

Town of Washington
Town Board
June 4, 2009

The Town Board of the Town of Washington held a special meeting on June 4, 2009, at the Town Hall, Reservoir Dr., 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, Building Inspector Jack Neubauer, Planning Board Chair Tom Beaumont and Attorney Rebecca Valk.

Also present were: Wetland Committee members Matthew Rollins, Brad Roeller, Dan Weller and Frank Genova, Concerned citizens Howard Schuman, Kate Farrell, Stephen Kaye, Stacy Hoppen, Cathy Culkin, Steve Van Tassel and Jeff Kane.

Supervisor Prisco explained that this meeting will not involve public input. This is for discussion between the Town Board, Wetlands Committee and Town Attorney.

Councilman Murphy said that as a result of discussions coming out of the Public Hearings, through the Town Attorney, the town has reached out to Wetland Specialists Bruce Barber and Norbert Quenzer to assist the town with reviewing the current document and offering opinions or suggestions. Both gentlemen were interested in talking to the town, but as there are costs involved the Board will need to discuss this further.

Councilman Murphy asked Mr. Weller to provide his input to the Board. Mr. Weller said that he hopes the changes he has suggested will help address and alleviate some of the concerns. Mr. Weller said he is a member of the Town Conservation Advisory Committee, the Wetland Committee and a retired professional forester.

Mr. Weller said that in the discussions there have been concerns about landowner's rights. The Committee discussed the issue of a "taking" relative to the severity of the regulations. A "financial taking" is an equally critical concern. If the fiscal burden to apply for a permit is so great that the landowner gives up, that, too, can constitute a taking.

The following suggestions and comments were offered:

Section 1, 3rd line and 2nd paragraph: Eliminate "preventing" and substitute "minimizing and/or reducing"

Justification: Preventing may not be achievable in all cases where minimizing and/or reducing is an achievable goal.

Section V A Any "deliberate" form of...

Justification: Homebuilders of America vs. Corps of Engineers. Dirt on the tread of a bulldozer fell into a wetland, and the Corp tried to claim this as “fill” and lost the lawsuit.

Section VII, C, Line 3: After “cooperating consulting forester” add “or a DEC forester”
Justification: DEC foresters also administer forestry operations.

Section VIII C, 6. Contour interval of one foot seems excessive and expensive. The Planning Board has never required such intensive contour mapping (private conversation). Combining a contour map of five foot intervals combined with a field inspection should provide the needed information for a decision at a much lower cost to the landowner.

C, 12 Why require delineation of “all” regulated areas on the applicant’s property? The only delineation needed is where the proposed regulated activity is going to occur. There is no justification for delineation in other areas unless the town wants the landowner to pay for additional wetlands mapping. This is an indefensible landowner expense that appears to have as a goal to make the application so expensive that the owner will give up.

C 7 and 13. Redundant Eliminate # 7 and leave # 13.

C 20. This is very excessive. Some people spend their entire career studying the hydrology of an area. How about a review of existent information regarding the hydrology? This, as written, would require considerable expense to a landowner.

C 24, Line 6. Suggests owners of private property. What if the project is 150 feet from a state highway? Do we require the state to be notified?

Section XV Definitions

Agriculture: If this is the State of New York’s legal definition, then Section VII B) 1 and 2 should NOT exclude logging and clear cutting.

Boundary of Wetland: ... characterized by wetland soils “and/or” wetland hydrology “and/or” wetland vegetation... This then will conform to the “W wetlands” definition on page 19.

Channelization: ...excavating “sediment, soil, mud, shells, gravel or other aggregate” from a watercourse. Current definition covers ONLY gravel.

Dams and Water: ...to obstruct “or modify” the “natural” flow of water...Water control measures may “modify” in addition to obstruct.

Forestry: ...cooperating consultant forester “or a DEC forester” Same as earlier suggestion.

Drain: ...by increments “or all at once.” Draining can be done all at once.

Mr. Weller recommended that the term “vernal pools” be eliminated from the text in the following sections:

Section I, line 3

Section II A line 4

Section III, line 2

Section IV, line 13

Section IX A 4 Line 1 and 5 Line 3 B 2 Line 1 and 3 Line 1

Vernal pools need not be highlighted any more than bogs, swamps, etc. The definition of Wetlands clearly includes vernal pool in Section XV Definitions.

Section VIII C 24 Is “prominent placement of one or more signs” always required? If not, what consistent rationale determines if signs are required? For example, are all applicants treated equally?

Mr. Weller said that the Qualitative Analysis of vernal pools being conducted by Clements is of scientific interest but is of limited value for administering this proposed legislation. The Qualitative Study will rank vernal pools quality for the spring of 2009. While this ranking might be valid for 2009, if the spring 2010 is very dry following a winter of low snowfall, the quality and productivity of even the “best” vernal pools will be low for that year. Just the opposite could be true in 2011 if we have heavy snow and a wet spring.

Mr. Weller recommended that the town not consider using the Clements Study for purposes of this legislation’s administration. Situations where a wetland’s “viability” may have been compromised by past actions will be apparent during a field inspection. He did not propose regulation of any wetland smaller than ¼ acre. For sake of perspective, ¼ acre is a circle approximately 118 feet in diameter.

Councilman Murphy read the attached correspondence from the Planning Board. The Planning Board expressed concerns about the proposed legislation. The Planning Board expressed continued cooperation with the Board and committee in seeking to achieve appropriate protections of wetlands environment.

Councilman Murphy said the Board now has three categories that can be explored: 1. Support the current document and move forward, 2. Oppose all legislation, 3. Take a middle ground with the current document and edit, revise and tighten it. He said that when the committee was formed they tried to encompass everything, and then generally you work down to a document that includes compromises. There has been good feedback on vernal pools, although it was a coincidence that Dr. Klemens’ study was being done at the same time as the legislation. Mr. Roeller asked should the committee reconvene. Ms. Valk said that she is preparing a review of the topics brought forth. Mr. Roeller and Mr. Rollins concurred that good comments have been heard. The committee requested that they be provided with all materials presented. They also requested that an expert be on hand to offer advice, explain information and to assist them.

Mr. Genova asked where we go from here. He said his impression was this legislation was about water, not salamanders and toads. He said his impression is that vernal pools are a taking and won't stand up in court.

The Board discussed the availability of funds for hiring a professional wetlands consultant. The Town has about \$4,000.00 budgeted for a wetland consultant. On a motion made by Councilman Audia and seconded by Councilman Turletes the Board moved to prepare an RFP for a wetlands consultant. All ayes were recorded. Councilman Murphy and Attorney Valk will prepare an RFP for the Board's consideration.

Ms. Valk said she would put her comments together and circulate them to the Town Board and the committee. The committee will meet along with Zoning Administrator Neubauer and a member of the Planning Board. Mr. Beaumont requested that there be two members of the Planning Board, himself and Josh Mackey. Mr. Beaumont complimented the Wetlands Committee on their good faith effort and attitude and willingness to work on this project. Mr. Rollins thanked him and said we have overachieved not underachieved.

There being no other business, on a motion made by Councilman Turletes and seconded by Councilman Murphy, the meeting was closed at 8:15 PM. All ayes were recorded.

Mary Alex, Town Clerk