

NOTE: AS FURTHER REVISED ON 7/10/14
VILLAGE OF MAMARONECK
HARBOR AND COASTAL ZONE MANAGEMENT COMMISSION MEETING MINUTES
MARCH 19, 2014 – 7:30 PM
169 MOUNT PLEASANT AVENUE, COURT ROOM, MAMARONECK, NY

Attendees:

Present:

Chairperson Cindy Goldstein
Alice Pernick
Nick Allison
Clark Neuringer
Jim Bilotta
Brian Glattstein
Kevin LaFollette

Also Present: Anna Georgiou, Counsel to the HCZMC
Sven Hoeger – Environmental Consultant
Anthony Carr – Village Engineer
Robert Galvin – Village Planner

1. Open Meeting

The meeting of the HCZMC was called to order by Chairperson Cindy Goldstein at 7:30 PM

Ms. Goldstein stated that she would like to start with their schedule that their next meeting is scheduled for April 16th and it has been brought to her attention that it is the middle of a vacation, and Holiday week and I believe that Mr. Galvin was able to secure an alternate date for us on the following Tuesday the 22nd if Commission Members would like to reschedule that meeting.

Alice Pernick stated that she would not be available but it was ok with her. All other Commissioners agreed to meet on April 22nd.

2. Old Business

A. Work Session – Review and Establishment of Commission Draft Rules of Procedure for 2014

Chairperson Goldstein stated that once we adopt it we will then forward it to the Board of Trustees for their approval of it. I know that Anna and Les have been working on it and you have a draft in front of you based on some earlier comments and Anna and I spoke yesterday and there may be a few things that we will clarify.

Anna Georgiou discussed the Draft Rules that evolved from a meeting approximately (2) two months ago when there were initial discussions, Lester Steinman attended that meeting. She stated that Chairperson Goldstein had corresponded with Lester Steinman about the draft. So what you have before you is the draft that was prepared as a result of those discussions and there are a couple of

other changes that were recently discussed with the Chair that can be reviewed. Number (5) which is on page (2), under # (3) the last sentence of # 3 states that members of the public may also be heard on other items set forth on the agenda at the discretion of the Chair, and we discussed adding or a majority vote of the Commission present and that is fine if you'd like to do that.

Chairperson Goldstein replied that was one change in the draft in front of you to allow a majority vote of the Commissioners to allow the public to speak if the Chair did not agree.

Ms. Georgiou stated that the next change is on page (3) number (5) the last sentence of sub-section (B) the added sentence, these materials shall also be made available to the public to the extent practicable in accordance with applicable law. We discussed that, we didn't discuss actual language but from what we discussed that is what was developed.

Chairperson Goldstein replied that the point is not only should the Commission get all the information ahead of time which it does currently, which I would like to thank you Bob (Galvin), but I figured it should go into the procedures to be expected to be done.

Ms. Georgiou stated that on page (4) number (6) Sub-Section (E) instead of approval of minutes we changed that to review minutes because that doesn't refer to a diffident approval of the minutes. On page (6) there was a question as to whether the site visit as it was described in number (9) Sub-Section (C) was compliant with the New York State Open Meetings Law, and it is compliant as it's drafted.

Mr. Galvin stated, you can put a site visit on the Web Site just as you would a meeting and say, on such a such a date for whatever purpose.

Chairperson Goldstein asked prior to the visit or after the visit?

Mr. Galvin replied prior to the visit

Ms. Georgiou replied, that would not be required, if you go by yourself you will not have a quorum issue.

Mr. Galvin replied, the only time you would put a site visit on the Web Site is when there is a quorum, if the Board itself is going there.

Mr. Neuringer asked if they could clarify that, Sub-Section (C) says, shall not be a meeting for conducting business and Commission members shall not discuss, so therefore if I read this, that there is not an issue with a quorum, we're not discussing, it's not a meeting and it doesn't have to be noticed.

Ms. Georgiou replied that there's not an issue because you're not discussing the application and it does not have to be noticed.

Mr. Galvin replied, that from the Planning Board's prospective at a meeting it would be established that on such and such a date we will be having a site visit at a location and that would be put on the Web-Site.

Mr. Neuringer asked if this would preclude the Commission if it's a matter of interest to the public, in affect publicizing the fact that there's going to be a site visit if the public wanted to attend

Chairperson Goldstein replied that there is a matter of private property

Mr. Neuringer replied, not without permission

Ms. Georgiou replied that she didn't think that needs to be addressed in the rules, that's something we could look at, how that could be best structured. That's going to be the exception rather than the rule so we can certainly look at that on a case by case basis. Now to continue, on page (7) there was a question regarding the last sentence of #10 Sub-section (b) which appears on page (7) the last sentence of that Sub-section; In all other cases an abstention or silence shall be considered a negative vote in opposition to the proposed resolution for purposes for determining the final vote on the matter. The question was whether or not an abstention, and whether or not it can be looked at as an affirmative vote or how it should be viewed otherwise , you really need to read the whole section to get the meaning of it so why don't we look at the whole.

Voting

- (A) Each member of the Commission shall have one vote. The affirmative vote of the majority of the total authorized voting power of the Commission is necessary to pass any matter.

- (B) Every member of the Commission present at any meeting there of when a vote is taken shall vote for or against. However, a member may be recused in cases of conflict of interest or where the member was not present at the meeting where the matter was discussed. In such cases, the permitted abstention shall be recorded as excused. In all other cases an abstention or silence shall be considered a negative vote in opposition to the proposed resolution for purposes of determining the final vote on the matter.

Chairperson Goldstein replied, my question was what does that mean? An abstention is an abstention I guess that's my question.

Ms. Georgiou replied, it means that it doesn't count as an affirmative vote. Again this is something she can talk to Les (Steinman) about more directly, she believes it's not going to count as a positive vote for the resolution

Mr. Neuringer stated that it shouldn't count as a negative vote

Ms. Georgiou replied, it's not "for" so we can re-word it to reflect that.

Chairperson Goldstein replied, so this nothing to do with New York State Law, this is the way it would be interpreted under regular New York State Law we could do what we like here.

Ms. Georgiou replied, that if you prefer to list an abstention as an abstention that's fine, that can be done.

Mr. Neuringer stated, sometimes I've seen it written not as an abstention but as not voting.

Ms. Georgiou replied that could be done as well.

Chairperson Goldstein asked if anyone have any feelings on this.

Mr. Allison replied, if you get four of the seven that's the majority right, what happens if you get (3) Ayes, (1) abstention and (3) Nays

Ms. Georgiou replied, that it's really not going to make that much of a difference because it is not a vote "for" so it's fine, we can certainly put in some language that address your concern.

Mr. Neuringer replied, I may be wrong but the only concern I would have "shall be considered a negative vote", that's an active action.

Chairperson Goldstein asked if we could just delete that sentence.

Mr. Glattstein asked what happens in the case where you have seven people voting where you have (3) Aye, (3) Nay and (1) abstain

Ms. Georgiou replied that it doesn't carry, the resolution doesn't pass. So, we can take out the sentence.

Chairperson Goldstein asked if everyone was ok with that and does it make it clearer. Anna, I think that covers everything that we discussed, does anyone else have anything to discuss?

Ms. Pernick replied, on the bottom of page (7), 13 (b) "The Commission may seek training or assistance from representatives of the New York State Department of State and Westchester County as deemed necessary", as deemed necessary by whom?

Ms. Georgiou replied, 240-38 reads, "The Harbor and Coastal Zone Management Commission may hire any consultant and or expert necessary to assist the Harbor and Coastal Zone Management Commission in reviewing and evaluating any applications before it the cost of which will be borne by the applicant".

Chairperson Goldstein replied, that's if there would be a charge for it. I think the issue we were talking about actually was if there were no charge and we were just engaging with people from the Department of State to get their opinion, guidance and expertise on certain issues. There are quite a few references to our ability, in fact our duty to liaison, in fact, that's (14) 240-37 (a) (14) "to maintain liaison and consult with and advise appropriate Federal, State, and County officials on matters relating to the Harbor". There are other references in here so frankly, this makes it narrower. We are not limited to New York State Department of State and Westchester County; we can talk to whomever we please.

Mr. Neuringer asked, should we add the words "or others"

Chairperson Goldstein replied, "And others" yes, let's do that. I imagine we might need DEC, it could be anybody.

Ms. Georgiou replied, "And others" ok

Mr. Glattstein replied, I have a question on page (3) (5C), is there any issue with the Sunshine Laws regarding that or is there a different definition of what public importance might be?

Ms. Georgiou replied that she did not think it's an issue.

Mr. Glattstein replied, I just wanted to make sure, thank you.

Chairperson Goldstein asked, if anyone else had any other comments, questions, or suggestions or are we ready to move forward and adopt them pending final review

Ms. Pernick asked, as amended?

Chairperson Goldstein replied, yes, as amended tonight and pending final review of Mr. Steinman and then they would be sent to the Board of Trustees.

Chairperson Goldstein asked for a motion to adopt the amended HCZM Rules and Procedures and after final review forward to the Board of Trustees.

On Motion of Mr. LaFollette, seconded by Ms. Pernick

Motion passes

Ayes: Mr. Neuringer, Mr. Glattstein, Mr. Allison, Mr. Bilotta, Ms. Goldstein, Mr. LaFollette, Ms. Pernick

Nays: None

Abstain: None

Absent: None

Vote: 7 – 0 in favor.

Mr. Neuringer replied, to everyone who worked on this, very, very good job.

Chairperson Goldstein – Old Business

B. Mamaroneck Beach & Yacht Club – Status Update

The DEIS is still being developed by the Applicant. There is nothing new to report at this time. This will stay on the agenda as Old Business for awhile.

C. Revisions to PLL-V-2013 amending Chapter 294 – Storm water Management and Erosion and Sediment Control, to Update Certain References and Revise Provisions for Consistency with other Laws.

Chairperson Goldstein stated, as I understand this is still being updated Mr. Carr, has the Board looked at the latest iteration of that law?

Mr. Carr replied, yes they have and they will be forwarding it over to you. Myself and Linda Whitehead went over the revisions and they are going to still forward it over to your commission for review. So, the Board is aware but they still want me further explain it at the next meeting or at least provide a memo explaining the changes from the original revisions to the second.

Mr. Galvin asked Mr. Carr, am I correct that the Board is not asking at the next meeting for a Consistency, but they are providing this Commission with recommendations and for any input, is that correct.

Mr. Carr replied, yes that's correct.

Chairperson Goldstein replied, may I ask that the members of this Commission get the information as soon as possible because I think this particular law is complicated enough that we would need more time than usual maybe more than just the week-end before the meeting.

Mr. Galvin replied, probably not just the language itself but any explanatory memo and such that the Village Engineer would put together to help you.

Mr. Neuringer replied, my sense on this one would be commentary, questions, concerns

Mr. Galvin replied, as soon as we get them we will forward that over to you. I would think as early as next week.

Mr. Carr replied, yes. Would you like me to forward it to you first?

Mr. Galvin replied, forward it to me and then Kathy can put it in the files to be forwarded to everyone here.

D. Discussion on Development of Harbor Management Plan.

Chairperson Goldstein replied, at our last meeting we started a discussion of not so much the development of a Harbor Management Plan, we have a Harbor Management Plan, we need to as a Commission under Section 240. That is one of our responsibilities to continually update that plan. I had a brief conversation with Harbor Master (Joe Russo) that who would welcome a conversation with this Commission; he has a lot of good ideas and if we play our cards right and wait until the spring we can get a tour of the Harbor. If there are two or three members of this Commission who would like to form a Sub-Committee to take a look at a voluminous document, our Harbor Management Plan, with an eye towards coordinating review I think the public might have something to say about this, I think the Marine Industry would probably have something to say about this document and we do have guidelines for the preparation of a Harbor Management Plan from the Department of State which I think we could incorporate and make our lives easier in the process. So, I guess I'm looking for volunteers. So please first come first serve! Don't all rush at once!

