

Local Law No. 2 of 2008

A Local Law amending the Town of Clinton Zoning Law, Section 5.51 Freshwater Wetlands, Watercourses, Lakes, Ponds and Floodplains

Be it enacted by the Town of Clinton Town Board as follows:

SECTION 1.

The existing Section 5.51, Wetlands, Watercourses, Lakes, Ponds and Floodplains, of the Town of Clinton Zoning Law is hereby amended to read as follows:

5.51 FRESHWATER WETLANDS, WATERCOURSES, LAKES, PONDS AND FLOODPLAINS

A. Purpose

The intent of this regulation is to minimize any negative impacts caused by development to freshwater wetlands, watercourses, lakes, ponds, and floodplains and to regulate their use to maximize the public's rights to enjoy these areas. The purpose of this section is to regulate the dredging, filling, deposition or removal of materials, including vegetation; the diversion or obstruction of water flow; the placement of structures in, and other uses of, the ponds, lakes, reservoirs, natural drainage systems and freshwater wetlands located in the Town of Clinton; and to require permits therefor; and providing for the protection and control of freshwater wetlands, waterbodies and watercourses.

B. Legislative Intent

The Town Board of the Town of Clinton has determined that the public interest, health and safety and the economic and general welfare of the residents of the Town of Clinton will be best served by providing for the protection, preservation, proper maintenance and use of the town's ponds, lakes, reservoirs, waterbodies, streams, watercourses, freshwater wetlands, natural drainage systems and adjacent land areas from encroachment, soiling, polluting or natural elimination resulting from rapid population growth attended by commercial development, housing, road construction and/or the disregard for natural resources. This section is intended to protect water supplies, aquifers, storm water management capacity, chemical and pollutant filtration ability, habitat and breeding environment, and recreation opportunities provided by the Town's water resources.

C. Applicability

1. Regulated Activities which require a permit. Except as otherwise provided in subsection D herein concerning Exempt Activities or subsection H herein concerning Waiver of Requirements, it shall be unlawful, in the absence of a permit issued pursuant to this section, to do any of the following activities in any wetland, watercourse or Controlled Area (as defined below):

- a. Place or construct of any structure;
- b. Place or construct of any part of a septic system or other type of sewage disposal system, including a sewage treatment plant;
- c. Construct or install of any road, driveway, utilities or utility corridor, or other improvements, including the driving of pilings or placement of other obstructions, unless all other alternatives are clearly impractical;
- d. Conduct any form of draining, dredging, excavation or removal of material either directly or indirectly;
- e. Conduct any form of dumping, filling or depositing of material either directly or indirectly;
- f. Introduce any form of pollution, including but not limited to surface or water discharge from a sewage system, the deposition or introduction of inorganic chemicals, animal wastes, pesticides or fertilizers and the discharging of solid, liquid or gaseous wastes;
- g. Alter or modify any natural features and contours or natural drainage patterns;
- h. Construct dams or other water control devices;
- i. Clearcut trees at once or over time, not regulated under Section 5.44, Soil Erosion and Sediment Control;
- j. Create an increase or decrease in the flow, velocity or volume of water in any wetland, watercourse, lake, or pond, excluding customary seasonal raising and/or lowering;
- k. Conduct any other activity that may impair the natural function(s) of a wetland, watercourse, lake, pond, or floodplain.

D. Exempt Activities

The following activities are allowed without a permit under this section:

1. The deposition or removal of the natural products of the wetlands and adjacent areas by recreational or commercial fishing, aquaculture, hunting or trapping, where otherwise legally permitted and regulated;
2. Ordinary maintenance, repair and/or replacement of existing structures or improved areas which do not involve expansion or substantial modification, including but not limited to bridges, roads, driveways, highways, bulkheads, docks, piers or pilings;
3. Public health activities under orders and regulations of the New York State Department of Health, provided that copies of all such orders and regulations affecting wetlands have been filed with the Planning Board and that the Planning Board may request modification of such orders if it deems it necessary to implement this law;
4. Any actual or ongoing emergency activity which is immediately necessary for protection and preservation of life or property or the protection or preservation of natural resource values;
5. The application of non-polluting chemicals and dyes for the purpose of maintenance;
6. Accepted agricultural practices, except where alteration is being reviewed as part of an

application for site plan approval, subdivision approval, a special permit or a variance.

7. All activities listed in Section 24-0701(3) through (8) of the N.Y. Environmental Conservation Law as exempt from the permit requirements of the New York State Department of Environmental Conservation, and defined by 6 NYCRR §663.2 of the New York State Environmental Conservation Rules and Regulations.

8. Wetlands of 12.4 acres or greater shall be regulated by New York State Department of Environmental Conservation Law, Freshwater Wetlands Act, or as amended and updated, shall be regulated by the Department of Environmental Conservation and shall not be subject to this section.

9. All activities contemplated in pending applications before the planning board which have received at least preliminary approval or final approval provided the approval has not expired.

