

COMMENTS TO PROPOSED REVISIONS TO TREE ORDINANCE Dean Travalino

'There is no single ordinance that works for every community. Each community should determine its unique needs and how its tree ordinance will fulfill those needs. It is often useful to look at tree ordinances of neighboring municipalities and talk to people from those municipalities to find out what in their ordinance has worked well and what needs improvement. A provision for a tree board may be a stand-alone ordinance or it may be incorporated in the tree ordinance.'" NYSDEC

Chapter 203. TREE PRESERVATION

§ 203-1. Purpose.

The preamble states that the Tree Ordinance addresses concerns for wetlands, stormwater runoff on steep slopes and carbon absorption and concludes that the value of trees is **"essential and self-evident."** Nevertheless, the proposed ordinance significantly restricts homeowners' rights to enjoy their properties. Few tree ordinances in the State regulate tree cutting on private property when it does not interfere with the public way. Fines including remediation can be large and subject to litigation. The more reasonable the regulation and fairness the enforcement the more compliance there will be.

CLEAR-CUTTING The cutting down and/or removal of live trees from any residential property within the Town of Lewisboro in the absence of any visible evidence of one or more of the following circumstances: (i) such tree being dead, diseased, and/or in a state of irreversible decline or decay, as determined by a professional arborist (or other licensed tree service professional retained by the property owner or resident); or (ii) posing a substantial risk of endangering life or property if any such tree or trees are not cut down and/or removed from the residential property in question. This definition shall not include activity described in **§203(B)(4) of this Chapter.**

1. The stated purpose of the 2021 ordinance was to prevent "clearcutting" under the common understanding of the term occasioned by what was an extremely rare occurrence several years ago. At the time the town only regulated clearcutting in the wetlands law. Under the current tree ordinance homeowners are now limited to cutting up to three trees per year between 6 inches and 18 inches regardless of the size of the property. A permit is required for any one tree 18 inches or larger. Neighboring towns use a formula that expresses the number that can be cut annually in relation to the number of acres, for example: North Salem, properties of two acres or less -4 trees, more than two acres -2 trees per acre, any size property 19; Bedford; 9 trees on properties of four acres or less, -19 trees on properties of six acres or less, etc. Even the Town's wetlands law contains such a formula.

CLEAR-CUTTING Section 217 Lewisboro Wetlands and Watercourses

-Any cutting of live trees four inches or more in diameter at breast height above the ground by more than 30% per contiguous acre of any wetland, and/or regulated buffer area, during a single ten-year period as determined on the basis of wetland area per lot or group of lots under single ownership.

2. Much of the language after the first sentence is confusing, redundant and better addressed in the body of the ordinance. For example, when is a tree so hazardous that it can be cut down with a photograph or if an emergency is tree specialist approval necessary? What records need to be kept? Should a permit be filed after the fact? Seems to confuse without 203-4 (B). Why not just:

CLEAR CUTTING: the cutting down or removal of any live tree 6 inches or larger located within any residential property located in the Town of Lewisboro in excess of the number permitted in Section 203 4 B (4) or otherwise in violation of this ordinance.

3. In the last sentence section 203 (B) (4) the letter B and the 4 are transposed.

AGRICULTURAL ACTIVITY The activity of an active farm, including grazing and watering livestock, irrigating crops, harvesting crops, and using the land for growing agricultural products, but shall not include the operation of a dude ranch or similar operation, or the construction of new structures associated with agricultural activities, or cutting timber for sale.

1. This provision is out of sync with the public policy of the state and our neighboring town of North Salem.

– The agricultural exemption included in the state wetland law reads "farmers and other landowners." Income from the boarding and sale of horses counts as income from agricultural activities under the AG & Markets law.

-Like Lewisboro, North Salem is semi-rural community that promotes local source farming, horse riding facilities, micro farms and "backyard stables" as a means of preserving the rural character of the community and preserving open space. Their comparable definition reads as follows:

FARMING OPERATION [NS]

Any operation on a parcel of land, not less than four acres, that is used for soil-dependent cultivation of agricultural crop production and/or the raising of livestock, poultry or dairy products, raising of fur-bearing animals, the keeping of horses and livery or boarding stables, as permitted under Chapter 250, Zoning. The definition of "farming operation" excludes dog kennels.

[LEW]

SPECIMEN TREE – A tree with a dbh of **18 inches or larger**, and small native or ornamental flowering trees with a dbh of eight inches or larger.

*In Lewisboro any "**Specimen Tree**" must have a permit issued regardless of the number of trees permitted under the annual cutting limitations. in North Salem Specimen Trees also require a permit but they are defined as having a diameter of 36" inches or larger (Pound Ridge 24 inches). Bedford requires a permit for any tree cut 18 inches or larger, does not have a "specimen tree" definition, but does have a "special historic trees" provision for trees designated by the Town Board with the advice of the Tree Advisory Board.*

[Lew]

§ 203-3. Administration and Enforcement.

