

TOWN OF WASHINGTON  
TOWN BOARD  
Dec. 11, 2008

The Town Board of the Town of Washington held their regular meeting on Thursday, December 11, 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, Allan Rappleyea, Michael Murphy and Robert Audia, Town Clerk Mary Alex, Attorney for the Town John Gifford and Associate Attorney Rebecca Valk.

Also present were Janine Stankus, Frank Genova, Howard Schuman, Willie Murphy, Tom Beaumont and Kate Farrell.

Supervisor Prisco reported that with this evening's ice storm, Highway Superintendent Brownell is not present. He is out with the highway crew working to keep our roads safe.

Supervisor Prisco opened the meeting with the Pledge of Allegiance.

County Legislator Fettes was listed on the agenda for an update on Dutchess County issues; however she was unable to be present. Councilman Rappleyea questioned whether Mrs. Fettes had been at any town meetings this past year. With the recent budgetary it is especially important that we have direct and formal communication from Legislator Fettes.

In the matter of replacing Councilman Rappleyea, Supervisor Prisco was pleased to announce that the Board had decided to appoint William Murphy to fill Mr. Rappleyea's unexpired term. There were five excellent enthusiastic candidates. The townspeople should be proud of the fact that within two weeks time there was a wonderful response to the call for a Board member. Supervisor Prisco thanked Councilman Rappleyea for his service to the community and she was proud to have him sit at the table with her for ten years. He is bright, thoughtful and will be missed.

On a motion made by Councilman Audia and seconded by Councilman Turletes the Board appointed William F. Murphy to the Town Board for a period of one year to fill the unexpired term of Allan Rappleyea. All ayes were recorded.

On a motion made by Councilman Turletes and seconded by Councilman Rappleyea the Board opened the public hearing on the Interim Period of Development. All ayes were recorded.

Ms. Valk explained that even though the town held a public hearing and adopted this local law, the law was accidentally not circulated to the county therefore it has to be ratified. The beginning date of the moratorium will continue to be November 16.

On a motion made by Councilman Rappleyea and seconded by Councilman Audia the Board opened the public hearing on fire contract with the Village of Millbrook. Supervisor Prisco noted that the complimentary transfer station permits to the LOSAP eligible volunteers remains in the contract.

### RESOLUTION

Councilman Audia, seconded by Councilman Murphy, introduced the following proposed local law, to be known as Local Law No. \_\_1\_ of 2009, entitled A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK TO AMEND THE TOWN OF WASHINGTON ZONING CODE TO ADD A NEW SECTION 396 ENTITLED "WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON".

BE IT ENACTED by the Town Board of the Town of Washington that the Town Code is amended to read as follows:

Section 1. The Town of Washington Zoning Code is hereby amended to add a new Section 396 "Wetlands and Watercourse Law of the Town of Washington", reading in its entirety as follows:

SECTION 396.           WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON

#### **Section I. Language and Purpose**

It is the purpose of the "Wetlands and Watercourses Law of the Town of Washington" to protect the health, safety and welfare of the citizens of the Town of Washington by preventing despoliation and destruction of wetlands, vernal pools, water bodies and watercourses, and controlled area, collectively referred to herein as "regulated areas," recognizing their varying ecological, water quality, supply and recreational values. The Town of Washington hereby regulates activities that may cause significant adverse effects or environmental impacts to the function served by regulated areas or the benefit derived therefrom.

It is further the purpose of this Law to enact regulations which will preserve, protect and conserve wetlands, potable water sources and watercourses and the benefits derived therefrom, prevent the despoliation and destruction of wetlands, water sources, and watercourses, and regulate use and development of such areas consistent with the general welfare and beneficial economic, social and agricultural development of the Town of Washington through the requirement of permits therefore, providing for the protection and control of wetlands, water bodies, potable water sources, and watercourses.

#### **Section II. Findings**

The Town of Washington has reviewed, finds and affirms the following:

- A) The objectives of the Town of Washington Master Plan include protecting the community's many resources for the future by enhancing the rural quality of the community and protecting environmentally sensitive areas and natural resources,

waterways, flood plains and wetlands by establishing guidelines and regulating development within regulated areas.

- B) The Town of Washington 1987 Master Plan encourages the Town to consider techniques for protecting the physical attributes of the community.
- C) The guidance of the Federal Water Pollution Control Act (Clean Water Act) and publication titled the National Wetlands Mitigation Action Plan (12/26/02; 11/16/04) which affirms a federal commitment to the goal of no net loss of the Nation's wetlands.
- D) The findings of the New York State Department of Environmental Conservation (NYSDEC) publication titled Survey and Compendium of Local Laws for Protecting Water Quality from Nonpoint Source Pollution (1/96) which is a compilation of local laws which have been used by municipalities to protect wetlands and waterways in their jurisdictions from nonpoint pollution. The publication states, "Non-point source pollution is the primary cause of the water quality problems in more than 90 percent of New York State's impaired waterbodies".
- E) The findings of the pertinent literature published by the NYSDEC and articulated in 6 NYCRR 664.3 that, in their undisturbed and natural condition, the regulated areas sought to be protected herein serve multiple beneficial functions, including but not limited to:
  - 1) The protection of water resource quantity and quality by preserving sources of surface water, recharging groundwater and aquifers, serving as chemical and biological oxidation basins, serving as nutrient traps for nitrogen and phosphorus, filtering pollutants, and/or functioning as settling basins for naturally occurring sedimentation.
  - 2) Protection of aquifers and water bodies that are, or can, or may be used in the future for water supply purposes.
  - 3) The protection of stream channel and stream bank stability thereby controlling and reducing erosion, flooding and related property damage.
  - 4) The control of flood water and storm water runoff by the regulation and storage of natural flows.
  - 5) The provision of important nesting, feeding, migratory and wintering habitat for diverse wildlife species, including many listed as "special concern", "threatened", "endangered", and "rare" by New York State; or other government entities, including the U.S. Fish and Wildlife Service.
  - 6) The provision of breeding and spawning grounds, nursery habitat and food for various species of fish and other wildlife.
  - 7) The support of distinctive and less common vegetative associations specifically adapted for survival in low oxygen environments.
  - 8) The provision of areas of unusually high land productivity which support significant wildlife diversity and help to maintain ecological integrity.
  - 9) The provision of areas throughout the Town of Washington for recreational uses.
  - 10) The provision of outdoor laboratories and living classrooms for environmental studies.
  - 11) The provision of open space and visual relief from residential and commercial development.

- F) The findings of the NYSDEC titled Freshwater Wetlands Program: Freshwater Wetlands Status and Trends which recognizes that considerable statewide acreage of these important natural resources sought to be protected herein has been lost or impaired by the cumulative effects of acts inconsistent with the natural uses of such areas, and contrary to public health, safety and welfare.
- G) The findings of the Environmental Law Institute publication entitled Conservation Thresholds for Land-Use Planners (2003) which determined that the adjacent "buffer" areas (i.e. controlled areas) associated with lakes, ponds, streams and wetlands "provide benefits that are significant for maintaining the functional integrity and quality of such resources, and for furnishing protection against adverse impacts from activities in adjacent areas." Due to the diversity in quality and functional roles of different wetlands, vernal pools, and watercourses, the Town of Washington has determined that variable wetlands and watercourse controlled area widths are appropriate to protect the functional integrity and quality of these resources.
- H) The Town of Washington Town Board has determined, based upon a review of the aforementioned literature and from observations made by others in the Town itself, that further unregulated land development activities and water withdrawals (wells and surface water intakes) and sewage collection systems may alter the hydrology of ground and surface waters, which can lead to significant adverse effects or environmental impact to the function served by regulated areas or the benefits derived therefrom, thus posing a threat to the health, safety and general welfare of the people of the Town of Washington and the surrounding region.

