

PUBLIC HEARING

October 26, 2016

At 8:01 p.m. Supervisor Schiliro stated that the Public Hearing, which was adjourned on September 28, 2016 would reconvene in accordance with the Public Notice that follows:

NOTICE IS HEREBY GIVEN that the Town Board of the Town of North Castle will hold a Public Hearing on Wednesday, July 27, 2016, at 7:30 p.m., or as soon thereafter, at Town Hall, 15 Bedford Road, Armonk, NY 10504, to consider establishing landmark designation, pursuant to Chapter 195 of the Town Code, entitled Landmarks Preservation of the Gazebo, the Millennium Wall and the surrounding land within a 50 feet radius of the center of the Gazebo and the land on the west side extending in a width of 100 feet to Maple Avenue. The property is located at Wampus Brook Park, Mt. Kisco Road/Maple Avenue, Armonk, New York and known on the North Castle Tax Maps as 108.01-6-20.

ALL PERSONS HAVING AN INTEREST IN THE MATTER ARE INVITED TO ATTEND AND BE HEARD.

By Order of the North Castle Town Board
Alison Simon, Town Clerk

Dated: July 6, 2016
Armonk, New York

The Town Clerk noted that an email from Sharon Tomback, Town Co-Historian, dated October 26, 2016, was received since the public hearing was reconvened on September 28, 2016.

Susan Shimer appeared before the Board and provided background regarding the Town's Landmarks Preservation Ordinance which she noted was adopted by the Town Board about forty years ago. (*Note: July 20, 1978*). Ms. Shimer said that around that same time (*Note: April 5, 1979*) the Town Board landmarked certain sites in the Town and designated Landmarks Preservation District No. I.

Ms. Shimer said that Landmarks Preservation District No. I. includes the property on the both sides of Bedford Road, and encompasses the Chinese Christian Church (formerly the Methodist Church), as well as Town Hall and the Cornell Birdsall House, and the green space between these two Town buildings. She said that there is nothing which precludes the inclusion of the land around the Gazebo in the landmark designation recommended by the Landmarks Preservation Committee. Ms. Shimer cited the definition of a Landmark from the Town Code and stated that the Code requires that when land marking a structure "the adjacent areas necessary for the proper appreciation of the landmark" should be included. She displayed the photos of the Gazebo including the view of the Gazebo from the street.

Ms. Shimer said that no other ordinance of the Town, nor any state law, suggests that the requirements of the ordinance are affected by the fact that the property to be landmarked is in a park; the Town's ordinances do not place encumbrances on its parks that would be affected by the land marking of the Gazebo and adjacent areas. She added that the Town's ordinances with respect to public lands pertain to the conduct of individuals permissible in the parks and the hours of operation.

Ms. Shimer said that State law also does not place an encumbrance on the Town's parks that would be affected by what the Committee strongly believes should be landmarked. Quoting from the *Handbook of the Alienation and Conversion of Municipal Parkland in New York* published by the NYS Office of Parks, Recreation and Historic Preservation 2012, Ms. Shimer said that the only encumbrance on parkland is that "once land has been dedicated to be used as a park, it cannot be diverted for uses other than recreation, in whole or in part, temporarily or permanently even for another public purpose, without legislative approval." Referencing the *Handbook*, Ms. Shimer said there are many things the town can do with its park which are not considered encumbrances that can affect the Gazebo such as issuing a revocable license to a profit-making entity for the operation of a park facility such as a café or snack bar, and she noted that park maintenance facilities and restroom facilities are considered acceptable in a park setting. She said it is these facilities that concern the Committee which seeks to limit what can be done in Wampus Brook Park in the limited area adjacent to the Gazebo which it considers necessary for the proper appreciation of the Gazebo from Maple Avenue and the protection of the streetscape.

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Ms. Shimer said there is a precedent in Town of what the Committee seeks to do. The Elijah Miller House is a landmark on the Federal, State and local registries and is located on parklands. She said there are other properties landmarked on public lands in New York State, including Van Cortlandt House Museum, New York City; Canfield Casino and Congress Park, Saratoga Springs; and John Jay Homestead, Katonah.

Christine Eggleton, Landmark Preservation Committee Vice-Chairman, read the email dated October 26, 2016 from Sharon Tomback, Town Co-Historian, in which she expressed support of the landmark designation as recommended by the Committee. Speaking on her own behalf, Ms. Eggleton stressed the importance of preserving the view of the Gazebo from the street.

