

SECTION XVI WETLAND ZONING ORDINANCE

1. Purpose

In the interest of the public health, convenience, safety, and welfare, this regulation is intended to guide the use of wetland areas in order to:

- a. Prevent the town from being required to construct central sewer and water treatment facilities, which will be necessitated by the unwise use of wetland areas and the subsequent pollution of surface and ground waters by septic systems.
- b. Prevent development on wetlands, which will cause the pollution of surface and ground waters.
- c. Encourage environmental diversity by protecting and maintaining existing wetland systems and the vegetation and wildlife habitat supported by such systems.
- d. Preserve natural floodwater storage areas and protect persons and property from the increased danger of flooding which results from inappropriate development on wetlands.
- e. Protect water recharge areas necessary to maintain adequate ground water supply and augment stream flow during dry periods, and;
- f. Encourage uses that can appropriately and safely be located in wetland areas in accordance with the above purposes.

2. Wetlands Defined (amended March 1992)

- a. Wetlands are areas that are inundated or saturated by surface or ground water at a frequency and duration to support, and that under normal conditions do support, a community of vegetation typically adapted for life in saturated soil conditions.

They include, but are not limited to, swamps, bogs, marshes, ponds, lakes, seasonal streams, brooks, or rivers, as well as soils that are defined as poorly drained or very poorly drained as defined by High Intensity Soil Maps for New Hampshire as prepared by the Society of Soil Scientists of Northern New England.

- b. A qualified soil scientist is a person qualified in soil classification and mapping who is recommended or approved by the New Hampshire State Conservation Committee or the Rockingham County Conservation District.

- c. The location of a wetland boundary in any particular case must be determined by on-site inspection of soil types and vegetation.

This data shall be prepared by a qualified soil scientist using the current standards of High Intensity Soil Maps of New Hampshire as prepared by the Society of Soil Scientists of Northern New England.

Any necessary soil testing procedures shall be conducted at the expense of the landowner or developer.

WETLAND: Any area falling within the jurisdictional definitions of Newton Wetland Ordinance. The Town of Newton has adopted the following language of RSA 482:A:2X. "Wetlands" means an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support a prevalence of vegetation typically adopted for life in saturated soil conditions. (Amended March 2005)

Also to adopt the following language of RSA 674:55 as further wetlands definition.

674:55: Wetlands. Whenever the term "wetlands" whether singular or plural, is used in regulations and ordinances adopted pursuant to this chapter, such term shall be given the meaning in RSA 482-A:2,X and the delineation of wetlands for purposes of such regulation and ordinances shall be as prescribed in rules adopted under RSA 482-A. Nothing in this subdivision shall be construed to limit the powers otherwise granted under this chapter for municipalities to plan land use and enact regulations based on consideration of environmental characteristics, vegetation wildlife habit, open space, drainage, potential for flooding and protection of natural resources, including critical or sensitive areas or resources and groundwater. In the context of such authority, municipalities may define and delineate resources or environmental characteristics, such as wet soils or areas, and shoreline or buffer areas, in a manner different from the common meaning and delineation of wetlands required herein.

3. Wetland Boundaries (amended March 1992)

Wetland boundaries shall be determined from soil field sheets, which show the results of the on-site inspection of soil types by a qualified soil scientist as referenced in Section 2.

The results of the on-site soils investigation will be on file with the Planning Board and Conservation Commission and confirmed by an on-site inspection of the referenced site by the Conservation Commission and the Planning Board.

4. Appeals (amended March 1992)

In the event that a wetland or wetland boundary is questioned, any person so aggrieved by such, may present evidence to the Planning Board. If the Planning Board accepts such new evidence as valid, the wetland boundary affected will be appropriately adjusted.

5. Permitted Uses

In designated wetland areas, permitted uses are as follows:

- a. Forestry, tree farming, and agriculture.
- b. Water impoundments and well supplies.
- c. Drainage ways such as streams, creeks, or other paths of normal runoff.
- d. Wildlife habitat and development.
- e. Conservation areas, nature trails and other educational and recreations of this ordinance.
- f. Open space in accordance with subdivision regulations and other sections of this ordinance
- g. Any use otherwise permitted by the Town Zoning Ordinance and State and Federal laws that does not involve the erection of a building or that does not alter

the surface configuration on the land by the addition of fill or by dredging except as a common treatment associated with a non-residential permitted use as listed above.