### **Section III. Intent**

- A) It is the intent of the Town of Washington to insure that activities in and adjacent to wetlands, watercourses and water bodies do not unduly impact the public health, safety and general welfare, or adversely affect the natural environment, or cause environmental degradation. It is the intent of this Section to incorporate the consideration of wetland, watercourse, and water body protections, including their controlled areas, into the Town of Washington's land use and development approval procedures, so as to provide a reasonable balance between the rights of the individual property owners to the reasonable use of their property and the rights of present and future generations in consideration of riparian law.
- B) It is the intent of this Law to conserve and protect the regulated areas described herein pursuant to the general enforcement power vested in and granted to the Town of Washington to protect the general health, safety and welfare of the residents of the Town and their property by: the New York State Constitution; the Municipal Home Rule Law; the Statute of Local Governments and the Town Law; as specifically provided in Environmental Conservation Law ECL-24-0509 which recognizes the right of local governments to establish their own procedures for the protection of regulated areas lying within their jurisdictions separate from the provisions of the Freshwater Wetlands Act found in ECL 24-0501 and the DEC regulations promulgated in Part 665 of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR Part 665) provided that such provisions are at least as protective of the regulated areas as 6 NYCRR Parts 663-664 and regulations promulgated pursuant to Freshwater Wetlands Act permits ECL 24-0701, etc.
- C) It is the intent of this Law to locally provide greater protection to wetlands than that provided by federal wetland regulations promulgated by the U.S. Army Corp. of Engineers (USACE) in cooperation with the federal Environmental Protection

Agency (EPA) and Fish and Wildlife Service specifically with regard to the presumption pursuant to 33 CFR. 323.6(a) which provides that alternatives to impacting wetlands are presumed to be available if a project is not a water-dependent project.

- D) It is the intent of this Law to exercise concurrent jurisdiction with the NYSDEC and the USACE for regulating wetlands, watercourses, water bodies, and controlled areas (i.e. "regulated areas") within the Town of Washington.
- E) It is the intent of this Law to further the Town's stated goals and objectives through a mandatory permit review process, and to separately strengthen and concurrently enhance the goals of the State Environmental Quality Review Act (SEQRA) to reduce the potential for adverse environmental impacts to important natural resources.
- F) It is the intent of this Law to conserve and protect the regulated areas described herein and be consistent with this objective, to advance responsible land use and management, development, natural resource extraction, and other activities conducted in the Town of Washington in order to avoid the loss or impairment of the natural functions and values of regulated areas as described herein.
- G) It is the intent of this Law to administer the provisions of this law to ensure administrative efficiency with the Town's land use development regulatory processes.

#### **Section IV. Wetlands and Watercourses Map(s)**

- A) Concurrent with the adoption of this Section the Town of Washington Town Board hereby adopts a map entitled "Zoning Map Series Map #5: Streams, Wetlands, Hydric Soils and Floodplains" (Wetlands Protection Map), drawn at a scale of one -inch equals one thousand feet (1" = 1,000') or larger which identifies the approximate locations of regulated wetlands and watercourses within the Town. The actual location(s) of a water course boundary and the controlled area around the water course, and/or a water body and the controlled area around the water body, and/or a wetland boundary and the controlled area around a wetland are subject to field delineation and verification by the Town in accordance with the definitions and methodologies set forth in this Section. The Planning Board, in consultation with the Conservation Advisory Commission, and with the advice of such qualified wetlands specialists, biologists, hydrologists, soil scientists, ecologists, botanists, and other experts as determined by the Planning Board, shall determine the location of all water course boundaries, wetland boundaries, and their associated controlled areas pursuant to this Section. The cost of such expert assistance, if required, shall be paid for by the applicant for a permit under this Section in accordance with the provisions of the Town's escrow policy.
- B) Said Map(s) may be modified by the Town Board so as to correct or clarify the locations of wetlands or watercourses, to incorporate additional wetlands or watercourses, to eliminate from the jurisdiction of this Section particular wetlands or watercourses deemed to be insignificant for the purposes of this Section, or to incorporate supplementary maps that correct, clarify, or affirm in detail the area of jurisdiction of this Section.

#### **Section V. Regulated Activities**

Activities and uses regulated under this Section are those that may cause identifiable significant adverse effect(s) or environmental impact(s) as defined herein to the functions(s) served by the regulated areas(s) or the benefits(s) derived therefrom located in the Town of Washington. It shall be unlawful for any person without a written permit issued by the Planning Board to conduct any regulated activity within a regulated area as defined in this

Section except as herein provided.

Regulated activities are those set forth in this section which occur or are proposed to occur within the boundary of a wetland, the boundary of a water course, or within the controlled area of a wetland or water course independent of whether the wetland or the water course or the controlled area is separated by one or more parcels or municipal boundaries.. Regulated activities under this Section shall be as follows:

- A) Any form of clearing, draining, dredging, excavation, removal of soil, mud, sand, shells, gravel, or other material or aggregate from or within any regulated area;
- B) Any form of dumping, filling, or depositing of any soil, stones, sand, gravel, mud, rubbish, or fill of any kind into or on any regulated area;
- C) Erecting any structures, including but not limited to buildings, whether principal, accessory, or temporary, construction of any road, driveway, or motor vehicle parking facility, paving, the driving of pilings, swimming pool drainage systems, constructing wells, or installing any pipes, service lines, cable conduit or other conduit, or placing of any other obstructions whether or not they affect the ebb and flow of water in or on a regulated area;
- D) Placing any other obstructions within any regulated area, whether or not the same affects the ebb and flow of water.
- E) Altering and/or modifying natural drainage patterns and contours of a regulated area;
- F) Introducing any influents of high thermal content that may cause deleterious ecological effects into or on a regulated area;
- G) Stripping any area of vegetation; including clear cutting;
- H) Using or storing chemicals, dyes, fertilizers, including manure, compost, topsoil, or other organic materials, fuels, herbicides, pesticides, de-icing materials, or similar materials within or on any regulated area.. This provision shall not apply in cases of emergency or in cases where the public safety may be in jeopardy;
- I) Installation of a septic tank, septic tank discharge pipe, storm water discharge outlet, roof gutter, grey water discharge pipe, or any part of any storm water management structure, or any sewer outfall within a regulated area;
- J) The discharge of treated or untreated sewage effluent, storm water discharge, or any other waste into a regulated area;
- K) The depositing or removal of the natural products of the wetlands commercial fishing, commercial shell fishing, and aquaculture where otherwise legally permitted and regulated;

#### **Section VI. Pre-Existing Lawful Activities**

- A) Pre-existing lawful activities shall mean land uses and structures legally established prior to the effective date of this Section 396. In order to have been legally established a land use activity or structure shall have been: 1) established pursuant to the provisions of this Chapter prior to the effective date of this Section; or 2) shall have been lawfully established prior to the effective date of this Chapter; or 3) shall have been lawfully established in compliance with Article 24 of the Environmental Conservation Law.
- B) The provisions of this Section shall not apply to the following pre-existing lawful activities including uses and structures established prior to the effective date of this

Section. In no event shall any pre-existing lawful activity be expanded, changed, enlarged, or altered except in accordance with the provisions of this Chapter. Should the permit, license, or approval under which any pre-existing lawful use or activity was established cease or expire, or if any pre-existing use or activity shall cease then the activity not be re-established and no structure shall be used except pursuant to a permit issued under the terms of this Chapter.

- C) With respect to all other uses and structures established prior to the effective date of this Section said uses and structures may continue as pre-existing lawful activities and structures provided:
  - 1) A valid preliminary subdivision plat, or site plan, or special permit has been duly approved by the Planning Board and is valid and in effect as of the date of this Section; or
  - 2) A valid building permit and/or certificate of occupancy has been lawfully issued by the Building Inspector and is valid and in effect as of the date of this Section; or
  - 3) A use variance, or area variance, or special permit has been duly approved by the Zoning Board of Appeals (ZBA) and is valid and in effect as of the date of this Section.

#### **Section VII. Activities Allowed Without Permit**

The following activities are exempt from the permitting requirement as set forth under this Chapter, provided they shall not cause significant adverse effect or environmental impact to the regulated areas.

