

Guest Column: Lewisboro needs a fair wetlands law

Written by Peter DeLucia

Thursday, 24 September 2009 00:00

I appreciate the hard work put in by the supervisor's task force in drafting proposed amendments to the town's current wetland and watercourse code. Their goals, to make interpretation, compliance, and administration easier and to reduce expenses for homeowners, are those that I have been strongly advocating since first being elected four years ago.

However, after a review of the proposed revisions, it is clear that the more critically needed changes have not been included, and some of the proposed changes might actually be counterproductive.

For example, the current revisions remove the requirement that the town maintain a wetlands map. The town has never had more mapping capabilities than it has today. Additionally, the County Planning Department maintains wetland maps. Getting rid of the map requirement may save the town some money, but it certainly will not save homeowners any expenses. As with the state law and neighboring towns, the map serves as fair notice to homeowners of the presence of wetlands.

Doing away with the requirement that the town maintain a wetlands map is like doing away with the requirement to post speed limit signs on our highways. This is a fairness issue. How does a driver know he or she is speeding without a speed limit sign? How does a homeowner know that he or she is near wetlands without a map?

Generally, wetlands that don't appear on a map are small, new, and often difficult to define, and usually artificially created by road runoff and other outside causes. Is it fair to then assess a fine for an unintentional violation? Lack of adequate notice is the reason that the Department of Environmental Conservation does not fine first offenders for inadvertent violations on wetlands that are not mapped, though they can be made to pay the cost of remediation.

Despite the revisions, the fines remain excessive. Drunk driving in New York carries a fine of \$500, yet a first time wetlands violator can be subject to multiple fines of up to \$7,500 each. In Bedford, the fines start at \$250. While our current Planning Board has been fair in the administration of the law, the ordinance must be written to work no matter who is enforcing it. I would like to see a sliding scale of violations — nominal if the wetlands are not mapped and increasing after the first offense.

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In addition, I remain uncomfortable with having planners, often already involved in the applicant's permit application, act as a "wetlands court." This is unfair both to the members of the board who must sit in judgment of their neighbors and to the applicants who deserve a hearing by an independent body. It is also contrary to my experience in hearings and enforcement at the county level, where we use independent hearing examiners to adjudicate health code violations.

Another concern is that under state law the "activities of farmers and other landowners" are exempt from local wetlands laws. Yet the new proposal contains a definition for "agriculture activities," which would end this exemption for backyard farmers and horse owners. By contradicting the state law, this could render our entire local law invalid.

Also, the current proposal retains the controversial "clearance form," which requires the wetlands inspector to come out and look at every project no matter how minor. This costs the town money by duplicating the efforts of the building department, and is an unreasonable intrusion on homeowners' privacy.

Finally, if we intend to pass a law that increases protection for homeowners, provides certainty, and saves unwarranted expense, there needs to be a defined minimum size wetland area where the buffer regulations don't apply. The state only regulates wetlands 12 acres or larger. In Pound Ridge, a watershed area and the only other local town with a 150-foot buffer, wetlands of less than one-quarter acre are exempt. Our local stormwater ordinance exempts area disturbances of fewer than 5,000 feet. Otherwise, we are back to the same illogical situation where a homeowner living on one acre with a small, seasonally wet depression three feet in diameter would be subject to an 150-foot buffer extending completely around this tiny "wetland" and effectively prohibited from doing anything on his or her property without a visit from the wetlands inspector and most likely incurring fees and other consulting costs.

I share the belief that the sooner the code is amended the better. However, without careful consideration of the changes outlined above, acting in haste will, at best, be just "window dressing" and more likely result in a further setback for the rights of Lewisboro homeowners.