

28 NOVEMBER 2018

**TOWN BOARD SPECIAL MEETING
TOWN HALL, MAHOPAC, N.Y.**

A Special Meeting of the Town Board of the Town of Carmel was called to order by Supervisor Kenneth Schmitt on the 28th day of November 2018 at 7:08 p.m. at Town Hall, 60 McAlpin Avenue, Mahopac, New York. Members of the Town Board present by roll call were: Councilman Barile, Councilman Schneider, Councilman Lupinacci, Councilwoman McDonough and Supervisor Schmitt.

The Pledge of Allegiance to the Flag was observed prior to the start of official business. A moment of silence was held to honor those serving in the United States Armed Forces as well as in memory of the police officers recently killed in the line of duty.

Supervisor Schmitt announced that the Town Board met at 6:00 p.m. in Executive Session with regard to personnel in connection with the 2019 Budget.

PUBLIC HEARING RESCHEDULED TO 1/16/19 - PROPOSED LOCAL LAW AMENDING CHAPTER 111 OF THE CODE OF THE TOWN OF CARMEL, ENTITLED "PEDDLING AND SOLICITING"

On motion by Councilwoman McDonough, seconded by Councilman Schneider, with all members of the Town Board present and voting "aye", the Public Hearing in connection with the proposed Local Law amending Chapter 111 of the Code of the Town of Carmel, entitled "Peddling and Soliciting" was rescheduled to January 16, 2019.

Prior to the motion being offered, Supervisor Schmitt confirmed that no one was in attendance to comment in connection with the proposed Local Law. He explained that the Town Board is considering a change to the proposed Local Law that may be considered substantive.

PUBLIC HEARING HELD - PROPOSED LOCAL LAW AMENDING CHAPTER 89 OF THE CODE OF THE TOWN OF CARMEL, ENTITLED "FRESHWATER WETLANDS"

With no one present in objection, the reading of the following Notice of Public Hearing as published in the Town's official newspapers was waived. Printed copies of the Notice were made available to the public.

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN, that the Town Board of the Town of Carmel will conduct a Public Hearing at the Town Hall, 60 McAlpin Avenue, Mahopac, New York 10541 on Wednesday, November 28, 2018 at 7:00 p.m. or as soon thereafter that evening as possible on a proposed Local Law amending Chapter 89 of the Code of the Town of Carmel, entitled "Freshwater Wetlands" as follows:

TOWN OF CARMEL
PROPOSED LOCAL LAW # ____ OF THE YEAR 2018
A LOCAL LAW AMENDING CHAPTER
89 OF THE CODE OF THE TOWN OF
CARMEL, ENTITLED "FRESHWATER
WETLANDS"

BE IT ENACTED by the Town Board of the Town of Carmel, County of Putnam, State of New York as follows:

SECTION 1: AUTHORITY

This chapter is adopted pursuant to the authority, of Article 2, § 10 of the New York State Municipal Home Rule Law.

SECTION 2: AMENDMENT OF CHAPTER 89

Chapter 89 of the Town Code of the Town of Carmel entitled "Freshwater Wetlands", is hereby repealed effective immediately and replaced with the following:

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§ 89-1 Legislative findings.

The Town of Carmel Town Board has determined that freshwater wetlands are invaluable resources for flood protection; erosion control; wildlife habitat; forests; pollution treatment; open space; water, including groundwater recharge; recreation; and other benefits associated therewith which, if preserved and maintained in an undisturbed natural condition, constitute important assets to present and future residents of the Town of Carmel.

- A. Any loss of wetlands deprives the people of the Town of Carmel of some or all of the many and multiple benefits to be derived from wetlands, by:
 - (1) Providing drainage, flood and stormwater control by the hydrologic absorption and natural storage capacity of wetlands;
 - (2) Providing wildlife habitat by providing breeding, nesting and feeding grounds and cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species;
 - (3) Providing protection of subsurface water resources and provision for valuable watersheds and recharging groundwater systems;
 - (4) Providing recreation by providing areas for hunting, fishing, boating, hiking, bird watching, photography, camping, nature study, passive enjoyment and other uses;
 - (5) Providing pollution control through biological degradation, chemical oxidation reduction, as well as physical separation, settling basins, and areas of plant uptake of certain nutrients and other pollutants;
 - (6) Providing natural erosion control by serving as sedimentation areas and filtering basins, absorbing silt and organic matter and protecting channels and coves;
 - (7) Preserving much needed open space which serves to satisfy man's psychological and aesthetic needs;
 - (8) Providing sources of nutrients in freshwater food cycles and nursery grounds and sanctuaries for freshwater fish; and
 - (9) Serving as an educational and research resource.
- B. Wetlands protection is a matter of concern to the Town and the establishment of regulatory and conservation practices for these areas serves to protect the Town by ensuring review and regulation of any activity in wetlands that might adversely affect the health, safety and welfare of the Town's citizens.
- C. Wetlands in Carmel and other areas form an ecosystem that is not confined to any one property owner or neighborhood. Experience has demonstrated that effective wetlands protection requires consistency of approach to preservation and conservation efforts throughout the Town.

§ 89-2 Intent.

- A. It is declared to be the intent of the Town of Carmel to protect, preserve, properly maintain and require prudent use of the wetlands, their associated wildlife within the Town of Carmel by preventing or minimizing erosion due to flooding and stormwater runoff, maintaining the natural groundwater supplies, preserving and protecting the purity, utility, water retention capability, ecological functions, recreational usefulness and natural beauty of all wetlands and other related natural features of the terrain. No net wetlands loss should occur as the preservation and maintenance of wetlands and associated areas constitute important assets necessary to promote the health, safety, general welfare, and economic welfare of the present and future residents of the Town.

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- B. It is further declared the policy of the Town of Carmel to exercise its authority pursuant to the Freshwater Wetlands Act, Article 24, § 24-0501 and § 24-0507 of the State of New York Environmental Conservation Law, which authorizes local governments to establish their own procedures for the protection and regulation of wetlands lying within their jurisdiction.
- C. It is further declared to be the policy of the Town of Carmel to state that the Town of Carmel Freshwater Wetland and Drainage Law may be amended from time to time by the Town of Carmel.
- D. This chapter is enacted pursuant to the above referenced law and any and all applicable laws, rules and regulations of the State of New York, and nothing contained herein shall be deemed to conflict with any such laws, rules or regulations.

§ 89-3 Definitions.