Mr. LaFollette replied, I guess my question is what the final goal of this is?

Chairperson Goldstein replied, to make recommendations to the Board of Trustees about changes we think should be made to the Harbor Management Plan. The Harbor Management Plan looks as if it were prepared on a typewriter I think it's that old and it might never have been revised since the 80's

so I think it's time to work process that document and I suspect that there are things that need to be changed, maybe not a lot maybe there are a lot. But, to prepare that document with revisions that we can offer to the Board of Trustees for their consideration.

Mr. Galvin replied, Madam Chairman, I've talked to Joe (Russo) about this and you are really right on, he would really like to have a lot of input and work cooperatively with the Commission. I would just like to offer, we have an Assistant Planner and if you need any maps and GIS material we can do that in house. So anything you want us to do in the Planning Department we can get that done for you as part of that update.

Mr. Neuringer replied, we had several applications I guess was last year where people were interested in modifying their floats, putting in piers instead of chains and so forth and the Harbor Master did come down and there was some good conversation back and forth and there were a lot of references made to a large map of the Harbor with boundaries, buffer zones and so forth and I think as I recall at the time it was stated that the thing was very, very much out dated and needed to be updated.

Mr. Galvin replied, I just want to let you know that we have the capabilities in house to help you with that.

Mr. Neuringer replied, this is a good opportunity to do all that stuff and it gets us to work closer with the Harbor Master who is very eager.

Mr. Bilotta asked, is this something the Village Board is looking at.

Chairperson Goldstein replied, I have no idea; I'm going by Section 240 which gives us the responsibility and duty to continually update the Harbor Management Plan.

Mr. LaFollette replied, Cindy I will certainly give it my best shot to work with that.

Ms. Pernick replied, I'll work with that also.

Mr. Glattstein replied, I'll work with Kevin on that.

Chairperson Goldstein replied, we have three and that is what we need. Perfect! It will come back to this Commission whatever finding there are and we will go from there.

Mr. Galvin replied, I think that the Board would certainly welcome HCZMC to take this on because that really is in your jurisdiction to do it. This is not on the horizon for the Board of Trustees. This is your area of expertise and this is something you could run with.

NEW BUSINESS

- A. Request from the Board of Trustees for Determination of consistency for PLL-A-2014 amending Chapter 342, the Zoning Code, to add provisions for a new Harbor Island Scenic Overlay District.**

Chairperson Goldstein asked Mr. Galvin to speak on this matter.

Mr. Galvin replied, we had briefly gone over this at the last meeting, this is a recommendation emanating from the Comprehensive Plan Update and I did a review of the Boston Post Road looked at the properties there. We developed with the Board a height of (38) feet and (3) stories on properties that were along the Harbor and essentially this is to protect the views from upland going down into the Harbor as well as from the Harbor. I attached the request from the Board of Trustees for Consistency, there's a Short Environmental Form, there is the CAF which I also provided at the last meeting. I've provided this in your package the actual delineation of the properties included in the proposed overlay district. The overlay district doesn't touch anything underneath it in the C-1. It adds that anything developed has to be (38) feet or under and not more than 3 stories. Currently on the Boston Post Road you could have 4 ½ stories and 50 feet.

Ms. Pernick asked, are there properties that are that high?

Mr. Galvin replied, there are properties that are close to that height over at Continental View depends on how you do the height of that, that's about 45 feet. Harbor View, one of the first infill housing that went up in the 80's has one part of the building at 4 stories and another at 3 stories.

Mr. Allison asked, this zone doesn't go down to Mamaroneck Avenue, does it?

Mr. Galvin replied, no, it's just along the Boston Post Road directly across from the Harbor.

Mr. Glattstein asked if it included the East Basin.

Mr. Galvin replied, no because the East Basin is MR, it's a different zone not C-1. It doesn't go further than the BMW property because then you are facing the "Treatment Plant" and there are no views.

Mr. Neuringer asked, are all of the sites indicated in this scenic overlay zone within the C-1 district presently

Mr. Galvin replied, yes.

Ms. Pernick asked, is there any current proposals that would be non-conforming because I think there are some vacant properties, and is there anything in the works?

Mr. Galvin replied that there is nothing at this time. There are no applications at this time.

Mr. Allison asked, was there any subsequent discussion at the March 10th 2014 Public Hearing, were there any owners or neighbors who had anything to say.

Mr. Galvin replied, no.

Mr. Neuringer asked, where does this process stand with the Board of Trustees.

Mr. Galvin replied, the Board of Trustees has closed out SEQRA and they are asking you for Consistency, they are going to continue with another Public Hearing on it and then make a determination.

Chairperson Goldstein asked for any further questions or comments on the matter.

Mr. Allison replied, my question is it's not inconsistent, there's no storm water discussion here, this is a scenic project, is there anything for us to do here with consistency?

Mr. Galvin replied, that's for you to determine, there really isn't any storm water, however there is visual and I believe one of your policies is visual.

Mr. Allison replied, the policy talks about the visuals from the view out I thought not the view in.

Mr. Galvin replied, the legislative purpose intent here is talking about views into the properties and views out so that they are protecting views from both directions.

Mr. Galvin stated that if you just feel that it's not inconsistent that's something you've decided in the past.

Ms. Georgiou replied, that she would suggest that the Commission apply the standard that's in Chapter 240: that the Local law "is consistent to the maximum extent practicable with policies" of the LWRP. That is the language that's in there and also that "the local law will not substantially hinder the achievement of any of the policies of the LWRP". That's the standard and that's in the draft resolution that's been prepared for the Commission tonight.

Mr. Allison replied, I'm a little surprised that no one who owns property has anything to say in public about it.

Mr. Neuringer replied, that normally would occur at the level of the Board of Trustees because it's almost a map change, it's an overlay zone but it's a map change it's a pure zoning issue. So, it would seem to me that effected property owners or the public would have an interest in a change in the zoning map of Mamaroneck, we're looking at it not as a project but if a proposed zoning change could have or would have any impact one way or another with respect to the LWRP and the principles that are in it.

Mr. Glattstein asked, what's the change that's actually being made, how many feet different would it be?