- A) The depositing or removal of the natural products of the wetlands by recreational fishing, shell fishing, hunting, or trapping where otherwise legally permitted and regulated;
- B) Agricultural activities including but not limited to grazing and watering of livestock, making use of water resources for agricultural irrigation, and otherwise engaging in the use of wetlands or other land for the production of agricultural products but excluding draining, filling, and construction activities not required for enhancement or maintenance of the agricultural productivity of land;
- C) Timber harvesting and forestry management pursuant to an approved management plan under NYSDEC regulations and any applicable law(s) of the Town of Washington, and administered by a certified forester, but excluding clear cutting.
- D) Public health activities under orders and regulations of the New York State Department of Health, provided that copies of all such public health orders and regulations affecting wetlands have been filed with the Planning Board and the Zoning Administrator and that the Planning Board may request modification of such orders if it deems it necessary to implement this Section;
- E) Activities of the Village of Millbrook related to the operation, maintenance and expansion of the Village's public water supply system;
- F) Any actual and ongoing emergency activity that is immediately necessary for protection and preservation of life or property, or preservation of natural resource values. Such emergency activities include, but are not limited to: search and rescue operations; preventive or remedial activities related to contamination of streams or other bodies of water; withdrawal of water for firefighting purposes; emergency response to floods, hurricanes and other storms, fires, and other public health emergencies. Within 30 days of the end of such an emergency involving any activity

which otherwise would be treated as a regulated activity under this law, the person chiefly responsible for undertaking such emergency activity shall send a written statement to the Planning Board setting forth the pertinent facts regarding such emergency, including an explanation of life, property, or resource values such activity was designed to protect or preserve;

- G) Ordinary maintenance and repair of existing structures or improved areas which do not involve expansion or increasing the size of such structures or improved areas, the use of pressure treated wood or substantial restoration, reconstruction, rehabilitation, or modification, including but not limited to bridges, roads, driveways, highways, railroad beds, bulkheads, docks, piers, or pilings; and
- H) Trimming, pruning, and bracing of trees, decorative landscaping including the addition of trees and plants, and incidental removal of trees and brush, provided that those additions are not of an invasive species (see Appendix, "A" attached hereto and made part hereof).

### **Section VIII. Permit Requirements and Procedures.**

- A) Any person proposing to conduct or cause to be conducted a regulated activity within a regulated area shall obtain the approval of the Planning Board prior to the commencement of the regulated activity. Applications for permits for regulated activities shall be filed with the Zoning Administrator. In addition:
  - 1) It shall be the responsibility of the Zoning Administrator, upon receipt of an application for a approval of a regulated activity under this Section to immediately refer the application to the Conservation Advisory Commission for assistance in making an initial determination as to whether the proposed regulated activity is subject to the requirements of this Section; it being the intent that the Zoning Administrator, after consultation with the Conservation Advisory Committee, shall at the earliest possible time determine whether a proposed activity is a regulated activity as set forth herein.
  - 2) It shall be the responsibility of the Building Inspector upon receipt of an application for a building permit to consult with the Zoning Administrator as to whether one or more of the activities proposed under a building permit application is a regulated activity as set forth in this Section,
- B) Application procedure; pre-application consultation. The applicant, prior to filing an application for a permit under the provisions of this chapter, shall consult with the Zoning Administrator as to the compliance requirements related to wetlands, watercourses and water bodies as well as application procedures for the Town of Washington Planning Board.
- C) Application for a wetlands/watercourse/water body permit. The applicant shall file with the Zoning Administrator an application, in such form, in such number, and with such information as the Planning Board shall prescribe. At a minimum, the following information shall be required:
  - 1. The name, address, and telephone number of the applicant.
  - 2. Names and addresses of abutting property owners.
  - 3. A description of the proposed project as it relates to this Chapter.
  - 4. A written explanation of why the proposed activity cannot be located at another site, i.e., out of the wetland, watercourse, water body or controlled areas.
  - 5. A map showing all wetlands, watercourses, water bodies and controlled areas on

the site under review and within 200 feet of the site boundaries. (The Planning Board reserves the right to require land data information for distances of greater than 200 feet based on the Board's assessment of field conditions).

6. A map at a scale no greater than one inch equals 50 feet (1" = 50') and containing contour intervals of one (1) foot or less in the regulated area showing the area of wetland or watercourse directly or indirectly affected, with the location of the proposed activity thereon.
7. A description of the vegetative cover of the area, including dominant species.
8. A description of the soil types on the site.
9. A Short Form Environmental Assessment Form (EAF) under SEQRA. The Planning Board reserves the right to require the applicant to prepare a Long Form EAF after the initial review of an application.
10. Letter of determination from the United States Army Corps of Engineers that the wetlands and watercourses are not subject to regulation under Section 404 of the Federal Clean Water Act, or a copy of a 404 permit application, (If area is governed by NYSDEC or USACE, then copy of applicable letter from the oversight agency is required.)
11. An application fee in an amount set by the Town Board, and an application review fee (escrow) in an amount set by the Planning Board.
12. Additional information. The Planning Board may require additional information in order to make a determination on the application. Additional information may include, but shall not be limited to, a schedule and sequence of proposed activities and the type of equipment to be used, the study of flood, erosion and other hazards at the site, and any other information deemed necessary to evaluate the proposed use in terms of the standards of this chapter. In addition, the Planning Board may require the following additional information:
13. The boundaries of all regulated areas within the applicant's subject property as identified and delineated in accordance with standards set forth in "The Freshwater Wetlands Delineation" prepared by the NYSDEC Division of Fish & Wildlife and the "Technical Report Y-87-1 Corps of Engineers Wetlands Delineation Manual" no more than eighteen months prior to the date of filing of the application on a topographic survey of the property and containing notation documenting the field delineation.
14. The description of the vegetative cover of the regulated area shall include the dominant species and their wetland classified status as referred to in The National List of Plant Species That Occur in Wetlands, New York or Northeast (Region 1) published by the U.S. Fish and Wildlife Service or the most recent edition.
15. Ground water table elevations indicating depth to ground water, direction of flow and hydrologic connections with surface water features.
16. Location of the construction area and area proposed to be disturbed, and its relation to property lines, roads, buildings, regulated areas within a minimum of two-hundred (200) feet or such other distance as determined by the Planning Board.
17. Applications affecting the water retention capacity, water flow, or other drainage characteristics of any wetland, watercourse or water body shall include a statement of the impact of the project on upstream and downstream areas giving

appropriate consideration to flood and drought levels and the amount of rainfall.

18. Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices and an analysis of the wetland hydrologic system including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions.
19. Locations and specifications for any proposal to drain, fill, grade, dredge and clear vegetation, including areas and quantities proposed for deposition or removal, the procedures to be used and dominant species of vegetation to be removed.
20. Locations and details of any existing and proposed storm water drainage facilities, including any point discharges, artificial inlets, or other conveyances which would discharge into regulated areas, and measures proposed to control erosion both during and after the proposed work including a schedule for installation and maintenance for such measures.
21. An analysis of hydrologic systems located within and connected to the regulated areas and a narrative to explain how the regulated areas will be affected by the proposed action including water retention capacity, water flow and drainage characteristics. Applications for projects affecting the water-retention capacity, water flow, or other drainage characteristics of any pond, lake, reservoir, natural drainage system, or wetland shall include a statement and numerical calculations of the impact of the project on upstream and downstream areas, giving appropriate consideration of other than normal levels of watercourses and amounts of rainfall, specifically the 100-year storm event.
22. Upon receipt of an application that the Zoning Administrator determines is complete as to form he/she shall refer said application to the Planning Board for review and action and shall also simultaneously refer said application to the Conservation Advisory Committee for review.
23. Planning Board review. Applications for wetland permit approval must be received by the Planning Board not less than two (2) weeks prior to the date of the regularly scheduled Planning Board meeting. No application shall be deemed complete until a Negative Declaration has been issued, or until a Draft Environmental Impact Statement has been accepted by the lead agency as satisfactory with respect to scope, content and adequacy.
24. When officially received. An application submitted under this section shall be deemed received at the next regular meeting of the Planning Board at which the application is to be considered. An application shall be placed on the Planning Board agenda only after payment of the application fee and application review fees and receipt by the Board of the specified number of copies of the application including maps and any supporting documentation.
25. Public review; public hearing. Except those applications for which the Planning Board has waived wetland permit review, within sixty-two (62) days of receipt of a complete application, the Planning Board shall hold a public hearing. Notice of the public hearing shall be published in the official newspapers at least ten (10) days prior to the date set for public hearing, and shall, at least ten (10) days before such hearing mail notice thereof to the owners of property within 200 feet of the property that is the subject of the application. The notice shall state the date, time, place and subject of the public hearing at which the application will be reviewed. Such notice shall not be required for adjourned dates. The records of the Receiver of Taxes of the Town of Washington shall be deemed conclusive as to ownership and the notice shall be deemed complete when deposited in a

