



## GENERAL BYLAWS & CHARTER

REVISED OCTOBER 200

## ARTICLE 18.

### ***Wetlands Protection Bylaw***

SECTION J. *Purpose.* The purpose of this Bylaw is to protect wetlands and adjoining land areas in the town of Westwood by controlling activities deemed by the Conservation Commission likely to have a significant or incremental effect upon wetland values, including but not limited to the following: public or private water supply, groundwater supply and quality, flood control, storm damage prevention, prevention of pollution, fisheries, wildlife habitat, and erosion and sedimentation control (collectively, the "wetland values protected by this Bylaw").

SECTION 2. *Jurisdiction.* Except as permitted by the Conservation Commission or as provided in this Bylaw, no person shall remove, fill, dredge, build upon, or alter the following resource areas: any freshwater wetland, marsh, wet meadow, bog, or swamp; any bank, lake, pond, vernal pond, river, or stream; any land under said waters; any land subject to flooding; or any riverfront area. Any activity proposed or undertaken within one hundred (100) feet of any freshwater wet- land marsh, wet meadow, bog, swamp, bank, lake, pond, vernal pond, river or stream (here- in after called the Buffer Zone) which, in the judgment of the Commission will alter an area subject to protection under this Bylaw is subject to regulation under this Bylaw.

SECTION 3. *Exceptions.* The permit and application required by this Bylaw shall not be required by this Bylaw for maintaining, repairing, or replacing, but not substantially changing or enlarging, an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, sewer, telephone, telegraph, or other telecommunication services, provided that the structure or facility is not substantially changed or altered, provided that written notice has been given to the Commission prior to commencement of work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission and provided that the Commission issues written confirmation that such performance standards and design specifications are met by the work.

The permit and application required by this Bylaw shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be per- formed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Conservation Commission prior to commencement of work or within 24 hours after commencement, provided that the Commission or its agent certifies the work as an emergency project, pro- vided that the work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency, and provided that within 21 days of commencement of an emergency a permit application shall be filed with the Commission for review as provided in this Bylaw. Upon failure to meet these and other requirements of the Commission, the Commission may, after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

The presumption that activity undertaken within thirty-five (35) feet of certain resource areas shall alter those resource areas, as set out in Section 8(k) of this By-law, shall not apply to (a) any lot shown on a subdivision plan filed and approved by the Planning Board pursuant to General Laws chapter 41, sections 81 P or 81 S, for which application for Planning Board endorsement or approval has been made prior to March 1, 1998, to (b) any lot otherwise in existence as of March 1, 1998, or to ( c ) the repair, maintenance, alteration, reconstruction or expansion of any structure in existence as of March 1, 1998. Such land and structures shall be subject to the presumption that any activity undertaken within ten (10) feet of the boundary of a wet- land, bank, pond, vernal pool, stream or river shall alter that resource area. The subdivision of any lot otherwise grandfathered pursuant to (a) or (b), above, shall be subject to the 35 foot set- back presumption.

Other than stated in this section, the exceptions provided in the Wetlands Protection Act (G.L. c. 131, S. 40) shall not apply.

SECTION 4. *Applications for Permits and Requests for Determination.* Written application shall be filed with the Commission to perform activities regulated by this Bylaw affecting resource areas protected by this Bylaw. The application shall include such information and plans as are deemed necessary by the Commission to describe the proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this Bylaw.

The Commission in an appropriate case may accept as the application and plans under this Bylaw the Notice of Intent and plans filed under the Wetlands Protection Act, G.L. c. 131, S. 40.

Any person desiring to know whether or not a proposed activity or an area is subject to this Bylaw may in writing request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission. The Commission in an appropriate case may accept as the application and plans under this Bylaw the Request for Determination and plans filed under the Wetlands Protection Act, G.L. c. 131, S. 40.

Any person filing an application for a permit or a request for determination shall do so with the Commission by certified mail, return receipt requested.

At the time of an application for a permit or request for determination the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, G.L. c. 131, S. 40, and shall be commensurate with the costs incurred by the Commission.

To assist its review of permit applications, the Commission may engage scientific and environmental professionals to review applications for technical accuracy and compliance with this Bylaw, including delineation of wetland boundaries, identification and verification of wetland features, identification and assessment of wildlife habitat, and the review of hydrological data or calculations. The Commission is authorized to require the applicant to pay the costs and expenses of any expert consultant deemed necessary by the Commission to review the application. The Commission may waive the filing fee and costs and expenses for an application or request filed by a government agency and shall waive them for a request for determination filed by a person having no financial connection with the property which is the subject of the request.

SECTION 5. *Notice and Hearings.* Any person filing an Application for a Permit shall do so with the Commission by certified mail, return receipt requested, and such application shall also include a certified list of abutters within 300 feet, according to the most recent records of the Assessors, including those across a traveled way or a body of water. The Commission shall set the date and time for the Public Hearing for the Application, and provide to the Applicant a copy of a Public Hearing Notice which shall be published at the Applicant's expense in a newspaper of general circulation in the Town of Westwood at least five working days prior to the hearing date.