- A. Except where specifically defined herein, all words used in this chapter shall carry their customary meanings. Words used in the present tense include the future and the plural includes the singular. The word "shall" is intended to be mandatory.
- B. As used in this chapter, the following terms shall have the meanings indicated:

ADJACENT AREA

Any land in the Town of Carmel immediately adjacent to a freshwater wetlands, lying within 100 feet; measured horizontally from the boundary of a freshwater wetlands. In addition, the adjacent area may include up to an additional 100 feet distance upslope of the wetlands, if it is within five feet of elevation of the wetlands' normal water level and the proposed activities have the potential to significantly impact the wetlands. However, the Environmental Conservation Board (ECB) may establish an adjacent area broader than 100 feet where necessary to protect and preserve a wetland, as defined in this section under "wetlands". Such an extension shall not become effective until the ECB has provided the opportunity for public notice and hearing. The ECB shall provide a minimum of 25 days notice to the public, affected landowners, easement owners and the Department of Environmental Conservation of the proposed extension.

AGRICULTURAL ACTIVITY

- (1) Shall mean the activity of an individual farmer or other landowner in:
 - (a) Grazing and watering livestock.
 - (b) Making reasonable use of water resources for agricultural purposes.
 - (c) Harvesting the natural products of wetlands.
 - (d) The selective cutting of trees.
 - (e) The clear-cutting of vegetation for growing agricultural products.
 - (f) Constructing truck roads of less than 15 feet in width for removing timber cut where construction does not alter waterflows.
 - (g) Operating motor vehicles for agricultural purposes.
 - (h) Erecting fences required to enhance or maintain the agricultural productivity of the land.
 - (i) Using chemicals and fertilizers according to normally accepted agricultural practices, including the application of compost, in order to grow crops for human or animal consumption or use, in or adjacent to wetlands where authorized by other state, federal or local laws.

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- (j) Otherwise engaging in the use of wetlands for growing agricultural products such as crops, vegetables, fruits, or flowers; but
- (2) Does not mean:
 - a) Filling or deposition of spoil, even for agricultural purposes;
 - b) Mining; or
 - c) Erecting structures not required to enhance or maintain the agricultural productivity of the land.

APPLICANT

Any individual or individuals, person or persons, firm, partnership, association, corporation, company, organization or other legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof who file an application for a permit issued by the ECB pursuant to this chapter and who is either the owner of the land on which the proposed regulated activity would be located, a contract vendee, a lessee of the land, the person who would actually control and direct the proposed activity, or the authorized agent of such person.

APPROVAL

Issuance of a permit or letter of permission granted by the ECB based on a majority vote.

AQUACULTURE

Cultivating and harvesting products, including fish and vegetation, that are produced naturally in freshwater wetlands, and installing cribs, racks and other in-water structures for cultivating these products; but does not include filling, dredging, peat mining or the construction of any buildings or any water-regulating structures, such as dams.

CHAIRPERSON

The Chairperson of the ECB as duly appointed annually by the Town Board of the Town of Carmel. "Assistant Chairperson" shall mean the assistant to the Chairperson as appointed on an annual basis at the first Board meeting of the year by the members of the Town Board.

CRITICAL ENVIRONMENTAL AREA (CEA)

A specific geographic area designated by a state agency having exceptional or unique characteristics that make the area environmentally important. Any Unlisted Action located in a CEA must be treated as a Type I action by any involved agency.

DATE OF RECEIPT OF APPLICATION FOR PERMIT OR LETTER OF PERMISSION

An application shall be deemed "received" by the ECB on the date of its first regular meeting where it accepts the application as complete.

DEPOSIT

To fill, place, eject or dump any material or the act thereof.

DEPUTY WETLANDS INSPECTOR

The Deputy Wetlands Inspector of the Town of Carmel appointed annually by the Town Board of the Town of Carmel.

DIRECTOR OF CODES ENFORCEMENT

The Director of Codes Enforcement of the Town of Carmel.

DREDGING

Excavating or removing sediment, soil, mud, sand, shells, gravel, or other aggregate.

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ENVIRONMENTAL CONSERVATION BOARD (ECB)

The Environmental Conservation Board of the Town of Carmel.

FILLING

Depositing any soil, stones, sand, gravel, mud, rubbish or fill in any manner.

LETTER OF PERMISSION (LP)

A written approval by the ECB to a person, issued in response to a written request to conduct an activity in a wetland or its adjacent area, indicating that the proposed activity meets the description and standards identified in the minimum land use regulations for that activity. These activities have been determined by the ECB as being compatible with freshwater wetlands and not having a significant adverse impact on wetlands or their functions and benefits.

MATERIAL

Liquid, solid or gaseous substances, including but not limited to: soil, gravel, rock, sand, clay, peat, mud, debris and refuse; any organic or inorganic compound, chemical agent, or matter (excluding pesticides, herbicides, algacides and agricultural or radioactive wastes to the extent that the same are exempt from local regulation or regulated exclusively by the State of New York); sewage, sewage sludge or effluent; and any other solid waste.

MITIGATION

This is wetland enhancement, restoration, creation and/or preservation project that serves to offset unavoidable wetland impacts. It may also be referred to as compensatory mitigation.

The applicant must demonstrate to the satisfaction of the ECB that the proposed compensatory mitigation will provide benefits equal to or greater than those of the replaced wetlands and will mitigate the impact of the proposed activity on any effected wetlands.

PLANNING BOARD

The duly appointed Planning Board of the Town of Carmel appointed by the Town Board of the Town of Carmel.

POLLUTION

The presence in the environment of humanly induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, plants, wildlife, fish or property.

PUBLIC HEALTH DEPARTMENT

The Putnam County Department of Health.

REGULATED ACTIVITY

Any form of draining, dredging, excavating, or mining; any form of dumping or filling, either directly or indirectly; erecting any structures, constructing roads, driving pilings, or placing any other obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to running a sewer outfall, discharging sewage treatment effluent or other liquefied wastes into or so as to drain into a wetland; or any other activity which substantially impairs any of the several functions or benefits of wetlands which are set forth in § 89-1 of this chapter. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetland and are located within the adjacent area.

REMOVE

To dig, dredge, suck, bulldoze, dragline, blast or otherwise excavate or regrade or the act thereof.

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SELECTIVE CUTTING

The annual or periodic removal of trees, individually or in small groups, in order to realize the yield and establish a new stand and to improve the forest. This area shall be less than three (3) acres in size.

STATE ENVIRONMENTAL QUALITY REVIEW ACT (SEQRA)

The law pursuant to Article 8 of the New York Environmental Conservation Law providing for environmental quality review of actions which may have a significant effect on the environment.

STOP-WORK ORDER

An order issued by the Director of Codes Enforcement or the Codes Enforcement Officer to cease work immediately when a wetland law violation has been observed. The stop-work order is usually requested by the Wetlands Inspector or the Deputy Wetlands Inspector.

TOWN BOARD

The duly elected Town Board of the Town of Carmel.

TOWN CLERK

The duly elected Town Clerk of the Town of Carmel.

TOWN ENGINEER

Any person employed by the Town of Carmel as the Town Engineer.

