

Town of Washington
Town Board
July 16, 2010

The Town Board of the Town of Washington held a special meeting on Friday, July 16, 2010, at the Millbrook Fire House, Washington Ave., Millbrook, NY. The meeting was called to order at 7:30 PM by Supervisor Florence Prisco with the following present: Councilmen Stephen Turlletes, Michael Murphy, Robert Audia and William Murphy, Town Clerk Mary Alex, and Associate Attorney Rebecca Valk.

Also present were Steve Marino of Tim Miller Associates, Howard Schuman, Frank Genova, Steve Van Tassell, Bob Campbell, Julia Widdowson, David Greenwood, Jeff Giardina, Tom Beaumont, Joan Trombini, Anthony Sloan, Rob Dyson, Richard Cantor, Stephen Kaye, Tom Barger, John Asklidson, David Strayer, Mary Rose Giardina, Fernando Nottebohm, Christine Bates, Nick Galente, Joe Forte and Joe Spagnola.

Supervisor Prisco opened the meeting with the Pledge of Allegiance.

On a motion made by Councilman W. Murphy and seconded by Councilman Audia the own Board opened the Public hearing on Local Law ___ of 2010, a law to amend the Town of Washington Zoning Code to add a new section 396 entitled "Wetlands and Watercourses Law of the Town of Washington."

Councilman M. Murphy thanked everyone for attending this meeting and offering their opinions on this legislation. Councilman Murphy introduced Steve Marino, a senior wetland scientist with Tim Miller Associates in Cold Spring, NY. Mr. Marino worked with the committee to take the comments from the last public hearings and to update the legislation. Mr. Marino said he is a Professional Wetlands Scientist and he has worked both sided of the table both for property owners and municipalities. The goal of the committee was to produce a workable document.

Mr. Marino presented the following power point presentation:

Why Protect Wetlands?

Primary Wetland Functions:

- 1) Protection of water quantity and quality - "Nature's Kidneys"
- 2) Protection of drinking water supplies
- 3) Protection of stream channel and stream bank stability
- 4) Control of floodwaters and storm water runoff
- 5) Important nesting, feeding, migratory and wintering habitat for diverse wildlife species
- 6) Support of distinct and less common vegetative associations
- 7) Provision of open space and visual relief and natural classrooms

and educational opportunities

Why Buffers?

Environmental Law Institute - 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.”

Goals of the new Town Law

“It is the intent of the Town of Washington to insure that activities in and adjacent to wetlands watercourses and waterbodies do not adversely affect the natural environment or cause significant environmental degradation or unduly impact the public health, safety and welfare.”

How will the Law do that?

- 1) Regulate certain activities within or adjacent to regulated wetlands as defined in the Law.
- 2) All wetlands greater than 1/4 acre, including the larger New York State DEC wetlands and all federal wetlands, will be regulated.
- 3) Perennial and intermittent watercourses are also regulated.
- 4) A watercourse must flow a minimum of three months per year to be regulated; perennial watercourses flow a minimum of nine months a year.
- 5) A 50 foot controlled area will apply to wetlands greater than 1/4 acre but less than one acre; wetlands greater than one acre will have a 100 foot controlled area.
- 6) An intermittent watercourse will have a 50 foot controlled area; a perennial watercourse will have a 100 foot controlled area.

What's regulated? What isn't?

Exempt Activities

- 1) Hunting, fishing and trapping where otherwise legal
- 2) Agricultural activities where otherwise legally recognized
- 3) Timber harvesting under an approved management plan, except for clear cutting
- 4) Activities required by the Health Department
- 5) Village of Millbrook activities associated with the operation of the Village water supply
- 6) Emergency activities
- 7) Ordinary maintenance and repair of existing structures and infrastructure
- 8) Trimming, pruning, bracing and planting of trees and shrubs

Activities that may require a permit

- 1) Draining, dredging or excavation

- 2) Dumping, filling or depositing of materials as defined
- 3) Construction of structures, roads, driveways, pools, infrastructure,
- 4) Placing of obstructions in regulated areas
- 5) Altering or modifying drainage patterns and contours
- 6) Introducing influent of high thermal content
- 7) Stripping of vegetation, including clear cutting
- 8) Use or storage of chemicals
- 9) Installation of sewage treatment or disposal systems

How will it work?

For most small projects:

1) A property owner will file an application with the Zoning Administrator for a building permit. The Zoning Administrator will check the available maps to determine if there is a wetland near the area of the proposed activity. The Zoning Administrator may also consult with the Wetland Administrator or CAC. If a wetland is found to be within the limiting distances as depicted on the Building Permit plans, a wetland permit application will be required.

2) A completed wetland permit application will be forwarded to the Planning Board, which will review the application and ultimately make a decision. The Planning Board may at any time consult with the Wetland Administrator, CAC or other experts during the review of a project. The law establishes a finite timeline for the review and decision on an application.

For larger projects, the application will most often be before the Planning Board for site plan, subdivision or other approvals, and the wetland permit will become part of the SEQRA process conducted for that activity.

Councilman M. Murphy has received correspondence from people that were not able to attend the meeting this evening. The first letter was from Adelaide Camillo:

ADELAIDE CAMILLO
Millbrook, New York 12545

July 14, 2010

Mr. Mike Murphy and Members of Fax to Mary Alex: 845-677-2085
The Wetlands Committee
Town of Washington
Washington, NY 12545

RE: Wetland Ordinance Comments and Public Hearing 7/16/10

Dear Mike:

I cannot attend your next public hearing, but would appreciate adding these comments to the record. While there are improvements in your revised draft, it is still vague in some areas, which may weaken environmental stewardship or cause confusion in some cases. I had hoped that the law would provide protection for the majority of the smallest wetlands (less than 1/4 acre), but I will let the scientific experts speak to that issue. It would be beneficial to this process if you could bring the notable scientists whose testimony you've heard to the same table with the Town's consultant, Tim Miller Associates, so that all perspectives can be heard in a collaborative fashion by your committee for optimum result.