Concurrently with newspaper advertisement, the Applicant shall post to each abutter by certified mail, return receipt requested, a copy of the Public Hearing Notice supplied to the Applicant by the Commission, and shall state where copies of the Application, including plans, may be examined and obtained by abutters free of charge. Applicants shall provide the Town Clerk with a complete copy of the Application and plans for public review.

Date of receipt of all filings made pursuant to this section shall be the date of the first regularly scheduled meeting of the Commission after certified mail receipt date.

The Commission shall commence the public hearing within 21 days of the date of receipt of an Application for a Permit. The return receipts from all abutters and/or proof of attempted delivery by certified mail shall be submitted the Commission at the opening of the Public Hearing. .

The Commission shall issue its permit or decision to deny the permit within 21 days from the close of the public hearing.

The Commission shall have authority to continue the hearing to a specific date announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the Applicant or others, information and plans required of the Applicant, reasons

deemed necessary by the Commission in its discretion. In the event the Applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.

The Commission in an appropriate case may combine its hearing under this Bylaw with the hearing conducted under the Wetlands Protection Act, G.L. c. 131, S. 40.

Any person filing a Request for a Determination of Applicability shall do so by certified mail, return receipt requested. The Commission, upon receipt of same shall provide the person making the request with a copy of a Public Meeting Notice giving the date and time at which the request will be heard. The person making the request shall post, certified mail, return receipt requested, to the owner (if not the person making the request) and to each abutter, as defined above, a copy of the public meeting notice and shall state where complete copies of the Request, including plans, if any, may be inspected or obtained free of charge. Applicants shall provide the Town Clerk with a complete copy of the Request.

The Commission shall issue a Determination of Applicability within 21 days of receipt of the Request for Determination.

The Commission in an appropriate case may combine its meeting under this Bylaw with the meeting conducted under the Wetlands Protection Act, G.L. c. 131, S. 40.

**SECTION 6. *Permits, Determinations and Conditions.*** If the Commission after a public hearing determines that the activities which are the subject of the application are likely to have a significant or incremental effect upon the wetland values protected by this Bylaw, the Commission within 21 days of the close of the hearing shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.

The Commission is empowered to deny a permit for failure to meet the requirements of this Bylaw; for failure to submit necessary information' and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or incremental effects upon the wetland values protected by this Bylaw; and where no conditions are adequate to protect those values. Due consideration shall be given to any demonstrated hardship on the applicant by reason of denial, as presented at the public hearing.

A permit shall expire three years from the date of issuance. Notwithstanding the above, the Commission in its discretion may issue a permit expiring five years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission or for projects undertaken by a government agency. Any permit may be renewed once for an additional one year period, provided that a request for renewal is received in writing by the Commission prior to expiration.

For good cause the Commission may revoke or modify a permit issued under this Bylaw after public notice and public hearing, and notice to the holder of the permit.

The Commission in an appropriate case may combine the permit or other action on an application issued under this Bylaw with the Order of Conditions issued under the Wetlands Protection Act. Prior to the commencement of any work permitted or required by a permit issued pursuant to this Bylaw, the permit shall be recorded by the Applicant in the Registry of Deeds or with the Registry of the Land Court, within the chain of title of the affected property. Certification of recording shall be sent to the Commission prior to the commencement of work. Failure to provide this certification prior to commencement shall be considered to be a violation of this Bylaw.

**SECTION 7. *Regulations.*** After public notice and public hearing the Commission shall promulgate rules and regulations to effectuate the purposes of this Bylaw. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this Bylaw. At a minimum these regulations

shall define key terms in this Bylaw not inconsistent with this Bylaw. Until such time as such regulations are promulgated, the regulations promulgated under the Wetlands Protection Act, G.L. c. 131, S. 40, shall be deemed to effectuate the purposes of this Bylaw.

SECTION 8. *Definitions.* The following definitions shall apply in the interpretation and implementation of this Bylaw.

The term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality, and any other legal entity, its legal representatives, agents, or assigns.

The term "Commission" shall mean the Conservation Commission as constituted under Article 5, Section 3, of the Town Charter.

The term "Wetlands Protection Act" shall mean Section 40 of Chapter 131 of the Massachusetts General Laws.

The term "freshwater wetland" shall mean any area, natural or manmade, in which ground-water is near, at, or above the surface of the soil for a significant portion of the growing season. Such areas have a hydrophytic vegetational community consisting of greater than fifty (50) per cent wetland plant species, and have a saturated hydric soil. Wetland plant species are considered to be those species identified by the United States Fish and Wildlife Service as occurring primarily in wetlands, or those species identified as wetland species in scientific or technical reference publications.

The term "stream" shall mean any body of water which flows either throughout the year or intermittently, in a definite channel in the ground, whether natural or manmade. A portion of a stream may flow through a culvert. Such channel in the ground must be clearly visible on the surface of the substrate at such times when the channel is dry. Streams subject to protection under this Bylaw are those that flow within or out of a pond, lake, marsh, bog, swamp or wet meadow.