10. The installation of approved dry hydrants.

11. The salting and sanding of public roads by municipal and state highway departments.

E. Approval Standards

In approving or denying any application for a permit under this law, the Planning Board shall consider the effect of the proposed activity on the ecology of the wetland, watercourse, lake, pond, or floodplain, on the public health and welfare, on flood hazards, water supply and on the maintenance and enhancement of other benefits provided by such resources. The Planning Board shall apply the following standards in making its determination:

1. The potential negative impacts of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetlands, watercourses, lakes, ponds, and floodplains should be eliminated or minimized. Such impacts include:
 - a. Infilling or other modification of natural topographic contours;
 - b. Disturbance or destruction of natural flora and fauna;
 - c. Influx of sediments or other materials causing increased water turbidity or substrate aggradation;
 - d. Removal or disturbance of wetland soils;
 - e. Reductions in water supply;
 - f. Interference with water circulation;
 - g. Reduction or increases in nutrients;
 - h. Influx of toxic chemicals or heavy metals;
 - i. Thermal changes in the water supply; and
 - j. Changes affecting natural aesthetic values.
2. The impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage and water quality should be eliminated or minimized;
3. The potential for damage from flooding, erosion, winds, soil limitations and other hazards due to the activity should be eliminated or minimized;

4. Water supply and waste disposal facilities, on and off site and in areas where future development can be reasonably expected, should be adequate after the completion of the proposed activity;
5. The activity should be consistent with federal, state, county and local comprehensive land use plans and regulations including New York State Environmental Conservation Law, Article 24; and
6. All reasonable alternatives on the subject parcel shall have been thoroughly explored and no other reasonable alternative is available on a site which is not a wetland, watercourse, lake, pond, or floodplain.

F. Application Process

1. The issuance of permits for regulated activities under this section shall be the responsibility of the Planning Board, which shall be referred all permit applications deemed to be complete by the Zoning Administrator. Applications for permits for regulated activities shall be filed with the Zoning Administrator. To the extent practicable, review of any impacts on a wetland, watercourse, lake, pond, or floodplains shall take place in concert with the review of any principal activity being reviewed by the Planning Board;
2. The Planning Board may request the advice of the Conservation Advisory Committee, consultants or interested parties prior to approving any regulated activity;
3. Where an application has been made to the Zoning Administrator, Town Board or Planning Board for an action that is subsequently determined to require a permit pursuant to this section, a copy of the said application may be submitted as the permit application.
4. The applicant shall file with the Zoning Administrator an application, in such form and with such information as the approval authority shall prescribe. At a minimum, the following information shall be required:
 - (a) A written explanation of why the proposed activity cannot be located at another site, i.e., out of the wetland, watercourse, water body or controlled areas.
 - (b) Applications affecting the water retention capacity, water flow, or other drainage characteristics of any wetland, watercourse or water body shall include a statement of the impact of the project on upstream and downstream areas giving appropriate consideration to flood and drought levels and the amount of rainfall.
 - (c) A map showing all wetlands, watercourses, water bodies and controlled areas on the site under review and within 200 feet of the site boundaries.
 - (d) A description of the vegetative cover of the area, including dominant species.
 - (e) A description of the soil types on the site.
 - (f) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets or other water control devices and an analysis of the wetland hydrologic system including seasonal water fluctuation, inflow/outflow calculations and subsurface soil, geology and groundwater conditions.
 - (g) An environmental assessment form under SEQRA.

5. The Planning Board reserves the right to hire a consultant at the expense of the applicant for the purpose of collecting information necessary to make an appropriate determination of impacts on any wetland, watercourse, lake, pond, or floodplain.

G. Standards for permit decisions.

In granting or denying or conditioning any application for a permit, the approval authority shall consider the following:

1. All evidence offered at any public hearing.
2. Any reports from other environmental councils, boards or commissions and/or federal, county, state or Town agencies.
3. The environmental impact of the proposed action.
4. Irreversible and irretrievable commitments of natural resources that would be involved in the proposed activity.
5. The suitability or unsuitability of the activity to the area for which it is proposed.
6. The effect of the proposed activity to the protection or enhancements of functions of wetlands, watercourses and water bodies and the benefits they provide.
7. The possibility of avoiding further reduction of the wetlands', watercourses', or water bodies' natural capacity to support desirable biological life, prevent flooding, supply water, control sedimentation, prevent erosion, assimilate wastes, facilitate drainage and provide recreation and open space.
8. The extent to which the exercise of property rights and the public benefit to be derived from such use may or may not outweigh or justify the possible degradation of the wetland, watercourse or water body, the interference with the exercise of other property rights and the impairment or endangerment of public health, safety and welfare.
9. Whether the property is grandfathered by virtue of approvals predating the adoption of Article 24 of the Environmental Conservation Law, and the extent to which it might be deemed unfair or unreasonable to regulate wetlands under this chapter to limit development which is accordingly grandfathered from state regulation.
- 10 The comments of the Zoning Administrator, which shall be submitted in writing to the Planning Board.

H. Waiver of Requirements.

1. Should the Planning Board determine, after review of said application and upon recommendation of the Zoning Administrator, that an action proposed for a regulated area is insignificant, the Planning Board shall have the power to:
 - (a) Waive any information requirements contained in §5.51(F)(4).
 - (b) Waive referrals to outside agencies.

