

SECTION XXV WETLAND ZONING ORDINANCE (Added March 1980)

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 (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 adapted for life in saturated soil conditions. (Amended March 2005)

The Town of Newton has also adopted 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. (Added March 2005)

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 or 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 or 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 (Added 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 (c) 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 waste 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.

SECTION XXVI AQUIFER PROTECTION ORDINANCE (Added March 1999)

1. AUTHORITY AND PURPOSE

Pursuant to RSA 674:16-21, the Town of Newton adopts an Aquifer Protection District and accompanying regulations in order to protect, preserve, and maintain the quality and quantity of existing and potential groundwater drinking supplies and related groundwater recharge areas within the Town.

2. DEFINITIONS

Animal Feedlot: A commercial agricultural establishment consisting of confined feeding areas and related structures used for the raising of livestock as defined by 40 C.F.R. 122.

Aquifer: For the purpose of this Ordinance, aquifer means a geologic formation, group of formations, or part of a formation that is capable of yielding quantities of groundwater usable for municipal or public water supplies.

Dwelling Unit: A building or portion thereof containing one or more dwelling units, but not including hotels, motels, rooms of a boarding house, clubs, lodges, trailers, or structures solely for transient or overnight occupancy.

Groundwater: All the water below the land surface in the zone of saturation or in rock fractures capable of yielding water to a well.

Groundwater Recharge: The infiltration of precipitation through surface soil materials into the groundwater. Recharge may also occur from surface waters, including lakes, streams and wetlands.

Leachable Wastes: Waste materials, including solid wastes, sludge and agricultural wastes capable of releasing contaminants to the surrounding environment.

Non-Conforming Use: Nonconforming means use of land, building or premise which is not a use permitted by the provisions of this ordinance for the district in which such land, building or premise is situated.

Recharge Area: The land surface area from which groundwater recharge occurs.

Site Coverage: That portion of the entire parcel or site, which, through the development of the parcel, is rendered impervious to groundwater infiltration.

Solid Waste: Any discarded or abandoned material including refuse, putrescible material, septage, or sludge, as defined by New Hampshire Solid Waste Rules He P 1901.03. Solid waste includes solid, liquid, semi-solid, or gaseous waste material.

Structure: Anything constructed or erected, the use of which demands its permanent location on the land, or anything attached to something permanently located on the land.

Toxic or Hazardous Materials: Any substance which poses an actual or potential hazard to water supplies or human health if such a substance were discharged to land or waters of the Town. Hazardous materials include volatile organic chemicals, petroleum products, heavy metals, radioactive or infectious wastes, acids and alkalis. Also included are pesticides, herbicides, solvents and thinners, and such other substances as defined in the NH Water Supply and Pollution Control Rules, Section Ws 410.04(1), in the NH Solid Waste Rules He-P 1901.3(v), and in the Code of Federal Regulations 40 CFR 261 as amended.

3. DISTRICT BOUNDARIES

a. Location

1. The Aquifer Protection District is defined as the area shown on the map entitled, "Aquifer Protection District", and is hereby adopted as part of the Town's Official Zoning Map. The Aquifer Protection District includes the area delineated by the groundwater mapping studies entitled, Lower Merrimack/Coastal Study as prepared by the U.S. Geological Survey in 1991 and found in the Newton Water Resource Management and Protection Program as Map 4. It is further described on Map titled Town of Newton Aquifer-Watershed Protection District and is hereby adopted as part of the Town's Official Zoning Map. The Aquifer Protection District is an overlay district, which imposes additional requirements and restrictions to those of the underlying district. This district also delineates and protects recharge areas as well as the aquifers. In all cases, the more restrictive requirement(s) shall apply.
2. The Watershed Protection District is defined as the area which includes the Aquifer Protection District and a small portion of land in the extreme southern portion of the Town of Newton east of Route 108 and not located within the Aquifer Protection District and all areas within 250 feet of Neal Pond Brook. It is further described on Map titled Town of Newton Aquifer-Watershed Protection District and is hereby adopted as part of the Town's Official Zoning Map. The Watershed Protection District is an overlay district which imposes additional requirements and restrictions to those of the underlying district. This district also delineates and protects recharge areas as well as aquifers. In all cases, the more restrictive requirement(s) shall apply.

b. Appeals

Where the bounds of an identified aquifer or recharge area, as delineated, are in doubt or in dispute, any landowner aggrieved by such delineation may appeal the boundary location to the Planning Board. Upon receipt of a written appeal, the Planning Board shall suspend further action on development plans related to the area under appeal and shall engage, at the landowner's expense, a qualified hydrogeologist to prepare a report determining the proper location and extent of the aquifer and recharge area relative to the property in question.

4. USE REGULATIONS

a. Minimum Lot Size

The minimum lot size within the Aquifer Protection District for each newly created lot shall be the same as allowed in the underlying zoning district. Larger lot sizes may be required depending on the soil-based lot sizing standards found within the Newton subdivision regulations.

b. Maximum Site Coverage

1. Within the Aquifer Protection District, no more than twenty percent (20%) of a single lot or building site may be rendered impervious to groundwater infiltration. To the maximum extent feasible, all runoff from impervious surfaces shall be recharged to the aquifer on-site. Recharge impoundments shall have vegetative cover for surface treatment and infiltration. Furthermore, the stormwater drainage plan shall provide for the removal of sediment, oil, gasoline, and all other toxic, hazardous and solid waste materials from impervious areas. This runoff may be treated by the use of treatment swales, oil/gas separators or other devices, prior to retention and percolation of the runoff. All such techniques shall be approved by the Planning Board.

