

TOWN OF WASHINGTON
TOWN BOARD
PUBLIC HEARING
January 26, 2009

The Town Board of the Town of Washington held a Public hearing on Monday, January 26, 2009, at the Town Hall, 10 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, Robert Audia and William Murphy, Town Clerk Mary Alex, Attorney for the Town Rebecca Valk, Wetland Committee members Dan Weller, Brad Roeller and Frank Genova.

Members of the public that were present were Howard Schuman, Dr. William Schlesinger and Dirk-Jan Rosse.

Supervisor Prisco opened the meeting with the Pledge of Allegiance.

On a motion made by Councilman Audia and seconded by Councilman Turletes, the Town Board opened the Public Hearing on Local Law No. 1 of the Year 2009, A Law to update the Town Zoning Code for Wetlands and Watercourses. All ayes were recorded.

Councilman Murphy, Chair of the Wetlands Committee Law, said that this meeting is a follow up to the last Public Hearing, where the committee heard extensive comments from the public. The committee has met to review the comments, met with Dr. Klemens for a discussion about vernal pools. Dr. Klemens, author of the book Best Development Practices Conserving Pool – Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States, has authorized the Town to use his book in the Appendix of the legislation, as a suggested reading. Councilman Murphy said that this has been a committee project, and the town is fortunate to have been able to reach out and receive cooperation from Neil, Brad, Dan and Frank, the CAC, the Planning and Zoning Boards, people at the Farm and Home Center and the IES. He praised the Planning Board and the Zoning Board for having done exceptional jobs of protecting the water in the community. Councilman Murphy noted the Mabbettsville Market project as a prime example of cooperation. He said that the town needed a tool that both the town and homeowners could use.

Councilman Murphy noted that the proposed legislation has been forwarded to Dutchess County Planning for comment. They have a thirty day time period to review the legislation and make comments.

He said that he has received an email from Adelaide Camillo. She states that “she is happy to go on record as encouraging the Town of Washington to make a serious and sincere commitment to environmental policy, and take measures to enact policy that has real depth and substance.”

Brad Roeller said that he has been comparing the drafts, and he has some minor recommendations. In Section 1, it discusses vernal pools and he advocates for a definition of a vernal pool to be added.

In Section 5, Regulated Activities, to protect vernal pools, he would like to see language that would recognize a larger control area that is defined. It would be a tool for the Planning Board to protect vernal pools. He said that it should be at the discretion of the Planning Board to increase or decrease a buffered area.

In Section 7, B, Activities Allowed, Mr. Roeller suggested that agricultural activities be defined by NYS Agriculture and Markets, so there isn't any question to which activities are allowed. This could be a text reference.

In Section 8, Permit Requirements, Par. C, Point 12, it states "In addition, the Planning Board may require the following additional information:" without any additional information listed. Is there something missing, or should that line be removed?

Frank Genova said that a vernal pool can be a sometime thing. A vernal pool is never a wetland. Defining a vernal pool is correct.

Dr. William Schlesinger, President of Cary Institute of Ecosystem Studies, presented the following written comments on behalf of Michael Klemens:

"Thank you for the opportunity to review the latest draft (29 October 2008) of the Proposed Local Law: Section 396. Wetlands and Watercourses Law of the Town of Washington. The Wetlands Ordinance Committee of the Board, under the leadership of Michael Murphy, is to be commended for its diligence in pursuing this important piece of legislation that will benefit the citizens of Washington, today, and into the future. The proposed local law provides mechanisms that will allow your local decision-makers to reach a prudent balance between stewardship of natural resources and the rights and responsibilities of private land owners.

I am submitting the following comments for your consideration as I believe they will clarify the local law to avoid some ambiguities or areas that I consider to be potentially problematic.

Section I. Language and Purpose: In the last sentence of that paragraph I suggest inserting "vernal pools" between "wetlands" and "waterbodies" to agree with the first paragraph of this section.

Section II. Findings: e (5): There is a misspelling. Remove the "e" at the end of "concern".

Section III. Intent A): First sentence: I suggest inserting “vernal pools” between “wetlands” and “waterbodies” to agree with earlier sections.