Here are additional comments and questions to consider:

1. The law provides that the Planning Board decides where wetland and watercourse boundaries are, in consultation with the CAC and with the advice of experts, but only if the Planning Board wants their assistance or follows their advice. See §V - A and §IX-11 (A.) Subjective choices would seem to open the door to numerous inconsistencies in implementation of this law.
2. Incidental removal of trees and brush is allowed without a permit. What does this mean? See §VI - H. The law's definition of "clear cutting" prohibits removal of trees when the area is greater than 1/4 acre. This area limitation does not have a time frame however, so it may be argued that the area limit is 1/4 acre at a time. This is an example of the vague terms used in the proposed law. I have seen the damage done to water bodies by uncontrolled tree clearing on a road I frequently drive on – what was once a vibrant pond teeming with wildlife including swans and egrets is now a mud hole where no wildlife survives.
3. There is some concern that the Zoning Administrator is the primary gatekeeper (§IX – A (1)). The Zoning Administrator, not trained in wetlands protection, must refer the application to the Wetland Consultant (is this the same person as the Wetland Administrator that is included in the law's definition?), but the Zoning Administrator's determination is not bound by the findings of the Wetland Consultant. Perhaps the process of deciding that no wetland permit application is necessary should require the Zoning Administrator to write a letter of "intended determination" with a copy sent to the Planning Board and CAC for their input prior to final determination.
4. Further, The Planning Board is not required to seek advice of the Wetland Administrator in its review of the wetland permit application. See §IX – 14. Again, decisions made without expert review may not necessarily be the best decisions.
5. The wetland disturbance mitigation ratio for this law is 1.5:1, where the Army Corps of Engineers federal standard is a minimum of 2:1. See §IX – 11(k.). The Corps of Engineers set this standard of requiring twice as much wetland creation than the area being disturbed due to the high failure rate of creating wetlands that are sustainable. Artificially made wetlands rarely replicate the efficiency and productivity of natural

wetlands particularly with regard to denitrification and other complex functions. In other words, you can never replace what is lost in nature once it is gone.

6. The standards for the permit decision seem to be biased toward property rights more than evaluating the loss of the functional, ecological benefit of the wetland resources. See §X – 7 & 8. What about the public's rights to clean water and protected natural resources and wildlife in their community?

7. The Planning Board could simply "rubber stamp" a permit that might be issued by the NYSDEC or the Army Corps of Engineers, without further review. See §X – C. This process would effectively tie the Town's wetlands law to the State and Federal law, which opposes the reasoning behind enacting a local law meant to set specific standards for a wetland permit. Perhaps this part of the law should be more specific and require that the provisions of §X-D, the Town's criteria, are fully met by the State or Federal agency's permit conditions, and if they are not, then the Town must review the permit application.

Thank you for making these comments part of the record and for all your efforts. I hope your Board considers these suggestions and will pass wetland legislation, protecting the vital resources that make the Hudson Valley a special place to live. Environmental stewardship is for the benefit of the entire community. It's an awesome responsibility that we hope will be taken seriously by the people you designate to enforce this law.

Sincerely,
Signed Original Submitted
Adelaide Camillo

Dr. Michael Klemens sent his comments on the proposed legislation:

Michael W. Klemens, PhD

July 13, 2010
Mr. Michael Murphy
Town of Washington Wetlands Committee
Town Hall
P. O. Box 667
Millbrook, NY 12545

Dear Mr. Murphy:

I have read the revised wetlands ordinance and wish to make the following comments. While the revised ordinance is an improvement over earlier drafts in its clarity, definitions, and standards, it falls short of adequately protecting many of the Town's smaller wetlands that are biologically productive and provide important ecological services to the citizens of the Town of Washington.

While the Town is making an important step forward in extending regulation to wetlands that do not fall under ACOE jurisdiction as "waters of the United States" and DEC regulation, many smaller wetlands within the Town remain unregulated and therefore unprotected from encroachment, pollution, and outright filling. These small wetlands of less than a 1/4 acre in size play an important role within the Town providing ecological services that include flood water retention, aquifer recharge, de-nitrification, as well as habitat for wildlife, including many wetland-dependent species that are considered to be endangered, threatened, or of special concern.

The number of wetlands that will remain unregulated and therefore unprotected within the Town by the proposed 1/4 acre regulatory threshold is not trivial. I have included two summary tables below from the work the citizen-science study that the Cary Institute conducted in 2009 in partnership with Cornell Cooperative Extension of Dutchess County. These were the data that were presented at the March 6th conference at the Cary Institute which you and other town officials attended. The first table shows the size distribution of 83 of the small wetlands that we studied to determine amphibian productivity. The second table shows the distribution of the 216 smaller wetlands that were identified using a combination of various sources including the Hudsonia map of intermittent woodland pools in the Town of Washington and the National Wetland Inventory. Both these tables show that the majority of these critical small wetlands are less than 1/4 acre in size. Lowering the size threshold for regulation in the proposed ordinance to 0.10 acre would encompass this critical class of productive wetlands and afford them protection from encroachment, pollution, and outright filling.

Number of Surveyed Pools by Size (acres)

Range (acres)

Frequency

Graph's are available in original document.

