

Record 2-10-26
FireDean Schilling

FEB 10, 2026 - WRITTEN STATEMENT BEFORE TOWN BOARD

RE: 250-78 Proposed Amendment to Wetland Code
FireDean Schilling , 99 Willow Lane **Target Time: 10:00**

I. INTRODUCTION: HANDOUT

Greetings everyone this lovely Feb evening , my name is FireDean Schilling , I live at 99 Willow Lane

In the packet we just passed you will find a chart...Reccomend keeping it handy—I will be referencing it throughout.

Before we go anywhere I want to explain why my fingernails are always dirty. My father was an organic gardener before that was a even a thing . My brothers and I helped him propagate azaleas beginning about age five. My sister owns Horsford Gardens one of the oldest plant nurseries on the East Coast. Im not sure exactly but for the past 40 years give or take I've planted north of 1,000 trees, shrubs, and perennials a year..

And it is *because* I love Clinton and care deeply about land stewardship that I am terrified of this law.

So...I am here to warn you that the legislation you are about to vote on is not just bad policy—it is legally defective. It penalizes the very people who are trying to improve the land, and it is built on a procedural contradiction that I believe will lead to its annulment.

II. THE LEGAL DEFECT & THE CHART

"So let's look at **this Chart** . Specifically, **Row 3** and **Row 4**.

On the Left column—the **Current Code**—you see what Im calling the 'Off-Ramp.' Under the current law, the Planning Board has the discretion (via Section H) to look at a minor project and determine it is 'insignificant.' They can suspend the permitting process and issue a permit immediately.

Now look at the Center column—the **Proposed Law**. Under *the Proposed Law* you are *deleting* that Off-Ramp. You are creating a 'Mandatory Referral' in search of an area variance so off to the ZBA you go.

The text of your SEQR application however suggests you kept the waiver, and its just moved into Section F.'

That is factually incorrect.

Because...Section F only governs the 'Application *Process*.' It allows the Board to waive specific *line items* of an application—such as a list of plant species, or a soil description. Section F **does not allow The Planning Board to waive the application itself.**

This is a critical distinction. By deleting Section H, you are removing the Planning Board's ability to say this activity (removing ivy poison ivy, digging out garbage) is inconsequential, or an extenuating circumstance , or need only be reduced in scope . As **Row 4** of the chart shows, if a project triggers the strict 30-cubic-foot threshold, the Planning Board *must* deny the permit and refer the resident to the **Zoning Board of Appeals (ZBA)**.

You cannot claim '*No Change in Intent*' on your state forms while simultaneously deleting the primary relief mechanism. That is a material contradiction. If you vote 'Yes' tonight, you are codifying a defect that invites an Article 78 proceeding."

III. THE TECHNICAL TRAP: THE MAP (4:00 - 6:30)

I cant go to the DEC if its less than 12 acres the DEC will tell me: 'Not our problem. It's too small.' **Under this new law the town is saying if you want our blessing you gotta go to the ZBA and until then if for any reason you remove poison ivy, plant a tree, build a garden larger than a kitchen table , you are in violation.**

So, lets assume the law passes and now the only path forward is through a ZBA variance. The ZBA is now, according to this law, saying you need to use the map on the Clinton NRI.

(PLEASE, for REFERENCE - lets look at the Large 2012 Hudsonia Map.)

This map is The 2012 Hudsonia Map—Ive made it easy so we are looking only at the **wetlands layer** shown here as it is in the NRI

This map is **Predictive**. It was created by remote sensing in 2012. It even has a **label at the top that says -WARNING ...not intended for legal determinations....** But remember, this law doesn't just regulate the areas on this map identified as wetlands, It also regulates a **100-foot 'Controlled Area'** around all the areas the map has identified.

So what does that mean ?

(REAL WORLD EXAMPLE #1 - 240year old barn USE OF THE HUDSONIA MAP FROM RECENT ZBA HEARING)

If I follow the Hudsonia Map and add 100-foot wetland buffers like it does it would cover over **40% of Clinton** .

