

DEPARTMENT OF STATE
OFFICE OF COUNSEL

M E M O R A N D U M

TO: Jaime Ethier, Capital Region, Mid-Hudson, and NYC Regional Unit Supervisor
FROM: Bill Sharp
SUBJECT: Village of Mamaroneck LWRP Amendment
DATE: March 18, 2019

I have reviewed the draft Local Waterfront Revitalization Program amendment for the Village of Mamaroneck. As will be explained, the amended LWRP is skillfully and well written but deficient in many respects. My comments follow

Executive Law §§ 911(6), 915(5) and 922 specify the elements an LWRP must contain to be deemed a completed submission eligible for review by the Secretary. These are:

1) Resolution of Legislative Body

When the Village of Mamaroneck wishes to submit the LWRP to the Secretary of State for approval, the Board of Trustees will need to submit a resolution to that effect.

2) Executive Law §§ 911(6) & 922 - Comprehensive Harbor Management Plan

A Comprehensive Harbor Management Plan (HMP) is defined in Executive Law §911(6) and required to be submitted as part of an LWRP, as well as the means for its implementation in Executive Law §922. DOS regulations at 19 NYCRR §603.3 require that if the HMP is not contained in a separate document, it may be integrated into an LWRP “in an identifiable manner”.

- The Village has incorporated a separate Harbor Management Plan into its amended LWRP. The HMP section provides a separate set of policies for deciding matters involving the harbor. Unfortunately, there is no description or inventory of the Mamaroneck and Larchmont harbor complex in the HMP section. The harbor complex should be described in terms of the Inner and Outer Harbor, a distinction the village makes in its laws. (See Mamaroneck Code 240-5) The HMP should (but does not) state that the Inner Harbor is the locale of the most concentrated water and waterfront activity in the Village and contains the Village's public boating facilities, its major waterfront

park, and all of the commercial marinas and boatyards. The HMP alludes to but does not state that a federal navigation channel that leads to the Inner Harbor.

Many things should be addressed in the HMP including: the status of underwater lands in Mamaroneck; the size and location of marinas in the harbor; fish and wildlife species; fishing activities; recreational boating; the location and activities of beach and yacht clubs; and conflicts among users.

There have been state administrative hearings and lawsuits involving ownership and use of underwater and formerly underwater lands in the village of Mamaroneck. The LWRP does not, but should, mention that the Village commissioned an extensive inventory of underwater lands in Mamaroneck Harbor which was prepared by Geoff Steadman of LR Johnston Associates and funded by NOAA and DOS. It is factually specific and makes recommendations for addressing conflicts among Harbor users. The Village should consider the desirability of enacting a local law to extend Village authority to regulate structures and other activities in the Hudson River, pursuant to NYS Executive Law § 922.

3) Executive Law § 915(5) - LWRP Elements

To approve the LWRP, the Secretary must find that the program incorporates each of the following to an extent commensurate with the particular circumstances of that local government:

(a) The facilitation of appropriate industrial and commercial uses which require or can benefit substantially from a waterfront location, such as but not limited to waterborne transportation facilities and services, and support facilities for commercial fishing and aquaculture.

- The majority of the Village of Mamaroneck waterfront is zoned residential.
- There are two waterfront zoning districts in Mamaroneck: Marine Commercial and Marine Recreation. Both districts are designed to enhance opportunities for water-dependent uses. The zoning districts were established under the original LWRP. Some explanation of how well these districts have worked in the Village should be provided.
- The boundaries of the Marine Commercial district correspond to existing marinas and boatyards; this district is divided into two smaller zones, MC-1 (General Marine) or MC-2 (Central Marine). The MC-1 district permits facilities for docking, mooring, hauling, launching, and dry storage of boats; and facilities for building, repairing and maintaining boats, marine engines and other marine equipment up to 150 tons. (Village Code § 342-36). The MC-2 provides for the same marine uses allowed in the MC-1 district but allows any principal uses permitted in a C-1 General Commercial District (with restrictions on manufacturing uses). (Village Code § 342-37).
- The Marine Recreation district hosts existing waterfront clubs, which constitute restricted public open space. (Village Code § 342-35). The zoning provides for membership clubs,

such as beach, golf, country, yacht, and similar clubs. Among the “accessory uses” are “seasonal residences for club members and their guests.” Litigation associated with the size and number of “seasonal residences” that could be constructed and used at the Mamaroneck Beach and Yacht Club (MB&YC) centered around the lack of definition of accessory use in the zoning. MB&YC had sought 19 seasonal residences. The zoning definition now caps that number at 12 seasonal residences per club.