Number of All Pools by Size (acres)

Range (acres)

Frequency

Section IV: Definitions "Controlled Area" there are two categories of regulated buffer. For larger wetlands (great than 1 acre) the proposal is for a 100-foot controlled area. For wetlands less than 1 acre the proposal is for a 50-foot controlled area. This reduction in controlled area (= regulated buffer zone) for smaller wetlands makes no ecological sense. In fact it could be argued that because of their smaller water volume, these wetlands are more vulnerable to pollution as there is less volume of water contained within to dilute pollution entering the wetland form the adjacent uplands. I suggest that all wetlands regulated under this proposed ordinance have a controlled area of a minimum of 100 feet.

Section VI: Activities Allowed without a Permit "E", I reaffirm my testimony of January 13, 2008 that expansion of the Village of Millbrook's water supply be a regulated activity. Regulation should not be equated with denial, especially in the case of this important community service, but would provide an opportunity to minimize and mitigate impacts that could arise from the expansion of the Village's public water supply.

Section IX: Permit Requirement and Procedures: "C:11 Additional Information". The ordinance should reserve the ability of the Planning Board to require information on State listed species and on biota and significant habitats. Such information is generally not part of the "wetlands functional assessment" described in Section IX C-11e: Being able to request that information is important as it is described under Section X "Standards for Permit Decisions: E-2 which calls for examination of adverse impacts of the proposed regulated activities on "Disturbance or destruction of flora and fauna, endangered and threatened species and significant habitats in a regulated areas".

I appreciate the opportunity to comment on these proposed regulations. As with all regulations, enforcement and the political will to require that enforcement will be critical to your efforts to promote more comprehensive stewardship of the Town's wetlands.

Sincerely,
Michael W. Klemens, PhD
Research and Policy Conservationist

Dr. William Schlesinger, President of the Cary Institute of Ecosystem Studies sent the following comments:

President
William H. Schlesinger

12 July 2010
Mr. Michael Murphy
Town of Washington Wetlands Committee
Town Hall
P.O. Box 667
Millbrook NY 12545

Dear Mike:

Unfortunately, I will be traveling at the time of the Town meeting to discuss the proposed ordinance protecting wetlands. However, in my position as President of the Cary Institute, let me offer the following scientific analysis of the importance of wetlands, especially small wetlands and vernal pools, in the Town of Washington.

From what I hear about the ordinance, I fear that the proposed legislation will not pertain to any wetland less than ¼ acre. This is most unfortunate. With this criterion, more than half of the wetlands in the Town would be unprotected. Small wetlands provide a number of “ecosystem services” that improve the quality of our daily life and add value to our properties in Dutchess County. I am not talking simply about those evenings in early spring, when a chorus of spring peepers makes the woods alive with the sound of their music. I am not talking about the wide eyes of a young child who has come upon a male wood duck in a secluded forest pond—wondering how anything could be so brightly colored. These all add to the value of life in Dutchess County—why people want to live here.

But, beyond aesthetics and their intangible value, wetlands provide real economic value to our landscape. Dutchess County, including the Town of Washington, is extraordinarily dependent upon groundwater for human use; there are nearly 35,000 private wells in Dutchess County. Recharge of groundwater is a current and growing issue for this region, as warmer summer temperatures increase the rates of evaporation of soil moisture and reduce percolation of surface waters. Vernal and ephemeral ponds are extremely effective for transfer of water to groundwater, so their value to communities extends far from their actual location and area on the landscape. Buyers of property in which the wetlands have been destroyed may later find their water supplies limited and likely to demand municipal water as a replacement—a real cost to all taxpayers. Some have argued that protection should not extend to seasonal wetlands, since they are not easily recognized during dry periods. This is incorrect. Practicing soil scientists recognize distinctive—known as diagnostic—horizons in the soils of these areas, classifying them as hydric soils. This is an official term used to classify these wetlands. It is found in all modern texts of soil science, in the journal of the Soil Science Society of America, and on soil maps produced by the U.S. Department of Agriculture. Wetland soil delineation is described in detail by Faulkner et al. (1989) and Megonigal et al. (1993), and it is well accepted by all soil scientists.

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

Increasingly, ecologists are appreciating the role that soil bacteria play in the cleansing of surface waters, especially in natural wetlands. One group of bacteria, known as denitrifying bacteria, convert soluble nitrate in surface waters to harmless nitrogen gas, which is emitted to the atmosphere. Nitrate in surface water is derived from the excessive use of fertilizer and linked to a number of problems in human health. A network of vernal pools, essentially acting as a set of vernal dams, slows springtime runoff from the landscape, enhancing infiltration of water and denitrification by soil bacteria. In 1996, Cary Institute scientist, Peter Groffman and his colleagues published data showing extremely high denitrification rates in vernal pools in Dutchess County.

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

We should not think that more stringent regulations to preserve small wetlands will simply hamper economic progress and rights of land developers in this region. Wetlands preservation offers many benefits to the future occupants of the county. You might suspect that vernal wetlands would harbor insect populations that carry West Nile virus and other disease to suburban inhabitants, but in a

healthy vernal system, these insects are maintained at low levels by the amphibians that feed on them. Regulations that preserve small wetlands will also preserve habitat for other species in the landscape. Amphibians themselves are the food for many animals, including birds. And work by Rick Ostfeld et al. (2009) at the Cary Institute has shown that high species diversity among birds is effective in reducing the prevalence of West Nile virus.

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

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

Sincerely,
William H. Schlesinger
President

Fellow, Soil Science Society of America
Member, National Academy of Sciences
Cc: Dr. Thomas Beaumont

References:

Baldwin, R.F., A.J.K. Calhoun, and P.G. DeMaynadier. 2006. Conservation planning for amphibian species with complex habitat requirements: A case study using movements and habitat selection of the Wood Frog (*Rana sylvatica*). *Journal of Herpetology* 40:442-453.