Mr. Galvin replied, currently along the Boston Post Road you can have multifamily going up to 4 1/2 stories at 50 feet and this will bring it down to 38 feet and 3 stories. Again, this is being done for scenic view protection. This came out of the Comprehensive Plan as a recommendation.

Chairperson Goldstein asked the Commission if they are prepared to vote on this resolution.

Mr. Natchez approached the commission stating that he would just like to remind the Commission that one of the major issues in the LWRP is scenic vista and I think this works well with it and I think if you feel it's consistent you might wish to include that within that because it actually does increase the vista's to the Harbor and therefore if you are so inclined you may wish to include it in your resolution.

Chairperson Goldstein replied, you mean to refer specifically to that particular policy in the LWRP

Mr. Natchez replied, the scenic vista in the current LWRP specifically refers to anything that is seen either toward or from Harbor Island. Therefore since this is an overlay district that's been proposed, I assume that to enhance the scenic vista would be appropriate. Any development that is proposed and has a view from Harbor Island may be an LWRP policy issue. As such the proposed legislation may be deemed Consistent in terms furthering the scenic vista policy.

Chairperson Goldstein asked Ms. Georgiou if she has found that particular policy number, if Commissioners would like to refer specifically to that policy number

Ms. Georgiou replied, it will certainly be reflected in the record, and the minutes, but it doesn't have to be in the resolution.

Chairperson Goldstein asked if anyone had any strong feelings on that, I mean it would be nice to have it in the resolution. Rather than put a lot more time into this tonight we should just move forward without that tonight.

Chairperson Goldstein asked for a motion to adopt this Consistency Resolution stating that this local law A-2014 is consistent to the maximum extent practicable to the policies of the LWRP and the local law will not substantially hinder the achievement of any of the policies set forth within the LWRP.

The following resolution was adopted.

HARBOR & COASTAL ZONE MANAGEMENT COMMISSION

CONSISTENCY RESOLUTION

PROPOSED LOCAL LAW A-2014

WHEREAS, the Harbor and Coastal Zone Management Commission ("Commission") has reviewed proposed Local Law A-2014, referred to the Commission by the Board of Trustees, that would amend Chapter 342 ("Zoning") by creating a Harbor Island Scenic Overlay District, limiting the height and number of stories pertaining to all new residential and commercial development along Boston Post Road across from Harbor Island Park, with an amendment of the Zoning Map to reflect the Scenic Overlay District ("Local Law"); and

WHEREAS, the Village Board of Trustees having determined the Local Law is an Unlisted Action pursuant to SEQRA, and after circulating its Notice of Intent to be Lead Agency to Involved Agencies, declared itself Lead Agency and on March 10, 2014 adopted a Negative Declaration under SEQRA finding no significant adverse environmental impacts resulting from the Action; and

WHEREAS, the Commission has considered and evaluated the Local Law for consistency with the Village of Mamaroneck's Local Waterfront Revitalization Program ("LWRP").

On motion of Ms. Pernick, seconded by Mr. Allison:

BE IT RESOLVED that the Local Law is consistent, to the maximum extent practicable, with policies of the LWRP and the Local Law will not substantially hinder the achievement of any of the policies set forth in the LWRP.

The motion passes:

Ayes: Mr. Bilotta, Mr. Allison, Ms. Pernick, Mr. Glattstein, Ms. Goldstein, Mr. Neuringer, Mr. LaFollette
Nays: None
Abstain: None
Absent: None

- B. Request from Board of Trustees for Determination of Consistency for PLL-B-2014 adding a new Chapter 109, establishing regulations regarding the planting/and or growing of bamboo in the Village of Mamaroneck.

Chairperson Goldstein asked Mr. Galvin for his comments

Mr. Galvin replied, I believe I talked about this in great detail at the last meeting but there was also an article in the paper two days ago and they have had their public hearings and the Board of Trustees has closed out SEQRA on this with the CAF and they are asking for a determination from this Board. I just want to point out for the record Sven's (Hoeger) commentary which was dated February 13, 2014 and he provided commentary on this, essentially the policies didn't apply or I let Sven address it.

Mr. Hoeger replied, essentially Bamboo is a garden plant, it is spreading across borders it really doesn't have anything to do with the protection of nature. It's not really evasive in the botanical since or the environmental since because it doesn't really proliferate propagate, make seeds, you have to physically have to take it out of the ground and put it somewhere in order for it to propagate. In that respect it's more like a law like you clean up after your dog. Essentially it's what you want to do with it. I've had one in my practice of Environmental Restoration where I actually found this plant (Bamboo) in a Wetland, near a Wetland because a gardener was getting to invasive in his gardening and he didn't want to kill the plant, he planted it in the Wetland. So, that is always a possibility but other than that it is very consistent with all the provisions of the LWRP.

Mr. Neuringer replied, if I may can I just ask a threshold question because I am just slightly confused on this. Why is this in front of us for a consistency review, if the Board of Trustees are interested in passing a law banning something why is that an LWRP thing and the reason I'm asking that is they want to ban an activity, they're not banning the plant they're banning someone from planting the plant.

Mr. Hoeger replied, they are banning the planting of the plant.

Mr. Neuringer replied, they are not going to give a ticket to the plant they are going to give the ticket to the homeowner and it seems to me that they are banning or what they want to ban is someone from doing something and if the Board of Trustees wants to pass a law preventing someone from putting big boulders in the street that wouldn't come in front of us for a consistency review so, they are taking an action saying that you should not do something. It's not a law about Bamboo; it's a law against an activity of a property owner.

Ms Georgiou replied, that we've had similar legislation come before the Commission previously for consistency review, like the ban on plastic bags.

Mr. Allison replied, in that case the plastic bags were going into the harbor. It seems like here following on Clarks logic, it looks and smells like something that should go in front of the commission, not that it should I've read it and I'm not sure why.

Ms. Georgiou replied, that Sven can explain environmental aspects but without going through a whole analysis on how proposed local laws need consistency review under Chapter 240, the way the code is written and it should be assumed too that this was also looked at by the Village Attorney here the referral was for consistency, is that correct Bob (Galvin)

Mr. Galvin – Yes

Ms. Georgiou continued that there is the necessity for consistency review; Chapter 240 requires it. It is an action it's an unlisted action.

