

PUBLIC HEARING

April 11, 2018

At 8:49 p.m. Supervisor Schiliro stated that a Public Hearing would be held in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN THAT the North Castle Town Board will hold a Public Hearing on April 11, 2018, at 7:30 PM, or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY 10504, to consider a Local Law to amend Chapter 340 entitled Wetlands and Watercourse Protection of the Code of the Town of North Castle to require the preparation of a “no wetland impact” alternative and to create a wetland mitigation bank.

The proposed local law is available in the Town Clerk’s office during regular business hours and on the Town website. ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the Town Board
Alison Simon, Town Clerk

Dated: March 23, 2018
Armonk, NY

The Public Notice was marked Exhibit “A” for the record.

The Affidavit of Posting calling the Public Hearing was marked Exhibit “B” for the record.

The Affidavit of Publication from The Journal News calling the Public Hearing was marked Exhibit “C” for the record.

Letter from Director of Planning, Adam Kaufman, to the Town Board, dated March 1, 2018, was marked Exhibit “D” for the record.

Full Environmental Assessment Form, Parts 1 and 2, were marked Exhibit “E” for the record.

The Town Clerk noted there was a Negative Declaration for consideration.

The Town Clerk noted there was a proposed Local Law for consideration.

Director of Planning Adam Kaufman explained the two aspects of the proposed local law. The first aspect would establish a Town wetland mitigation bank which is described as the Fee In-Lieu section of the proposed law. He said that on occasion there is a disturbance within a wetland or wetland buffer that cannot be fully mitigated on site. The proposed change to the law would allow applicants to make a payment into the wetland mitigation bank if the mitigation could not be fully completed on the site. The second aspect is the requirement for the applicant to prepare a “no wetland impact” alternative plan for review by the approving authority.

In response to a query from Councilman DiGiacinto, Mr. Kaufman confirmed that the revised version of the local law under consideration states that the amount of the cash payment required for such disturbance shall be in such amount as set forth in the Master Fee Schedule. Mr. Kaufman noted that the Town Board should take action on the revised Master Fee Schedule.

In response to a query from Councilman Berra, Mr. Kaufman said there might be a scenario where there could be no on-site mitigation, he cannot envision that scenario and there is usually some mitigation, some improvement that the Town would want on the site. Mr. Kaufman said he does not see the Conservation Board and the Planning Board agreeing not to have any mitigation where there is a disturbance.

With regard to the cash payment in the proposed amount of \$2,500 per 1,000 square feet of mitigation area, the average cost of mitigation as determined by Kellard Sessions, Mr. Berra said he would prefer that there not be an incentive for an applicant to use the bank, essentially save money, and perhaps not do as much mitigation as might otherwise be done. He asked if it would appropriate to increase the cash payment amount, or to use the greater of the agreed upon payment

amount or the cost to mitigate on site. Town Attorney Roland Baroni said that the applicant's professional prepares the estimate and Kellard Sessions reviews it for its accuracy.

Mr. Kaufman read aloud from the Fee In-Lieu section of the proposed law, with regard to the Town Board's authority to accept a cash payment in its discretion. Mr. Kaufman said that if the Town Board does not agree with the Conservation Board and the Planning Board recommendations, the Town Board does not have to accept the recommendations. Mr. Berra suggested that the amount of the cash payment be higher than the average cost; noting that the proposed law has a provision for the applicant to provide a plan with no disturbance.

Mr. Kaufman said that the number of times that the Town has approved a disturbance to a wetland is very few; a disturbance is usually to the wetland buffer. He said the impacts are usually less significant than actually filling in a wetland.

Councilman D'Angelo said that amount of the cash payment could be adjusted if needed in the Master Fee Schedule.

Mr. Kaufman said that the Town would not discuss the mitigation plan or the Fee In-Lieu unless the Conservation Board and Planning Board have deemed that the disturbance is reasonable and acceptable. He said if an applicant is proposing a significant amount of direct wetland disturbance, it would not be an approvable scenario.

In response to a query from Supervisor Schiliro, Mr. Kaufman said that the Town could not mandate that the mitigation be done on another site which the Town prefers as more beneficial, and request that the applicant make the cash payment, but the Town could suggest that they do. Mr. Schiliro said that greatly increasing the amount of the cash payment may give an applicant the incentive to do the mitigation on a site where it may be useless. He said he was in agreement with Councilman D'Angelo that the amount of the cash payment could be adjusted if needed.

Mr. Berra suggested that the proposed law be revised to add language regarding a strong preference for mitigation being done on site and against the applicant making a payment into the wetland mitigation bank.

