

TOWN OF WASHINGTON
TOWN BOARD
Public Hearing on Wetlands Ordinance
January 14, 2008

The Town Board of the Town of Washington held a Public Hearing on January 14, 2008, at the Town Hall, Reservoir Drive, Millbrook. The meeting was called to order at 7:00 PM by Supervisor Florence Prisco with the following present: Councilmen Stephen Turletes, Michael Murphy and Robert Audia, Town Clerk Mary Alex, Attorney for the Town John Gifford and Planning Board Consultant Neil Wilson.

Also present were Tom Beaumont, Brad Roeller, Matthew Rollins, Frank Genova, Tim Marshall, Howard Schuman, Adelaide Camillo, Mitch Trinkka, Jesse and Gail Bontecou, Julia and Nigel Widdowson, Stan Morse, Charles and Joan Blanksteen, Karen Crain, Jerry Baker, Debra and Fletcher Coddington, Vicky Kelly, Didi Barrett, Stacy Hoppen, Dirk-Jan Rosse, Dirk Rosse, Hester Weeden, Kate Farrell, Scott Tumblety and Tony Sloan.

The purpose of the Public Hearing was to hear any comments regarding the proposed Local Law, Section 396 Wetlands and Watercourses amendment.

The meeting was opened with the Pledge of Allegiance.

Supervisor Prisco turned the meeting over to Councilman Murphy who was instrumental in bringing the amendment to fruition. Councilman Murphy introduced his fellow committee men: Brad Roeller, Matthew Rollins and Frank Genova. Dan Weller was unable to attend the meeting. Mr. Roeller is a member of the Conservation Advisory Commission and Chairman of the Zoning Board of Appeals, is an employee at the IES, and has served on the previous wetland committee, with great knowledge of our natural resources. Mr. Rollins has a landscaping and garden center in the community, with a strong background in ponds and vegetation. Mr. Genova is a member of the Conservation Advisory Commission, and is a retired soil specialist. Mr. Weller is retired from the New York State DEC where he was a forester. Before her death, Michele West had also served on the committee. She was the Town Planning Board Chair. Ms. West was instrumental in reaching out to professional groups and initiating mapping tools.

Councilman Murphy said that this law is unique in that it speaks directly about definitions and suggested readings. It has taken about 1 ½ years to create the document, for which some people were critical. The committee observed other communities that have been adopting wetland ordinances. They wanted to be able to see what was being litigated or questioned in other towns. The document was passed on to the town attorney for legal review. The committee then presented the document to a focus group that included Ted Rathjen, Dick Whalen, Bob Campbell, Peter Devers and Dr. Peter Groffman. Dr. Bill Schlesinger, president of the IES and Jennifer Cavanaugh from Dutchess County Soil and Water sat in on the roundtable review. Ms. Cavanaugh identified a flaw in the document that resulted in a slight change to the document as

presented. Councilman Murphy had copies of the revised page available for distribution. Councilman Murphy also identified Howard Schuman as an ex-officio committee member. He been a watchdog throughout the whole process.

Attorney Gifford stated that there are matters currently regulated on the federal and state levels. This document does not override those regulations. It is meant as a supplement to the state and federal laws. The Town is proposing its own level of protection.

The Public Hearing was opened for comment from the public.

William Schlesinger, President of the Cary Institute of Ecosystem Studies submitted the following formal remarks for the Boards consideration.

“Statement of William H. Schlesinger

President, The Cary Institute of Ecosystem Studies, Millbrook

Thank you for allowing me to speak tonight on your work to develop policies regulating the disturbance of wetlands in Washington County. The proposed ordinance is an important first step towards more effective wetlands preservation, and you are to be commended for it. At the same time, I wonder if the proposed ordinance goes far enough: now would seem to be the right moment to extend protection to smaller wetlands (<0.25 acre) that are so important to healthy ecosystems in the Town of Washington.

These small wetlands often fall into the class of ephemeral wetlands, or vernal pools, which normally contain water only during the spring, largely derived from snowmelt runoff. These wetlands are important breeding grounds for amphibians, which maintain low populations of mosquitoes during the period when water is present. They are important loci for the capture and infiltration of moisture from surface runoff, which might otherwise be lost, and are important areas for the bacterial cleaning of nitrogen in runoff, known as denitrification. It's not that larger wetlands do not also perform these tasks, but the natural array of smaller wetlands across the landscape enhances these important ecosystem properties that we all depend on.

Because the amphibians they harbor spend the drier months in the surrounding forest, these vernal wetlands need preservation in the context of the entire landscape. Studies by Baldwin et al. (2006) show upland summertime movements up to 300 meters (~900 feet) by frogs and salamanders breeding in ephemeral wetlands, indicating the size of the appropriate buffer zone that should be maintained around these properties. Many species show limited immigration to new areas when their native breeding grounds are destroyed. Vasconcelos et al. (2004) report that frogs are 90% faithful to their birth habitat. The buffer zones around wetlands would best be extended considerably beyond the 50-100 foot buffers that are proposed.

We should not think that more stringent regulations to preserve small wetlands will simply hamper the progress and rights of development in this region. Wetlands preservation offers many benefits to the future occupants of the county. The feeding of amphibians in these pools reduces insect populations that might otherwise carry West Nile virus and other disease to suburban inhabitants. Regulations that preserve small wetlands will also preserve habitat for other species in the landscape. Amphibians themselves are the food for many animals, and work by Rick Ostfeld and others at the Cary Institute has shown that high species diversity among birds is effective in reducing the prevalence of West Nile virus.

Dutchess County, including the Town of Washington, is extraordinarily dependent upon groundwater for human use; there are nearly 35,000 private wells in Dutchess County. Recharge of groundwater is a current and growing issue for this region, as warmer summer temperatures increase the rates of evaporation of soil moisture and reduce percolation of surface waters. Vernal and ephemeral ponds are extremely effective for transfer of water to groundwater, so their value to communities extends far from their actual location and area on the landscape.

Increasingly, ecologists are appreciating the role that soil bacteria play in the cleansing of surface waters, especially in natural wetlands. One group of bacteria, known as denitrifying bacteria, convert soluble nitrate in surface waters to harmless nitrogen gas, which is emitted to the atmosphere. Nitrate in surface water is derived from the excessive use of fertilizer, and linked to a number of problems in human health. A network of vernal pools, essentially acting as a set of vernal dams, slows springtime runoff from the landscape, enhancing infiltration of water and denitrification by soil bacteria.

In short, while the proposed ordinance for the Town of Washington offers a refreshing recognition of the importance of wetlands and wetland preservation, you could take the final step to preserve small vernal wetlands and their appropriate buffer zones.

Finally, I hope you will ensure that there is adequate enforcement of wetlands preservation laws that you enact. No law is effective unless it is adequately enforced.

William H. Schlesinger is president of the Cary Institute of Ecosystem Studies (Millbrook) and a long-time scientific investigator of wetland ecology.”

Councilman Murphy said that this document is a tool for the Planning Board and the Zoning Department, if a project in its application is identified with a wetland. There is a short form for when the Zoning Administrator reviews an application and deems it will not be significant, then the short form will kick in. The Long Form will require that a wetlands specialist is contracted, along with the involvement of the CAC and the Zoning Administrator to help the applicant move through the process.

Mr. Askindson said that he echoes Dr. Schlesinger's comments regarding the importance of vernal pools. He stated that developers and small landowners need tools for guidance. He questioned pages 8 and 9, Section 8 for allowed activities. He doesn't understand shell fishing and aquaculture. Also in section G, regarding trimming and pruning he is unsure why you would trim trees or plant in a wetland. He also asked about enforcement, as fines can be meaningless to large developers.

Councilman Murphy said that the Zoning Administrator is the eye of the community. The Town depends on people telling the Zoning Administrator if something is not being done correctly. Mr. Askindson said the town is blessed with large tracts of land. The fear is that those properties will be bought by large developers. The only protection the town has is very strong laws.

Mr. Coddington said he agrees with all who have spoken. He asked if there is remediation if someone has disturbed a wetland. Mr. Roeller advised that the re-creation of a wetland is not an exact science. Mr. Coddington suggested adding language that a disturbed wetland would have to be restored to a position that is functional, at their own expense. A fine should be large, like 30% of the purchase price to discourage this type of activity. Mr. Genova said there is a difference between remediation and reclamation.

Stacy Hoppen submitted the following comments:

The proposed wetlands ordinance clearly identifies its intent to protect drinking water and human health, but does not spell out as clearly whether habitat and wildlife protection is meant to be included as well; some sections of the document mention habitat and wildlife protections while other sections leave it out. (e.g. Section II. Findings mentions wildlife while Section III. Intent leaves it out; and on page 13, Section XI. A. mentions protections for biological life, while Section XI. B. does not mention it.) Also, on page 13, Section XI.A. there is mention of supporting "desirable biological life" which raises the question of, what criteria would be used to determine this? Healthy wetlands are living systems with many interdependent parts--plants, animals, microorganisms--and without careful consideration of the impact on any part of this system, it is possible to undermine a wetland, and the ecosystem services it provides, by removing "undesirable" or "insignificant" forms of life.