Mr. Allison replied, could you go back and explain because you're saying the way Chapter 240 is written does that mean every local law requires a consistency review?

Ms. Georgiou replied, if it's not a Type II Action, it does require consistency review by the Commission.

Mr. Neuringer replied, I believe the Board of Trustees is contemplating or considering passing a law to ban smoking in public places, is that going to come to us through a consistency review, because to me that is also a law that is preventing or asking or seeking to prevent someone from doing something.

Ms. Georgiou replied that she did not know.

Mr. Galvin replied, I think they were looking at these are plants and therefore it belongs before this board.

Mr. Allison replied, right, looks, feels, smells like it belongs in front of us but we are not a legislative body we find consistency with the LWRP that really what we do.

Mr. Hoeger replied, the LWRP policy #17 addresses flooding and erosion, it could conceivable use this plant to help stem erosion, conceivably I'd say.

Mr. Allison replied, I think that is a reach.

Mr. Hoeger replied, I'm not saying it's not but its possible ok. The same with #37, eroded soils & coastal waters you can prevent erosion by planting this plant, all I'm saying is if you want to get a justification.

Mr. Neuringer replied, no that's just the point I don't think we need to go fishing. My concern is, again it's a threshold question everything that's sent to us we have to consider, cant the commission just say it's not applicable and we don't want to consider it.

Ms. Georgiou replied, we'd have to go through a detailed analysis on it but just looking at 240-29, prior to an action or approval on an action by a agency of the Village such action shall be certified as consistent to the maximum extent practicable with policies of the Village of Mamaroneck Local Water

front Revitalization Program and actions are defined they relate to what is a Type 1 and Type II unlisted action under SEQRA, under the definition section. It's pretty broad and under (A) for Type 1 and unlisted actions the "Harbor and Coastal Zone Management Commission shall determine whether actions are consistent to the maximum extent practicable" with LWRP policies, this is how Chapter 240 is written right now.

Chairperson Goldstein replied, I'm looking at the resolution that the Board of Trustees adopted and they made a "Neg Dec." for this legislation.

Ms. Georgiou replied, that they were the Lead Agency under SEQRA so they would normally do that and then send it to HCZMC for a Consistency determination after they finished the SEQRA process.

Chairperson Goldstein replied, I think this is a conversation we need to have at a later time but meanwhile we have this in front of us and they are expecting an answer.

Mr. Galvin replied, I may be out of order but is it possible for this Commission to just send it back to the Board and say we don't believe that there is any basis to even review it.

Ms. Georgiou suggested that the Commission at this point go ahead with its consistency review, this is the process as it has been for the past few years, when a Consistency Determination is requested by the Board of Trustees. She recommended that in this instance that the Commission, based on Chapter 240 that this proposed local law be reviewed for Consistency and then a memo could be prepared to relay to the Board of Trustees concerns in the future about certain proposed legislation coming before you for Consistency review. Her reading of Chapter 240 as counsel is that this proposed local law would require a Consistency review the way Chapter 240 is written.

Mr. Neuringer replied that you discriminate between the proposed local law to ban cigarettes

Ms. Georgiou replied that she understood what was being said and again would be more than happy to take the lead in drafting a memo or something to that point asking for clarification on when Consistency should apply.

Chairperson Goldstein replied, I think that's clearly an exercise the Commission would like to engage in.

Mr. Glattstein replied, I think it depends whether or not the activity that is proposed to be banned can affect the Harbor. If they want to ban the use of dinghies in the Harbor that would really affect the Harbor and something I think this Commission should be a part of, smoking I do not believe would affect the Harbor, Harbor Bamboo can be planted in the Wetlands. We don't necessarily have a problem with it but it could affect the Harbor.

Ms. Georgiou replied that this is the way Chapter 240 is written, the jurisdiction for the LWRP is the entire Village of Mamaroneck it's not just the Harbor area.

Mr. Neuringer replied, planting Bamboo up in Harbor Heights, if someone does that and they are committing a terrible act to me that's not an LWRP action Number one. Number two I believe that there is language in our code that a person doing something that causes a nuisance can be prosecuted for causing a nuisance and frankly the reason why I'm a little perturbed or concerned about this, it

seems to be well, I don't have any problem in trying to correct something that could be bad for a neighbor but it is singling out a particular species. My neighbor next door may be planting Poison Ivy that's growing onto my yard, why don't we band Poison Ivy. Once you go down the slippery slope of singling out an individual I think it's the overview. If you do something that is wrong or bad if you cause a nuisance that can be prosecuted so it seems to me that I think we have language in "Nuisance Laws" which is appropriating correct and if someone is doing something that is invading someone else's yard they are committing some sort of bad thing.

Chairperson Goldstein asked to hear from the public

Mr. Tiekert addressed the Commission, I'm in the landscaping business, my neighbor's raspberries invade my yard I may not mind it but they are invasive. I do believe horticultural standards Bamboo is invasive and it's only not by definition because it does not seed. I believe for a plant to be considered invasive it has to be able to be spread by seed. Generally most running Bamboos do not do well in water it's one way to contain them, I did note that on the plan rundiarea is actually a native plant it's one of the few native Bamboos that actually grows in the low lands of out falls of rivers it was used by native Americans for basket weaving so conceivably that would be an item that could be used to do a restoration in one of our river basins so I would agree that this is a law that we don't need. Most of these laws have come up out of Long Island where they have a very lonely soil where the stuff truly does run but in clay like soils and other soils it's not that big an issue. I think there are some misconceptions about the issues here that is all. Thanks.

Mr. Bilotta asked what happens if we do nothing.

Chairperson Goldstein asked if Ms. Georgiou could just explain the rules if this Commission doesn't act within 30 days.