- A. The Town Board will designate an Approving Authority to administer and enforce this chapter. The Approving Authority may be any individual duly appointed by resolution of the Town Board, including a licensed/certified Arborist and/or the Town Building Inspector. Any Approving Authority shall seek the advice and recommendation of the

Wetlands Inspector or any licensed/certified Arborist engaged by the Town Board (as may be applicable) for purposes of reviewing any application seeking issuance of a permit pursuant to the Chapter. Any contractor performing services pursuant to any permit issued under this Chapter shall be duly licensed for such services by the County of Westchester.

The Approving Authority shall:

- (1) **Consult with any other experts as deemed necessary;** including but not limited to the **individuals** set forth in subsection (A) above as required to administer this ordinance.

This section appears to create an enforcement scheme that grants plenary power to one person as yet unnamed. From the discussions at a previous town board meeting, it appears that the officer will most likely be the Building Inspector, who has a different set of skills and authorization under Town Law. **The proposal seems to confuse the "ministerial" role of the exercise of police power to enter properties and enforce the law, with the discretion needed to decide the scope of any permit issued and the restitution required for violators, in effect making such official judge, jury and executioner. And police!**

North Salem designates the building inspector but the role is administrative with all discretionary responsibilities given to the Planning Board. Bedford appoints an Enforcement Officer. The building inspector may process applications in conjunction with building permits but on the same standards as the enforcement officer and any other approval authorities.

At the last meeting discussing the ordinance the CAC chair expressed confidence in the administration of the law as long as the current Building Inspector is in office. The law should be written to work in all cases not with one individual in mind.

NS: Administration and enforcement.189 8

A. Planning Board review of applications for tree removal permit
The review, and approval or denial, of tree removal permits shall be under the jurisdiction of the Planning Board.

B. Building Inspector administration and enforcement.

1. This chapter **shall be administered and enforced by the Building Inspector.**

2. The Building Inspector may enter upon the application property for the purpose of inspection to determine compliance with this chapter, compliance with Planning Board issued tree removal permits, and for the purpose of undertaking any investigation, examination, survey or other activity necessary for the purposes of this chapter.

F. [Under this section the NS planning board may waive the a hearing under certain circumstances including where an area of less than 1 acre is being disturbed, and/or modify the documentation required with the application (Greenburgh accepts photographic documentation in some cases).**Remediation is also under the discretion of the planning board.**]

Bedford

Approval granted by other agencies. 112 4.d.

Approvals granted by **the Planning Board, the Wetlands Control Commission and the Building Inspector** shall be deemed tree removal permits when tree removal or preservation is specifically proposed in conjunction with applications submitted to such agencies. **These agencies shall apply the criteria, procedures and standards of this chapter** and shall consider how tree removal might be reduced by changes to the application being considered. **The opinion of the Enforcement Officer or the Tree Advisory Board may be sought to assist such agencies in their determinations.** These agencies shall record in their determinations the specific tree removal which they approved.

§ 112-6. Conditions. The Enforcement Officer or the enforcing agencies listed in § 112-4D above **may seek the advice of the Tree Advisory Board** and may impose conditions upon the granting of a tree removal permit.

III. Establishment of a Tree Board

Establishment includes defining membership, terms, duties, and meetings.

New York State Department of Environmental Conservation guide for municipalities looking to establish tree ordinances advises the creation of a tree board. at <https://www.dec.ny.gov/lands/5276.html>

Lewisboro's Section 203 does not provide a Tree Advisory Board to allow the community to participate in the process and work with the Approving Authority to meet the vision of the homeowner in a reasonable and balanced way. North Salem, Pound Ridge and Bedford within their ordinances apply the same standards to all Approving Agencies in order to reach a decision and craft conditions to the permit and remediation, if appropriate (see Appendix).

STANDARD OF REVIEW - BUILDING INSPECTOR

While Bedford, Lewisboro and North Salem all have similar STANDARDS OF REVIEW that apply equally, (see Appendix), in Lewisboro, the proposed revision to Section 203 4. B (3). relating to building permits gives to the Building Inspector **extraordinary discretion** that does not exist in any of our neighboring ordinances. Before its revision in 2021 Lewisboro's tree law (also Chapter 203) specifically exempted any cutting of trees **"in connection with** the construction, reconstruction, enlargement, moving or structural alteration of a building or other structure." The "in connection with" language remained in the new ordinance enacted in 2021. The 2023 proposed revision gives the Building Inspector unfettered discretion to decide what trees are **"essential"** to the applicant's project and what mitigation would be required to minimize the impact. The ZBA does not have the time, structure or expertise to work in a collaborative way to develop the conditions and/or remediation in the first place, especially since it hears appeals of those decisions. What if a homeowner is looking to build a home extension or new structure, like a tennis court, dock or patio. How many leaves or roots must they put up with? Or a paddock for horses or just a meadow in the backyard, especially where they have complied with storm water, steep slopes, wetlands, zoning, ACARC, etc.