WATERCOURSE

Any feature through which water flows continuously or intermittently in an identifiable course.

WETLANDS

All lands and all waters of the Town of Carmel, naturally or historically wet, which exceed 5,000 square feet in total area, which contain any or all of the following:

- (a) Inland wet meadows.
- (b) Inland fresh marshes.
- (c) Shrub swamps (see Subsection (2)(f)[2]).
- (d) Wooded swamps (see Subsection (2)(f)[1]).
- (e) Bogs and other areas of wetness in which shallow ponds may also be present.
- (f) Submerged lands commonly called marshes, swamps, sloughs, and flats supporting aquatic or semiaquatic vegetation of the following vegetative types:

[1] Wetland trees which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees; including, among others, red maple (*acer rubum*), willows (*salix* spp.), black spruce (*picea mariana*), swamp white oak (*quercus bicolor*), red ash (*fraxinus pennsylvanica*), american elm (*ulmus americana*), and larch (*larix laricina*).

[2] Wetland shrubs which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs; including, among others, alder (*alnus* spp.), button bush (*cephalanthus occidentalis*), bog rosemary (*andromeda glaucophylla*), and leatherleaf (*chamaedaphne calyculata*).

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[3] Emergent vegetation; including, among others, cattails (*typha* spp.), pickerelweed (*pontederia cordata*), bulrushes (*scriptus* spp.), arrow arum (*peltandra virginica*), arrowheads (*sagittaria* spp.) reed (*phragmites communis*), wild rice (*zizania aquatica*), bur-reeds (*sparganium* spp.) purple loosestrife (*lythrum salicaria*), swamp loosestrife (*decodon verticillatus*), and water plantain (*alisma plantage-aquatica*).

[4] Rooted, floating-leaved vegetation; including, among others, water lily (*numphaea odorata*), water shield (*brasenia schreiperi*), and spatter-dock (*nuphar* spp.).

[5] Free-floating vegetation; including, among others, duckweed (*lemma* spp.), big duckweed (*spriodela polyrhiza*), and watermeal (*wolffia* spp.).

[6] Wet meadow vegetation which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation; including, among others, sedges (*cares* spp.), rushes (*juncus* spp.), cattails (*typha* spp.), rice cut-grass (*leersia oryzoides*), reed canary grass (*phalaris arundinaceae*), swamp loosestrife (*decodon verticillatur*), and spike rush (*elecocharis* spp.).

[7] Bog mat vegetation; including, among others, sphagnum mosses (*sphagnum* spp.) bog rosemary (*andromeda glaucophylla*), leatherleaf (*chamaedaphne calyculata*), pitcher plant (*sarracenia purpurea*), and cranberries (*vaccinium macrocarpon* and *v. ocycoccos*).

[8] Submergent vegetation; including, among others, pond weeds (*potzmoziton* spp.), navads (*majas* spp.), bladderworts (*ulticulmaria* spp.), wild celery (*vallisneria americana*), coontail (*ceratophyllum demersum*), water milfoils (*myriophyllum* spp.), muskgrass (*chara*), stonewort (*nitella* spp), water weeds (*elodea* spp.), and water smartweed (*polygonum amphibium*).

- (g) Lands, submerged lands and overlying waters containing remnants of any vegetation that has died because of wet conditions over a sufficiently long period, providing that such conditions can be expected to persist indefinitely, barring human intervention.
- (h) Underlying lands and waters enclosed by aquatic or semiaquatic vegetation as set forth herein or dead vegetation as set forth above.
- (i) Soil types that are poorly drained, very poorly drained, alluvial or floodplain soils as defined by the USDA Soil Conservation Service and the Putnam County Soil and Water District such as (but not limited to) the following: sun silt loam, sun extremely stony silt loam, Fredon loam, Raynham silt loam, Carlisle muck, Freshwater marsh, Udorthents wet substratum, Ridgebury loam, Ridgebury very stony loam, Fluvaquents, Rippowam, Rumney, Palms muck, Leicester loam, Leicester very stony loam.

WETLANDS BOUNDARIES

The outer limits of all lands and waters defined under "wetlands."

WETLANDS INSPECTOR

The Wetlands Inspector of the Town of Carmel appointed by the Town Board of the Town of Carmel or a consultant hired by the Town Board of the Town of Carmel to be the Wetlands Inspector.

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WETLANDS MAP

The official map most recently adopted by the Town Board of the Town of Carmel on which are indicated the boundaries of any known wetland within the Town of Carmel and said map shall be used for informational purposes only. Said map may be amended from time to time by the Town of Carmel Town Board to incorporate any newly identified regulated wetlands or to delete wetlands no longer in existence: Said map shall not be considered to determine the absolute boundaries or locations of wetlands. Absolute boundaries and locations shall be determined by the Town of Carmel Wetlands Inspector on the basis of the outer limits of the lands and waters as defined in "wetlands" below and by the presence and extent of vegetation as listed below and/or by the presence of soil types listed below.

WETLANDS PERMIT

The written approval issued by the ECB where required for conducting a regulated activity in a wetland or adjacent area.

§ 89-4 General regulations.

- A. Concurrently with the Planning Board review and approval process, the Planning Board shall refer to the Town of Carmel ECB any application for approval of a site plan or subdivision, which does not require a wetland permit issued by the New York State Department of Environmental Conservation (DEC) and/or the U.S. Army Corps of Engineers (ACOE) that may impact or include any wetlands, as defined above, and would require a wetland permit under this chapter.
- B. None of the activities set forth below shall be commenced or carried out in or within 100 feet of any wetland, body of water, watercourse or intermittent stream or adjacent area within the Town of Carmel until, except as provided herein, a permit or letter of permission has been duly issued in accordance with the procedures set forth in this chapter:
 - (1) Depositing directly or indirectly, or permitting to be deposited, or removing or permitting to be removed, excavating, mining, dredging or filling, any material, debris, chemical waste or effluent.
 - (2) Erecting any building or other structure; construction of any road, driveway or motor vehicle parking facility; paving; installation of sewage disposal systems or sewer outfall or swimming pools; discharge of sewage treatment effluent or other liquid wastes; drilling and digging of wells; installation of any pipe or other conduit; or the placing of any other obstructions within a controlled area.
 - (3) Creating a decrease or increase or diversion in the flow velocity or volume of water.
 - (4) Destroying or permitting to be destroyed trees five inches or greater in diameter.
 - (5) Restoring land elevations that have been altered by erosion or storm damage.
 - (6) Introducing any effluent of sufficiently high thermal content so as to cause deleterious ecological effect.
 - (7) Introducing any form of pollution, including but not limited to, running a sewer or industrial outfall into a wetland or water body, discharging sewage treatment effluent or other liquid wastes directly into or so to drain into a freshwater wetland or adjacent area.
 - (8) Any other activity which substantially impairs any of the functions of the wetlands and watercourses or the benefits derived therefrom as set forth in Subsection A of this section. Any substantial removal of surface vegetation that may affect the function of a wetland or watercourse.
- D. Exceptions. No permit or letter of permission shall be required for the following activities:

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- (1) Hunting, trapping, fishing, passive recreational activities, and harvesting of natural wetland products with the exception of trees and shrubs as defined by this chapter.
- (2) Public health activities, orders, and regulations of the Putnam County Health Department, as defined in this chapter.
- (3) Activities subject to the review jurisdiction of the New York Public Service Commission or the New York State Board on Electric Generation Siting and the Environment under Article VII or Article VIII, respectively, of the Public Service Law. The standards and restrictions of this chapter will be applied by said bodies in determining whether to issue a certificate of environmental compatibility and public need under such articles.
- (4) Emergency activities.
 - (a) Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life or property or the protection or preservation of natural resource values. Such emergency activities include, for example:
 - [1] Search and rescue operations;
 - [2] Preventive or remedial activities related to contamination of streams or other large bodies of water;
 - [3] Floods, hurricanes, and other storms; and
 - [4] Public health concerns.
- (5) Ordinary maintenance and repair of existing structures or improved areas which does not involve expansion or substantial restoration, reconstruction, rehabilitation or modification, including but not limited to bridges, roads, highways, railroad beds, bulkheads, docks, piers, pilings, paved streets, trimming, pruning and bracing of trees. Decorative landscaping, including the addition of native trees and plants and incidental removal of trees and brush.
- (6) Any land use, improvement or development for which final approval shall have been obtained prior to September 1, 1976, from the Town of Carmel or the Town of Carmel authorities having jurisdiction over such land use, improvement or development. As used in this subsection, the term "final approval" shall mean:
 - (a) In the case of the subdivision of land, conditional approval of a final plat as term is defined in § 276 of the Town Law;
 - (b) In the case of a site plan not involving the subdivision of land, approval by the appropriate body or office of the Town of Carmel of the site plan; and
 - (c) In those cases not covered by Subsection C(6)(a) or (b) above the issuance of a building permit or other authorization for the commencement of the use, improvement or development for which such permit or authorization was issued.
- (7) "Agricultural activities" as defined above in § 89-3 are not regulated under the Freshwater Wetlands Law or this chapter. However, land altered by an agricultural activity after its original designation as a wetland upon an official map is still protected under the Freshwater Wetlands Law or this chapter, and other appropriate parts pursuant to the Freshwater Wetlands Law, so that any other activities are subject to the provisions of this chapter.

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§ 89-5 Application for a permit.

- A. Any person proposing to conduct or cause to be conducted a regulated activity requiring a permit under this chapter upon any freshwater wetland or adjacent area shall file an application with the Secretary of the ECB of the Town of Carmel together with the appropriate filing fee as set by the Town of Carmel Town Board. The Secretary shall forward a copy of such application to the Director of Codes Enforcement, the Wetlands Inspector, the ECB, and the Town Engineer.
- B. An application for a permit shall be filed by the applicant on a form prescribed by the ECB. Such application shall set forth the purpose, nature and extent of the proposed regulated activity. The application shall include a detailed description of the regulated activity being applied for, equipment used, quantities of material required, schedule of activities, erosion control plan, types and quantities of chemicals to be used, a site plan drawn to scale, a map showing the area of freshwater wetland or adjacent area directly affected, with the location of the proposed regulated activity thereon, an area locator map, a copy of the deed describing the subject property, showing the county clerk's stamp and such additional information as the ECB deems sufficient to enable it to make the findings and determinations required under this chapter. A complete SEQRA Environmental Assessment Form must accompany the application.
 - (1) Submission of an application for a permit shall constitute permission by the applicant for the ECB to conduct site inspections, as deemed necessary by the ECB, in connection with processing, acting upon or monitoring activities which may be permitted as a result of the application. At the discretion of the ECB, the property shall be flagged, prior to the acceptance of the application, to delineate wetlands, proposed roadways, property boundaries, or any other items deemed necessary by the ECB.
 - (2) The application shall be accompanied by a list of the names of the owners of record of lands within 500 feet of the lands upon which the project is to be undertaken (unless waived by the ECB) and a list of other permits required for this action and their present status. Compliance with the SEQRA regulations is mandated prior to any action taken on wetland applications.
 - (3) An application shall not be deemed to be completed or received until the ECB determines that all such information, including any additional information requested has been supplied in a complete and satisfactory form.
 - (4) Where a regulated wetland lies within two or more jurisdictions:
 - (a) The ECB must immediately provide copies to the other entities.
 - (b) The ECB will process the application in consultation with the other entities in order to achieve a mutually satisfactory determination.
- C. Within seven (7) days of its receipt of a completed application for a permit regarding a proposed regulated activity, the ECB shall have published one (1) time in the official newspaper of the Town of Carmel a notice of application at the Town's expense. Said notice of application shall be in a form prescribed by the ECB and shall:
 - (1) Specify that persons wishing to object to the application should file a notice of objection by a specified date, together with a statement of the precise grounds of objection to the application, with the ECB;

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- (2) Specify that if no notices of objection are timely filed or if the ECB determines that the proposed activity is of such a minor nature as to not affect or endanger the balance of systems within the freshwater wetland, then the ECB, at its discretion, may determine a hearing is not necessary and dispense with a public hearing; and
- (3) Specify that the application, including all documents and maps therewith, is available for public inspection at the Planning Office of the Town of Carmel.

D. Procedures for the public hearing.

- (1) If no public hearing is to be held in accordance with Subsection C(2) above, the applicant shall be timely notified.
- (2) If a hearing is to be held [in accordance with Subsection C(2) above] the ECB shall notify the applicant and shall publish a notice of hearing at least 25 days prior to the date set for the hearing in the official newspaper of the Town.
- (3) At least 15 days prior to the date set for the hearing, the applicant shall, by U.S. Mail, regular or certified at the discretion of the ECB, provide a notice of hearing to all owners of record of land adjacent to the affected freshwater wetland or adjacent area and to all known claimants of water rights, of whom the applicant has notice, which relate to any land within, or within 100 feet of the boundary of the property on which the proposed regulated activity will be located.
- (4) The notice of hearing shall:
 - (a) State the name of the applicant.
 - (b) Specify the location and outline the scope of the proposed activity;
 - (c) Specify the date, time and place of the public hearing on the application;
 - (d) Specify that persons wishing to be parties in interest and eligible to be heard at such public hearing, if any, should file a notice of appearance by a specified date, together with a statement of the precise grounds of support of, opposition to or interest in the application, with the ECB;
 - (e) Specify that any person who wishes to be a party in interest without filing a notice of appearance may do so by appearing at the public hearing and indicating his or her desire to be a party in interest; and
 - (f) Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Town of Carmel.