Ms. Georgiou replied, under Section 240-30 Certificate of Determination shall be filed with the Village Clerk by the appropriate agency pursuant to 240-29 within a 30 day period from the filing of the Coastal Assessment form or within the time allowed for comments under the State Environmental Quality Review Act whichever is later in the event no certificate is issued within such period then an affirmative determination shall be deemed to have been issued.

Chairperson Goldstein replied, so if we do nothing it passes, if we pass it, it passes and if we don't pass it.

Mr. Allison asked what happens if we don't pass it then what?

Ms. Georgiou replied, if you find it inconsistent.

Mr. Allison replied, yes.

Ms. Georgiou replied, then we would have to go through what Chapter 240 says about findings.

Mr. Allison replied, "the five reasons why".

Ms. Georgiou replied, yes we would have to go through the Chapter and identify the specific policies.

Chairperson Goldstein replied, I think that would hard to do on something like this. Does anyone else have any thoughts or feelings on this?

Mr. Neuringer asked, has a determination been made that the application as submitted, is complete.

Mr. Galvin replied, like any other application you have received you have a determination to make, if you want to say it's inconsistent ok, the Board of Trustees is in a bind they are sending everything over to you essentially.

Mr. Allison replied, if it smells and feels like than it must be, well I think that is a problem they are in a bind and they are going to give us thing s to review, I don't understand the logic in that.

Ms. Georgiou replied that she would clarify again, under Chapter 240 it is very broadly written, it's really tied to SEQRA and "action" is defined pursuant to the SEQRA regulations so it's not just something purely environmental in nature, that's why the Commission is getting these referrals.

Mr. Allison replied, I'm giving you my opinion, I not stating that's why this is before this Board, that's my personal opinion I object to the way the process is working, the way the law allows it to work.

Mr. Neuringer replied that I appreciate this, all I'm trying to do is understand the nature of either arbitrariness or things that are cherry picked, this one is coming to us, is the smoking ban not coming to us and why? I agree that you can interpret 240 as broad as you want then we should get everything but we're not.

Chairperson Goldstein replied, I thing we need to clarify that, Ms. Georgiou and I will speak and we'll ask the Village Attorney what her criteria is in determining this and in the meantime we have this particular item in front of us.

Mr. Allison replied, may I ask one more question to Ms. Georgiou, I don't generally see your face so this is nice, and, in this case, I see that you feel strongly about this and my question is why?

Ms. Georgiou replied and stated, as your counsel and I'm here to review Chapter 240 and tell you what Chapter 240 says and to advise you and that's the only reason why. I certainly understand what you are saying but we also have to deal with what we have as a law in front of us.

Mr. Neuringer replied, I appreciate that but can you understand some of the discomfort some of us have that it seems to be asking us to do a Consistency review on an action against human behavior or human action.

Ms. Georgiou replied, that she fully understood and that is something certainly as the Chair suggested the Commission can get clarification on that going forward.

Chairperson Goldstein replied, we have had situations like this in the past where we have all scratched our heads and said why are we looking at this.

Ms. Georgiou replied, absolutely, it's fine to get clarification.

Mr. Glattstein replied, if I can, I think that they have basically passed the ban on the activity and from what I can see that Sven (Hoeger) did it's coming to us to determine whether or not we agree with that ban when it comes to this plant being used to prevent erosion, to create a buffer, basically policy 17, 37 and 44 and from what I heard this plant is really not something that would be used in our Harbor that way from Sven, although we found some very, very interesting commentary and history but according to Sven I believe you said this plant would not be useful for the public to use for that purpose.

Mr. Neuringer asked for what purpose for erosion control?

Mr. Glattstein replied, for policy 17.

Mr. Neuringer replied, the plant is very, very valuable to use for screening for example it's extraordinarily effective.

Mr. Glattstein replied, right but I don't know if that's what we're looking at unless you want to tie it to the scenic view.

Chairperson Goldstein, replied, the scenic view is not going to be the catchall for everything tonight it just can't be.

Mr. Glattstein replied, I don't know how high the plant grows I'm only looking at what Sven gave us in relation to our policies.

Chairperson Goldstein replied, I think what we are struggling with is (a) why is this in front of us and (b) why are we picking on Bamboo, maybe there are other thing should be picking on but that is not in our purview.

Mr. Hoeger replied, I think the gentlemen that spoke here from the public (Mr. Tiekert), made a very good point and that is, this is probably in front of you because this plant is considered an invasive. Invasive plants are generally regarded as bad. We are doing a lot of things in the Country, spending millions and billions on eradicating invasive and there are whole departments, governments devoted to that. The point that he made was in this particular place here Bamboo is not invasive. It is more invasive for the south and in certain cases the one that he mentioned is further south it is not here we don't use it here so in this case I think it may be because other communities nearby have passed laws like this that your community wants to pass the same and maybe the confusion is what is invasive and therefore what would fall under the category of the LWRP.

Mr. Neuringer replied, that goes right to the conversation we are trying to have it is not a discussion about whether the law the Board of Trustees is considering makes any sense or makes absolutely no sense, that's not our discussion here but to determine consistency for what I believe is a law about human behavior. It's not about a plant because if it was about a plant we should ban Ivy. Some Ivy that's grown totally takes over a yard or pachysandra or whatever, we're not talking about a plant we are talking about preventing an individual from doing something bad.

Chairperson Goldstein replied, so here we are again.

Ms. Pernick replied that I think we just need to vote on it, and see if we can get so guidance as to for the future why these things are coming before us and I think we should move on.

Chairperson Goldstein asked for a motion on this Resolution which states:

Be it resolved that the local law is consistent to the maximum extent practicable with policies of the LWRP and the local law will not substantially hinder the achievement of any of the policies set forth in the LWRP.

On Motion by Ms. Pernick and second by Mr. Glattstein

All in Favor

No response.

Chairperson Goldstein asked to call the roll:

Jim Bilotta – Abstain

Nick Allison – Nay

Brian Glattstein – Abstain

Clark Neuringer – Abstain

Cindy Goldstein – Nay

Alice Pernick – Whether we think this is a silly law or not it's what's before us and I challenge anybody to tell me why it's not consistent so I say Aye, yes

Kevin LaFollette – Aye

Mr. Allison replied, so in 30 days it becomes law, no harm done no foul.