Adelaide Camillo commended the committee on the hard work that they have done on this proposal. She has asked David Clouser, a professional engineer, to review the proposed documents and offer his comments. She echoes the comments made previous to her. (David Clouser's comments are attached at the end of this document.)

Julia Widdowson said she is submitting a report prepared for the citizen's group, Millbrook Matters. The following comments were written by Michael Klemens and submitted by Mrs. Widdowson.

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RE: Wetland and Watercourses Law
Supplemental Technical Review
Comments

I have been requested to review the proposed wetlands ordinance on behalf of the citizen's group, Millbrook Matters. As many of my comments mirror those of David Clouser & Associates

(comment letter dated January 11, 2008) I will confine my comments to items that were not covered in Mr. Clouser's communication. I concur with Mr. Clouser that this proposed wetland ordinance is an important step forward in the Town of Washington's commitment to conserve its natural resources and I applaud your efforts. The following comments are made in the spirit of improving certain aspects of the proposed law.

Two of Mr. Clouser's comments bear repeating...the first that the Zoning Administrator should not unilaterally make determinations concerning what is and is not a regulated activity. I have had the unfortunate first hand experience when I was chairman of the City of Rye Planning Commission of placing that initial decision in the hands of zoning staff. We subsequently amended our procedures to ensure that these decisions were made by individuals knowledgeable about wetlands—but only after some embarrassing and costly incorrect determinations by our staff. In a similar vein, I do believe that any amendments to your wetlands and watercourses map be conducted in the manner that Mr. Clouser suggests, in order to maintain a transparent and public process that considers the impacts of additions and deletions to the wetlands map under SEQRA.

Under Section VIII (Activities allowed without permit) I have two areas of concern. Under "A" I would suggest deleting aquaculture as a exempt use. Aquaculture has the potential to severely impact wetlands unless designed and conducted in an ecologically sensitive manner. I believe that aquaculture should be a regulated activity and would benefit from the type of review that a regulated activity would trigger. Under "D" I am concerned that not only operation and maintenance of the Village of Millbrook's public water supply is grandfathered as an exempt activity, but also expansion activities. In the past, the creation of reservoirs and impoundments has resulted in the loss of many sensitive and important wetlands through flooding. Municipal wells also can lower the water table and disrupt (lower) the overlying wetlands. Therefore it is my advice that expansion activities of the Village of Millbrook's public water supply be a regulated

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activity. This will result in additional water extraction or collection being conducted in a manner that minimizes impacts to wetlands and watercourses, while meeting public needs for clean drinking water.

Under Section X: B (Long Form): No. 9 That the planning board may also require information on "wetland-dependent biota" and "ecological interactions between wetlands on or near the proposed activity". This latter would factor movements of wildlife (corridors) between various wetlands both on and off site and would be especially important to many wetland-dependent amphibians and reptiles.

Under Section XI: B. I would recommend that the planning board also consider, as part of its permitting process "ecological interactions between the wetlands on or near the proposed activity" as a proactive way to maintain wildlife movement corridors between various wetlands on a site.

My final comments concern vernal pools, many of which are already mapped by Town of Washington. Some of these important resources are less than 0.25 acres, and therefore would not be protected under your new ordinance. I would suggest that you extend protection to wetlands that are less than 0.25 acres if they are vernal pools. Also, I recommend that the regulated area around a vernal pool be a minimum of 100 feet, to correspond to the area that is needed to fuel

the pools with leaves and detritus and the form a staging area for young amphibians. In addition, as vernal pools have extensive upland habitat needs, I would suggest that the Planning Board consider extending the regulated area well beyond 100 feet surrounding exemplary vernal pools. There is a large volume of literature on vernal pool conservation, and I would be available to work with the Town of Washington to incorporate standards that would enable vernal pools to be identified, ranked, and protected in a transparent manner based on their individual ranking. Not all vernal pools are equal in their ecological importance, and as they require large of areas of habitat surrounding them, protection should be focused on those pools with the highest biological and ecological values. Much of this information including an assessment and ranking methodology) is contained in a publication that I co-authored (Calhoun and Klemens, 2002: Best development practices for conserving vernal pool breeding amphibians in commercial and residential developments in the northeastern United States. You may wish to include this reference in your list of recommend readings in the proposed ordinance. A copy of this publication is included as an attachment to this letter.

Thank you for this opportunity to comment on this important initiative that you have undertaken.”

Michael W. Klemens, PhD

Scott Tumblety said he is alarmed by fencing going around properties, as it effects habitat migration. He suggested that fencing around wetlands be regulated. Mr. Sloan agreed with Mr. Tumblety.

Ms. Camillo noted that the town should reference the Hudsonia Study, as it doesn't appear in the references. The study was supported by two local funders. It would help map biological areas of concerns. Ms. Camillo said the town has the good fortune of having an abundance of vernal pools within its jurisdiction.

Howard Schuman said that the Board might wish to confirm this with Stacy Hoppen, but in his opinion the Hudsonia Maps are better than the county data. The Hudsonia map shows wetlands and vernal pools that have already been identified and mapped. There is an application before the Planning Board for the Bancroft property, where the Hudsonia study shows vernal pools that are not indicated on the county data. Ms. Hoppen produced the digital maps map sets. She said that the town could add stream layers to the information they currently have. The Hudsonia data shows actual field research and could be used in conjunction with the county data.

Mr. Baker voiced concern that small properties could be rendered virtually unbuildable. He asked if there would be an appeals process. The Board acknowledged that lots could be unbuildable. Mr. Gifford advised that a property owner could go through the Planning Board process and if denied could appeal to the Zoning Board of Appeals. If necessary they could go through an Article 78 proceeding. Mr. Baker suggested some type of grandfathering process. Mr. Gifford said the town recognizes grandfathered rights.

Mr. Askindson asked how a consultant would be brought in. Councilman Murphy said that an RFP will be developed and advertised. The cost for the consultant will be incurred by the applicant.

Mrs. Barrett asked what the process will be after tonight. Councilman Murphy said that the hearing will remain open. The committee will review the comments. Another public hearing will probably be scheduled. The document will be updated if necessary and be brought back to the attorney and then to the public.

Ms. Farrell said that she supports the efforts and the work that Mike Murphy and his committee put into this Wetlands Ordinance. She hopes that the Town Board considers the expert opinion provided tonight before integrating the law.

Ms. Farrell asked will the zoning administrator, who will be the gatekeeper of this ordinance, have any education to prepare him for this responsibility. With regards to Section VIII, entitled: Activities Allowed without Permit

Item a includes aqua culture

Item b includes 'grazing and watering of livestock' and 'use of wetlands or other lands for growing marketable agricultural products'

Item e discusses emergencies but does not state that an emergency may not be used to bypass the wetlands ordinance or state, federal environmental regulations

Item g includes 'decorative landscaping and removal of trees and brush'

Ms. Farrell understands the existing working farms in our town would be grandfathered in with certain practices of grazing and watering livestock. However, going forward can the Wetlands Committee provide some regulations and/or restrictions on the above mentioned items?

Mr. Gifford said that there is a fine line between what the town is trying to accomplish but not restrict agriculture. Mr. Marshall said that there are best management practices that can be recommended. There are grants available to help implement those practices. Mr. Bontecou said that there is a lake on his property, half in Stanfordville and half in Washington. It was recommended that the lake be fenced to keep the cattle out. Assistance was available from the federal and state governments, as well as Dutchess County Soil and Water to move the cattle away from the water source.

Mr. Coddington said the town should look at a transfer tax for property flippers (those that own for less than ten years) and the town would have money to purchase small wetland properties.

Mr. Rosse said that he has been involved in wetland discussions in many areas. He expressed concerns about the runoff produced by the Village of Millbrook. He said it is a good idea to protect the wetlands and the process should be transparent. He suggested the committee members become certified, so they have a depth of knowledge. He also said there should be tax abatements if you have a small property and lose your rights to develop the land.

Mrs. Nilson asked how people could obtain a copy of the legislation. Councilman Murphy said it has been available on the town website since November, as well as copies

available at the town hall. Mrs. Nilson said that an Article 78 procedure can be expensive. Can the law be tightened? Mr. Gifford said that if you are turned down at the Planning Board level and the ZBA an Article 78 is the only way one may go.

Mr. Schuman said that he has been observing the committee in action from the beginning. They have done an excellent job. While there may be a few tweaks or corrections he hopes that the proposed portion can be adopted as soon as possible. It is a good ordinance. It can be adopted and then refined.

A gentleman asked about the map that has been identified. Mr. Roeller explained that it is a compilation of the National Wetlands Inventory, DEC watercourses and hydric soils and water courses. A final map will be available prior to the adoption of the law.

Mr. Askindson suggested that as part of the Planning Board application the subdivision plat be required to show the wetlands.

Councilman Murphy thanked Mitch Trinkka for doing a terrific article in the Round Table. He said that the Public Hearing will remain open.

There being no other business, on a motion made by Councilman Murphy and seconded by Councilman Audia the meeting was closed at 8:35 PM. All ayes were recorded.

Mary Alex, Town Clerk