Faulkner, S.P., W.H. Patrick, and R.P. Gambrell. 1989. Field techniques for measuring wetland soil parameters. *Soil Science Society of America Journal* 53:883-890.

Groffman, P.M., G.C. Hanson, E. Kiviat, and G. Stevens. 1996. Variation in microbial biomass and activity in four different wetland types. *Soil Science Society of America Journal* 60:622-29.

Megonigal, J.P., W.H. Patrick, and S.P. Faulkner. 1993. Wetland identifications in seasonally flooded forest soils: Soil morphology and redox dynamics. *Soil Science Society of America Journal* 57:140-149.

Ostfeld, R.S. 2009. Biodiversity loss and the rise of zoonotic pathogens. *Clinical Microbiology and Infectious Disease* 15:40-43.

Vasconcelos, D. and A.J.K. Calhoun. 2004. The movement patterns of adult and juvenile *Rana sylvatica* and *Ambystoma maculatum* in three restored seasonal pools in Maine. *Journal of Herpetology* 38:551-561.

Jennifer Coccozza, a Senior Planner for the Dutchess County Department of Planning and Development submitted these comments:

July 16, 2010

To: Town Board, Town of Washington
Re: Referral 10-260; Wetlands and Watercourses Law of the Town of Washington

The Dutchess County Department of Planning & Development has reviewed the subject referral within the framework of General Municipal Law (Article 12B, Sections 230-l and 230-m). After considering the proposed action in the context of countywide and intermunicipal factors, the Department finds that the Board's decision involves a matter of some concern and offers the following comments.

Action – The Town of Washington is proposing to delete section 328 of the Town of Washington Zoning Code "Wetlands and Watercourses" and adopt new language as section 396 "Wetlands and Watercourses Law of the Town of Washington."

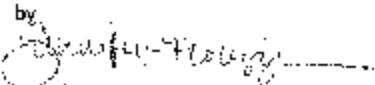
Comments – It appears that the intent of the Town is not to regulate minor uses or activities that would not "cause identifiable significant adverse effect(s) or environmental impact(s) . . . to the function(s) served by the regulated areas or the benefit(s) derived therefrom . . ."

The Town has proposed the following definition: "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." From our read of this definition it appears that most anything that sits on the ground would be termed a structure, and would therefore be regulated. A croquet set, child's swimming pool, or bench would seem to qualify as a "structure" under the proposed definition. There is no language in Section VI, *Activities Allowed Without Permit* that would exempt such actions and uses from requiring a permit.

As it appears that the intent of the law is not to regulate such minor uses and activities, the Town could revise the language of the proposed law. As currently written a full application (complete with maps, vegetative cover, short form EAF, etc.) must be submitted to the Zoning Administrator *before* a determination is made as to whether or not Section 386 applies to a particular action. For such smaller actions the process of applying for an action that would never result in the application of Section 386 could be confusing and somewhat onerous on a property owner. One suggestion might be for the Town to maintain a non inclusive list of common non significant actions that a complete application would not be required for.

Recommendation - The Department recommends that the Board rely upon its own study of the facts in the case with due consideration of the above comments.

Kealy Salomon, Commissioner
Dutchess County Department of Planning and Development

by 
Jennifer F. Coccozza
Senior Planner



Dutchess County
Department of
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Councilman Murphy said that he has been hearing that the Conservation Advisory Commission (the CAC) is being cut out of the process. He said that is a misunderstanding and that it is untrue. There is a CAC member at all Planning Board meetings. The CAC will accompany the Planning Board with the feet on the ground tours of a property.

Councilman Murphy thanked the Millerton News and the Millbrook Independent for the recent coverage in their papers reporting to the community the most up to date information on this legislation.

Councilman Murphy advised the public that Town Clerk Alex has had conversations with the GIS specialist that created the Wetlands map. There have been changes to the National Wetlands Inventory, so the map will be updated with current information.

The meeting was opened for comments from the floor.

Stephen Van Tassell, a dairy farmer on Verbank Rd., said "I object to the wetland proposal in the strongest terms. This law clearly makes a mockery of private rights. This law precludes any town discussion pertaining to affordable housing as it is the most exclusionary document you could possibly propose.

The costs of this law are apparent.

1. A new cop.
2. Increased salaries for the lawyer, Town Board, Planning Board and probably the Advisory Committee.
3. Future lawsuits are certain.

I would offer as a solution a wetlands provision that could mirror the ag value program where the higher the wetland value the larger reduction in assessment without any significant cost to the local government. I also object to there being no response from the Board concerning assessed value under the new law."

Richard Cantor, an attorney with Teahan and Constantino, located at 2750 South Rd., Poughkeepsie, NY said he is here on behalf of Rob Dyson.

Mr. Cantor said that the information presented by Mr. Marino is an incomplete chart. The functions of wetlands are different. Some are mud and some have a high importance and the flaw is that this law doesn't distinguish up front if the wetland has a potential to serve a useful environmental purpose. I am not here speaking against protecting the environment. No reasonable person would speak against protecting the environment. Mr. Cantor asked if this particular law in its present form, or some altered form, an appropriate tool to achieve the goal.

Mr. Cantor presented a written statement which is attached.

