

Chapter 161, WETLANDS PROTECTION

[HISTORY: Adopted by the Town of Georgetown 5-5-1986 Annual Town Meeting, Art. 13. Amendments noted where applicable.]

GENERAL REFERENCES

Building construction -- See Ch. 29.

Earth removal -- See Ch. 49.

Erosion control -- See Ch. 57.

Zoning -- See Ch. 165.

Subdivision regulations -- See Ch. 365.

§ 161-1. Purpose.

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in this municipality by controlling activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution, fisheries, shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values (collectively, the "wetland values protected by this chapter").

§ 161-2. Jurisdiction. [Amended 6-12-2000 ATM, Art. 21]

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: within 100 feet of any freshwater wetland, marsh, wet meadow, bog or swamp; within 100 feet of any bank or flat; any lake, river, pond, stream, or estuary; any land under said waters; or within 100 feet of any land subject to flooding or inundation by groundwater or surface water; and within 200 feet of any river, perennial stream, brook or creek.

§ 161-3. Exceptions.

A. The permit and application required by this chapter shall not be required 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, telephone, telegraph or other telecommunication services, provided that the structure or facility is not substantially changed or enlarged, 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.

B. Emergency projects.

(1) The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that:

(a) The work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof.

(b) Advance notice, oral or written, has been given to the Commission prior to commencement of work or within 24 hours after commencement.

(c) The Conservation Commission or its agent certifies the work as an emergency project.

(d) The work is performed only for the time and place certified by the Conservation Commission for the limited purposes to abate the emergency.

(e) Within 21 days of commencement of an emergency project a permit application shall be filed with the Commission for review as provided in this chapter.

(2) 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.

C. Other than stated in this section, the exceptions provided in the Wetlands Protection Act shall not apply.

§ 161-4. Applications for permits and requests for determination.

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

B. The Commission in an appropriate case may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, MGL c. 131, § 40.

C. Any person desiring to know whether or not proposed activity or an area is subject to this chapter 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.

D. At the time of an application or request, 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, MGL c. 131, § 40. In addition, 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 or request. 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.

[Amended 6-12-2000 ATM, Art. 21]

§ 161-5. Notice and hearings.

A. Any person filing an application or a request for determination with the Commission at the same time shall give written notice thereof, by certified mail or hand delivery, to all abutters according to the most recent records of the assessors, including those across a traveled way or body of water. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. When a person requesting a determination is other than the owner, the request, the notice of the hearing and the determination itself shall be sent by the Commission to the owner, as well as to the person making the request.

B. The Commission shall conduct a public hearing on any application or request for determination, with written notice given at the expense of the applicant, five working days prior to the hearing, in a newspaper of general circulation in the municipality.

C. The Commission shall commence the public hearing within 21 days from receipt of a completed application or request for determination.

D. The Commission shall issue its permit or determination in writing within 21 days of the close of the public hearing thereon.

E. The Commission in an appropriate case may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL c. 131, § 40.

F. The Commission shall have authority to continue the hearing to a date certain 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 deemed necessary by the Commission in its discretion or comments and recommendations of boards and officials listed in § 161-6. In the event that 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.

§ 161-6. Coordination with other boards. [Amended 6-12-2000 ATM, Art. 21]

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, by certified mail or hand delivery, to the Board of Selectmen, Planning Board, Board of Appeals, Board of Health and Building Inspector, the Highway Department, and a cover page of the application to the Board of Selectmen. The Commission shall not take final action until such boards and officials have had 14 days from receipt of notice to file written comments and recommendations with the Commission, which the Commission shall take into account but which shall not be binding on the Commission. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission prior to final action.

§ 161-7. Permits, determinations and conditions.

A. 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 cumulative effect upon the wetland values protected by this chapter, 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.

B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; 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 cumulative effects upon the wetland values protected by this chapter; 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.

C. 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. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received in writing by the Commission 30 days prior to the expiration of the existing permit. [Amended 6-12-2000 ATM, