

VILLAGE OF MAMARONECK
BOARD OF TRUSTEES LWRP UPDATE SPECIAL MEETING MINUTES
WEDNESDAY, JULY 20, 2011– 5:30 PM
COURT ROOM AT 169 MT. PLEASANT AVENUE, MAMARONECK, NY

Attendees: Mayor Rosenblum, Trustees Santoro (later), Hofstetter, Ryan and Albert. Staff – Village Manager Richard Slingerland, Assistant Village Manager Daniel Sarnoff. Lester Steinman, Esq., attended as the Village's Land Use Attorney. Planning Consultant Susan Favate attended from Buckhurst, Fish and Jacquemart Planners. Charles McCaffrey, LWRP Consultant participated by cell phone.

On the motion of Trustee Ryan, seconded by Trustee Albert, the meeting was convened at 5:42 p.m. by vote of four in favor, none opposed, Trustee Santoro absent.

Mayor Rosenblum mentioned that the meeting of the Board was intended to address the matter of jurisdiction for the review of matters for consistency, pursuant to the LWRP. The following is the text of the summary sheet of jurisdictional alternatives provided by the planning consultants from BFJ.

Optional Approaches to Local Consistency Determination

Four approaches to procedures for determining the consistency of Village actions with the Mamaroneck LWRP have been identified for the consideration of the Village Board.

1. Current Approach with Modifications

The Harbor and Coastal Zone Management Committee (HCZMC) makes the determination. This is the current approach with several procedural changes that address concerns that have been raised regarding duplication of effort. The following procedural changes would be made to the current process under this option.

- A list of minor and ministerial activities that would not be subject to a consistency determination would be established.
- The time period within which a consistency determination, currently 30 days, would be modified to allow for the 30 days to begin, not when the application is received by the HCZMC, but upon its determination that it has adequate information to make a consistency decision.
- Coordination between the HCZMC and the acting agency would be improved
- If the HCZMC determines that the only issues regarding the consistency of an action relate to the policy standards that are the standards that are those of the law that the acting agency is applying, then the HCZMC may notify the acting agency that the action is consistent upon the acting agency's decision that the policy standards have been met.
- The above modifications would be applied to all options

2. HCZMC is Advisory

The HCZMC determination of consistency would be advisory to the acting agency. The acting agency must consider the determination of the HCZMC but it may reach different conclusions. There are several options as to how this would work and this is a common approach in other municipalities with an LWRP. For example, the Town of Mamaroneck/Village of Larchmont LWRP requires the acting agency to justify in writing why it reached a different conclusion from the Coastal Commission regarding the consistency of the action.

3. Consistency Determination Split Between HCZMC and the Planning Board

The responsibility for making the consistency determination would be geographically split between the HCZMC and the Planning Board with the HCZMC making the determination for actions adjacent to Long Island Sound and the Planning Board making the determination for actions occurring inland within the

Village. There are options for drawing the dividing line: 1) parcels on Long Island Sound and all others; 2) parcels seaward of the first road inland from Long Island Sound and all others; 3) the Post Road as the dividing line.

4. Planning Board Becomes Coastal Commission

The Planning Board would be designated as the Coastal Management Agency and make all consistency determinations. This is done in some municipalities with LWRPs, most notably in the City of New York where the City Planning Commission is also the City Coastal Commission.

Susan Favate handed out a timeline for the future steps on completion of the update of the LWRP, and explained that the document is currently approaching a final draft state, and at some time in the near future, the Board should make a determination, when they are comfortable with the draft, that it can be sent as a “semi-final” draft to the NYS Department of State (NYS DOS), so that they can begin their review. She suggested that the matter be included on the August 8, 2011 Work Session, so that the Board can send the draft up to the NYS DOS to get their comments on the initial draft.

Mrs. Favate reviewed the list of optional approaches with regard to jurisdiction over consistency determinations, and reviewed a Flow Chart showing the variations. Mr. McCaffrey mentioned that the consistency determination process needs to be better coordinated. He said there could either be a coordinated review, or separate review, but the goal should be to avoid duplication. He gave the example that if the Board of Architectural Review is reviewing a specific issue, then they should be able to determine consistency. He gave another example that if the matter was only stormwater, then the HCZM would not have to review that as well. Trustee Ryan mentioned that in some cases, it had been suggested to have the Chair person look at the application, and if there was no issue then the Chair would sign off.