But, dont take my word for it. Listen to John Lyons, a well known local environmental attorney. Just a few months ago John stood where I am now and entered this drawing which he made using the Hudsonia Map at a public hearing and entered into the record - Johns' map used the Hudsonia Map to illustrate where the wetland buffer was on this aerial photograph and he determined that 40 percent of this property was wetland or wetland buffer . The Hudsonia Map he claimed said that a barn that was built sometime in 1780's and still exists today is sitting in a Wetland Buffer

IV. REAL WORLD EXAMPLE #2: THE PHOTOS (6:30 - 8:30)

I counted FOUR examples on our street that had , by the existing law, flagrant violations viewable from the street. Clearly the town is overwhelmed already correct? Lets ask Jeff? Ok, but Im going to show you only **one** of those as a real world example...

ACTION : Look at Photo Comparison A./B and C (The Dutchess Parcel Wetland Overlay) According to the Dutchess Parcel and DEC map this property contains significant wetland areas and according the DEC map (which is undisputed) this property owner planted THREE TREES DIRECTLY INSIDE THE WETLAND, NOT THE BUFFER. These trees were not permitted, instead it appears that the owner planted them while he had an unrelated building permit open but he did not have a wetland permit. An easy fix might have been the waiver, but apparently he didnt bother and **now**, under this law that cant happen.

[ACTION: Back to CHART)

Now going back to the property that allegedly has a 240 year old barn in the wetland buffer, Refer back to **Row 5** of your Chart. Under the *Current* law, this owner actually had to spent **\$14,000** on permits to remove poison ivy , a project that ultimately was ruled not by the ZBA but by the Planning Board to be de minimis. Under your *New* law—without the Section H Waiver—not only would the planning board not been allowed to do this but the cost for the resident to get a permit jumps to **\$25,000**.

Once this law goes into effect going before the ZBA to prove doing *anything* on 40 percent of your property is worthy of receiving a variance means first hiring a wetland scientist, a civil engineer, a city planner and a land use attorney.

And look at the penalties in **Section K** of the law. A 'Subsequent Offense' is punishable by a fine of up to **\$15,000**. *'Each consecutive day of the violation may be considered a separate offense.'*

That means a homeowner with a continuing violation—such as a planted buffer or a drainage pipe—faces statutory fines of **\$15,000 per day**. And if you think threats of fines of this magnitude aren't being used against residents already than I invite you to please review the ZBA minutes.

V. CONCLUSION: THE "ALIGNMENT" MYTH (8:30 - 10:00)

Finally, on your FEAF application that the town is preparing to submit it says - *"This proposed action is to adopt a local law to amend the Town of Clinton Zoning code to **align** the Town zoning code with the January 2025 updates to Article 24 of the New York State Environmental Conservation Law."*

That is false.

Article 24 is designed for major state-level projects over 12.4 acres. Towns like Red Hook and Millbrook align with the State by updating their definitions, but they keep their waivers because they know they are regulating backyards, not huge nature preserves.

This isn't alignment. **This law takes the State standard and adds to it whole other level of bureaucracy. AND it eviscerates the only existing relief -rationale oversight by The Planning Board.**

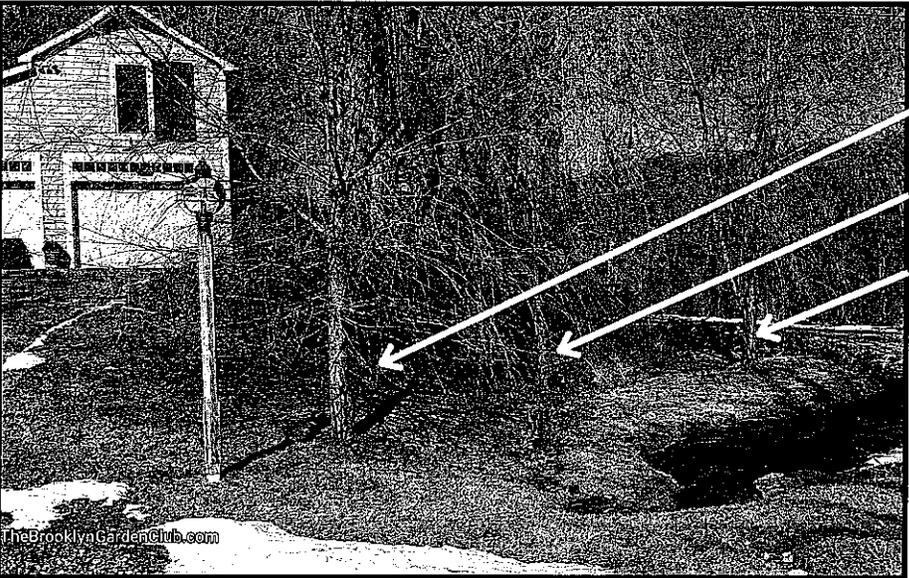
So here is your choice tonight:

You can vote 'Yes.' If you do, you pass a law that is legally defective because of your SEQRA contradiction. You invite an Article 78 proceeding that will likely annul this law. And you tell every gardener, every person (like my wife) who is severely allergic to poison ivy and wants to remove it from a buffer zone, every person who puts a french drain in their backyard to stop water from flooding into their home, or wants to plant a few trees that they'll need 25,000 dollars, an environmental scientist, engineer, urban planner and a lawyer.

OR You can **TABLE THE VOTE**. Find a better way forward. **Restore Section H**. Verify what a resident is doing and where it is by requiring the MCEI to go on site and bring his findings to the Planning Board. And then, let The Planning Board do their job.



September 2019



**(3) Unpermitted
Willow Tree
Additions Inside
Wetland
(Estimated
Rootball Size 14cf
each)
Total
Disturbance: 45
cf**

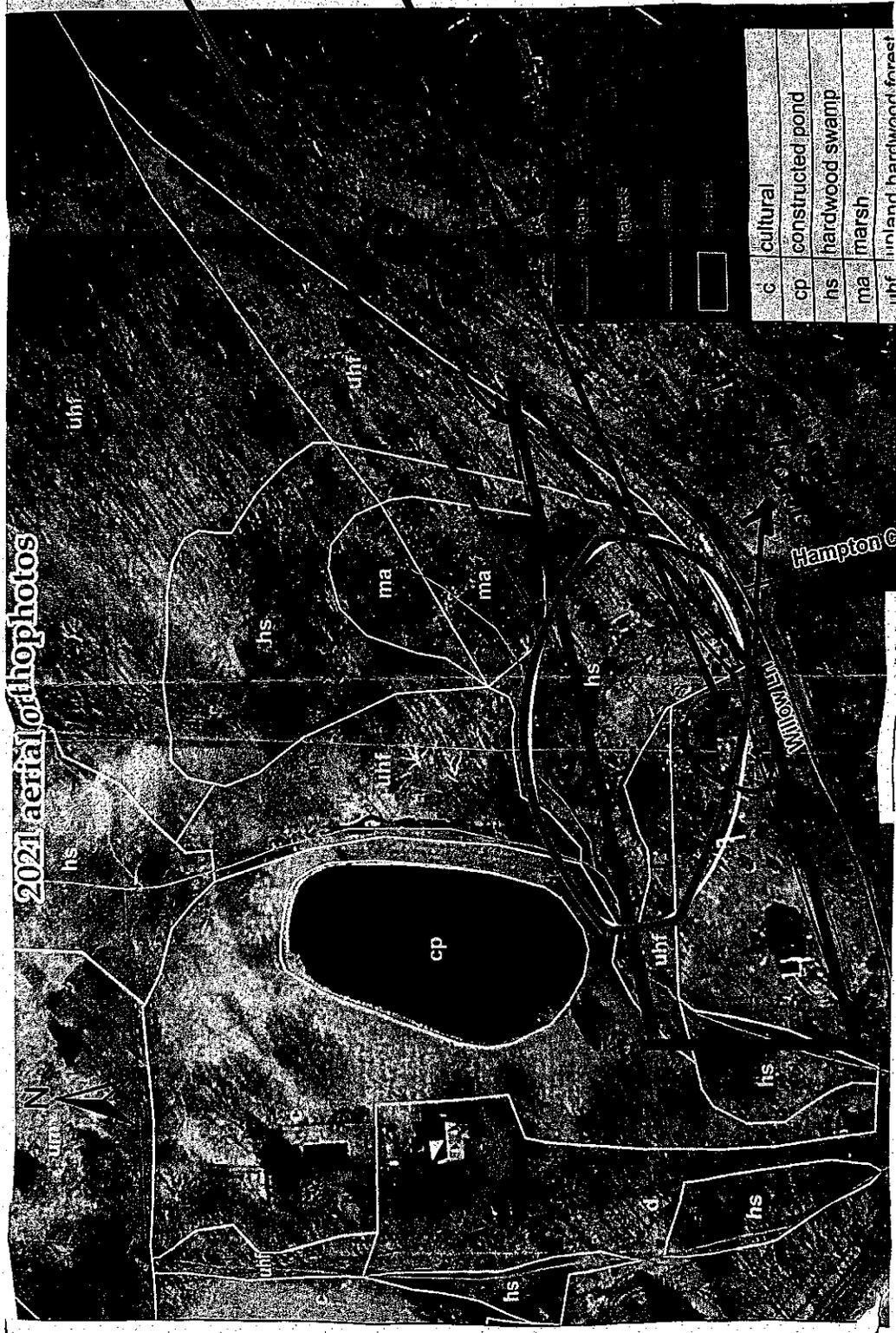
December 2025



Wetland (Dutchess Parcel Map)

STEP / ACTION	CURRENT CODE ("\$14,000 'Prove It' Cost to Resident")	PROPOSED LAW ("\$25,000 'Prove It' Cost to Resident")	SYSTEMIC IMPACT (Loss of Waiver, Planning Board Discretion)
1. THE TRIGGER (Neighbor Complaint or MCEI Site Visit)	Dispute: Resident claims land is dry; Map says "Wetland."MCEI issues Violation.	Strict Liability: 2012 Map is codified. MCEI issues Stop Work Order.	Automatic Enforcement: MCEI stripped of field judgment ; forced to enforce 14-year-old map data.