Section IV. Wetlands and Watercourses Map(s):

B) I strongly suggest elimination of the following text: **“to eliminate from the jurisdiction of this Local Law particular wetlands or watercourses deemed to be insignificant for the purposes of this Local Law”**. This clause subjects the Town to significant legal exposure as there is no methodology, criteria, or procedure in the proposed local law to “demap” a wetland that is deemed “insignificant”. Absent a well-defined set of scientifically-supported criteria to “demap” a wetland one can only surmise that such “demapping” could expose the town to a legal challenge should a party challenge the determination of insignificance as either arbitrary and/or capricious.

If the intent of the Board is to be able to base permitting decisions upon the quality and health of a wetland (which is a prudent and well-accepted practice) there is an objective manner to achieve this result. The robustness of a wetland can be assessed using a variety of accepted peer-reviewed assessment tools, the ACOE wetland functions manual (a.k.a. “the highway methodology”) or in the case of vernal pools, Calhoun and Klemens (2002). There is ample provision in the standards for permit decision to take into account the quality of a wetland, vernal pool, or watercourse. This is the accepted and scientifically-supported method to consider the viability, function and ecological importance of a wetland in decision-making, opposed to a decision made in the absence of proper scientific analysis.

Section VIII. Activities Allowed Without a Permit E): As stated in my review of earlier drafts of the proposed local law, expansion of the Village’s public water system should fall under review of this local law. I have no problem with grandfathering the existing operations and maintenance of the current facility but expansion of a reservoir, for instance, may entail flooding other highly productive wetlands. By placing **only** expansion of the Village’s water supply under this permitting process, the Board reserves its ability to consider prudent and feasible alternatives for the extraction/impoundment of future drinking water needs of the Village.

Section X. Standards for Permit Decisions A 1): Suggest replacing A) 1): as follows: **1) On the ecological functionality and integrity of the wetland, vernal pool, or watercourse.** (*Note 1: This emended sentence achieves objectives Section IV B by empowering the Board to consider the functionality and integrity of the wetland to be a factor in the issuance of a permit.*) (*Note 2: The Board may also wish to add ecological “functionality” and “integrity” to the definitions section and possibly even tie it to specific references, such as the ACOE handbook and Calhoun and Klemens—however—the Board is advised to*

leave themselves latitude to use other manuals and assessment tools as they are developed. Please do not lock the local law to particular manual or handbook that may be rendered obsolete with the passage of time).

Section VIX. Definitions: Controlled Area: The controlled area definition distinguishes between small and larger wetlands, only allowing a 50-foot controlled area around vernal pools and similar small wetlands less than an acre in size. Many of the smaller wetlands are those of the highest risk and sensitivity. There is a misconception that larger wetlands will contain all the functions and biota of the smaller wetland—so a focus on enhanced protection of larger wetlands will not encompass the values of the smaller less protected wetlands. In ecological reality, it is often quite the opposite. Smaller wetlands have very unique and distinctive functions. Therefore, it makes good sense that both types of wetlands should have a 100-foot controlled area around them.

I hope that these comments will enable the Town Board and the Wetland Ordinance Committee to further improve upon the proposed local law. If I can provide you with any additional assistance or information, please do not hesitate to contact me.”

Dr. Schlesinger said that he supports and echoes the comments made by Dr. Klemens. He said that this is beginning to look like a very good document. With a little more tweaking the final document will be that much better.

Mr. Roeller said he agreed with Dr. Klemens’ suggestion regarding the Village falling under review if they expand the water supply.

Ms. Valk advised that under case law, a municipality does not have to abide by another municipality’s law. Councilman M. Murphy said that the current Village administration is conscious of this. He would hope that it would be a cooperative effort.

Mr. Rosse expressed that to follow up on his comments from the last public hearing, he believes that the Village should be responsible. If the Village increases their water supply, the town should charge the village, as we are protecting the water. Mr. Rosse said he didn’t see much language on pesticide and herbicide use. Another area of concern to him is the chemicals that are being put on the roads are polluting the water. We should ask what the golf course applies. Pollutants do not filter out of the water system, they travel with the water. He said that the town should not be using heavy metallics in snow removal. The town is exempted from the law, but the highway department should adopt best management practices.

Councilman M. Murphy said the Public Hearing will remain open until at least February 12th. The Town has to receive comments from Dutchess County Planning. Ms. Valk said that the Planning Board and CAC have just received their notice, and might wish to comment as well. Ms. Valk reminded the Board that if there are substantive changes then the proposed legislation would need to be recirculated.

There being no other business, on a motion made by Councilman M. Murphy and seconded by Councilman Turletes the meeting was closed at 7:40 PM. All ayes were recorded.

Mary Alex, Town Clerk