properly addressed postpaid envelope in the United States mail. The Planning Board may also provide that the hearing be further advertised in such manner as it deems most appropriate for full public consideration of the application, including the prominent placement of one (1) or more signs on the premises that is the subject of the application notifying interested persons that an application for a site plan approval is under consideration by the Board.

26. Referral to Neighboring Municipalities. For a wetland application under this section involving property located within five hundred (500) feet of an adjacent municipality notice of any public hearing shall be given by mail or electronic transmission to the clerk of the adjacent municipality not less than ten (10) days prior to the date of said hearing.
27. Agricultural data statement. An application for wetland permit approval must also contain an agricultural data statement if any portion of the project is located on property within an agricultural district containing a farm operation, or other property with boundaries within five hundred (500) feet of a farm operation located in an agricultural district. The agricultural data statement shall contain the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district which contains farm property; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.
28. Time of Decision. Within sixty-two (62) days of close of the public hearing the Planning Board shall approve, approve with modifications, or disapprove the wetland permit application. A copy of the Planning Board's decision shall be filed in the Office of the Town Clerk within five (5) days of the date of such decision, and a copy shall be mailed to the applicant. In acting to approve, with or without modifications a wetland permit application, the Planning Board may attach such conditions and safeguards as it deems necessary to assure that the purpose and intent of these regulations are complied with. Within sixty (60) days of the date of approval or approval with modifications, the applicant shall present to the Planning Board a corrected final wetland plan in reproducible form, including any modifications required by the Planning Board as a condition of approval. Upon verification by the Planning Board that the wetland plan complies with the requirements of the approval, the plan shall be endorsed by the Planning Board Chairperson and filed with the Planning Board and the Zoning Administrator. The permittee shall not commence any site preparation, including but not limited to tree removal, removal of soil, grading, stockpiling of soil or other construction material, until the wetland plan has been endorsed by the Planning Board Chairperson.

#### **Section IX. Standards for Permit Decisions.**

- A) In granting, denying, or conditioning any permit, the Planning Board shall consider the effect of the proposed activity:
  - 1) On the ecology of the wetland, potable water sources and watercourses;
  - 2) On the public health and welfare;
  - 3) On flood hazards and irreversible and irretrievable commitments of natural resources that would be involved in the proposed activity;
  - 4) The possibility of avoiding further reduction of the wetlands', watercourses', or water bodies' natural capacity to support desirable biological life, prevent

- flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space;
- 5) The extent to which the exercise of property rights and the public benefit to be derived from such use may or may not outweigh or justify the possible degradation of the wetland, watercourse or water body;
  - 6) The interference with the exercise of other property rights and the impairment or endangerment of public health safety and welfare, and on the maintenance and enhancement of other benefits as stated in Purposes Section.
- B) In order to approve an application, the Planning Board must find that the proposed regulated activity is consistent with the purposes of this Section, including:
- 1) Preserving and protecting wetlands, water resources, potable water sources and watercourses and the benefits derived therefrom;
  - 2) Preventing the despoliation and destruction of wetlands and watercourses;
  - 3) Regulating the development of such wetlands and watercourses, in order to secure the natural benefits derived therefrom, consistent with the general welfare and the beneficial economic and social development of the Town of Washington.
- C) In granting a permit, the Planning Board may limit the same and impose conditions designed to carry out the purposes of this Section. The Planning Board may require a bond or letter of credit in an amount and with surety and conditions satisfactory to the Planning Board to secure compliance with the conditions and limitations set forth in the permit.
- D) The Planning Board shall also review and consider all other state and federal applications for activities within the regulated wetland. The Planning Board shall have the discretion to issue a permit for a regulated activity where the Board finds that the permit mitigation requirements as a condition of a state or federal agency having concurrent jurisdiction over a regulated wetland or water course disturbance permit satisfies the requirements of this Section. Such issuance and findings shall not be construed as refusal of jurisdiction by the Board, and the Board shall issue such permit conditioned on the applicant complying with all of the conditions of such state or federal permit approval.
- E) No Permit Approval shall be considered for the proposed regulated activity by the Planning Board unless and until the applicant has demonstrated by clear and convincing data and analysis:
- 1) That there is no reasonable alternative to the proposed regulated activity including a reduction in the density, intensity of use, or scope of the proposed use, or alternative site plan which would avoid significant adverse effect or environmental impact to the function of regulated area(s).
  - 2) That the significant adverse effect(s) or environmental impact(s) of the proposed regulated activity to the function served by the regulated area(s) or the benefits derived therefrom, has been minimized to the maximum extent feasible.
  - 3) Consistency with public health and safety as well as any existing Federal, State, County and local comprehensive land use plans and regulations.
- F) To determine if the applicant has complied with the criteria above, the Planning Board, in consultation with the Wetlands Administrator, CAC and the Zoning Administrator, shall evaluate the adverse effects or environmental impacts of the proposed regulated activities, upon regulated area functions and neighboring land use as enumerated below:

- 1) Depositing fill in a regulated area, or other modification of topographic contours.
- 2) Disturbance or destruction of flora and fauna, endangered and threatened species and significant habitats in a regulated area.
- 3) Influx of sediments or other materials causing increasing water turbidity and/or substrate aggradations in a regulated area.
- 4) Removal or disturbance of regulated area soils
- 5) Destabilization of regulated area channel or bank
- 6) Reductions and/or increases in regulated area water supply.
- 7) Reductions and/or increases in an associated controlled area.
- 8) Interference with the circulation of water within or through a regulated area
- 9) Damaging thermal changes and/or nutrient levels in the water supply within or through a regulated area.
- 10) Introduction of hazardous or toxic pollutants into a regulated area.
- 11) Any other considerations which the Planning Board deems pertinent to the functioning of regulated areas.
- 12) Alterations to flood flows, flood storage, storm water, upstream and downstream channel and bank stability, storm barriers and water quality of regulated areas.
- 13) Impacts of flooding, erosion, hurricane winds, soil limitations, and other hazards such as fire and landslide of regulated areas.
- 14) Impacts on water supply and waste disposals or regulated areas.
- 15) Cumulative adverse effect of any proposed or reasonably anticipated future activities on regulated areas subject to the application.

#### **Section X. General Wetland Permit Conditions.**

The following General Conditions shall be conditions of all wetland permits issued pursuant to this Chapter.

- A) By acceptance of this permit the owner/applicant/permittee agrees that the permit is contingent upon strict compliance with this Chapter of the Town of Washington Town Code and any special conditions of the Planning Board.
- B) The owner/applicant/permittee shall notify the Planning Board and the Zoning Administrator in writing not less than 72 hours in advance of the time work is commenced, and shall promptly notify the Planning Board and the Zoning Administrator in writing of the completion of work.
- C) The permitted work shall be subject to inspection by an authorized representative of the Town of Washington which may order work suspended if the public interest so requires.
- D) The Town of Washington reserves the right to modify, suspend or revoke this permit at any time after due notice when: a) the scope of the project is exceeded or a violation of any condition of the permit or provision of the law pertinent regulations are found; or b) the permit was obtained by misrepresentation or failure to disclose relevant facts; or c) newly discovered information or significant physical changes are discovered.
- E) The permittee is responsible for keeping the permit active by requesting renewal

from the Planning Board, including any forms, fees or supplemental information that may be required by the Planning Board not less than thirty (30) days prior to the expiration of this Permit.

- F) This permit shall not be construed as conveying to the applicant any right to trespass upon private lands or interfere with the riparian rights of others in order to perform the permitted work or as authorizing the impairment of any right, title or interest in real or personal property held or vested in a person not party to this permit.
- G) The permittee is responsible for obtaining any other permits, approvals, easements and rights-of-way which may be required from any other governmental agency or private person. The granting of this permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from any other federal, state, regional, or local government agency or department, which may be required.
- H) Any modification of this permit by the Planning Board shall be in writing and attached hereto.
- I) All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediment, fuels, solvents, lubricants, epoxy coating, paints, concrete, leachate or other environmentally deleterious materials associated with the project.
- J) All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or his agent as part of the permit application.
- K) All sediment and erosion control measures depicted on the approved plans shall be installed prior to commencement of the approved work and shall be continuously maintained during the term of the project. The sediment and erosion control measures shall be replaced as necessary or as directed by the Planning Board or its authorized representative.
- L) The permit form shall bear the following language, which form shall be signed by the permittee:

“BY THIS SIGNATURE THE PERMITTEE STATES THAT HE/SHE HAS READ THE GENERAL AND SPECIAL CONDITIONS OF THIS PERMIT, UNDERSTANDS THE REQUIREMENTS AND LIMITATIONS OF THIS PERMIT, AND AGREES TO COMPLY WITH THE CONDITIONS OF THIS PERMIT AND CHAPTER 39A OF THE TOWN OF CODE”.

#### **Section XI. Expiration of Permit.**

- A) All permits issued pursuant to this Section 396 shall expire upon completion of the activities specified and, unless otherwise indicated, shall be valid for a period of one year from the date of issue. No original permit granted pursuant to this chapter shall be valid for a period longer than three years from the date of issue. The approval authority may extend the time in which the activities specified in the permit must be completed if, in its opinion, such extension is warranted by the particular circumstances thereof for not to exceed two additional periods of 90 days each. A request for extension shall be made in writing to the approval authority at least 30 days prior to the expiration date of the original permit, or the first ninety-day extension.

- B) Should a permittee fail to complete the activities specified in the permit prior to the expiration of the second ninety-day extension, the original permit shall become null and void and a new permit must be applied for. The request for a new permit shall follow the same form and procedure as the original application except that the approval authority shall have the option of not holding a hearing if the original intent of the permit is not altered or extended in a significant way.
- C) Notice of change of ownership of the parcel covered by the permit must be filed with the Zoning Administrator within 30 days of the transfer. This shall be a condition attached to all permits issued under this chapter.

### **Section XII. Enforcement.**

- A) This chapter shall be enforced by the Zoning Administrator or his or her designee.
- B) The Town is specifically empowered to seek injunctive relief restraining any violation, threatened violation or breach of any permit condition under the provisions of this chapter, and/or to compel the restoration of the affected regulated area to its condition prior to the violation, or breach of any permit condition. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorney's fees.

### **Section XIII. Penalties.**

Any person convicted of having violated or disobeyed any provision of this chapter, or any condition attached by the approval authority in a permit granted pursuant to this chapter shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$2,000 nor more than \$15,000, and/or imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense.

### **Section XIV. Effect of other laws and regulations.**

No permit granted pursuant to this chapter shall remove an applicant's obligation to also comply in all respects with the applicable provisions of any other federal, state or local laws or regulations, including but not limited to, the acquisition of any other permit or approval.

### **Section XV. Definitions.**

**Agriculture:** The employment of land, including for the primary purpose of obtaining a profit in money, for raising, harvesting, and selling crops, or feeding, including but not limited to, grazing, breeding, managing, selling or producing livestock, poultry, fur-bearing animals or honeybees, or by dairying and the sale of dairy products, by any other horticulture, floriculture or viticulture, aquaculture, hydroponics, Silva-culture, animal husbandry, or by a combination thereof. It also includes the employment of land, including for the primary purpose of obtaining a profit, for stabling or training equines, including but not limited to providing riding lessons, training clinics and schooling shows, including other on-farm niche marketing promotions.

**Alter:** To change, move or disturb any vegetation, soil drainage way or other natural material or system within a wetland, watercourse or controlled area.

**Applicant:** Any individual or individuals, firm, partnership, association, corporation, company, organization, or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof, who has a request for a permit to conduct a regulated activity or who has an application pending before the Planning Board.

**Applicant Fee:** A sum paid by an applicant to accompany either a short form or long form

application and collected by the town Planning Board in accordance with a fee schedule as shall be established from time to time by resolution of the Town Board and made available by the office of the Town Clerk and the Building Inspector.

**Aquaculture:** Cultivating and harvesting products, including fish and vegetation, that are produced naturally in freshwater wetlands, and installing cribs, racks and other in-water structures for cultivating these products, but does not include filling, dredging, peat mining or construction of any buildings or any water-regulating structures, such as dams.

**Bank:** The land area immediately adjacent to, and which slopes toward the bed of the watercourse and which is necessary to maintain the integrity of a watercourse.

**Berming:** The process of building up stream banks higher than the surrounding floodplain elevations to contain water in the channel.

**Boundary of Wetland:** The outer limit of a regulated area characterized by wetland soils, wetland hydrology, and wetland vegetation as defined under Wetland/Freshwater Wetland.

**Catchment Area:** Lands that drain into a common water body, watercourse or wetland.

**Channelization:** The process of straightening, widening and excavating gravel from a watercourse.

**Clear-Cutting:** Complete cutting and removing of an entire stand of trees, replaced by natural or planted regeneration.

**Conservation Advisory Commission:** A commission comprised of local citizens appointed by the Town Board to exercise a review function and provide a focal point in the community on all matters affecting the protection, preservation and enhancement of the environment.

**Controlled Area:** An r area surrounding a wetland or watercourse that is also subject to the regulations of this code, determined as follows, all measurements to be on the horizontal:

1. For all wetlands, the "controlled area" shall be:
  - a. For a wetland that is one (1) acre or greater in size the land area within one hundred feet (100') of the boundary of the wetland.
  - b. For a wetland that is one (1) acre or less in size the land area within fifty (50") feet of the boundary of the wetland.
2. For a water course or a water body the "controlled area" shall be the land area within one hundred (100) feet from the top of the bank of the watercourse or water body. The top of bank shall be the mean high water mark of the water course or water body.

**Dams and Water Control Measures and Devices:** Barriers used to obstruct the flow of water to raise, lower or maintain the water level in wetlands.

**Date of Receipt of Complete Application:** A complete application shall be deemed received by the Planning Board on the date of the first regular meeting of the Planning Board following the filing of the complete application and supporting plans with the Planning Board.

**Deposit:** To fill, place, eject or dump any material, but not including storm water.

**DCSWCD:** Dutchess County Soil and Water Conservation District

**Discharge:** The emission of any water, substance or material into a wetland, watercourse, or controlled area.

**Drain:** To deplete or empty of water by drawing off by increments.

**Dredge:** To excavate, move or remove sediment, soil, mud, sand, shells, gravel, or other

aggregate either by hand or machine.

Excavate: To dig out, move, or remove any material either by hand or machine.

Forestry: Activities in wetlands undertaken in compliance with a forest management plan prepared in accordance with Section 480-A of the NYS Real Property Tax Law or in concert with a consulting forester, shall be deemed permissible under this regulation.

GIS: Maps and data presented by Geographic Information System technology.