Summation of Vote:

Ayes: Ms. Pernick and Mr. LaFollette

Nays: Mr. Allison, Chairperson Goldstein

Abstain: Mr. Glattstein, Mr. Neuringer, Mr. Bilotta

Absent: None

C. Request for Determination of Consistency for a Proposed 2 Lot Subdivision Located at 209 Grand Street.

Chairperson Goldstein replied; let's move on to the request for determination of consistency for a proposed two lot sub-division located at 209 Grand Street. Proposed subdivision is for two lots which would include a two-family residence on each lot in the R-4F zoning district, Mr. Noto for the applicant.

Mr. Noto, replied, Good evening Madam Chair and members of the Harbor and Coastal Zone Management Commission, Paul Noto, 650 Halstead Avenue, Mamaroneck for the applicant BB&G Construction Corp. with me is Michael Mastrogiacomo our engineer. The Chair has accurately described the proposal, procedurally we have been before the Planning Board for several meetings and on January 22nd of this year they issued a Neg. Dec. under SEQRA and then on February 6th 2014 the Zoning Board granted six (6) variances that were necessary for this project to move forward so we are before you on the third (3rd) leg of that process to obtain we hope a Consistency Determination. I will have Michael go through the Storm Water Plan, I think that is primarily be interested in.

Mr. Mastrogiacomo replied, good evening I am the Engineer for the project, what we are doing is the existing home is remaining where it is, we were required to design with the two (2) lot subdivision adequate parking for this lot which we are going to design a sub-surface drainage system for that, that will be it's on independent drywell system and for the new house once we have the full exact layout we are going to do a full 100 Year Storm design on the drywell system and also do a water quality analysis and have a separate system for that in accordance with State Code.

Mr. Glattstein asked, is this in the Flood Zone.

Mr. Mastrogiacomo replied, no not in the Flood Zone.

Chairperson Goldstein asked, what type of paving material will be used for the parking area.

Mr. Mastrogiacomo replied, right now we are planning asphalt but I've been talking to the Builder and we may do a pervious asphalt to try and balance it out depending on how large the system is going to be.

Chairperson Goldstein asked, how many cars do you have to accommodate there?

Mr. Mastrogiacomo replied, three (3) cars.

Ms. Pernick asked if the drainage for the original house is going to stay as is.

Mr. Mastrogiacomo replied, yes we are not touching that.

Mr. Glattstein replied, the proposed two family residence I see some rectangles on there (referring to the plans) it looks like parking but I also see some parking across and in back of the current structure, you said there is only three (3) parking spaces.

Mr. Mastrogiacomo replied, for this two family we will need four (4). One (1) will be in the garage, three (3) outside. For the proposed two (2) will be in the garage and tow (2) in the driveway.

Mr. Bilotta replied, you said you were going to do a water study on the existing.

Mr. Mastrogiacomo replied, no not on the existing on the proposed we would have to do a water quality system as well.

Mr. Bilotta replied, so basically you're going to hold the water for a 100 year storm and slowly release it into the system.

Mr. Mastrogiacomo replied, correct.

Chairperson Goldstein asked Mr. Hoeger if he would like to elaborate on anything that he has here.

Mr. Hoeger replied, that it is fully consistent for the LWRP and that he has a memo for the Commission.

Mr. Neuringer replied, on your sheet (7) you have pretty good computations with respect to the drainage calculations, were these done pursuant to any perc test?

Mr. Mastrogiacomo replied, no they analysis used and the perc test used were from other jobs that I've done in the project just as a preliminary just to get to this point and now we have to do a deep hole test as well as a percolation test.

Mr. Neuringer replied, so later these will be substantiated later by a perc test.

Mr. Mastrogiacomo replied, yes.

Mr. Neuringer replied, ok also on your drawing number (6) you are indicating (10) cultec's have you made any determination as to what the sub-strata conditions are.

Mr. Mastrogiacomo replied, no not yet and the reason being I still don't have an exact dimension of the proposed residence right now we are just holding the maximum allowable area that we can build and working with those numbers and so until my client actually gives me a footprint of the house he wants to build then I can adjust everything.

Mr. Neuringer replied, the impact on this is that if you do a review and analysis based on what's shown tells you a certain story, when things are found out things can change and the story can change so if there is not the possibility you getting in (10) cultec units or the land is shown to be totally solid with rock and there is no absorption where does the water go?

Mr. Mastrogiacomo replied, just from the topography and being out there and the type of vegetation that's there a very large tree right towards the backyard. There is some rock at the front of the property at the back there is a beautiful lawn and everything and up and down the street, I highly doubt that we are going to hit rock until at least (5) five feet. Even if I have to redesign and use a shallower cultec and work something else out like put in another concrete storage chamber to dissipate the water at a slower rate so the drywells can handle it we can always design it.

Mr. Neuringer replied, so basically it would be safe to say that either the project would proceed based on what's shown or adjusted but the net result of the amount of water either retained or that would be held and then forgoing into the storm sewage system would remain as prescribed.

Mr. Mastrogiacomo replied, that is correct, we would have a net zero increase.

Mr. Glattstein asked if that is written anywhere.

Mr. Neuringer replied, no.

Chairperson Goldstein replied, that's a practical matter if you did have to change things dramatically based on site conditions how would the Village know you've done what you had to do.

Mr. Noto replied, that's the policy of the Planning Board just so you know, they have a policy of no net increase in runoff. It's their policy it's not written in code anywhere by the way for the record but it is their policy. We have a Village Engineer who is usually pretty strict getting passed him is not always easy so we would have to go through a process where he would have to approve it and then he knows what the policy's are in the Village.

Chairperson Goldstein replied, so the Village would manage the actual progress.

Mr. Noto replied, yes absolutely.

Mr. Galvin replied, don't forget it's a subdivision so you are going through a Storm Water analysis you are not approving a building on the site you are approving the division of property. We typically ask for the footprint so that you can make some determinations in terms of Storm Water but once they go in for a building permit there is also another added review they would have to do and they would have to do a SWPPP on that also.