- E. The hearing shall be held no sooner than 25 days and no later than 75 days after the receipt of a completed application for a permit regarding a proposed regulated activity, which hearing shall be held pursuant to the provisions of § 89-6 of this chapter.
- F. The ECB shall make the application, including all documents and maps associated with it, available for public inspection at the Planning Office of the Town of Carmel.

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§ 89-6 Application for a letter of permission.

- A. The abbreviated letter of permission procedures are applicable when the ECB has determined that the proposed activity will not substantially alter or impair the natural functions or benefits of a wetland. Such activities are designated as Type II actions under SEQRA.
- B. The advantages of a letter of permission are that no public hearing is required and that the letter of permission, if it is granted, is granted within 20 calendar days of the ECB's acceptance of a properly completed application.
- C. If the proposed activity does not qualify for a letter of permission and a permit is required instead, the ECB will inform the applicant at its next regularly scheduled session and will require the appropriate fees and any additional information necessary to make the application complete.

§ 89-7 Public hearing on a permit application

- A. Any public hearing held on a permit application received under this chapter shall be conducted by the ECB. The ECB chairman shall have full authority to control the conduct and procedure of the hearing, including setting time limits on discussion both verbal and written, and shall be responsible for a complete record of the hearing.
- B. Any person may appear and be heard by the ECB. Comments for inclusion may also be submitted in writing.

§ 89-8 Decision on permit application.

- A. Where a public hearing has been held regarding a permit application, the ECB shall either issue the permit requested with or without conditions, or deny the application. The decision by the ECB to issue or deny a permit after a public hearing shall be based on documents submitted by the applicant, any additional documents relied on by the ECB with respect to the application and on the record of the hearing.
- B. Where no public hearing regarding a permit application has been held, either because a hearing was determined not to be necessary pursuant to Subsection C(2) of § 89-5 of this chapter or because no notice of appearance was filed with regard to the public hearing and a hearing was cancelled pursuant to § 89-5 of this chapter, the ECB shall compile a file consisting of documents submitted by the applicant and any additional documents relied on by the ECB with respect to the application.
 - (1) The ECB may also take notice of general, technical or scientific facts within the specialized knowledge of the ECB. Any document made part of such file shall be available for inspection by the applicant and any interested member of the public. On the basis of such file, the ECB shall either issue the permit requested, with or without conditions, deny the application or order a public hearing; to be held pursuant to the provisions of this chapter.
 - (2) The decision by the ECB to issue or deny a permit shall be made in writing. The decision by the ECB to issue or deny a permit shall be based on the file consisting of documents submitted by the applicant and any additional documents relied on by the ECB with respect to the application.
- C. In either instance within 45 days one (1) written copy of the decision of the ECB on each application for a permit under this chapter shall be filed with the Town Clerk, the Director of Codes Enforcement and the Wetlands Inspector.

§ 89-9 Standards for permit decisions.

The ECB shall use the following for the basis of determinations:

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- A. All persons proposing to conduct activities on wetlands or adjacent areas that have not been specifically exempted from regulation under § 89-4C of this chapter must obtain either a permit or a letter of permission.
- B. In granting, denying or modifying a permit, the ECB may apply the standards for permit issuance contained in this section in conjunction with the official wetland map. In applying these standards, the ECB will consider the effect of the proposed activity regardless of political boundaries. In granting a letter of permission, the ECB will determine that the proposed activity complies with the following:
- Cross wetlands at their narrowest point;
 - Keep wetland crossing widths to the minimum necessary. Reduce or eliminate road shoulders and/or sidewalks at wetland crossings if safety is not compromised;
 - Size culverts correctly for best hydrologic connectivity.
 - Use permeable fill material or culverts between wetlands to maintain hydrologic connectivity
 - Use engineered swales for stormwater conveyance instead of curb and gutter.
 - If you can't avoid buffer impacts try to limit them to the outer 25% of the buffer.
 - Use existing disturbed areas for utility crossings.
 - Use existing roadways, paths, or trails if possible by upgrading them and including new culverts or bridges.
 - Plant tall, dense evergreen vegetation around the outside edge of buffers to improve screening between development and sensitive areas. Avoid invasive plant species.
 - Reduce the amount of impervious surface and preserve as much natural soil cover as possible.
 - Disperse downspouts to vegetated areas or direct them to rain gardens instead of impervious surfaces.
 - Disconnect impervious surfaces from each other by interspersing them with natural cover.
 - Use pervious materials for construction of hard surfaces (driveways, parking lots, sidewalks) where possible.
 - Do not clear and grub wetlands or their buffers except when preparing for permanent impacts.
 - On plans, clearly mark limits of construction. In the field, clearly mark wetlands and buffers with high-visibility construction fencing and maintain it for the life of the construction project.
 - Use BMPs for erosion control and construction stormwater management and maintain those structures and practices for the life of the construction.
 - Use compost berms, blankets, and socks instead of silt fence where these BMPs are appropriate.
 - Keep construction staging and stockpiling of materials out of wetlands and their buffers.
 - Restrict site access of machinery to as few areas as possible to reduce soil compaction.
 - Use clean fill materials so that invasive plants and animals are not introduced into the project site.
- C. The proposed activity must minimize impacts to or loss of the wetland. This may include an examination of alternative project layouts, designs, and pollution control features for the project. If the appliance cannot adequately avoid or reduce these impacts the applicant must propose some compensation or restoration for these impacts, sometimes called "mitigation" measures.

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§ 89-10 Mitigation of impact.

The applicant may suggest a proposal to enhance the existing benefits provided by a wetland or to create and maintain new wetland benefits in order to increase the likelihood that a proposed activity will meet the applicable standards for permit issuance. Such a proposal must meet the following provisions:

- A. The mitigation must occur on or in the immediate vicinity of the site of the proposed project.
- B. The area affected by the proposed mitigation must be regulated by this chapter after the mitigative measures are completed.
- C. The mitigation must provide substantially the same or more benefits than those lost through the proposed activity.

§ 89-11 Governmental acquisition.

Duly filed notice in writing that the state or any agency or political subdivision of the state is in the process of acquiring any freshwater wetland, by negotiation or condemnation authorizes but does not require denial of any permit, but only if the affected landowner and the local government have been so notified.

- A. The written notice must include an indication that the acquisition process has commenced, such as that an appraisal of the property has been prepared or is in the process of being prepared.
- B. If the landowner received no offer for the property within one year of the property denial, this bar to the permit lapses. If its negotiations with the applicant are broken off, the state or any political agency or subdivision must, within six months of the end of negotiations, either issue its findings and determination to acquire the property pursuant to § 204 of the Eminent Domain Procedure Law or issue a determination to acquire the property without public hearing pursuant to § 206 of the Eminent Domain Procedure Law, or this ban to the permit lapses.