Mr. Cantor said the submission requirements and procedures for submission is three and a half pages, which is too much. We don't need this law. We have all the tools that we need to achieve the goals of this law, and that is the Environmental Review Law, which everyone calls SEQR. It starts with a relatively simple Environmental Assessment form; even the long form gives you the flexibility in the environmental process. The assessment asks does the wetland have a useful environmental function and do we have an activity to threaten the environmental function. If the answer is yes, the town has the substantive ability to deny an application that will do significant damage to a significant wetland or require the applicant to modify the application to avoid or substantially mitigate that damage. This draft begins with an overwhelming expensive submission before you get to what are you dealing with, which is - does this have the potential to cause harm. I would urge that there is no reason to adopt this law. If you disagree and feel the need to adopt a law, then consider a pared down and simplified law. Why would you propose current jurisdiction over an existing, expensive time consuming state process. Why propose concurrent jurisdiction? There is also a federal process under the Army Corp of Engineers.

In respect to the comments received from the Dutchess County Department of Planning, Mr. Cantor suggested that this was a polite attempt by the County to say that the definitions are too broad. Examples – the towns definition of alter, someone mowing their grass or planting trees would alter, dredging – a child picking up and throwing a rock is dredging under your example. Over expansive definitions of activities.

Mr. Cantor asked do you realize the extent of the buffer requirements? By regulating a quarter acre of land, a full acre of land is impacted. This is onerous when you don't have a procedure right at the beginning to determine what needs to be protected and what doesn't need to be protected. An ordinary resident in the Town of Washington, wishing to sub-divide a hypothetical 100 acre lot that wants to make 2 or 3 lots to make some money or give some land to their kids, they will spend \$20,000 to comply with this code. This is incredibly onerous.

Mr. Cantor urged the Board to keep the public hearing open for at least one more meeting, so people can hear and see the comments that have been made and to add to them, if they desire.

Mr. Cantor said there is no need for this wetland law. This draft is not the correct draft. It is overly expansive and creates a huge amount of financial and time burdens on the resident. This will also overwhelm the building department. To place this burden on the building and zoning function of the town, unless you plan on hiring and paying a lot more money, will be overwhelming to that department.

Bob Campbell, said he is the owner of the Kitchen and Bath Design Center on Route 44. With this zoning law, the value of your property should go down. If the value goes down, then your taxes should go down. When I see more restrictions, I get nervous. Over the years, I've been before many of the Boards in this town. The people on them are reasonable. That might

change in the future, with people in place that want more and more restrictions. He also said that if we keep adding regulations, then in the future, there is no way that you could build a house on a small site like on Maple Hill or the Horseshoe. We have to be careful that we don't strangle the residents. We all love the town of Washington and the Village of Millbrook. Let's be careful how we do things.

John Asklidson, living at 70 Daheim Road, said that he has served on a Conservation Board in a town south of here, that reviewed every application that went before a planning board in a town of 15,000 people. He said that this legislation is fairly boiler plate and not terribly onerous. He disagreed with Mr. Cantor's projection that a typical family wanting to put an addition on a house or subdivide a lot would spend \$20,000. - \$40,000.00. The wetlands not only protect the environment, they are important to our culture and our scenic vistas. The history is that they provide value to our property, not decrease the value. You are protecting the town from rampant development. The days of homesteading and farming are disappearing, and we have large scale developers, like Toll Brothers, who are going to take advantage of the town. The very large parcels of land will not stay in families forever. Large scale developers are waiting to come in. My property is in a wetland and I know that if I wanted to put an addition on my home, I would not be denied. That is just not going to happen. Mr. Asklidson finished by saying that I vote for this. I hope that this will pass, and that the Planning Board will use the CAC is much as possible.

Frank Genova, of Valley Farm Road, said that he goes way back with this issue. He said that I respectfully ask you not to pass this law. It is a convoluted document and is an administrative nightmare. If you regulate a tenth of an acre wetland you are taking one point six two acres of land. You cannot take peoples land relative to the land or protecting habitat.

Mr. Genova continued by saying there is only one map that is regulatory for wetlands and that map is a hydric soils map. No other map applies; you can't use a habitat map. You have no contract with the habitat or the environmental issues involved. Water is the one thing we are talking about. Not salamanders or turtles. It is ridiculous to take a man's land because of certain habitats.

Mr. Genova said that he, on behalf of the Town, attends the Wappinger Creek Intermunicipal Watershed Council. The Wappingers Creek Watershed which incorporates 134,871 acres is very, very important to us. It is one of the largest and most important in Dutchess County. Cornell has completed a survey that was primarily concerned with water. The results show that municipalities have said they are concerned with the watershed. The ordinance that is being considered tonight is 23 pages. Pleasant Valley's legislation is 4 pages, Pawling is not 23 pages. Milan's is 33 pages and it went to court. He said he is very disturbed about the way this has been done. Mr. Genova said he is a charter member of the CAC and will continue to take an active part of the CAC, but he will not be a part of a vigilante committee saying you can't use 15 – 20 acres of your land. Mr. Genova said that it was mentioned that this law is due to a public health issue. He said I fail to see that I can't park my car there, or put up a badminton course or a kennel because an animal might be there next year.

Fernando Nottebohm, a resident on North Tower Hill Rd, said he was initially pleased with this law because it meets a need that we have. He said that he believed Mr. Cantor was here for reasons yet unknown by us, and Mr. Genova is talking about the animals.

Dr. Nottebohm asked is it trivial or is it important. It has been said that the protection of water and the quality of water is important. Water is something we have to address. We have to ask is it a matter of consequence to any of us. I don't think anyone one is concerned about one particular animal. People from other lands admire the quality of water that we have. I think everyone involved is concerned about the preservation of water quality for the present and future and that is not trivial.

Dr. Nottebohm stated that in this document there is little protection for vernal pools. You are stipulating wetlands of one quarter of an acre, and most vernal pools are smaller than that. The reason they are called vernal pools is because they hold water for 2 or 3 months in the spring and they dry up and they are gone. They are real and a part of our eco-system. If you want to be casual about the complex ecosystems alright, but I happen to think they are desperately important.