Neal Baumann, Armonk, read a letter on behalf of St. Stephen's Episcopal Church in support of the landmark status of the Gazebo. Then stating that he was speaking on his own behalf, Mr. Baumann said that the historic district is constantly in danger as development attempts to encroach on the area and zoning is attempted to be changed.

Ed Woodyard urged the Board to landmark the Gazebo to preserve its integrity.

Councilman DiGiacinto said she appreciated the comments made, but added that she was uncomfortable with and hesitant to landmark the adjacent property and tie the hands of a future Town Board. She said she was very supportive of land marking the Gazebo. In response to a query from Ms. DiGiacinto, Town Attorney Roland Baroni said it would take a special act of the State legislature for the Town to sell parkland.

Councilman Reiter said he thought the Gazebo should be landmarked and was comfortable with land marking the area which includes the Millennium Wall.

In response to a query from Supervisor Schiliro, Mr. Baroni said that the research done on this topic did not come up with definitive information to either prohibit or permit land marking parkland. Mr. Baroni said as a matter of practicality it may not make sense to layer authority over an authority that is already in place with regard to decisions such as landscaping the park. Ms. Shimer said that the landscaping is necessary and expected, and that the Committee is concerned about permanent changes to the park. In response to a query from Mr. Baroni, Councilman D'Angelo said that the Parks and Recreation Advisory Board had not been consulted regarding the proposed landmark designation.

Councilman D'Angelo said the Gazebo and the immediate area of the accessible ramp should be landmarked. Mr. D'Angelo said he was not in support of going further with the land marking, nor of an additional layer of approval.

Councilman Berra said he did not see it as a terrible restraint to landmark the adjacent area as recommended by the Committee as the designation would not include the whole park. Mr. Berra said that if the Town wants people to landmark their property to preserve views it has the opportunity to lead by example. He asked if consideration could be given to land marking of the area up to, but not including the brook, rather than land marking to the street. Ms. Shimer said that recommendation to landmark to the Town right of way would provide for the proper appreciation of the Gazebo from the street. Mr. Baumann expressed support of Mr. Berra's suggestion to landmark the area up to the brook which would allow for protection of the Wampus Brook shoreline under the purview of the Parks Department.

Linda Fernberg, member of the Committee, expressed concern about what might happen on the land and said it is possible to lease the area in front of the Gazebo and urged the Board to include the adjacent land.

Supervisor Schiliro said that he is absolutely in support of preserving the Gazebo, but said that he is not comfortable with land marking the adjacent land at this time. He said he has concerns with land marking the adjacent land which is parkland, adding that he felt comfortable that the land is protected. The Supervisor expressed concern that adding another layer of government might create an impediment which could impact Town operations. He said consideration of land marking the land could be addressed at a future time.

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Councilman DiGiacinto said she agreed that the land marking of the land to the Gazebo could be considered at a future time. Councilman D'Angelo said he would contact the Parks and Recreation Advisory Board to schedule a joint meeting with the Landmarks Preservation Committee and provide its opinion. Ms. DiGiacinto recommended that Parks Department employees be included.

Ms. Shimer said that she thought there is some confusion about the encumbrance that is created by parkland. She said the encumbrance is that the land cannot be sold to a private individual; it does not mean that nothing can be done with it. She said she was sure the Committee would be happy to meet with the Parks and Recreation Advisory Board. Ms. Shimer stated that, since she feels her time is futile, she resigned from the Landmarks Preservation Committee.

Sue Berenson expressed support of including the adjacent land in the landmark designation to prevent something from happening in front of the Gazebo.

Councilman Berra suggested keeping the public hearing open to continue the dialogue regarding the streetscape, and reconvene the public hearing in a few months. The majority of the Board indicated they would like to close the hearing and landmark the Gazebo.

Christine Eggleton expressed concern about temporary structures which could block the view of the Gazebo and become permanent as she said has occurred with the kiosks in Union Square and Bryant Park.

Ed Lobermann expressed support of the majority decision of the Town Board to landmark the Gazebo and consider the land at a future time.

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 9:05 p.m.

The roll call vote was as follows:

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

Noes: None

Councilman D'Angelo moved, seconded by Councilman DiGiacinto, approval of a Landmark Designation, pursuant to Chapter 195 of the Town Code entitled Landmarks Preservation, of the Gazebo and accessible ramp which parcel is located at Wampus Brook Park, Mt Kisco Road/Maple Avenue, Armonk, New York and known on the North Castle Tax Maps as 108.01-6-20.

The roll call vote was as follows:

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

Noes: None

Alison Simon, Town Clerk

Dated: November 8, 2016