§ 89-12 Conditions to a permit or letter of permission.

- A. Any permit or letter of permission issued pursuant to the law may be issued with conditions. Such conditions may be attached as are necessary to assure the preservation and protection of affected freshwater wetlands, water and related resources, including wildlife, and to assure compliance with the policy and provisions of the ECB's rules and regulations adopted pursuant to this chapter.
- B. Every permit or letter of permission issued pursuant to this chapter shall contain the following conditions:
 - (1) The ECB shall have the right to inspect the project from time to time;
 - (2) The permit, or letter of permission, shall expire on a date certain;
 - (3) The permit or letter of permission holder shall notify the ECB of the date on which the regulated activity is to begin, at least five (5) days in advance of such date; and
 - (4) The ECB's permit or letter of permission shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit or letter of permission.
- C. The ECB shall set forth in writing in the file it keeps regarding a permit or letter of application, its findings, and reasons for all conditions attached to any permit or letter of permission.

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- D. The applicant has accepted expressly, by the execution of the application, the full legal responsibility for all damages, direct or indirect, of whatever nature, and by whomever suffered, arising out of the project described herein and has agreed to indemnify and save harmless the Town from suits, actions, damages and costs of every name and description resulting from the said project.
- E. Granting of a permit does not relieve the applicant of the responsibility of obtaining any other permission, consent or approval from the U.S. Army Corps of Engineers, U.S. Coast Guard, New York State Office of General Services or any other local governmental permits or approvals which may be required.
- F. All necessary precautions shall be taken to preclude contamination of any wetland or water body by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

§ 89-13 Environmental Conservation Board; membership, terms in office, powers.

- A. The ECB heretofore created by the Town Board of the Town of Carmel exercising its authority pursuant to § 24-0501, Subdivision 2, of Title 5 of Article 24 (The Freshwater Wetlands Act) of New York State Environmental Conservation Law with all the duties and powers herein described shall consist of five (5) members who shall be specifically qualified by reason of education, training or experience to perform the duties provided for hereunder.
- B. The members of such Board shall be appointed by the Town Board. Members shall be appointed for a term of five (5) years from and after the expiration of the terms of their predecessors in office. If a vacancy shall occur otherwise than by the expiration of term, it shall be filled by the Town Board for the unexpired term. The Town Board shall have the power to remove any member for cause.
- C. In order to carry out the purposes and provisions of this chapter, the Board shall have the following powers:
 - (1) To advise the Town Board of the need for professional and technical assistance.
 - (2) To hold hearings, in the exercise of its powers, functions and duties as provided for in this chapter.
 - (3) To enforce the law, directly or through a Wetlands Inspector or Deputy Wetlands Inspector.
 - (4) To perform other activities, within the limits of the law, to properly evaluate wetlands permit applications, alleged violations, or other activities which do or might effect wetlands.
- D. The Town Board shall designate a member of the ECB to act as Chairman thereof as well as Vice Chairman thereof. Upon failure to do so, the ECB shall elect a Chairman from its own members, who shall serve until such appointment by the Town Board. [Added 4-11-2012 by L.L. No. 4-2012]

§ 89-14 Enforcement.

- A. This chapter shall be enforced by the ECB or the Wetlands Inspector or the Deputy Wetlands Inspector of the Town of Carmel. It shall be the duty of the Wetlands Inspector or the Deputy Wetlands Inspector to advise the Town of Carmel Director of Code Enforcement or the Codes Enforcement Officer to issue notices of violation of this chapter.

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- (1) The Wetlands Inspector or the Deputy Wetlands Inspector shall advise the Town of Carmel Director of Code Enforcement or the Codes Enforcement Officer to issue a written "Order to Remedy a Violation" which specifies the nature of the violation and provides a specific time within which the violation shall cease and satisfactory corrective action shall be taken by the violator.
 - (2) The Wetlands Inspector shall advise the Town of Carmel Director of Code Enforcement or the Codes Enforcement Officer to issue appearance tickets in person or by certified mail to violators to appear in Town Court, with or without previously issuing an "Order to Remedy a Violation" to answer a charge of violating this chapter.
 - (3) The Town Board may designate a resident of Putnam County or an adjacent New York State county as the Wetlands Inspector or hire a consultant to be the Wetlands Inspector, and may also designate Deputy Wetlands Inspectors.
 - (4) The Wetlands Inspector or a Deputy Wetlands Inspector may enter upon any wetlands or their adjacent areas, public or private, within the Town, without hindrance, for the purpose of making or verifying surveys, making examinations or investigations necessary to the exercise of the powers and performance of the duties conferred or imposed upon the ECB by this chapter.
- B. Administrative sanctions. Any person who violates, disobeys or disregards any provision of this chapter, including any provision of any permit issued pursuant to this chapter, or any rule or regulation adopted by the ECB pursuant to this chapter, shall be liable to the people of the Town of Carmel for a civil penalty not to exceed an amount to be established by the Town Board for every such violation, to be assessed, following a hearing or opportunity to be heard in Town Court upon due notice and with rights to the specification of the charges and representation by counsel.
- (1) Such civil penalty may be released or compromised by the Town Attorney with the consent of the Town Board and such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Town Attorney with the consent of the Town Board.
 - (2) In addition, the Court shall have the power to direct the violator to restore the affected freshwater wetland to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the ECB. Any such order of the Court shall be enforceable in an action brought by the Town Attorney at the request of the Town Board and in the name of the Town of Carmel in any court of competent jurisdiction.
 - (3) The ECB shall require an application for a permit be made and conditions for a permit be met for activities which were conducted without an appropriate permit or may require an application and a permit for the restoration of the violated regulated area.
 - (4) Any civil penalty or order issued by the court pursuant to this subdivision shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.
- C. Criminal sanctions.

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- (1) Any person who violates an order, permit, rule, or regulation of the agency regulating freshwater wetlands and adjacent areas pursuant to this chapter shall, following a hearing or opportunity to be heard in any court of competent jurisdiction, upon due notice and with rights to the specifications of the charges and representation by counsel, in addition for the first offense, be guilty of a violation punishable by a fine of not more than \$250 per day; for a second and each subsequent offense he or she shall be guilty of a misdemeanor punishable by a fine of not less than \$1,000 nor more than \$2,000 or a term of imprisonment of not less than 15 days nor more than six months, or both.
- (2) Instead of these punishments, any offender may be punished by being ordered by the court to restore the affected freshwater wetland to its condition prior to the offense, insofar as possible. The court shall specify a reasonable time for the completion of such restoration, which shall be affected under the supervision of the ECB. Each offense shall be a separate and distinct offense.

- D. Equitable relief. The ECB shall have the right to recommend to the Town Board that they seek equitable relief to restrain any violation or threatened violation of any of the provisions of this chapter.