Regarding Option #2, Mr. McCaffrey continued and said that arrangements where an HCZM is advisory-only are the most common, and that in his experience in these instances an HCZM’s finding had only been overridden two to three times in the past 20 years.

Regarding Option #3, where the Consistency Determination would be split between the HCZMC and the Planning Board, Mr. Slingerland said that it was his impression that the majority of the Board is not in favor of this option, and the Board did not disagree, although Mayor Rosenblum asked that the Board not make a pre-determination of these issues until they had been explained and discussed by the Board.

Regarding Option #4, where the Planning Board Becomes Coastal Commission, Mr. McCaffrey indicated that this approach is commonly used in communities where finding sufficient membership for municipal boards is a problem. New York City also uses this approach.

Mr. Jim Desmond asked to speak, and said that with regard to the timeline and the contract with the State, the State is amenable to allowing the Village more time within the schedule to review the LWRP update, so that the Village gets it right. He said that as a Commission now, the HCZM has power, but that if it became advisory, then it would not have any power, which he was not in favor of. He said this is a simple process and it is becoming overly complicated. Mayor Rosenblum said that some of this came up during the review by the LWRP Review Committee, and that he wanted a full review by the Committee and the Board. Mr. Slingerland said that the Building Department had recommended some of these changes as improvements to streamline the process. Trustee Hofstetter said that the Village used to have a process in place that was understood and enforced, but that the process has broken down over time. Mr. Desmond said that the HCZM is acting as an arm of the State, to enforce the coastal zone policies, and that this is powerful stuff. He said the Village should

provide sufficient staff to support the process, and if the Board strengthened the HCZM without dispersing its authority, it would work fine. He recommended the Village keep things the way they are now, and follow the process. Mayor Rosenblum said he disagreed with that point of view, and said his goal is to make the process more simple and understandable. Mayor Rosenblum further said that the process in the Village of Mamaroneck is too long and unfair, and that it should be modernized. Trustee Ryan said there is merit to all the points of view that have been voiced. She said that over time, since the LWRP and the original Coastal Zone Management Plan were originally enacted, as time went by the application and enforcement of the LWRP had been diminished and weakened, but with a flow chart, if everything is well laid out, with information, guidelines such as a flow chart, and training, then everyone can do their job. Mayor Rosenblum agreed with the need to improve teaching and training.

Mr. McCaffrey said that with the process, for site plans, there could be more flexibility to make the coastal zone management program better fit the needs of the Village. Mr. Steinman said that the process could be amended to provide for conditions to be imposed, and that such conditions could be binding. Mayor Rosenblum said that Mr. McCaffrey has the most experience in this regard, on LWRPs, and the transition between when the original program was enacted to how it is applied in other communities today. Mr. McCaffrey said that things have changed over many years, and that sea level rise is one of the new things that has to be considered, when it was not something that had to be considered when the coastal zone management program was originally enacted. Mrs. Favate said that in practice, it is not simple, and the application of it varies from community to community. She said that Consistency Review has been confused, and has become duplicative as it relates to the site plan process, which was not the original intent.

Mr. Tony Weiner rose to address the Board. He mentioned he is a former member of the HCZM, and that there is no consistency training offered on a regular basis, but that when it was offered he was the only person who had taken all of the training. He said consistency is a holistic process, and that, for instance, he sees an application of it would be to say in review of an application, that the applicant should not be allowed to put certain buildings or structures near a wetlands. He said the HCZM does not know its job. He said that the Board of Trustees should not rush through updating the LWRP and get it wrong. "The system is broken, and the Village has an underfunded and understaffed building department, and while the Village had an environmentalist, in the logic of the Village of Mamaroneck they were gotten rid of." He said the Village should take the time and the opportunity to look at the process and fix it. He said that everyone should take a look at BFJ's flowchart, (from the *Citizen's Guide to Planning and Zoning in the Village of Mamaroneck*, May 2006) and they would see that the entire process has been documented, and it is not being followed, it is only benefiting a lot of consultants. He said there should be an advisor and staff person to let the HCZM know that "these are consistent" without forcing an applicant to spend a lot of time and money. He said, "why not combine and work under one Commission with the Town of Mamaroneck?" Mayor Rosenblum asked, "would you recommend making the HCZM advisory?" Mr. Weiner said he would not.