2. THE ACTIVITY (35cf soil disruption)	Assessment: 35cf is a minor infraction.	Assessment: 35cf Exceeds 30cf Threshold	Automatic Enforcement: MCEI stripped of field judgment ; forced to enforce 14-year-old map data.
3. PLANNING BOARD (The "Off-Ramp")	Discretionary Review: PB reviews impact. Can issue Waiver of Requirements (§ 250- 78H) if impact is de minimis.	Mandatory Referral to ZBA: PB has NO AUTHORITY to waive. Must deny permit or force Full Review.	Planning Board is stripped of authority; becomes a pass- through to ZBA.
4. THE ESCALATION (The "Bottleneck")	Permit Process: Resident submits data. PB eventually approves (after delays).	Mandatory ZBA Variance: Resident must apply for Area Variance to plant trees.	Jurisdictional Bloat: ZBA adjudicates minor garden projects in 'Predicted' Wetland & Buffers covering 40% of Clinton
5. RESIDENT BURDEN (Resident Cost)	Actual Cost: ~\$14,000 (Urban Planner, Environmental Scientist, Engineer, Dileneation, Legal -3 Applications).	Est. Cost: \$25,000+ (Additional Legal and Experts fees).	"Pay-to-Play": Resident pays \$25k to disprove ' predictive ' map
6. TAXPAYER BURDEN(Town Cost)	High: Multiple reviews by ZBA, Planning Board, MCEI	Extreme: Town Attorney & Consultants bill hourly for both PB and ZBA reviews.	Fiscal Waste: Taxpayers fund dual- board, and MCEI reviews for trivial garden projects.