§ 89-15 Stop-work orders, suspension or revocation of permits.

- A. The Wetlands Inspector, or the Deputy Wetlands Inspector, if any, shall advise the Town of Carmel Director of Code Enforcement or the Codes Enforcement Officer to suspend or revoke a permit or letter of permission issued pursuant to this chapter where it finds that the permittee has not complied with any or all terms of such permit or letter of permission, has exceeded the authority granted in the permit or letter of permission, or has failed to undertake the project in the manner set forth in the application, permit, or letter of permission.
- B. All regulated activity shall cease immediately upon revocation of a permit or the issuance of a stop-work order which may be obtained by the Director of Codes Enforcement or the Codes Enforcement Officer.
- C. The ECB shall set forth in writing in the applicant's project file its findings and reasons for revoking or suspending a permit or letter of permission pursuant to this section.

§ 89-16 Other laws and regulations.

- A. To the greatest extent practicable, any public hearing held shall be incorporated with any public hearings required by or pursuant to the New York State Town Law, General Municipal Law or Environmental Conservation Law relating to approvals or permits otherwise required for the undertaking of regulated activities on the freshwater wetland or adjacent area in question.
- B. No permit granted pursuant to this chapter shall remove any person's obligation to comply in all respects with the applicable provisions of any federal, state or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

§ 89-17 Bonding requirements.

- A. The ECB may require that, as a condition of any permit or letter of permission issued pursuant to this chapter the permittee shall post a bond with the Agency, in an amount determined by the ECB, conditioned upon faithful compliance with the terms of such permit or letter of permission and for the indemnification of the Town of Carmel for restoration costs resulting from failure to comply. Such bond shall be issued by a corporate surety authorized to do business in the State of New York and shall be in favor of the Town of Carmel. It shall remain in effect until the ECB certifies that the work has been completed in compliance with the terms of the permit or letter of permission or the bond is released by the ECB, or a substitute

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bond is provided.

- B. The ECB shall set forth in writing in the applicant's project file its findings and reasons for imposing a bond pursuant to this section.

§ 89-18 Review and appeal.

Any decision or order of the ECB made pursuant to or within the scope of this chapter may be reviewed at the request of any person adversely affected by any such decision or order of the ECB, in accordance with Article 78 of the State Civil Practice Law and Rules.

SECTION 3 – HOME RULE

Nothing in this Local Law is intended, or shall be construed (a) to limit the home rule authority of the Town under State Law to limit the Town's discretion in setting fees and charges in connection with any applications requiring Town approval.

SECTION 4 – SEVERABILITY

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Carmel hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 5 – EFFECTIVE DATE

This Local Law shall take effect immediately upon filing in the office of the Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.

At said Public Hearing, all interested persons shall be heard on the subject thereof. The Town Board will make every effort to assure that the Public Hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should contact the Town Clerk.

By Order of the Town Board
of the Town of Carmel
Ann Spofford, Town Clerk

Supervisor Schmitt opened the Public Hearing for public comment at 7:13 p.m. Eight (8) people were in attendance.

Robert Laga, Town of Carmel resident and Chairman of the Environmental Conservation Board (ECB) expressed his appreciation to the Town Board for revisiting the "Freshwater Wetlands" chapter of the Town Code.

Mr. Laga acknowledged that in attempting to streamline the procedure and eliminate duplication, the proposed Local Law changes the ECB's responsibility to monitoring Town of Carmel wetlands only, not New York State or New York City wetlands. He suggested therefore that it should then become a requirement of the Building Department that when they issue a permit to a resident who is working on or adjacent to a New York State DEC or New York City DEP wetland, they ensure that the applicant has followed the protocol for that agency. Mr. Laga stated that the ECB works in conjunction with both agencies when issuing permits. However, if the proposed Local Law is adopted their permitting will be done on a smaller scale. He stated that there should be a vehicle in the proposed Local Law, Planning Board approval process, or as previously mentioned, the Building Department permit that mandates identification of any wetlands in the area and if so ensures that the applicant meets those requirements.

Mr. Laga inquired about an updated map.

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Town Engineer Richard Franzetti explained that the map was based upon the existing map with the removal of the New York State DEC regulated wetlands, waterbodies and streams.

Mr. Laga stated his interpretation that streams are covered in the proposed Local Law and requested confirmation.

Mr. Franzetti explained that the rewriting of this section of the Town Code was initiated because the original code overextended the reach of what an environmental or wetlands code should be. It included water bodies and streams which are covered under a different section of New York State law. He stated that many local towns and villages in the area have virtually the same language in the wetlands section of their Code written by perhaps the same consultant at the time and noted that the issue was never really delved into.

Mr. Laga cited the language in §89-4 B of the proposed Local Law which states that “None of the activities set forth below shall be commenced or carried out in or within 100 feet of any wetland, body of water, watercourse or intermittent stream or adjacent area within the Town of Carmel until, except as provided herein, a permit or letter of permission has been duly issued in accordance with the procedures set forth in this chapter”. He reiterated his interpretation that streams are included and questioned the intent of the Town Board.

Supervisor Schmitt asked Mr. Laga as chairman of the ECB if he would recommend that the streams remain under his oversight.

Mr. Laga replied, yes. He commented that typically the ECB regulates within 100 feet of a body of water. However, the buffer could possibly be reduced to 50 feet for a stream.

Councilman Schneider sought confirmation from Legal Counsel that the proposed legislation addresses streams.

Legal Counsel Gregory Folchetti stated that §89-4 B of the proposed Local Law covers watercourses and intermittent streams with a 100 foot setback.

Councilman Schneider pointed out that these changes were actually made on the recommendation of the ECB.

Legal Counsel Gregory Folchetti indicated that the prior version of the proposed Local Law indicated a 50 foot setback.

Councilman Schneider explained that the intent of the proposed Local Law is to bring the Town’s wetland regulations up to date, and added that the Town Board did not intend to take away any of the ECB’s authority.

Supervisor Schmitt referenced the 100 foot setback included in the proposed legislation.

Mr. Laga replied that 100 feet is standard.

Councilman Schneider inquired to Legal Counsel if the proposed Local Law needs to be amended to reflect a prerequisite signoff by the Building Department or the Planning Board in regard to compliance with other regulatory bodies.

Legal Counsel Gregory Folchetti explained that regulatory bodies have their own governing criteria for when they issue permits and monitor the work that is being done pursuant to the permits. He questioned if the Town Board is willing to put upon the Building Department or Engineering Department the responsibility to monitor what other agencies are supposed to monitor when they issue the permits.

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Mr. Laga stated that when someone submits an application to the ECB that shows a DEC or DEP wetlands, they are asked to provide the permit received from the applicable outside agency to the ECB for their files. Then the ECB will verify that it is done. He expressed his concern that the proposed Local Law removes the ECB from this process. He indicated that someone else should be responsible to double check that the applicant was granted the required permits.

