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FRIDAY FAST FACTS

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Farrell Fritz Long Island Land Use and Zoning Blog

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East End Town Considering Novel Approach to Speed Up Groundwater Protection Efforts

By Philip A. Butler on January 28, 2019

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Long Island's potable water supply comes from one place: aquifers. And as the population of Long Island continues to grow steadily upward, this vital subterranean resource faces both a growing demand and a growing threat of pollution from human-driven sources. Consequently, the issues of groundwater quality and groundwater protection have been rising to the top of the list of concerns for many Long Island communities for some time.

At a recent meeting of the Shelter Island Town Board, the problem of groundwater pollution was once again up for discussion. Shelter Island, unlike some other Long Island communities, does not have public water. It also does not have public sewers. Accordingly, its residents rely on private wells and septic systems for the water supply and wastewater disposal. This reality makes Shelter Island residents particularly vulnerable to issues that arise when pollutants from septic systems—namely, nitrogen—find their way into the groundwater.

In 2017, Shelter Island's Town Board created a rebate program to incentivize owners of residential property to voluntarily replace old septic systems with new low-nitrogen septic systems. Intended to supplement Suffolk County's septic system grant program, the Town rebate is funded by the Town's

Community Preservation Fund and offers residential-property owners reimbursement of up to \$15,000 for eligible septic system upgrades. Other East End towns, such as the Town of Southampton, have implemented similar programs.

Perhaps dissatisfied with the rate of response to its rebate program, the Town is now considering a new idea to speed up the installation of low-nitrogen septic systems. During their work session on December 11, 2018, Town Board members discussed the possibility of legislation that would require a low-nitrogen septic system to be installed on any improved residential real property in the Town that changes owners and does not already have a low-nitrogen system in place. The Board members also discussed the possibility of extending the Town's rebate program to help fund those projects.

As of yet, there is no actual bill before the Town Board for its consideration, and as was made clear during its discussion on December 11th, the proposed legislation raises a number of questions that will need to be addressed:

- Would such a mandate be lawful?
 - Some could argue that the legislation would impose an illegal restriction on a property owner's ability to convey title to their property.
- What title transfers would trigger the obligation to install a low-nitrogen septic system?
 - For example, in instances of inheritance, the law could impose an unexpected and potentially unaffordable financial obligation on family members.
 - Would a long-term lease trigger the need for an upgrade?
- In the event of a sale, who is obligated to fund and perform the system upgrade as between the buyer and the seller?
 - The requirement to install a new septic system in conjunction with a sale will likely become a bargaining point during contract negotiations.
- Must an upgrade be completed before or after title changes hands?
 - If before, the law could result in the delay of certain transfers while the responsible party pursues permits, grants/rebates, and completion of the project.
 - If after, how will the Town ensure that the upgrade is completed, and what will it do if it is not?
- How will the Town ensure that transferors and transferees are aware of the law and its requirements in advance of the transfer of title?
 - What happens when unknowing parties conclude a transaction

that would have required a new system to be installed?

Whatever the answer to these questions will be, the proposed legislation, if enacted, would represent a proactive and unique approach to combatting groundwater pollution on Long Island. This office will be monitoring the progress of the law if and when the legislation makes its way before the Board.

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