- The industrial area is located in the northwest portion of the Village. It’s location at the foot of four drainage basins - the Sheldrake River, Mamaroneck River, Beaver Swamp Brook and Pine Brook - is most directly associated with many of the area's most serious flooding and runoff problems. Exacerbating the stormwater runoff problems, several Superfund sites regulated under the auspices of NYS DEC are located in the industrial area. The Village's Stormwater Management and Erosion and Sedimentation Control Law, (Village Code, Chapter 294) adopted to implement the original LWRP, requires that following construction there be a "zero net increase" in the volume of runoff.
- Among marine commercial uses, the HMP should (but does not) state that there are six commercial boatyards and marinas and one municipal marina found within the Inner Harbor. Four – Nichols Yacht Yard (Westchester’s largest marina), Mamaroneck Boats and Motors (a certified boat service center), Total Yacht Sales and the Village-owned Harbor Island Municipal Marina - are found along the western shoreline; and three – Safe Harbor/Post Road Boat Yard, Derektor Shipyard and McMichael Rushmore Yard - are found in the East Basin. The HMPP should (but does not) mention marina facilities in the Inner Harbor also include those maintained by the Sheldrake Yacht Club, Orienta Yacht Club, Shore Acres Point Corp., Mamaroneck Beach, Cabana and Yacht Club, and the Beach Point Club.

(b) The increased use of and access to coastal waters and the waterfront for water-related activities such as boating, swimming, fishing, walking and picnicking.

- Mamaroneck contains several publicly owned and semi-public open spaces. In particular, Harbor Island Park, 44 acres in size, is the Village's largest and most well-used park.
- The Village identifies existing access points and proposes numerous projects and studies to increase public access to the shore.

(c) The promotion and preservation of scenic, historic, cultural and natural resources as community amenities and tourist designations.

- Mamaroneck has identified 60 sites as being either listed on the State or National Registers of Historic Places or resources of local historic, architectural or cultural significance.

- The Village's Historic Preservation law (Chapter 218) appears to be well-written.
- The draft LWRP Amendment talks on p. 6 about the Village's Historic Preservation **Ordinance**. This is inaccurate since in 1973, all villages in New York lost the legal authority to adopt ordinances; they can only enact local laws. The Historic Preservation Law in fact was adopted by local law by the Board of Trustees of the Village of Mamaroneck in 1982 as L.L. No. 9-1982. Any reference to it (or any other village laws) as ~~ordinances~~ should be stricken.
- Mamaroneck focused on its scenic views in its inventory and analysis section of the draft amended LWRP, particularly in reference to its scenic vistas. The draft LWRP Amendment stated: "Views both from and to the water and open space areas merit protection and should be considered in assessing potential impairment of scenic quality." Except for Harbor Island Park, Policy 25 of the LWRP does not list the important viewing spots. This needs to be fixed. Curiously, in Section IV of the draft LWRP Amendment, which discusses public access (and not viewsheds), three properties are identified as potentially important for protecting scenic views. The viewing spots are Rushmore Avenue Street End, Orienta Avenue Street End and, Sheldrake Riverfront along Fayette Avenue. (See draft LWRP Amendment p. 93). These viewing spots should be discussed in the Inventory and should be reflected in the explanation following Policy 25.

(d) The strengthening of the economic position of the state's major ports and small harbors.

- The Village does not contain a major port or harbor(s).

(e) The redevelopment of deteriorated or formerly developed waterfronts through the re-use of existing infrastructure and building stock and the removal of deteriorated structures and unsightly conditions that have negative effects upon the waterfront area and adjacent neighborhoods, and appropriate new development.

(f) The application of local aesthetic considerations in the design of new structures and the redevelopment of waterfront sites.

(g) The protection of sensitive ecological areas, including but not limited to dunes, tidal and freshwater wetlands, fish and wildlife habitats, and the protective capability of coastal land features. Such protection will assure that land use or development will not affect such areas.

- P 97-98 - The draft LWRP amendment states that the Village of Mamaroneck contains both tidal and freshwater wetlands. According to p. 21 of the draft LWRP amendment, the Department of Environmental Conservation (DEC) has mapped and regulates one freshwater wetland, Magid Pond, in the Village of Mamaroneck.

- Village Code Chapter 192 is confusing and could benefit from being rewritten. The Chapter is titled, and purports to regulate, “Freshwater Wetlands.” It invokes ECL Article 24 alone as authority for local exercise of authority over freshwater wetlands. The important definitions of “boundaries of a wetland,” “project,” “regulated activity,” and “freshwater wetlands map,” are all keyed to freshwater wetland regulation. However, “wetlands” is defined as “[l]ands and waters of the state that meet the definition provided in § 25-0103, Subdivision 1, of the New York State Tidal Wetlands Act...” as well as those soils classified as federal wetlands comprising hydric soils and those soils meeting the parameters in the Federal Manual for Identifying and Delineating Jurisdictional Wetlands. However, wetland is not defined as including a “freshwater wetland.” Why tidal and federal wetlands are regulated under a local freshwater wetlands law, but not freshwater wetlands themselves, is confounding. Equally bewildering, the Village’s Wetland Permit Application seemingly applies to both freshwater and tidal wetlands www.village.mamaroneck.ny.us/Pages/MamaroneckNY_Building/apps/08%202017%20WETLANDS%20PERMIT%20APP.pdf but the draft LWRP amendment says the DEC and the federal government regulate tidal wetlands, not the Village. (P. 21).
- The Village could regulate tidal wetlands if it wishes under ECL Article 25. The draft LWRP amendment recognizes wetlands play an important role in controlling flooding and stormwater runoff. “It is a well-documented that wetlands are a critical component in the protection of both surface and groundwater quality. Wetlands absorb and contain floodwaters and remove significant quantities of pollutants through a combination of physical, chemical and biological processes.” (Pp. 81-82). It makes sense to rewrite Chapter to address tidal and freshwater wetlands in a complete manner.
- The LWRP states:

“The current Village wetlands regulations, primarily encompassed in Chapters 192 (Freshwater Wetlands) and 240 (Management of Coastal Zone, Harbor and Watercraft) of the Village Code, *contain several inconsistencies and redundancies that should be addressed*. In addition, the Planning Board's jurisdiction over wetland permits often creates confusion and redundancy, as applicants seeking to construct or alter in-water structures (i.e. bulkheads, piers and docks) must gain structures permit approval from the HCZMC pursuant to the requirements of Chapter 240-21, as well as wetland permit approval from the Planning Board. There are also inconsistencies and conflicting requirements regarding provision of notice in connection with actions proposed to be taken in or within specified distances from wetlands.” (P. 97, emphasis added).

One of the possible solutions mentioned is to “[t]ransfer jurisdiction from the Planning Board to the HCZMC for wetland permit applications coupled with a marine structures or perimeter permit application before the HCZMC. The Planning Board would retain

jurisdiction to determine wetland permit applications coupled with a site plan or subdivision application before the Planning Board. This will eliminate duplication of effort and costs to applicants.”

- No Coastal Fish and Wildlife Habitats of Statewide Significance have been designated within or adjacent to the Village of Mamaroneck. However, in Policy 7a, the Village of Mamaroneck has identified 17 habitat areas of local significance that the Village wishes to specially manage and protect. The boundaries of these local habitats need to be mapped with certainty and have supporting habitat narratives that describe each habitat. The narrative provides site specific fish and wildlife documentation, as well as useful information for impact assessment. It provides an assessment of activities having potential impacts on the viability of the area as a habitat and suggests appropriate management practices for protecting the habitat.

(h) A statement identifying those elements of the program which can be implemented by the local government, unaided, and those that can only be implemented with the aid of other levels of government or other agencies. Such statement shall include those permit, license, certification or approval programs, grant, loan, subsidy or other funding assistance programs, facilities construction and planning programs which may affect the achievement of the waterfront revitalization program.

(i) The establishment of a comprehensive harbor management plan and the means for its implementation.

- See # 2 above

4) Implementation Measures-Local Laws

(a) New or revised laws and regulations

Mamaroneck identified no laws as new laws necessary to implement the LWRP. As this is an amendment to an already approved LWRP, the Village of Mamaroneck Consistency Law has already been adopted as Chapter 240 (Management of Coastal Zone, Harbor and Waterfront). Notably, in 2014, amendments were made to Chapter 240 (1) transferring jurisdiction from the HCZMC to the Board of Trustees to determine consistency for Type I and Unlisted actions undertaken, funded or approved by the Board of Trustees; and (2) providing that prior to making its consistency determination, the Board of Trustees shall refer the action to the HCZMC for a written recommendation on the consistency of the proposed action.

Changes still must be made to Chapter 240. Section V of the Draft LWRP amendment details many proposed revisions that are necessary to implement the LWRP, including defining “actions” and “minor actions.” (These recommendations begin at p. 107). Also, Village’s current law does not list any of the policy statements against which applications will be judged;

the policy statements constitute the standards for purposes of administrative decision-making. Moreover, the draft LWRP amendment itself recognizes the need to correct the inconsistencies and redundancies in the Village of Mamaroneck Consistency Law (p. 97) and the desirability of ensuring that the HCZMC is involved in the processing of wetland applications. A revised Chapter 240 could also formalize its rule providing for a *preliminary consistency review* at the outset of a land use application. The draft LWRP amendment also proposed to amend Chapter 240 to establish buffers along navigation channels and other waterways.

Also, the Village indicated, in Section V, that it will examine and consider the desirability of enacting a local law to extend Village authority to regulate structures and other activities in the Hudson River, pursuant to authority given to the Village in Article 42 of the NYS Executive Law. (Section V, p. 14).

Finally, the draft LWRP amendment notes: “The 2012 Comprehensive Plan recommends rezoning the Hampshire property – potentially to a public recreation zone or a lower density residential zone – to preserve Hampshire’s open space to the greatest extent possible. The Comprehensive Plan also recommends exploring a rezoning of the Village’s parks and other major open spaces from R-20 to a zone that better reflects their use.” (P 85). It would be appropriate for the Board of Trustees to address this issue 7 years after it was recommended.