Grading: To adjust the degree or inclination of the contours of the land, including leveling, smoothing, and other modifications of the land surface by any means including filling and excavation

Intermittent Watercourse: A regulated area that comprises stream, creek, or brook, through which surface water travels on a seasonal basis. For the purpose of this Law, intermittent watercourses are those where water stands or flows for a total of three (3) months or more in a consecutive 12 month period. Note: Waterways specifically designed and constructed to serve a storm water conveyance or treatment function, such as grassy swales, drainage ditches, and other structures engineered to concentrate and convey storm water from development and only retain water for short duration after a rain storm or spring snow melt are not considered intermittent watercourses.

Logging: Commercial harvesting of live timber.

Material: Liquid, solid or gaseous substances, including but not limited to soil, silt, gravel, rock, sand, clay, peat, mud, debris and refuse; any organic or inorganic compound, chemical agent or matter, including sewage, sewage sludge or effluent; and agricultural, industrial or municipal solid waste.

NYCRR: New York Code of Rules and Regulation

NYSDEC: The New York State Department of Environmental Conservation

Permit or Wetland Permit: That form of town approval required for the conduct of a regulated activity within any wetland, watercourse or controlled area.

Permittee: The person(s) in whose name the wetland permit is issued.

Perennial watercourse: A regulated area that comprises river, stream, creek or brook through which surface water travels on a continual basis.

Planning Board: The duly appointed Planning Board of the Town of Washington

Pollution: The presence in the environment of human- or animal-induced conditions or contaminants in quantities or characteristics which are or may be injurious to human, plant or animal life or property.

Project: Any action resulting in direct or indirect physical or chemical impact on a wetland, watercourse or controlled area, including but not limited to any regulated activity.

Regulated Activities: Any activity that may potentially have a significant adverse effect or environmental impact to the function served by a regulated area, or the benefits derived there- from.

Regulated Areas: Those areas enumerated in this Law pursuant to the title, purpose, finding and intent of this Section (i.e. wetlands, watercourses, waterbodies and controlled areas).

Remove: To dig, dredge, suck, bulldoze, drag line, blast or otherwise excavate or re-grade, or the act thereof.

Routine Maintenance and Landscaping: The mowing, weeding, cultivating, planting, and trimming of vegetation or removal of dead or diseased trees in natural or improved

landscaped areas, except for the use of pesticides, herbicides, and fertilizers.

**Significant Adverse Effect or Environmental Impact:** An activity that may substantially alter or impair the natural function(s) or benefit(s) of a regulated area.

**State Environmental Quality Review Act (SEQRA):** The law pursuant to Article 8 of the Environmental Conservation Law.

**New York State Environmental Conservation Law** providing for environmental quality review of actions which may have a significant effect on the environment.

**Sound Agricultural Practices:** Farm operations that are reviewed on a case by case basis by the Commissioner of Agriculture and Markets to determine if the agricultural practice conforms with Section 308 of the Agriculture and Markets Law (AML) which provides for this review. The guidelines for this review state that (1) the practice should be legal; (2) the practice shall not cause bodily harm or property damage off the farm; (3) the practice should achieve results intended in a reasonable and supportive way; (4) the practice should be necessary.

**Structure:** Anything constructed or erected, the use of which requires location on or in the ground or attachment to something having location on the ground. The term includes but is not limited to tennis courts and swimming pools.

**Timber Harvesting:** Any activity which may alter the physical characteristics of any forested land, including but not limited to any activity involving or associated with the cutting of trees, except that the following activities shall not be considered to be "timber harvesting":

1. The routine maintenance of roads, easements and rights-of-way and the clearing of farm fence lines; and
2. The clearing of approved subdivision roads, site plans and public utility easements.
3. , The use of pesticides, herbicides, and fertilizers to induce vegetative growth.

**Town Board:** The duly elected Town Board of the Town of Washington

**Town Clerk:** The duly elected Town Clerk of the Town of Washington

**Water body:** Any natural or artificial pond, lake, reservoir or other area which usually or intermittently contains water and which has a discernible shoreline.

**Watercourse:** Any natural or artificial, permanent or intermittent, public or private water body or water segment, such as ponds, lakes, reservoirs, rivers, streams, brooks, waterways or natural drainage swales, that is contained within, flows through or borders on the Town of Washington.

**Wetlands Administrator:** A professional individual who is an expert in wetlands and who is hired/appointed by the Town of Washington Town Board to work with the Zoning and Planning boards of the Town to assist their agents in investigating, advising and determining the appropriate actions which should take place with regards to wetlands applications brought before them.

**Wetlands:**

- 1) All geographic areas greater than one-fourth (1/4) acre identified on the Wetlands & Watercourses Maps 5, 5A and 5B, but not including wetlands regulated by the NYSDEC, and characterized by any or all of the following:
  - a) Marshes, swamps, bogs, vernal pools, or other areas of ~~permanent~~ water retention fed by springs or natural drainage systems.
  - b) Soil types that are poorly drained or very poorly drained, alluvial or flood plain soils or potential hydric soils as defined by the Soil Survey of the United States

Department of Agriculture, Soil Conservation Service and the Dutchess County Soil and Water Conservation District, including but not limited to the following:

- a) Hydric Soils: Canandaigua, Carlisle, Fluvaquents, Halsey, Hydraquents, Livingston, Medisaprists, Palms, Sun, Wayland
  - b) Potential Hydric Soils: Kingsbury and Rhinebeck, Linlithgo, Massena A, Massena B, Punsit, Udorthents, Fredon, Raynham Silt Loam
  - c) Note:\* These soils found by field determination.
- c) Lands and submerged lands commonly called marshes, swamps, vernal pools, sloughs, bogs, flats supporting aquatic or semiaquatic vegetation of the following vegetative types:
- (i) Wetland trees, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees; including, among others red maple (*Acer rubrum*), willows (*Salix sp.*), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red ash - green ash (*Fraxinas pennsylvanica*), American elm (*Ulmus americana*), and larch (*Larix laricina*).
  - b) (2) Wetland shrubs, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over shrubs; including, among others, alder (*Alnus spp.*), button bush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda polifolia*), leatherwood (*Dirca palustris*), silky dogwood (*Cornus amonum*) and redosier dogwood (*C. sericea*), large cranberry (*Vaccinium macrocarpon*) and highbush blueberry (*V. corymbosum*), winterberry (*Ilex verticillata*), red chokeberry (*Aronia arbutifolia*), summersweet (*Clethra alnifolia*), swamp azalea (*Rhododendron viscosum*), bush cinquefoil (*Potentilla fruticosa*), poison sumac (*Rhus vernix*), American cranberrybush (*Viburnum trilobum*), and wild-raisin (*V. cassinoides*), and leatherleaf (*Chamaedaphne calyculata*).
  - (i) Emergent vegetation, including, among others, cattails (*Typha spp.*), pickerweed (*Pontederia cordata*), bulrushes (*Sciripus spp.*), arrow-arum (*Peltandra virginica*), arrowheads (*Sagittaria spp.*), reed (*Phragmites australis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium spp.*), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), water plantain (*Alisma spp.*), horsetails (*Equisetum spp.*), sedges (*Carex spp.*), rushes (*Juncus spp.*), marsh marigold (*Caltha palustris*), sweetflag (*Acorus calamus*), regal fern (*Osmunda regalis*) and ostrich fern (*Matteuccia struthiopteris*) and swamp buttercup (*Ranunculus septentrionalis*).
  - (ii) Rooted, floating-leaved vegetation; including, among others, water lily (*Nymphaea odorata*), water- shield (*Brasenia schreberi*), hornwort (*Ceratophyllum spp.*), and water smartweed (*Polygonum amphibium*).
  - (iii) Free-floating vegetation; including, among others, duckweed (*Lemna spp.*), and water-meal (*Wolffia spp.*).
  - (iv) Wet meadow vegetation, which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation; including, among others, sedges (*Carex spp.*), rushes (*Juncus spp.*), cattails (*Typha spp.*), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arundinacea*), swamp loosestrife (*Decodon verticillatus*), purple

loosestrife (*Lythrum salicaria*), spike-rush (*Eleocharis* spp.), Joe-Pye weeds (*Eupatorium* spp.), N.Y. ironweed (*Vernonia noveboracensis*), cardinal flower (*Lobelia cardinalis*), gentians (*Gentiana* spp.), marsh fern (*Thelypteris palustris*), false hellebore (*Veratrum viride*), skunk cabbage (*Symplocarpus foetidus*), Jack-in-the-pulpit (*Arisaema* spp.), Turk's-cap lily (*Lilium superbum*), and rough-leaved goldenrod (*Solidago patula*).