2. Maximum impervious site coverage may exceed twenty percent (20%) provided that the following performance standards are met and the plans are approved by the Planning Board or its designated agent:

a. The developer shall submit a stormwater drainage plan. Such a plan shall provide for the retention and percolation within the aquifer of all development generated stormwater runoff from a ten (10) year storm event, such that the post-development discharge volume to the aquifer is, at a minimum, equal to the pre-development discharge to the aquifer. Furthermore, the stormwater drainage plan shall provide for treatments required under b, 1.

c. Prohibited Uses

The following uses are prohibited within the Aquifer Protection Zone:

1. On-site disposal, storage, distribution, processing or recycling of toxic or hazardous materials or wastes including, but not limited to, all petroleum-based products, except as in c, 2., below.

2. Underground storage tanks except as regulated by the NH Water Supply and Pollution Control Commission and only limited to the private needs and use of the site itself, no distribution, storage, or off-site transfer of the materials is permitted. Storage tanks, if completely contained within basements, are permitted.

3. Dumping of snow carried from off-site or storage of snow and ice removal chemicals or salts.

4. Automotive uses including: Cars washes, service and repair shops, junk and salvage yards.

5. Laundry and dry cleaning establishments.

6. Industrial uses which discharge contact type wastes or any other toxic or hazardous waste on site.

d. Conditional Uses (Amended March 2004)

1. The Planning Board may grant approval for those uses listed above in d, 1 (Section d, 1 deleted by March 2004 vote) only after it is determined that all of the following conditions have been met:
 - a. the use will not detrimentally affect groundwater quality, nor cause a significant long term reduction in the volume of water contained in the aquifer or in the storage capacity of the aquifer;
 - b. the use will discharge no wastewater on-site other than that typically discharged by domestic wastewater disposal systems;
 - c. the proposed use complies with all other applicable provisions of this Section.
 - d. the land owner must prove that the standard of 4.d, 2(a) (Section 4.d, 2(a) renumbered 4.d 1(a) by March 2004 vote) will be met and that provisions for continuous perpetual compliance are in place to insure protection of the aquifer and recharge area through substantial and credible evidence submitted to the Planning Board and reviewed in accordance with Site Plan Review process, including review of submitted materials by a qualified hydrogeologist, environmental engineer or other professional consultant.
2. All conditional uses shall be subject to inspections by the Building Inspector or other agent designated by the Selectmen. The purpose of these inspections is to ensure continued compliance with the conditions under which approvals were granted. Failure to insure and maintain constant compliance with this ordinance will result in revocation of the Conditional Use Permit in accordance with RSA 676:4-a.

e. Permitted Uses

The following activities may be permitted provided they are conducted in accordance within the intent of this Ordinance:

1. Any use permitted by the underlying district of the Zoning Ordinance, except as prohibited in 4.c or regulated by 4.d of this Article.
2. Maintenance, repair of any existing non-conforming use or structure, provided there is no increase in impermeable surface beyond that permitted in accordance with 4.b of this ordinance, further provided that there is no change or expansion in use that presents increased risk to detrimentally affect groundwater quality, nor cause a significant long term reduction in the volume of water.
3. Agricultural and forestry uses, provided that fertilizers, pesticides, manure and other leachables are used according to best management practices as prescribed by the Rockingham County Conservation District, if applicable. All said leachables must be stored under shelter.

f. Special Exception for Lots of Record

Upon application to the Board of Adjustment, a special exception shall be granted to permit the erection of a structure for a permitted use within the Aquifer Protection District on a non-conforming lot provided that all of the following conditions are found to exist:

1. The lot upon which an exception is sought was an official lot of record, as recorded with

the Rockingham County Registry of Deeds, prior to the date on which this Section was posted and published in the Town.

2. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside of the Aquifer Protection District.
3. No reasonable and economically viable use of the lot can be made without the exception.
4. The design and construction of the proposed use will be consistent with the purpose and intent of this Section.

g. Non-Conforming Uses

Any non-conforming use within the Aquifer Protection District shall comply with all applicable provisions of the Newton Zoning Ordinance (Non-Conforming Uses) except that no expansion shall be permitted.

5. MISCELLANEOUS PROVISIONS

a. Location

Where the premises are partially outside of the Aquifer Protection Overlay Zone, potential pollution sources such as, but not limited to, on-site waste disposal systems shall be located outside and down gradient of the Zone to the extent feasible.

6. ADMINISTRATION

a. Application and Interpretation

The provisions of the Aquifer Protection District shall be applied and interpreted by the Planning Board.

b. Enforcement

The Board of Selectmen (or their duly designated agent) shall be responsible for the enforcement of the provisions and conditions of the Aquifer Protection District.