2021 aerial orthophotos



Hudsonia Map
Wetland &
Buffer

240 Year Old
Barn

2024 ZBA Public Hearing Willow Lane Property Exhibit

Town of Clinton

Dutchess County, NY

Natural Resources Inventory - 2023

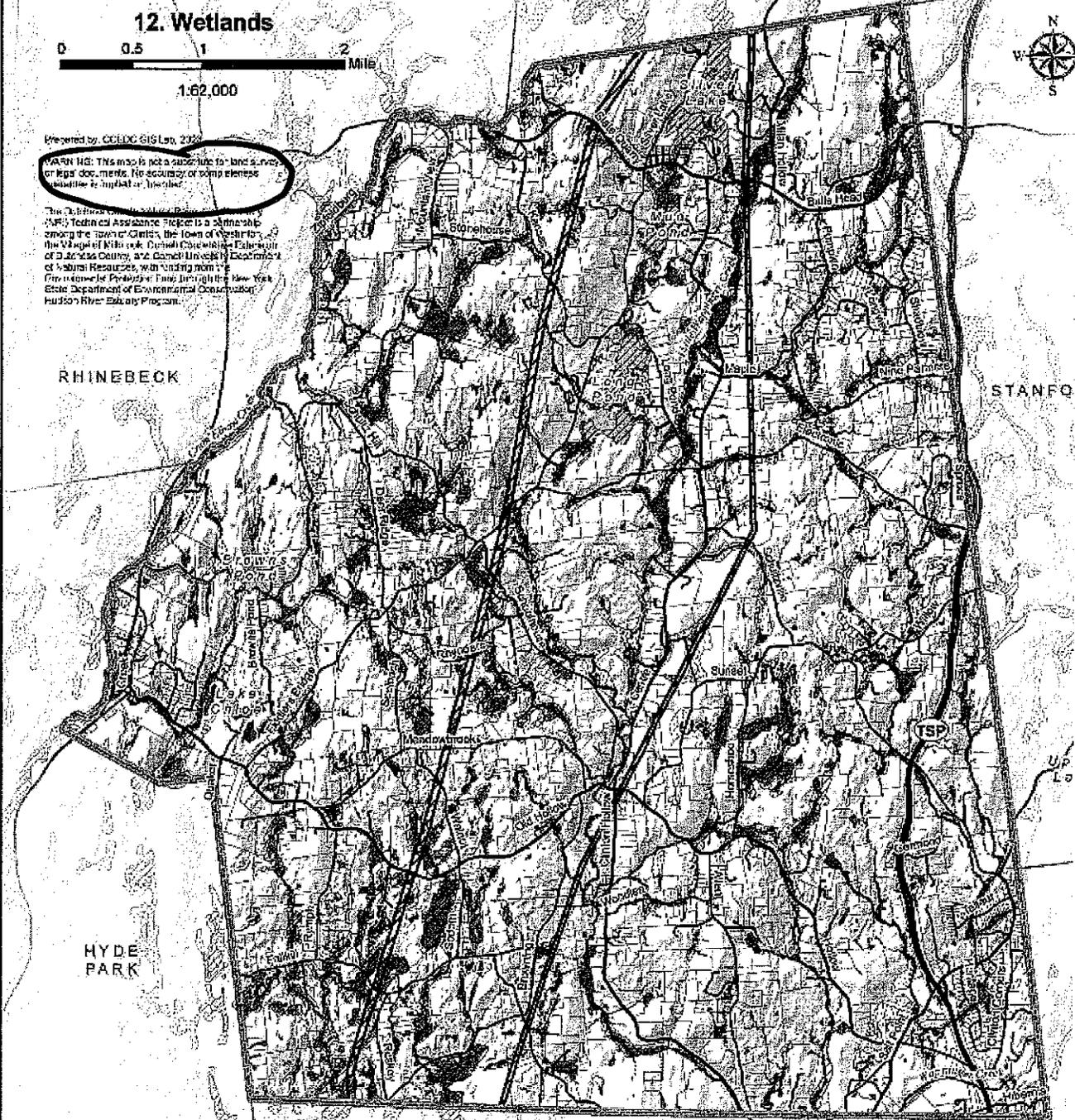
12. Wetlands



Created by: CCDC GIS Lab, 2023

WARNING: THIS map is not a substitute for field surveys or legal documents. No warranty of any kind is made by the Town of Clinton or the State of New York.

The Dutchess County Technical Assistance Program (TAP) Technical Assistance Project is a partnership among the Town of Clinton, the Town of Westerlo, the Village of Milnsink, Cornell Cooperative Extension of Dutchess County, and Cornell University's Department of Natural Resources, with funding from the Environmental Protection Fund through the New York State Department of Environmental Conservation Hudson River Estuary Program.



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|-----------------------|----------------------|-----------------------------|
| Clinton Boundary | Waterbody | Regulatory Wetland (NYSDEC) |
| Municipal Boundary | Perennial Stream | Wetland (Hudsonia) |
| Parcel Boundary | Intermittent Stream | Probable wetland area |
| Teconic State Parkway | Utility Right-of-Way | Possible wetland area |
| Major Road | | |
| Local Road | | |

DATA SOURCES

Municipal Boundaries: Dutchess County Real Property Parcel Boundaries; Dutchess County Real Property; Roads: Dutchess County GIS; 2019 Wetland: NYSDEC Regulatory Fieldwide Wetlands & Hudsonia, Ltd. 2019; Hydrology & Forest Wetlands: USGS, Soil Conservation Service 1978