection of Ossipee Lake, its bays and its surrounding waters.

We look forward to continuing to work with you as a partner in the coming year.

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