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May 11, 2009

VIA MAIL and via email [townclerk@washingtontny.org](mailto:townclerk@washingtontny.org)

Mary E. Alex, Town Clerk  
Town of Washington  
10 Reservoir Drive - P.O. Box 667  
Millbrook, NY 12545

RE: PROPOSED WETLANDS LAW

Dear Town Clerk Alex:

I transmit a letter addressed to Supervisor Prisco and Members of the Town Board providing a series of questions and answers in connection with the proposed Wetlands Law.

It is respectfully requested that you distribute the letter to the Members of the Town Board by email or by personal delivery. If it is possible, please deliver the letter to them prior to this Thursday evening's public hearing so that they will have an opportunity to review the letter prior the public hearing.

Very truly yours,



RICHARD I. CANTOR

RIC:gyy  
encs.

cc w/encs.

Mr. Robert Dyson  
John Gifford, Esq. via email [jgifford@vandewaterlaw.com](mailto:jgifford@vandewaterlaw.com)  
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May 11, 2009

VIA MAIL AND via email [supervisor@washingttonny.org](mailto:supervisor@washingttonny.org)

Supervisor Florence Prisco and Members of the  
Town Board of the Town of Washington  
c/o Town Hall  
10 Reservoir Drive-P.O. Box 667  
Millbrook, NY 12545

RE: PROPOSED WETLANDS LAW

Dear Supervisor Prisco and Members of the Town Board of the Town of Washington:

I write to thank you for the opportunity to listen to the Town Board discussion of the proposed Wetlands Law at your workshop on April 30, 2009. In my opinion, there were a series of good questions asked by Board Members but the Board Members did not receive, in most cases, responsive answers.

I take this opportunity to list some of the questions that were asked and to offer my response for your consideration.

The questions and my responses are as follows:

Question 1. How would a land use application with the proposed Local Law in effect differ from the procedures that are now in effect?

Answer: The biggest difference is that the boards, agencies and employees with land use approval jurisdiction under current procedures including, in particular, SEQRA, have flexibility to delve into the issue of wetlands, vernal pools and other protected resources if these issues are relevant to a particular application. In my terminology, they are relevant to a particular application if an applicant is proposing to undertake some form of disturbance within or adjacent to one of the

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environmental resources in question and such proposed disturbance has the potential to damage a resource that performs a beneficial environmental function. This initial determination of relevance can be made, as compared with the proposed Local Law, with a relatively small effort and a relatively modest cost.

If the conclusion is that the issues are not relevant, neither the land use authorities nor the applicant need to spend time, effort and money on the issues. On the other hand, the proposed Local Law, in its current format, requires an applicant and the land use authorities to go through the "whole nine yards" of procedures that will cost thousands and thousands of dollars and take months and months to satisfy without regard to whether protection of the resources in question is relevant to the proposed activity. The proposed Local Law does not reflect the fact that SEQRA can address the issues and does not distinguish between those situations in which protection is relevant and those situations in which protection is not relevant.

Question 2. Is the current draft of the Local Law unreasonably restrictive?

Answer: Yes. It is unreasonably restrictive because it does not distinguish between contributing wetlands and other protected resources and non-contributing wetlands and other protected resources. It is also unreasonably restrictive because the list of submission requirements for an application is unreasonable - unreasonably expensive and unreasonably time consuming.

Question 3. How does the proposed Local Law impact a property owner with a 5 acre lot who is seeking a building permit for a one-family residence?

Answer: The proposed Local Law subjects such an owner to the full list of submission and review obligations.

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Question 4. Should vernal pools be classified?

Answer. NYSDEC classifies wetlands in categories reflecting the relationship between wetlands and their beneficial environmental functions. Vernal pools, if considered apart from wetlands, should also be classified.

Question 5. Should vernal pools be taken out of the legislation?

Answer. Vernal pools should be taken out of the legislation except as noted in the following paragraph.

Vernal pools should be regulated only to the extent that they constitute a wetland having at least the minimum required size. The current draft regulates vernal pools no matter how small and requires a 100 foot buffer no matter how small the vernal pool. It also regulates vernal pools without regard to the quality of the environmental function of the vernal pool.

Question 6. Are the SEQRA procedures applicable to an activity that requires only a building permit?

Answer. Yes. Building permits that raise only ministerial issues are not subject to SEQRA. Building permits that raise discretionary issues, such as the treatment of wetlands or vernal pools, are subject to SEQRA. Accordingly, the availability of SEQRA procedures applies to building permit applications in situations in which vernal pools, wetlands and other potentially protected resources are relevant.

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Question 7. Why does DEC regulate wetlands only 12.4 acres or larger?

Answer. First, it is not correct that NYSDEC regulates only wetlands of 12.4 acres or greater. Pursuant to Environmental Conservation Law §24-0301(1), NYSDEC regulates wetlands having an area of at least 12.4 acres and smaller wetlands which in the opinion of the Commissioner have unusual local importance by reason of one or more of the specific benefits set forth in §24-0105(7). This last provision identifies loss of freshwater wetlands that will cause negative environmental impacts under the enumerated categories.

An additional answer is that the limitation of regulation based upon 12.4 acres, except as aforesaid, is a reflection of a legislative and regulatory judgment that smaller wetlands are far less important and have a far smaller likelihood of causing environmental problems.

I hope that these questions and answers provide assistance to you in your deliberations.

Respectfully submitted,



RIC:ggv

RICHARD I. CANTOR

cc: Chairperson Thomas Beaumont and Members of the Town of  
Washington Planning Board  
Mr. Robert Dyson  
John Gifford, Esq. VIA EMAIL [jgifford@vandewaterlaw.com](mailto:jgifford@vandewaterlaw.com)  
Rebecca Valk, Esq. VIA EMAIL [rvalk@vandewaterlaw.com](mailto:rvalk@vandewaterlaw.com)