- (c) Suspend the permitting process for the action and authorize the immediate issuance of the permit.

2. Where the Planning Board finds that any waivers are appropriate, it shall set forth its decision and reasons therefor in writing and file the same with the Office of the Planning Board.

I. Findings.

1. Permits will be issued by the Planning Board pursuant to this section only if the approval authority shall find that:
 - (a) The proposed regulated activity is consistent with the policy of this chapter to preserve, protect and conserve wetland, watercourse and water body functions and the benefits derived therefrom.
 - (b) The permit issued for the proposed regulated activity is at least as restrictive as would result under application of the Freshwater Wetlands Act of the State of New York, N.Y. Environmental Conservation Law § 24-0501 et seq.
 - (c) The proposed activity is compatible with the public health and welfare.
 - (d) The proposed regulated activity cannot practicably be relocated on site to eliminate or reduce the intrusion into the wetland, watercourse or water body or the controlled areas adjacent thereto.
2. The applicant shall have the burden of proof in demonstrating that the proposed activity will be in accordance with the policies and provisions of this section.

J. Permit conditions.

Any permit issued pursuant to this chapter may be issued with conditions to assure the preservation and protection of affected wetlands, watercourses and water bodies, and compliance with the policy and provisions of this chapter.

K. Penalties for offenses.

Any person convicted of having violated or disobeyed any provision of this chapter, or any condition attached by the approval authority in a permit granted pursuant to this chapter shall, for the first offense, be punishable by a fine of not less than \$1,000. For each subsequent offense, such person shall be punishable by a fine of not less than \$2,000 nor more than \$15,000, and/or imprisonment of not more than 15 days. Each consecutive day of the violation may be considered a separate offense.

L. Enforcement.

1. This chapter shall be enforced by the Zoning Administrator. The Town Board may also designate other enforcement officers.
2. The Town is specifically empowered to seek injunctive relief restraining any violation, threatened violation or breach of any permit condition under the provisions of this chapter, and/or to compel the restoration of the affected wetland, watercourse, water

body or controlled areas to its condition prior to the violation, or breach of any permit condition. If the Town is successful in obtaining preliminary and/or permanent injunctive relief, it shall be entitled to an award by the court of its reasonable attorney's fees.

M. Appeals

Any appeal from a planning board determination under this section shall be made by an aggrieved party to the Supreme Court, Dutchess County in the manner provided by article seventy-eight of the civil practice law and rules.

SECTION 2.

The following definitions are added to Section 8.2 of the Town of Clinton Zoning Law:

Clearcut -- shall mean the removal of 30% or more of trees over 4 inches dbh within an area of ½ acre or less within a ten-year cutting cycle.

Controlled Area – For the purposes of Section 5.51 of this law, the “controlled area” shall mean:

- a. Any area within one hundred (100) feet of a watercourse, lake or pond;
- b. Any wetland between 5 and 12.4 acres and the area within one hundred (100) feet of the boundary of such wetland;
- c. Any wetland between ½ acre and 5 acres and the area within fifty (50) feet of the boundary of such wetland; and
- d. Land within the 100 year floodplain.

In all instances, the controlled areas shall be as depicted on the map entitled “Clinton, NY – Proposed Water Protection Amendment” dated April 2008, revised August 2008 or such revised updated and adjusted map as may be approved by later resolution of Town Board and as prepared by GIS Lab Environment Program on file in the office of the Clerk of the Town of Clinton.

Wetland - Any area, which meets one or more of the following criteria:

A. Lands and waters that meet the definition provided in Section 24-0107.1 of the New York State Environmental Conservation Law, Freshwater Wetlands Act, or as amended and updated. The approximate boundaries of such lands and waters are indicated on the official wetlands map promulgated by the Commissioner of the New York State Department of Environmental Conservation, or as amended and updated.

B. An area that is comprised of hydric soils and/or are inundated or saturated by surface or groundwater at a frequency or duration sufficient to support, and under normal conditions do support, a prevalence of hydrophytic vegetation as defined by the Federal Interagency Committee for Wetlands Delineation, 1989, in the Federal Manual for Identifying and

Delineating Jurisdictional Wetlands, Washington, DC, and adopted by the US Army Corps of Engineers, US Environmental Protection Agency, and the US Fish and Wildlife Service, or as amended and updated. Hydric soils referenced above shall include the soil types taken from the revised Dutchess County Soil Survey Series, 1991, or such revised, updated and adjusted soil surveys as may be completed. The wetland resources described above are designated on maps from New York State Department of Environmental Conservation Environmental Conservation Law, Freshwater Wetland Act and National Wildlife Inventory maps developed by the United States Fish and Wildlife Service.

SECTION 3.

Any portion of laws, ordinances, resolutions or regulations in conflict with this Local Law are hereby superseded by this Local Law.

SECTION 4.

The remaining portions of Town of Clinton Zoning Law shall remain in full force and effect.

SECTION 5.

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances, and the Town Board of the Town of Clinton hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

SECTION 6.

This Local Law shall become effective immediately upon filing in the Office of the Secretary of State in accordance with Section 27 of the N.Y. Municipal Home Rule Law.