- (v) Bog mat vegetation; including, among others, sphagnum moss (*Sphagnum* spp.), pitcher plant (*Sarracenia purpurea*), large cranberry (*Vaccinium macrocarpon*) and sundew (*Drosera rotundifolia*).
  - (vi) Submergent vegetation with most or all of their leaves and stems below the water surface; including among others, pondweed (*Potamogeton* spp.), bladderwort (*Utricularia* spp.), coontail (*Ceratophyllum demersum*), water-milfoil (*Myriophyllum* spp.), wild celery (*Vallisneria americana*) and waterweed (*Elodea* spp.)
- 2) Finite boundaries of wetlands shall be established on each parcel or parcels by ~~the DCSWCD~~ or an appropriately qualified individual, as approved by the Planning Board.

Section 2. The Town Washington Zoning Code shall be amended to create an "Appendix D" which shall read in its entirety as follows:

## APPENDIX D

### WETLANDS AND WATERCOURSES LAW OF THE TOWN OF WASHINGTON

#### Suggested Readings

"Native Species Planting Guide for New York City and Vicinity" by Danielle Luttenberg, Deborah Lev, Michael Feller Natural Resources Group 1993

Wetlands Planting Guide for the Northeastern United States "Plants for Wetland Creation, Restoration, and Enhancement" by Gwendolyn A. Thunhorst Environmental Concern, Inc. 1993

The National List of Plant Species That Occur in Wetlands, New York or Northeast (Region 1) published by the U.S. Fish and Wildlife Service

Soil Survey of the U.S. Department of Agriculture Soil Conservation Service

Freshwater Wetlands Mapping and Classification Regulations - 6 NYCRR Part 664

ECL Article 15, Title 5; 6 NYCRR Part 608: Use and Protection of Waters

Wappinger Creek Watershed Map - Inter-municipal Council of Dutchess County (*as of this date*)

Best Development Practices Conserving Pool-Breeding Amphibians in Residential and Commercial Developments in the Northeastern United States by Calhoun and Klemens

Hudsonia Critical Habitat Maps—Wetlands Overlays

Section 3. This local law shall take effect immediately upon filing with this state's Secretary of State.

Supervisor Prisco advised the Town Board that, pursuant to the Municipal Home Rule Law of the State of New York, it will be necessary to hold a public hearing upon this local law. Councilman Audia offered the following resolution which was seconded by Councilman Murphy, who moved its adoption:

WHEREAS, on December 11, 2008, Councilman Audia has introduced this local law for the Town of Washington, to be known as "Town of Washington Local Law No. 1 of the Year 2009, a local law of the Town of Washington, Dutchess County, New York, to amend the Town of Washington Zoning Code to add a new section 396 entitled "Wetlands and Watercourses Law of the Town of Washington"

RESOLVED, that a public hearing be held in relation to the proposed changes as set forth in the form of notice, hereinafter provided, at which hearing parties in interest and citizens shall have an opportunity to be heard, to be held at the Town Hall, 10 Reservoir Drive, Millbrook, New York, on January 26, 2009 at 7:00 o'clock, p.m., Prevailing Time, and that notice of said meeting shall be published in the official newspaper of general circulation in the Town of Washington, by the Town Clerk, at least five (5) days before such hearing and that such notice shall be in the following form:

**NOTICE OF PUBLIC HEARING**

TAKE NOTICE, that the Town Board of the Town of Washington will hold a public hearing at the Town Hall, 10 Reservoir Drive, Millbrook, New York on January 26, 2009 at 7:00 o'clock, p.m., on Local Law No. 1 of the Year 2009, to amend the Town of Washington Zoning Code to add a new section 396 entitled "Wetlands and Watercourses Law of the Town of Washington"

TAKE FURTHER NOTICE, that copies of the aforesaid proposed local law will be available for examination at the office of the Clerk of the Town of Washington, at the Town Hall, 10 Reservoir Drive, Millbrook, New York between the hours of 9:00 a.m. to 12:30 p.m. and then between 1:30 p.m. to 3:00 p.m.. on all business days between the date of this notice and the date of the public hearing.

TAKE FURTHER NOTICE, that all person interested and citizens shall have an opportunity to be heard on said proposal at the time and place aforesaid.

By the Order of the Town Board

Dated: 1/7/2009

Mary Alex, Town of Washington Town Clerk

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Prisco AYE

Councilman Turlletes AYE

Councilman Rappleyea AYE

Councilman Murphy AYE

Councilman Audia AYE

This resolution was duly adopted.

On the recommendation of Town Justice Elizabeth Shequine, on a motion made by Councilman Rappleyea and seconded by Councilman Murphy the Board appointed Colleen Mc Garry as temporary court clerk in the absence of Dana Lopergalo when she is on maternity leave. Her rate of pay will be \$15.00 per hour. All ayes were recorded.

In the absence of Highway Superintendent Brownell, Mr. Gifford advised the Board that Mr. Brownell would like to apply for a shared services grant with the Towns of Amenia and Dover for a roller. The cost to the towns will be about \$2500 - \$3000. Mr. Gifford has some amendments to offer to the agreement, but expects to have a resolution at the reorganization meeting.

R. Stephen Lynch appeared before the Board to discuss the continuation of an initiative started last year for a shared municipal service grant. The village is the lead agency with the Town and Dutchess County being joint applicants. We had anticipated having to come back this year. Mr. Lynch has received suggestions from the state. The Village will pay for the full 10% of the cash match required by the state. The grant is due on January 14<sup>th</sup>.

Ms. Farrell requested an explanation of the grant. Mr. Lynch said that it is the sharing of planning for water and sewer services in the Village, Town and at the County building. The benefit is to be able to plan potential enhancements and corrections to the system. The Village has already begun to address problems that have been brought to light due to the I and I Study.

Councilman Murphy said that we moved forward on this application last year. He requested that the Town receive a copy of the grant application for final review. Mr. Lynch said that he would email a copy of the grant application to the town. Ms. Farrell and Mr. Schuman requested to see copies of the grant application.

Councilman Murphy offered the following resolution, which was seconded by Councilman Audia, who moved its adoption:

WHEREAS, the Village of Millbrook is preparing a shared services grant for improvements to the sewer and water facilities in the community; and

WHEREAS, the Town agrees to be a joint applicant on the project with the Village and the County of Dutchess upon the review of the application by the Town Board.

All ayes were recorded.

Ms. Farrell asked who was on the water and sewer sub-committee for the Master Plan? Mr. Beaumont said that it fell under the natural resources committee, that there weren't any specific to water and sewer.

Supervisor Prisco announced a joint meeting between the Town, Village and School District to be held on January 20, 09 at the Village Hall. Trustee Morse had also asked if Supervisor Prisco wished to resurrect the Municipal Emergency Committee.

The Town received written notice from the Dutchess County Department of Planning and Development that the Town's request for a grant in the amount of \$100,000. has been included on the list of projects that were being brought forth to a public hearing. The Town applied for funds for Handicapped Accessibility at the Town Park. The Public Comment period runs through January 6<sup>th</sup>.

On a motion made by Councilman Rappleyea and seconded by Councilman Audia the minutes of the November 13, 2008 meeting were accepted as presented. All ayes were recorded.