Mr. Kaufman noted that the preference for on-site mitigation is currently in the Code. He read aloud from Section 340-9.(A)(2) of the Code which states that on-site mitigation shall be required; however, off-site mitigation shall be permitted in cases where an on-site alternative is not possible or practical.

In response to a query from Supervisor Schiliro, Mr. Baroni said that he thought that additional language regarding a strong preference that the mitigation be done on-site is limiting to the Town Board, and is not necessary. He said this a discretionary decision on the part of the Town Board which is subject to challenge. He said the additional language would not lessen the Town Board being subject to a legal challenge.

After all persons were heard who desired to be heard, Councilman D'Angelo moved, seconded by Councilman DiGiacinto, that the Public Hearing be closed at 9:11 p.m.

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiGiacinto, that based upon review of the Environmental Assessment Form and all other materials, it has been determined that there will be no significant adverse environmental impact and the Town Board hereby adopts a Negative Declaration.

The roll call vote was as follows:

Ayes: Councilmen D'Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiGiacinto, the adoption of Local Law 2 of 2018 to amend Chapter 340 entitled Wetlands and Watercourse Protection of the Code of the

Town Board Minutes
April 11, 2018

Town of North Castle to require the preparation of a “no wetland impact” alternative and to create a wetland mitigation bank. The Local Law follows at the end of these minutes.

The roll call vote was as follows:

Ayes: Councilmen D’Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Councilman D’Angelo moved, seconded by Councilman DiGiacinto, adoption of the revised Master Fee Schedule to add Wetland Fee In-Lieu in the amount of the cash payment required for such disturbance to be \$2,500 per 1,000 square feet, or fraction thereof, of Town-regulated wetland and wetland buffer mitigation required.

The roll call vote was as follows:

Ayes: Councilmen D’Angelo, DiGiacinto, Reiter, Berra, Supervisor Schiliro

Noes: None

Alison Simon, Town Clerk

Dated: April 20, 2018

TOWN OF NORTH CASTLE

**Local Law No. 2 for the Year 2018
Adopted April 11, 2018**

A local law to amend Chapter 340 entitled Wetlands and Watercourse Protection to require the preparation of a “no wetland impact” alternative and to create a wetland mitigation bank.

Section 1. Amend Section 340-6.A of the Town Code to add the following new section in proper numerical order:

(13). Preparation of a plan that does not require the issuance of a wetlands permit for review by the Planning Board.

Section 2. Create the following new Section 340-9.A(4) of the Town Code as follows:

(4) Fee In-Lieu. The Town Board, upon recommendation of the Planning Board, shall have the authority to accept a cash payment to the Town of North Castle Wetland Mitigation Bank in lieu of providing some, or any, of such required wetland and wetland buffer mitigation, and the Town Board, in its discretion, may elect to accept such payment on behalf of the Town. The amount of the cash payment required for such disturbance shall be in such amount as set forth in the Master Fee Schedule. The expenditure of wetland mitigation bank revenues shall be limited exclusively to those actions designed to provide for the enhancement of wetland and/or wetland buffer areas.

Section 3. Amend Section 340-3 of the Town Code to revise the following definitions:

MITIGATION -- The creation or substantial improvement of wetlands and wetland buffers in nonregulated areas, in degraded wetland areas, or in wetland buffer areas to lessen, ease or replace the functional capacity of existing wetlands or wetland buffers that is lost or adversely impacted as a result of the permitted activity. Wetland mitigation, referred to in this chapter as “mitigation,” requires the development and implementation of a mitigation plan, pursuant to § 340-9.

MITIGATION PLAN -- The plan prepared by the applicant pursuant to § 340-9 when the applicant has demonstrated that either losses or adverse impacts to the wetland or wetland buffer are necessary and unavoidable as defined in § 340-8D and have been minimized to the maximum extent practicable. The mitigation plan shall compensate for unavoidable wetland losses or adverse impacts at a ratio of not less than two for one, i.e., two acres of created wetland for every one acre of wetland loss or adverse impact. The mitigation plan shall also compensate for unavoidable wetland buffer losses or adverse impacts at a ratio of two for one, unless the approval authority determines that such mitigation is not feasible.

Section 4. Conflicting Standards.

Where the requirements of this Local Law impose a different restriction or requirement than imposed by other sections of the Code of the Town of North Castle, the Town Law of the State of New York or other applicable rules or regulations, the requirements of this Local Law shall prevail.

Section 5. Severability.

The invalidity of any word, section, clause, paragraph, sentence, part or provision of this local law shall not affect the validity of any other part of this local law that can be given effect without such invalid part or parts.

Section 6. Effective Date.

This Local Law shall take effect immediately upon its adoption and filing with the Secretary of State.

Dated: April 11, 2018