

Youghiogeny River Advisory Board Meeting
Garrett County Community College
Minutes, Thursday, March 12, 1998, 7:00 - 9:00 pm.

Board Members Present

Jim Simms
Roger Zbel
Don Sebold
Phil Frantz
Rusty Thomas
Jerry Thayer
Asa McCain
Sull McCartney

Guests

Jack Hinebaugh
Don Hershfeld
Allen Nolan
Dan Clements, Cumberland Times

Board Members Absent

Shawn Sanders

Staff

Gary Yoder
Dave Baker
John Nelson
Paul Durham

Pam Anderson
Ed Golden
Mark R. Spencer
Ken Pavol

Approval of December Minutes, 1997

The minutes were approved. The advisory board recommended to note board members present and absent in future minutes as a matter of record.

Public Comment

Mr. Jack Hinebaugh, a property owner who resides next to the river, stated that the Yough was historically a bass stream and did not have trout. (In reference to the *History of Fishing on the Youghiogeny River* submitted by Fisheries staff.)

Mr. Hinebaugh also read a letter from former Secretary Brown, via Tom Demming that the river is navigable, and therefore can be used by the public. He stated a recent case in Pennsylvania that involved navigability and the respective ownership of the river bottom, and recommended that this issue be reconsidered by the advisory board. Mr. Durham recalled the case, but stated it would have to be examined for applicability. Ms. Anderson, Asst. AG for MDDNR, stated that this issue has come up before, and that a property owner in Maryland would have to test the case in a Maryland court for a ruling.

Responding to the liability issue, Mr. Zbel indicated that rafting outfitters carry insurance, and that in case of injury, a client on a trip would typically sue the outfitter not a contiguous property owner.

Board Discussion

Board discussion ensued about the general implications of conducting guided fishing services on the river. Mr. Thomas asked if permitting guided services on the river constituted a taking? Mr. Durham replied that a property owner has the sole discretion or legal right, to either allow the activity or prohibit the activity - a change in the regulations would not take away a right.

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Mr. Sebold indicated that someone may be able to commercially fish on the river, but as a property owner, he is still restricted from other types of commercial use. Paul Durham replied that the issue is if a guided fly fishing service is consistent with the intent of the river management plan and that use or activity, is not the same as erecting a commercial structure.

Presentation - Fisheries

Ken Pavol with MDDNR presented a history of fishing activities on the river and highlighted the previous handouts distributed to the board. (For detailed information, refer to handouts forwarded to the board prior to the February meeting.) Mr. Pavol indicated that stocking activities (15,000 fingerlings annually) on the river primarily occur from Penelec to Sang Run. Fish include brown and rainbow trout.

Mr. Pavol summarized the handouts referring to guided fly fishing activities on the river, stressing that most of the services occur in the same area from Hoyes to Sang Run. Mr. Thayer asked what would happen if or when the power plant is sold? (Mr. Durham later explained the status of the disposition of the company's properties.) Mr. Hinebaugh said that he thinks Sang Run is getting lower possibly due to development in the upper part of the watershed. Mr. Sebold indicated that the board needs to talk about commercialization in certain zones, and at the forefront, the board needs to look at what the management plan is trying to provide regarding proposed commercial uses.

Mr. McCartney said the river is not zoned. Mr. Sebold stated that he can't imagine the river is excluded. Paul Durham stated that the definitions of the scenic corridor, respective maps and other textual references in the regulations should be rewritten for consistency.

Mr. Thayer stated that a commercial service should be defined, and asked if there should be a limitation to that particular use? Mr. Thayer recommended that limitations of use be considered during the board's deliberations.

Mr. Zbel stated that fly fishing outfitters should be qualified and certified. Mr. Yoder replied that there is a voluntary certification for fly fishing outfitters at GCC as part of the Adventuresports program. The certification process requires the applicant to demonstrate competency and skill levels, plus a knowledge of Maryland law pertaining to restrictions of uses on public and private lands.

Legal Presentation

Ms. Anderson presented and discussed the legal issues as previously requested by the board. The issues were summarized verbatim from the handouts. (Refer to handouts forwarded to the board.) The legal paper included the following sections - statutory authority, existing Youghiogeny River regulations and a justification to update the regulations to more clearly address commercial activities on the river. Ms. Anderson noted that one important regulation (Fisheries) states that a "fishing guide" must obtain a license, and it does not differentiate between salt or freshwater. DNR will follow up on researching that legal requirement and its applicability to the Youghiogeny. Ms. Anderson summarized that revisions to the regulations can be crafted to reasonably address any issue, including carrying capacity or limits to use, location of use etc.

Mr. Frantz asked if there is a hierarchy of use - can the plan be superseded by regulation or law? Ms. Anderson indicated that the plan is a guide to managing the river. It is not a legal document in itself, but

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is referenced in the regulations for purposes of implementing management activities on the river. The plan then has more weight consequently, than other forms of DNR plans. Mr. Frantz asked if Annapolis has the authority to change the regulations? Ms. Anderson indicated yes, DNR has that authority.

Mr. Frantz made a formal motion that he would like DNR to: 1) identify shortfalls in the existing regulations and plan with respect to commercial definitions; 2) potential impacts to private property owners; 3) navigability; 4) liability; and 5) clarification of zones. The motion was seconded and unanimously passed. Mr. Frantz also made a motion requesting that DNR provide a written vision statement describing the character of the river corridor 10 - 15 years from now. The motion was seconded and passed by a 6 to 2 margin. Mr. Thayer replied that the board should make those suggestions. Mr. Durham replied that DNR has a framework for acquiring property in the corridor from willing sellers, as well as how those lands should be managed in the future.

Mr. Spencer stated that DNR would produce two products for the board's review at the next meeting. First the issues would be addressed as formally requested by the board, and second draft regulations would be submitted to the board for their review, which will be crafted to address those issues. Mr. Spencer also stated that DNR will continue to work with the board and not appoint a subcommittee, and that DNR would like to complete the final draft regulations by the summer.

Public Comment

Mr. Don Hershfeld introduced himself as a new property owner along the river as well as being an angler. Mr. Hershfeld stated that fly fishing outfitters are very sensitive to protecting the scenic quality of the Youghiogheny River and the need to maintain good relationships with adjoining property owners. Both factors are inherent to their business - degradation of the river would be detrimental to their business. Mr. Hershfeld asked the board to consider this important observation during their deliberations.

The board agreed that the next meeting will be Thursday, May 14, 7:00 pm. at GCC. The meeting adjourned at 9:00 pm.

Respectfully Submitted by: John Nelson and Mark R. Spencer