Mr. Neuringer replied, this is very well done, it is very nicely reviewed and engineered, documented, calculated but I would just hope that this doesn't go forward based on assumptions it should be based on perc tests and so forth.

Mr. Galvin replied, the Planning Board can also request before we go along with the subdivision process.

Ms. Pernick replied, we can put in any conditions that we want on our determination can't we?

Ms. Georgiou replied, that it is a Consistency Determination, you are not giving a permit.

Chairperson Goldstein asked if anyone from the public had anything to say about this particular application. No comments from the public then are we comfortable or are there anymore questions. Mr. Carr do you have any questions or comments on this?

Mr. Carr replied, I have comments at this time but once they perform the perc test and the test pits we will have an idea what they can actually do at this site as far as Storm Water because you are right without a test pit or a perc test which is required you could fit (10) cultec's or zero. Once they have sub-surface information then I think we'll have a good idea on how we can move forward.

Mr. Neuringer replied, this is a Consistency Determination, with respect to the pertinent perc tests and redesign, that's a site plan issue for the Planning Board.

Mr. Allison replied, I couldn't tell you what a perc test was vs. what a parking ticket was so since we've used that term a lot could someone explain to me what a perc test is.

Mr. Carr replied, a perc test is really just a hole that is dug in the ground and you monitor how fast the water drops in an hour, percolates in the ground. Typically it's the rate 3 inches stabilize, so you

record a 3 inch drop at a stabilize rate and a test pit is you go to the bottom of your system and dig a couple feet beyond the bottom and that test pit will tell you if there's ground water or bedrock there or both.

Mr. Allison replied, and if it's all bedrock

Mr. Carr replied, if it is bedrock then we will have to re-visit what can be done at the site because that is definitely a site restraint so there has to be a provision which is one of the new things in the local law V that allows the Village Engineer to explore alternative Storm Water Management Practices if you do run into site restraints such as groundwater and bedrock.

Mr. Neuringer replied, there is no prohibition's in the code that prevents retention systems for one site being located on a different site is there?

Mr. Carr replied, I'm sorry can you repeat the question.

Mr. Neuringer replied, there's no provision in the code that would prevent the retention system for one parcel for being located on a different on a different parcel?

Mr. Carr replied, currently not except if they are in a Floodplain. If they are in a Floodplain water quantity is not required only water quality is required. If there is an issue with one site it doesn't prohibit on another you have to do what's particle.

Mr. Neuringer replied, this has been a difficult application, I think there were problems with the Planning Board or Zoning Board and so forth this has been well done under the circumstances.

Chairperson Goldstein stated if the Commission was all set, a vote will be taken on the resolution:

The following resolution was adopted.

HARBOR & COASTAL ZONE MANAGEMENT COMMISSION

CONSISTENCY RESOLUTION

BB&G Construction Corp., 209 Grand Street

WHEREAS, the BB&G Construction Corp. ("Applicant") applied to the Planning Board to subdivide an existing lot situated at 209 Grand Street containing a two-family residence into two lots and to construct a new two-family residence on the newly created lot ("Project"); and

WHEREAS, after circulating its intent to be Lead Agency to involved agencies and having received no objection within thirty days, the Planning Board declared Lead Agency pursuant to SEQRA and thereafter issued a Negative Declaration on January 22, 2014 finding no significant adverse environmental impacts resulting from the action; and

WHEREAS, the Commission has reviewed the Project for the purpose of determining consistency with the Village of Mamaroneck's Local Waterfront Revitalization Program ("LWRP").

On motion of Mr. Allison, seconded by Mr. Bilotta:

NOW, THEREFORE BE IT RESOLVED that the Commission has completed its review and evaluation of said Project, including the Coastal Assessment Form submitted, and after conferring with its consultants has determined that the Project is consistent, to the maximum extent practicable, with policies of the LWRP and the Project will not substantially hinder the achievement of any of the policies set forth in the LWRP.

The motion passes:

Ayes: Mr. Bilotta, Mr. Allison, Ms. Pernick, Mr. Glattstein, Ms. Goldstein, Mr. Neuringer, Mr. LaFollette

Nays: None

Abstain: None

Absent: None

Chairperson Goldstein stated that we have no minutes yet from February to review , I just want to report back briefly based on our memo to the Board of Trustees dated February 28, 2014 dealing with the LWRP update, I met with the Village Manager on March 7th to ask if the Board had made any progress on deciding what it wanted to do with our offer to help with that document and he said no they had not, although many of you may have seen in the Mamaroneck Review there may not have been a formal vote taken but I think that some members of the Board have made up their minds. I just a little disconcerted that somehow our memo has been misconstrued as trying to do something that we weren't trying to do, we were trying to make a recommendation to the Board which is completely under Section 240 something that we are supposed to do. We are supposed to advise the Board of Trustees on anything pursuant to the goals and objectives of the Coastal program and we are supposed to assist them and we are supposed to be involved in any subsequent studies of the LWRP. I'm just a little concerned that as volunteers we're being accused of things that we normally wouldn't be accused of with the right thoughts to try to help the Village so, I await communication from the Village in terms of what our next step is. Certainly under the code I'd think we could go ahead and make comments on the specifics contained in the LWRP if we wanted to do that. I'm just throwing it out there I only know what I read in the paper.

Mr. Neuringer replied that if you read the paper my sense is that there seems to be a growing hysteria out there and I would suggest that people would just calm down a bit. We sit here as a Board of Citizen Volunteers and we've been told time and time again as Volunteers we are the best that Mamaroneck has to offer so we're just trying to do a good job and the code stipulates certain things and if you read the code all we're trying to follow and we have advisors and we have experts that assist us and we have consultants. I don't believe that there is any place that's it's stipulated that we have to ask permission to as Sven or Anna (Georgiou) a question. One of our consultants happens to be the State of New York and if we have a question we can ask those questions. I just think everyone should just calm down a bit we're just trying to do our job.

Chairperson Goldstein asked if there are no other matters this meeting is adjourned.

Meeting Adjourned 8:45 PM

**Minutes prepared by
Kathy Guadagnolo**