Dr. Nottebohm said, in regard to this document, it does not have a clear order of priorities. He noted Section 10 B #36, and asked at what point does community's financial interest take precedence over a community's interest in the wetlands and protection of its water? There is little said about aquifers and watersheds. Aquifers are a key component of the water sources that we are trying to protect they are just a bit deeper under the ground. Many wetlands act as collection points for the water that goes into the aquifers. Watersheds are collection points for rain and snowmelt. Dr. Nottebohm said that there should be an explicit link between watershed, wetlands, watercourses and aquifers. If this is an omission of the current law he suggested a follow up.

One of the goals for the law should be water itself. Water for human consumption. Water itself for irrigation and other agricultural use, and water for the support of life. Road salt, fertilizer and oil can runoff into the streams, rivers and aquifers. He suggested a follow up with a future law on water protection. He also said that Section 396 should address or a future law should address concerns about water courses.

Dr. Fernando Nottebohm suggested that because current applications are exempt under this proposal, the town place a moratorium on applications so there is not a rush for applications before the Planning Board while this law gets worked out.

David Strayer, living on Weatherford Lane, Millbrook, said he thanked the Board for listening. Some aspects of the law can be improved, the potential law has very significantly improved on the protection of natural resources and happy to be seeing this considered. He identified Section 5 A ,which is the initial identification of wetlands and watercourses. He said the map overlooks and omits a lot of wetlands and watercourses in the town. Although Section

5 A says its acts as a guide, it fails to identify any other guides the town should use and because of that omission it has the potential to overlook a lot of other areas to be protected. He would like to see some language that indicates the town has the duty to consult other more reliable or more useful maps including the Hudsonia Maps or the USGS maps or other contour maps which indicate the likely location of stream courses on a property.

Howard Schuman, Maple Hill Dr, said he would like to follow up on some of the things that have been discussed. He has followed this from the start and he applauds the work of the people that has spent their time to bring this together. He said this is a good ordinance and there may be ways to improve it a little more and make it easier for people to follow. In terms of property value, in what makes this town the way it is the wetlands and land surrounding that we have. The ordinance is designed to protect that and he is fully in support of this law. It is good for the future of this town. He had a couple of comments to add. The problem with the present map is in order to determine if you fall under this regulation you have to look at the regulated activities and follow the check list. Then you look at the map to see if your property falls on the map. There are places that would fall into the regulation but are just not on the existing map. It should be written in there someplace so that the person who has the problem can look at it, perhaps on the town website that you look at a pdf on the town website. You should make additional maps easily available to the property owner such as the Hudsonia map or the vernal pool map by placing them on the town website. He echoes what David has said that you should incorporate other maps, so you can look at, and easily see what your property has. Neil Curry, the GIS specialist, at the Farm and Home Center, that has produced the wetland overlay map for the town, can help the town with these maps.

A lot of work has been done on this. Mr. Schuman said there has been an effort made to improve the Planning Board and CACs discretion where individual's property can be looked at on an individual basis. There is a review mechanization in place and things will be judged on the merits of each particular property. The problem is if people don't know what is on their property, which is where the maps can be important.

Mr. Schuman asked when does the CAC become involved. In many towns, the CAC looks at the application at the same time as the Zoning Administrator. If they are all involved at the beginning there may be less problems. He would like a change in Step 9, that the CAC, as a group, and not one individual attending Planning Board meetings, look at all applications as they come in and add their opinion with the Zoning Administrator.

Going back to the maps again, the vernal pools are recognized wetlands. They are recognized wetlands on the list of wetlands. They are very unique by their structure. They are small, but play an important part of filtering our water and an important part of our ecosystem. The problem is they are small. A study was done in 2004; the Dyson Foundation, the Tribute Garden and the Dutchess Land Conservancy funded a study by Hudsonia. They did a 90 page study and produced a high quality map of the environment and the habitat which were especially suitable to vernal pools. These people went out in the field and checked the vernal pools and the Hudsonia map indicates more than the NWI maps. There are quite a few vernal

pools on the Hudsonia map, such as Mr. Dysons, and the vernal pools on Supervisor Prisco's land that are not shown on the NWI map. He suggested taking and including the Hudsonia map as an overlay and the people will have the information first hand, before they get involved in a lengthy process. We need to update our map sources. Finally from an environmental point of view, the health of vernal pools are an important part of the environment. It is like taking trees out of the environment. We need to continue to have vernal pools. If you take these out of the landscape they will change other parts of the environment. The ones with a fifty foot buffer need a one hundred buffer. The smaller vernal pools cannot be protected without at least a one hundred foot buffer. The ones under one quarter of an acre are not protected and they are numerous and those with their full biomass add up. If the functioning ones are not protected, eventually they will be filled in and disappear. I argue that they should be looked at on an individual basis, they may be quite valuable.

I am arguing for three improvements: Involve the CAC immediately, upgrade the map structures and reconsider putting a 100 foot protection buffer of vernal pools and look at each vernal pool on a case by case basis.

Rob Dyson, Route 82, asked if anybody had a problem with the consultant's information listing the reasons to protect the wetlands. He said we have existing laws that the Planning Board and Zoning Board can easily follow. All of this is codified right now in existing laws that cover all of these issues. There is nothing in this law that is needed because if there is a doubt or a problem with a wetland. The problem we are creating is the legislation is overly broad, non-specific, overly defined and fundamentally unnecessary. I appreciate the amount of effort everyone goes through on all of the issues that come before the Town Board and I thank you for all that you have done. The existing regulation covers these and you don't need to create unnecessary and enhanced need for legal help, planning help, engineering help, which all cost money. Every step will be adversarial. It will cost the town more money and the applicant more money. It's unnecessary.