Councilwoman McDonough confirmed that the applicant is made aware that they are required to obtain the permits.

Mr. Laga stated that it was the applicant's responsibility.

Councilwoman McDonough expressed her concern that the Town's staff are already taxed and stated that she did not want to see them do someone else's work.

Mr. Laga acknowledged her concern and noted that it was presently being done by the ECB.

Legal Counsel Gregory Folchetti explained that Mr. Laga's issue is less of a concern when it relates to a subdivision application or a site plan application up for Planning Board approval. What may be a concern relates to monitoring the compliance with the other agencies with regard to an individual homeowner who just needs to obtain a building permit and lacks Planning Board intervention. The ECB will not have the jurisdiction now to issue the local permit.

Mr. Laga expressed his concern that the proposed Local Law takes away the applicant's notice requirement which gives any other resident who is interested in the project the opportunity to review the file.

Mr. Laga addressed the subject of tree cutting.

Legal Counsel Gregory Folchetti stated that there is a separate section of the Town Code that covers trees.

Mr. Laga explained that the ECB has had some instances in the past two years where they have enhanced the harvesting of trees on properties where detrimental situations could have happened to the adjacent neighbors. He commented that at the end of the day they were not happy that the trees were coming down. However they understood that everything was done to keep it right for them.

Nicholas Fannin, Vice Chairman of the ECB and resident of Carmel Water District #2 echoed Mr. Laga's sentiments with regard to the Town Board revisiting the Code. Mr. Fannin expressed his support for streamlining the process as well as for reducing the size of the ECB to five members as it has often been a challenge for them to reach a quorum with only five current members. He also expressed his support of Mr. Laga's comments with regard to streams and stressed that all of the water courses in the Town and County are connected and feed into the same water that comes out of our taps eventually.

Mr. Fannin went on to state that the ECB reviews many applications that require the involvement of state agencies and federal agencies, the U.S. Army Corps of Engineers (ACOE). He stated that many times the ECB provides a double-check, and that 95% of all applications that have come before them that did require either an ACOE or a DEC permit were required by the ECB to make some changes. Mr. Fannin provided examples including the requirement for spill kits. He noted that things often get overlooked by the higher level agencies because they are not thinking about what is happening at the local level.

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Mr. Fannin pointed out that the DEC does address notification in connection with their permits. However, their geographical regions are very large and they may not be aware of everything occurring locally.

Mr. Fannin underscored that if moving forward the ECB is not responsible for double checking and for ensuring that residents have an opportunity to comment on what their neighbors' projects are, then the responsibility needs to be somewhere else because the bulletin that comes out from the DEC is not easily accessible to the public. And in addition, he pointed out that the DEC does not require certified mailings to give notice to neighbors so that they can address their concerns to a board at a local level.

Mr. Fannin acknowledged that revisiting this legislation is part of the Town Board's broader plan. He stated however, that he wanted to make sure that twenty years from now he does not look back and regret the relegation of some of the regulation of the Town's water to the state or the federal government when it should have been kept local.

Supervisor Schmitt expressed his support for the ECB to continue their oversight.

Mr. Fannin expressed his concern that §89-4 General Regulations clearly indicates that any application that requires a wetland permit issued by the ACOE or the DEC is not required to appear before the ECB.

Supervisor Schmitt inquired to the Town Engineer if there can be language added to the proposed Local Law which allows for oversight.

Mr. Franzetti indicated that it was up to the Town Board.

Supervisor Schmitt stated that valid points were presented at this Public Hearing. The Town Board will take them under advisement and continue the discussion.

Edward Barnett, Chairman of the Lake Mahopac Park District Advisory Board and ECB member questioned if the regulation of streams will be as it was in the previous iteration of the Code.

Councilman Schneider indicated that it was clarified earlier that they would be.

Councilwoman McDonough added that streams are addressed in §89-4 B.

Mr. Barnett commented that there is a presumption that the state has many resources available is not appropriate. He commented that as a member of many boards, the current ECB has tremendous talent. Mr. Barnett suggested that the general public is very interested in water quality protection.

Vincent Turano, ECB member pointed out that four out of the five ECB members are present at the Public Hearing. He expressed his support of his colleagues' earlier comments. He went on to state that the Town Board should have involved the ECB more closely with regard to the amendments as he believed that he could have made suggestions that would possibly streamline the process.

Councilwoman McDonough commented on how the Town Board did involve the ECB in drafting the legislation.

Mr. Turano stated that he did not see anything after the first draft. He further stated that one of the things that should have been addressed that was not, was that many times the ECB has homeowners who appear before them that have very small projects yet they are forced to go through this process. Mr. Turano suggested that something should have been done for them.

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Councilwoman McDonough invited the ECB members to forward to the Town Board, any suggestions with regard to the process in connection with individual homeowners.

Mr. Laga spoke about how the ECB members provide direction to individual homeowners during the application process.

Councilwoman McDonough stated that she often views the televised ECB meetings and commended the efforts of the ECB members.

Supervisor Schmitt stated that the Public Hearing will be continued. He welcomed additional comments via participation at a future meeting or in writing.

Mr. Barnett asked when to anticipate the final draft of the proposed Local Law for review.

Legal Counsel Gregory Folchetti stated that it would depend on the final draft of the legislation after the Town Board's consideration of all of the comments made. If there are any substantive changes, new notice is required. He stated that keeping the Public Hearing open for another couple of weeks allows for further comments because obviously there are considerations that the Town Board would want to take into account.

Councilman Lupinacci stated that nothing will be finalized until January of 2019 and that any changes will be forwarded to the ECB for review.

Mr. Laga questioned the possibility of expediting the amendment to the membership size of the ECB or if the Town Board would appoint two new competent individuals.

Councilman Barile confirmed that the ECB is designated for seven members.

Mr. Laga expressed his concern that the current ECB is down to four members.

Supervisor Schmitt indicated that a new member had been appointed and advised Mr. Laga to contact ECB secretary Rose Trombetta for further information.

With no one else present wishing to be heard on the subject of the Public Hearing, on motion by Councilman Lupinacci, seconded by Councilwoman McDonough and Councilman Barile, with all members of the Town Board present and voting "aye", the Public Hearing will remain open.

In response to technical problems experienced at this and other recent meetings, Councilman Barile explained that the Town Board will be upgrading their audio equipment next year. He apologized for any inconvenience.

ADJOURNMENT

All agenda items having been addressed, on motion by Councilwoman McDonough, seconded by Councilman Schneider, with all members present and in agreement, the meeting was adjourned at 7:49 p.m. to the scheduled Work Session.

Respectfully submitted,

Ann Spofford, Town Clerk