Riverfront Area -the area of land between a river's mean annual high water line measured horizontally outward from the river and a parallel line located 200 feet away, except that the parallel line is located: (i) 25 feet away in densely developed areas, as designated by the Conservation Commission, and (ii) 100 feet away for new agricultural and aquacultural activities.

River -a river is any natural flowing body of water that empties to any ocean, lake, pond, or other river and which flows throughout the year. Perennial streams are rivers; intermittent streams are not rivers.

The term "land subject to flooding" shall mean any area adjacent to a water body which is inundated during the 100-year storm, as indicated on FEMA maps.

The term "pond" shall mean any body of water, either naturally occurring or manmade, which is never without standing water due to natural causes except during periods of extended drought. Swimming pools or other impervious manmade basins shall not be considered ponds.

The term "vernal pond" shall mean any naturally-occurring confined basin depression which holds water for a minimum of 2 continuous months during the spring and/or summer.

The term "alter" shall include, without limitation, the following activities when undertaken to, upon, within, or affecting resource areas protected by this Bylaw:

- (a) Removal, excavation, or dredging of soil, sand, gravel, or aggregate materials of any kind;
- (b) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns, or flood retention characteristics;
- (c) Drainage or other disturbance of water level or water table;
- (d) Dumping, discharging, or filling with any material which may degrade water quality;
- (e) Placing of fill, or removal of material, which would alter elevation;
- (f) Driving of piles, erection or repair of buildings, or structures of any kind;
- (g) Placing of obstructions or objects in water;

- (h) Destruction of plant life including cutting of trees or brush;
  - (i) Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water;
  - (j) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater;
  - (k) Any activity undertaken within thirty-five (35) feet of the boundary of a wetland, bank, pond, vernal pond, stream, or river shall be presumed to alter that resource area. This presumption may be overcome by demonstrating to the satisfaction of two-thirds of the Commission that the proposed activity will materially benefit the resource area.
- Except as otherwise provided or required by this Bylaw or Regulations promulgated hereunder, definitions set forth in General Laws Chapter 131 section 40 and the regulations thereunder (310 C.M.R. 10.00, et seq.) shall apply to the construction of terms in this Bylaw.

SECTION 9. *Security.* As part of a permit issued under this Bylaw, in addition to any security required by any other municipal or state board, agency, or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the methods described below:

- (a) By a proper bond or deposit of money or negotiable securities or other undertaking of financial responsibility equal in value to the cost of performance and observance of the conditions imposed to protect or restore the resource areas, as determined by the Commission;
- (b) By a conservation restriction, easement, or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

SECTION 10. *Enforcement.* The Commission, its agents, officers, and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this Bylaw and may make or cause to be made such examinations, surveys, or sampling as the Commission deems necessary.

The Commission shall have authority to enforce this Bylaw, its regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions.

Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission the Chief of Police shall take legal action for enforcement under criminal law.

Municipal boards and officers, including any police officer having police powers shall have authority to assist the Commission in enforcement.

Any person who violates any provision of this Bylaw, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$300.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the Bylaw, regulations, or permit violated shall constitute a separate offense.

In the alternative to criminal prosecution the Commission may elect to utilize the non-criminal disposition procedure set forth in General Laws Chapter 40, Section 21D.

SECTION 11. *Preacquisition Violations.* Any person who purchases, inherits, or otherwise acquires real estate upon which work has been done in violation of the provisions of this chapter or in violation of any permit issued pursuant to this Bylaw shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against any such person unless commenced within three (3) years following the date of acquisition of the real estate by such person or five (5) years after the violation, whichever is earlier.

SECTION 12. *Burden of Proof.* The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed, in the application will not have unacceptable significant or incremental effect upon the wetland values protected by this Bylaw. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.

SECTION 13. *Rights of Appeal.* Any person aggrieved by the decision of the Commission, whether or not previously a party to the proceeding, may file a complaint seeking relief in the Superior Court of the County of Norfolk, according to the provisions of Massachusetts General Laws, not more than 21 days after the issuance of the decision of the Commission. Such a complaint may also be filed if the Commission fails to hold a public hearing or issue an Order, Notification, or Determination within the time period required by this Bylaw.

SECTION 14. *Relation to the Wetlands Protection Act.* This Bylaw is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule Statutes, independent of the Wetlands Protection Act, G.L. c. 131, S. 40, and regulations thereunder.

SECTION 15. *Severability.* The invalidity of any section or provision of this Bylaw shall not invalidate any other section or provision thereof, nor shall it invalidate any permit or determination which previously has been issued.

*Article 18 Adopted at 1989 Annual Town Meeting (Article 10).*

*Section 8K was deleted in its entirety and a new Section 8K substituted therefore 1998 Annual Town Meeting (Article 27).*

*Section 3, Paragraph 3, added at 1998 Annual Town Meeting (Article 27).*

*Section 2 was deleted in its entirety and a new Section 2 substituted therefore 1998 Annual Town Meeting (Article 28).*

*Section 8 was amended by adding definitions of Riverfront area and River 1998 Annual Town Meeting (Article 28).*

*Section 3, Paragraph 3. was amended by extending the M.G.L. citations in line 4 to 8fS. Amended at 2000 Annual Town Meeting (Article 28).*