Dirk Jan Rosse, who lives on Overlook Road, said he has spent the past thirty years of his life digging out ponds, here, in New Jersey, Connecticut, Vermont, New Hampshire and Massachusetts. I can tell you wetland laws are contentious and you don't know what is coming at you. As far as the fees, with the ambiguity that is in there, it can cost you upwards of one hundred thousand dollars to do a simple project of just cleaning out a pond. We all need water, to drink clean water. I don't see anything in the legislation about what is going into the water – the man made toxins. Road salt, fertilizer, septic systems, that's really not addressed in here. Chlorides are cumulative. The ecosystem gets loaded up with these toxins. Look at Lake George; they are building one of the largest man made wetlands because the Northway has destroyed Lake George. I look at this and say we need to do something. Right now, it looks like some people are penalized and others benefit. I've been saying this for a long time, who benefits, the Village of Millbrook. We, in the town, preserve the water. My family has been here 60 - 70 years. My father lives at the headwaters of the Millbrook Stream. Water goes into the Village Millbrook clean and comes out dirty. The treatment plant needs to be upgraded. You really need to clarify that map. You should mail the legislation to everybody in the town

that is affected by this. Here you just have a cross section of the population. Everybody has to drink water, you're going in the right direction, and it's just not the right way to go. Everyone has to toe the line and address what goes into the system. The town can't put road salt on the roads, no chlorine in the pond and no fertilizers at the park. Simplify it, so it's not so wordy that you don't need a hundred experts to figure it out.

Stephen Kaye, of Deep Hollow Road, said there is a way to simplify the law. Currently the way the law is written is that if you want to do a major wetlands alteration of some kind, say to build a bridge across a stream, you go to the DEC, and the DEC approves it. He then has to go to you guys to get a permit. Mr. Kaye said that is overdone. He said if an application has to be reviewed by the DEC where they have experts and are proficient at this thing, then basically there should be an approval by the town, except for the extent where there would be a SEQR event and there you would be part of the process. That would eliminate a great many of the applications and simplify the law. The map should include more and if you have the map, reference everything you have by putting it on it. If you put something on it, the property owner should be advised and have the opportunity to say no, you are wrong. The property owners should be noticed and be a part of the process. This would address Frank's concern of it being a taking. Certainly the owner should understand and should have the full opportunity to come before you, so he fully understands this.

David Greenwood, Harts Village, said the concern discussed about the map is realistic. There is an incredible amount of responsibility on the Zoning Administrator. He is the first one to review the application. How it is followed up, and on the hands of a lesser competent individual, could be considered capricious. The document that the Zoning Administrator uses should be as accurate and detailed as possible. Rather than say we have a map that isn't very good, there are better ones make this one the best. The first map we have should be a better one that is as accurate as possible. This precludes a lot of information. If an applicant is coming to ask a question and is given a map that is inadequate, it is short sided on our part. I appreciate that there are other maps available that should be spelled out up front and included.

Councilman Murphy said that an upgraded National Wetlands Inventory map is available. The updated map will become incorporated in the document.

Dr. Nottebohm asked if the Board can answer why this is needed. Councilman M. Murphy said that the opening statement states why it is needed. This public hearing will remain open until the Town Board meeting in August. We will try and address some of the ambiguities and misunderstandings of the process that were raised tonight. He said that this is not a standalone law. It is part of the Planning Board process. Someone going to the Building or Zoning Department might be sent to the Planning Board for approval. It is not separate, but it is triggered by an application.

Mr. Campbell said that tonight he has heard that some people are a little against it and others are saying it is not strict enough. He has not heard tonight that it sounds good the way it

is. Councilman Murphy said that keep in mind that the process is the Town Board sees a need, and a committee is pulled together to create a document. Before it can be adopted, the Town must hold a public hearing. The Town Board will decide if the issues can be looked at and addressed. The document goes back to the Town Board and be voted upon, moved back to the committee or shelved, and that is the process. Supv. Prisco said that until the Board is satisfied that everyone has been heard the public hearing will remain open. We have to hear what you are thinking.

Mr. Cantor said that the comments about the accuracy of the map requires the applicant by personal observation to identify all wetlands, and it is not limited to what is on the map. If you ask Mr. Marino what his firm charges to go to a property and identify the wetland on a property, you might be surprised by what it costs. Second point, contrary to what Councilman Murphy said, the wetland permit in many cases is adjunct to another application, but if you adopt this legislation, this would be a standalone approval on any number of activities that don't require other approvals.

Mr. Cantor finished by saying that the standard, if and when you adopt something, should be an avoidance of damage to a functional wetland. The way it is written now, why do I need to satisfy to the Board that I could put my driveway somewhere else if I am not doing damage to a functioning wetland?

Councilman Murphy thanked Mr. Cantor for the clarification on the stand alone application. Councilman Murphy thanked everyone for their comments and participation. After some discussion, the Board kept the Public Hearing open, with an undetermined date for the next Public Hearing.

Supervisor Prisco said that there was one other of business that the Town Board needed to conduct prior to closing the meeting. The Town is in the final phases of the Park expansion project. While the Town has some cash in reserve, the Board has decided to move forward with a Bond Anticipation Note (BAN) to pay for the remainder of the project. At the last Town Board meeting, the Town Attorney was asked to prepare the Bond Resolution for this evenings meeting.

At a special meeting of the Town Board of the Town of Washington, Dutchess County, New York, held at the Town Hall, Reservoir Drive, Millbrook, New York, on the 16th day of July, 2010, at 7:30 o'clock P.M., Prevailing Time.