Regarding the Comprehensive Plan project, River Street had met with all of the sub-committees on December 4<sup>th</sup>. The Committee provided River Street with a comprehensive tour of the town, and also had discussion on the community survey. The next meeting is scheduled for January 6<sup>th</sup> at 1:00 PM.

Councilman Audia reported that an exact RFP has been drawn up for the soffets work on the Town Hall. This will allow all contractors to bid on the same materials, color specification, quality, etc. Lou Spagnola will be replacing eroded connections from the furnace to the chimney on December 15<sup>th</sup>. The Town Hall will be closed that day as the work is being completed.

R. W. Ciferri entered the meeting.

Councilman Murphy said that the Planning Board has been working on the Mabbettsville Market application. A Public hearing has been opened and closed. They are awaiting input from Dutchess County Planning.

Supervisor Prisco announced that the Annual Organizational meeting will be held on January 5, 2009, at 7:00 PM, at the Town Hall. William Murphy will be sworn in that evening as the replacement for Councilman Rappleyea.

There being no comments made, on a motion made by Councilman Rappleyea and seconded by Councilman Audia the Public Hearing on Local Law No. 3 of the Year 2008 was closed. All ayes were reported.

There being no comments made, on a motion made by Councilman Rappleyea and seconded by Councilman Audia the Public Hearing on the Fire Contract with the Village of Millbrook was closed. All ayes were recorded.

### **RESOLUTION**

Councilman Rappleyea offered the following resolution, which was seconded by Councilman Murphy, who moved its adoption:

WHEREAS, a local law was introduced entitled A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK TO EXTEND LOCAL LAW #4 OF THE YEAR 2007 "A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK TO AMEND THE ZONING CODE OF THE TOWN OF WASHINGTON TO ADD A NEW SECTION 395 ENTITLED 'REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF LANDS AND BUILDINGS'" FOR AN ADDITIONAL YEAR; and

WHEREAS, a public hearing in relation to said local law was held on November 13, 2008 at 7:00 p.m., Prevailing Time; and

WHEREAS, notice of said public hearing was given pursuant to the terms and provisions of the Municipal Home Rule Law of the State of New York; and

WHEREAS, due to a procedural defect in the adoption of the local law, the Town Clerk gave notice of a new public hearing, in accordance with the terms and provisions of

the Municipal Home Rule Law of the State of New York, to be held on December 11, 2008 at 7:00 p.m. Prevailing Time; and

WHEREAS, a public hearing in relation to said local law was held on December 11, 2008 at 7:00 p.m. Prevailing Time;

WHEREAS, said local law has been on the desks of the members of the Town Board of the Town of Washington for at least seven (7) days, exclusive of Sunday.

NOW, THEREFORE, BE IT RESOLVED that the Town Board approves, authorizes and hereby ratifies the Town Clerk's action of noticing a new public hearing for December 11, 2008 on said local law.

NOW, THEREFORE, BE IT FURTHER RESOLVED that the following local law is hereby enacted:

## **TOWN OF WASHINGTON LOCAL LAW NO. OF THE YEAR 2008**

### **Section 1. PURPOSE**

The Interim Development Law, adopted as Local Law No. 4 of 2007, became effective upon filing with the New York State Department of State on November 16, 2007. By its express terms the Interim Development Law was due to expire one (1) year from the date of filing, or November 16, 2008.

The Town Board, the Comprehensive Master Plan Review Committee and all sub-committees, along with the Town's consultants all continue to study, review and consider the content of the Town's future master plan. During the last year, the Comprehensive Master Plan Review Committee and all of its sub-committees conducted extensive research and met on a regular basis to discuss, evaluate and debate the research

gathered. In addition, the Town will be retaining a consultant to assist with conducting a survey of the community, gathering the work of the various sub-committees to date and utilizing that work to draft the master plan document. Subsequently, the proposed master plan document will be reviewed pursuant to the State Environmental Quality Review Act and, upon adoption of the new master plan document, necessary companion updates, if any, to the Town Zoning Code will be prepared.

Inasmuch as the Comprehensive Master Plan Review Committee, the Town Board and the Town's consultants will require some additional time to draft the proposed master plan, set a date(s) for public comment, and adopt the new master plan document and any necessary companion updates to the Town Zoning Code as recommended by the Comprehensive Master Plan Review Committee, much of which will take place after November 16, 2008, the Board deems it prudent to extend the expiration date of the Interim Development Law for an additional one (1) year period to provide the Board sufficient time in which to consider the new Master Plan and obtain public comment. This extension to Local Law No. 4 of 2007 is specifically determined to be necessary in order to maintain the *status quo* pending continued work on the preparation and enactment of a new Master Plan and any necessary companion updates to the Town Zoning Code.

Section 2.      AUTHORITY

This extension of Local Law #4 of 2007 is enacted by the Town Board of the Town of Washington pursuant to its authority to adopt local laws under the New York State Constitution Article IX and Municipal Home Rule Law Section 10.

Section 3. ENACTMENT OF EXTENSION TO THE TEMPORARY MORATORIUM

The expiration date of LOCAL LAW #4 OF 2007, ENTITLED "A LOCAL LAW OF THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK TO AMEND THE ZONING CODE OF THE TOWN OF WASHIGNTON TO ADD A NEW SECTION 395 ENTITLED 'REGULATION FOR AN INTERIM PERIOD OF DEVELOPMENT AND USE OF LANDS AND BUILDINGS'", is hereby extended for a period of one (1) year beginning November 16, 2008, after which date Local Law #4 of 2007 shall lapse and be without further force and effect unless further extended by action of the Town Board.

Section 4. This Local Law shall be filed immediately with the Secretary of State as provided by law and shall be effective as of November 16, 2008.

RESOLVED that the Town Clerk shall file a certified original of this local law in the office of the Town Clerk and one (1) certified copy in the Office of the Secretary of State, State of New York, such certified copy to have attached thereto a certificate executed by the attorney for the Town of Washington that it contains the correct text and that all proper proceedings have been had or taken for the enactment of this local law.

The foregoing resolution was duly put to a vote which resulted as follows:

Supervisor Prisco	Aye
Councilman Turletes	Aye
Councilman Rappleyea	Aye
Councilman Murphy	Aye
Councilman Audia	Aye

On a motion made by Councilman Rappleyea and seconded by Councilman Murphy, the Town Board ratified the readvertisement and publication of the Legal Notice to adopt a moratorium for one additional year that was done by the Town Clerk. All ayes were recorded.

On a motion made by Councilman Rappleyea and seconded by Councilman Audia the Board authorized Supervisor Prisco to sign the Fire Contract with the Village of Millbrook in the amount of \$412,810.00. All ayes were recorded.

Supervisor Prisco thanked Warren McMillan and the Recreation Department for a wonderful Santa and Tree Lighting. It was wonderful to see village shops open, as well as carols being played on Franklin Avenue.

Mr. Genova requested that the Town Board look into providing Dial A Ride services to seniors in the community. He said the need for handicapped accessible transportation for residents that immobile is something they should consider. Supervisor Prisco said she would meet with Mr. Genova and contact Dial A Ride for additional information.

On a motion made by Councilman Rappleyea and seconded by Councilman Audia the Board moved into Executive Session to discuss a personnel matter for a specific employee. All ayes were recorded. At 9:00 PM, on a motion made by Councilman Murphy and seconded by Councilman Turletes the regular meeting was resumed. All ayes were recorded.

On a motion made by Councilman Murphy and seconded by Councilman Turletes the following claims were accepted as presented:

Gen Fund A	\$16,196.95
Gen Fund B	\$230.55
Youth Rec Fund	\$5,485.62
Highway Fund DB	\$59,319.90
Justice Fund	\$23.28
Parkland	\$225.00
Equipment Reserve	\$8,800.00

All ayes were recorded.

There being no other business, on a motion made by Councilman Murphy and seconded by Councilman Turletes the meeting was closed at 9:25 PM. All ayes were recorded.

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Mary Alex, Town Clerk