- h. The construction of fences, footbridges, catwalks, and wharves only provided:
 - 1. Said structures are constructed on posts or pilings so as to permit unobstructed flow of water: and
 - 2. The natural contour and elevation of the wetland is preserved.
- i. All plans for such permitted uses of wetlands must be submitted to the Conservation Commission for review and written recommendation prior to conducting such permitted use. Said recommendation shall be addressed by the Planning Board before site plan or subdivision approval.

The Conservation Commission may retain the services of an outside consultant for the purpose of the plan review. Costs of the outside consultant retained by the Conservation Commission for the purposes of the plan review shall be at the expense of the landowner or developer.

6. Easements, Rights-of-Way

Streets, roads, and other access ways and utility rights of way or easements may be permitted, provided that:

- a. The street, road, access way of utility right-of-way or easement is essential to the productive use of land not zoned under the provisions of this ordinance.
- b. The street, road, access way of utility right-of-way or easement is so located and constructed as to minimize any detrimental impact of such uses upon the wetland.
- c. Such location and construction be compatible with the intents and purposes of this ordinance.
- d. Approval for such uses may be obtained as part of site plan approval pursuant to RSA 674:43 or the subdivision approval pursuant to RSA 674:35 (amended March 1992)

7. Calculations of Minimum Lot Size

- a. Areas designated as poorly drained soils may be utilized to fulfill twenty-five percent (25%) of the minimum lot size required by the Zoning Ordinance and Subdivision Regulations for the district wherein the wetland is located.
- b. Areas designated as very poorly drained soils, pond and lakes, or fresh water marsh may not be utilized to fulfill any of the minimum lot size required by the Zoning Ordinance and Subdivision Regulations for the district wherein the wetland is located.

8. Other Conditions, Buffer Zones (amended March 1992)

- a. No subsurface wastewater disposal system shall be constructed within a seventy-five foot (75 ft.) horizontal distance from a designated boundary of a wetland or poorly drained soil types.

No wastewater disposal system shall be constructed in or on fill material (legally or illegally placed) that has been placed over a wetland.

There shall be no filling or alteration of subsurface elevations of wetlands, poorly drained or very poorly drained soil to provide for these setback distances.

- b. No building activity requiring a building permit shall be permitted within 50 feet of any poorly or very poorly drained soil except as provided in subsection © of this section. (added March 2000)
- c. Where an existing building within the wetland setback is destroyed or in need of extensive repair, it may be rebuilt provided that such rebuilding is completed within two years of the event causing destruction. The new or rebuilt structure shall not extend further into the wetland or setback than the original foundation. (added March 2000)
- d. No human or animal manure shall be stored or released in a manner, which may adversely affect wetlands.

9. Other Provisions (added March 1992)

- a. The Building Inspector shall not issue any permit for construction within a wetland, poorly drained or very poorly drained soil area unless such activity conforms with the provisions of this ordinance and pertinent State and Federal regulations.
- b. Any wetlands, poorly drained or very poorly drained soil types altered in violation of this ordinance shall be restored at the expense of the violator(s) as provided by RSA 483-A:5.

10. Exceptions (added March 1992)

When an existing subsurface wastewater disposal system fails and a new system cannot be designed to meet all of the requirements of Section 8 of this ordinance, the Newton Health Officer may approve a subsurface wastewater disposal system that best meets health requirements and wetland protection requirements but does not necessarily meet all of the buffer requirements of Section 8 of this ordinance. This does not negate the requirement to obtain a State of New Hampshire Water Supply and Pollution Control Division approval.

11. Other Required Permits (added March 1992)

In all cases, prior to alternations, a State Dredge and Fill Permit must be obtained. It may also be necessary to obtain approval from the US Army Corps of Engineers.

* Qualified Soil Scientist is a person qualified in soil classification who is recommended or approved by the Rockingham County Conservation District Board of Supervisors.

** Intermittent streams are those in which surface water does not flow continuously.

12. To establish the entire Town of Newton as a Water District. The Town of Newton shall authorize the Board of Selectmen, pursuant to New Hampshire RSA Chapter 38, to establish a municipal water utility, to accept future dedications of water utility infrastructure and to acquire those portions of existing water utility infrastructure, plant and property which the Selectmen judge to be suitable for establishing a municipal water utility, with the further understanding that any agreement to accept or acquire such plant or infrastructure shall either be paid for from monies appropriated for general government purposes, or alternately, in the Selectmen's discretion, any agreement to acquire or a determination of acquisition price shall be presented to a future Newton Town Meeting for approval and ratification prior to final acquisition of water utility property.