The following resolution was offered by Councilman Audia, who moved its adoption, and seconded by Councilman Turletes, to wit:

BOND RESOLUTION DATED JULY 16, 2010

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$200,000 SERIAL BONDS OF THE TOWN OF WASHINGTON TO PAY A PORTION OF THE COSTS OF IMPROVEMENTS OF PARK AND RECREATIONAL FACILITIES IN THE TOWN OF WASHINGTON, DUTCHESS COUNTY, NEW YORK

WHEREAS, the Town of Washington has undertaken to make improvements to its park and recreational facilities located at 3744 Route 44 in the Town of Washington, Dutchess County, New York, which improvements include utility, grading, erosion and sediment control and related physical improvements and site work (the "Improvements"); and

WHEREAS, pursuant to the State Environmental Quality Review Act, the environmental consequences of the Improvements were reviewed and a negative declaration in connection therewith was adopted by the Town Board on or about April 16, 2009; and

WHEREAS, the Town Board wishes to authorize the financing of a portion the costs of the Improvements in accordance with the Local Finance Law, as hereinafter provided.

NOW THEREFORE, BE IT RESOLVED, by the Town Board of the Town of Washington, Dutchess County, New York, as follows:

Section 1: The Improvements are hereby authorized at a total maximum estimated total cost of \$675,000.00. Of such maximum estimated total cost \$400,000.00 has been or will be paid out of current funds. Consequently, the down payment requirement of section 107:00 of the Local Finance Law has been fulfilled.

Section 2: The plan for the financing of a portion of such maximum estimated cost is by the issuance of \$200,000.00 serial bonds of said Town hereby authorized to be issued therefore, pursuant to the Local Finance Law.

Section 3: It is hereby determined that the period of probable usefulness of the Improvements is fifteen (15) years pursuant to subdivision 19(c) of paragraph a of Section 11:00 of the Local Finance Law. It is hereby further determined that the maximum maturity of the serial bonds herein authorized will not exceed five (5) years.

Section 4: The faith and credit of said Town of Washington, Dutchess County, New York, are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. There shall annually be levied on all the taxable real property in said Town a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

Section 5: Subject to the provisions of the Local Finance Law, the power to authorize the issuance of and to sell bond anticipation notes in anticipation of the issuance and sale of the serial bonds herein authorized, including renewals of such notes, is hereby delegated to the Supervisor, the chief fiscal officer. Such notes shall be of such manner, as may be prescribed by said Supervisor, consistent with the provisions of the Local Finance Law.

Section 6: All other matters except as provided herein relating to the serial bonds herein authorized including the date, denominations, maturities and interest payment dates, within the limitations prescribed herein, and the manner of execution of the same and also including the consolidation with other issues, shall be determined by the Supervisor, the chief fiscal officer of such Town. Such bonds shall contain substantially the recital of validity clause provided for in Section 52.00 of the Local Finance Law, as the Supervisor shall determine consistent with the provisions of the Local Finance Law.

Section 7: The validity of such bonds and bond anticipation notes may be contested only if:

(1) Such obligations are authorized for an object or purpose for which said Town is not authorized to expend money, or

(2) The provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication, or

(3) Such obligations are authorized in violation of the provisions of the Constitution.

Section 8: This resolution shall constitute a statement of official intent for purposes of Treasury Regulations Section

1.150-2. Other than as specified in this resolution, no monies are, or are reasonably expected to be, reserved, allocated on a long-term basis, or otherwise set aside with respect to the permanent funding of the object or purpose described herein.

Section 9: This resolution, which takes effect immediately, shall be published in summary form in the Poughkeepsie Journal, which is hereby designated as the official newspaper of said Town for such purpose together with a notice of the Town Clerk in substantially the form provided in Section 81.00 of the Local Finance Law.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call, which resulted as follows:

Supervisor Prisco	AYE
Councilman Turletes	AYE
Councilman M. Murphy	AYE
Councilman Audia	AYE
Councilman W. Murphy	AYE

The resolution was thereupon declared duly adopted.

The attached legal notice will be published by the Town Clerk in the next available edition of the Poughkeepsie Journal.

LEGAL NOTICE OF ESTOPPEL

NOTICE IS HEREBY GIVEN that the resolution, an abstract of which is published herewith, has been adopted by the Town Board of the Town of Washington, Dutchess County, New York, on the 16th day of July, 2010 and the validity of the obligations authorized by such resolution may be hereafter contested only if such obligations were authorized for an object or purpose for which said Village is not authorized to expend money, or if the provisions of law which should have been complied with as of the date of publication of this notice were not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty (20) days after the date of publication of this notice, or such obligations were authorized in violation of the provisions of the Constitution.

BOND RESOLUTION DATED JULY 16, 2010

A RESOLUTION AUTHORIZING THE ISSUANCE OF \$200,000 SERIAL BONDS
OF THE TOWN OF WASHINGTON TO PAY A PORTION OF THE COSTS OF
IMPROVEMENTS OF PARK AND RECREATIONAL FACILITIES IN THE TOWN OF
WASHINGTON, DUTCHESS COUNTY, NEW YORK

Class of objects or purposes:	Utility, grading, erosion and sediment control, and related physical improvements and site work
Maximum estimated cost:	\$675,000
Period of probable usefulness:	Fifteen Years
Maturity of obligations:	Five years
Amount of obligations to be issued:	\$200,000 bonds

A complete copy of the resolution summarized herewith is available for public inspection during regular business hours at the Office of the Town Clerk of the Town of Washington for a period of twenty days from the date of publication of this Notice.

There being no other business, on a motion made by Councilman M. Murphy and seconded by Councilman Audia the meeting was closed at 9:20 PM. All ayes were recorded.

Mary Alex, Town Clerk