Mr. Desmond spoke and said that right now the Village of Mamaroneck has the power to control what happens on the waterfront, and that he did not recommend that it be shared with the Town of Mamaroneck and the Village of Larchmont. Trustee Hofstetter said that the waterfronts of the communities are very different, and the idea of having a joint Village of Mamaroneck/Town of Mamaroneck/Village of Larchmont HCZM is not a good idea.

Mayor Rosenblum said that the first question is to Mrs. Favate, since she had been asked to review with the Board all four alternatives to determine which would fly and which would not. He said pragmatically, option 4

would not work, option 1 remains and option, and options 2 and 3 remain options that I would include. He said the Village should be concerned about any development within the Village.

Trustee Hofstetter said the Board should go along with option 1, he did not see the benefits of option 2, and option 3 of splitting the jurisdiction of the consistency process geographically is problematic. He indicated that he would support option 4 only if the Village looked into the possibility that Mamaroneck could elect, community wide, the Chairman of the Planning Board, and that he would like to see that happen because then the Chairman would be more answerable to the entire community.

Trustee Ryan said she favored alternative 1, possibly option 2, but she was not in favor of options 3 and 4.

Mr. McCaffrey advised the Board that the Department of State wants the Board to make a determination on the direction of the update to the policies and process for the LWRP in Mamaroneck. Trustee Hofstetter asked if he meant the State wanted only one alternative, and Mr. McCaffrey said, "Yes." Trustee Hofstetter said then in that situation he supported option 1. Mayor Rosenblum said he supported option 3, with input from the Planning Board, the ZBA, and the HZCM, as well as option 1.

Trustee Albert said that option 1 is the best way to go, and the least complicated recommendation we can have for the update of the LWRP. He said the Village should send that as our recommendation to Albany.

Trustee Santoro asked if there is any way that option 1 and 3 can be combined.

The Board subsequently had unanimously indicated its support for option 1, although Mayor Rosenblum again noted his preference for a combination of item two and three, however for pragmatic purposes based upon Mr. McCaffrey's statement about submitting only one direction to the State, he and the Board directed Mrs. Favate, Mr. McCaffrey and Mr. Steinman to develop more detail on this option, for presentation at the August 8 work session.

Trustee Ryan said that under state law, the Planning and Zoning land use boards are required to have annual training. She asked if the Village could require it for the HCZM. Mr. McCaffrey explained that it is the recommendation of the State to have more training for its members to understand the process. Mr. Desmond said that the last time the State offered to come in and provide training, the Village had to pay for it.

Assistant Village Manager Dan Sarnoff mentioned that the Village had recently offered training to the HCZM, and that the Village had paid for it, but that it was only a couple of thousand dollars for all of the training to cover all of the bases. Trustee Hofstetter said that the point is that the training has to occur on a regular basis. Mayor Rosenblum said that it appears that a majority of the Board is in favor of alternative one, to maintain the current approach with modifications.

Mr. Steinman said that there are practical ways the Board can improve the consistency determination process. He used the example that an amendment to the Village's Alarm Code, if designated Unlisted under SEQRA, could have required HCZM review and approval. He said the Board and the Village did not want to diminish the effectiveness of the HCZM by having them review things they really did not need to review. As they were wrapping up the discussion, the Board agreed that in general the Village should schedule the next public hearing in September.

On the motion of Mayor Rosenblum, seconded by Trustee Hofstetter, the Board voted to adjourn the meeting by vote of five in favor, none opposed, at 6:55 P.M.

Minutes prepared by Richard Slingerland Village Manager.