Lewisboro's current law (2021) B. Exempt Activity (2023 proposed change in red)

203 4. B (3) Tree removal in connection with the construction, reconstruction, enlargement, moving or structural alteration of a building or other structure, including construction and installation of site improvements related thereto, for which an application for a building permit shall have been approved by the Building Inspector. Any such building permit application shall include a listing or inventory of trees proposed for removal. **The building inspector shall have the discretion to limit the removal of trees to those which are deemed essential to construction.**

Suggestion:

- A. **203 4. B (3)** Tree removal in connection with the construction, reconstruction, enlargement, moving or structural alteration of a building or other structure, including construction and installation of site improvements related thereto, for which an application for a building permit shall have been approved by the Building Inspector. Any such building permit application shall include a listing or inventory of trees proposed for removal. **The building inspector shall have the option with the advice of the Tree Advisory Board and other relevant agencies to limit the removal of trees in a reasonable manner that fulfills the vision of the applicant and is in accordance with the Standards of Review set forth in Section 203 4. C. Any such determination shall be recorded and deemed a Tree Permit.**

[Notes]

- If Planning Board is to make determinations for issuance of Tree Permits then consider adding a Tree Advisory Board and reference in Section 203 4.C.
- If town retains a qualified Enforcement Officer (Forestry Officer in towns like Greenburgh) then revise ordinance to show consultation with Tree Advisory Board with appeal to ZBA.
- Review of tree removal in special character zone should be limited to specimen trees whether 18, 24 or 36 inches and/or "special historic trees." by enforcement officer or planning board in collaboration with Tree Advisory Board.
- Qualified Enforcement Agent (such as part-time Forestry Officer in Greenburgh) would take some pressure off building department and planning board's wetlands administration and improved turnaround times.
- Reading the actual law is not the ideal way to inform the public on what they need to do to conform with the ordinance. Greenburgh's website includes links to the Westchester County contractors license look up page and a website to help locate a licensed Arborist. Bedford's website contains a tree ordinance page with a concise and complete explanation of how to comply:

[Understanding Our Tree Ordinance - Town of Bedford \(bedfordny.gov\)](https://www.bedfordny.gov/Understanding-Our-Tree-Ordinance)

APPENDIX

STANDARDS OF REVIEW

Lewisboro 204 4. C. Standards of Review. In making its determination to grant, deny or grant with conditions a tree removal permit under this chapter, the Approving Authority shall consider the following factors:

- (1) Whether the removal will have a significant adverse impact on ecological systems, including erosion potential and wildlife habitat.
- (2) Whether the removal will have a significant adverse impact on other properties or roadways, including an impact on screening or drainage.
- (3) Whether removal of a tree on a steep slope or very steep slope is likely to impact the stability or runoff from that slope and have an adverse impact on stormwater pollution or require additional stormwater management practices.
- (4) Whether the tree is a specimen tree and, in the discretion of the Approving Authority, alternatives exist that would achieve the objectives of the applicant without removal of the specimen tree.
- (5) Whether the tree is designated by the NYSDEC as a protected native plant.
- (6) Whether possible or practicable alternatives exist.

NS

Standards for approval.

A tree removal permit may be granted provided the Planning Board finds that the approved regulated activity will not result in soil erosion, impairment of adjacent trees to remain, adverse drainage or other conditions which would impair the use of the property in accordance with the provisions of Chapter 250, Zoning, of the Code of the Town of North Salem, and that such activity will be in harmony with the general purpose and intent of Chapter 250, Zoning, and this chapter, and if the Planning Board further finds that the permit to be granted is capable of being completed within a reasonable time.

Bedford

Standards. The Enforcement Officer shall grant or grant with conditions a tree removal permit unless one of the following conditions for denial is found to exist: (1) The trees proposed for removal include landmark/special trees or trees designated as threatened or endangered on the New York State Department of Environmental Conservation list of protected native plants. (2) The removal will have significant adverse impact on ecological systems, including erosion potential and wildlife habitat. (3) The removal will have significant adverse impact on other properties or roadways, including impact on screening or drainage.

SAMPLE TREE ADVISORY BOARD (Town of Bedford)

112-10 A. For the purposes of advising the Enforcement Officer, the Building Inspector, Planning Board, the Wetlands Control Commission, the Town Board, the Department of Public Works, the Recreation Department and other agencies and officials of the Town of Bedford and the residents of the Town of Bedford on matters related to the preservation, planting and removal of trees and on the tree removal and planting programs of the Town, the Town Board establishes the Tree Advisory Board. [Amended 8-5-2008 by L.L. No. 7-2008].

B. The Tree Advisory Board shall be composed of up to nine members, each appointed by the Town Board to serve five-year terms, except that when the Tree Advisory Board is initially constituted, one member shall be appointed to a term of five years, one member to a term of four years, one member to a term of three years, one member to a term of two years and one member to a term of one year. Members shall be residents of the Town of Bedford. One member shall be designated Chair by the Town Board. The Enforcement Officer shall be a member of the Board, ex officio. [Amended 8-5-2008 by L.L. No. 7-2008]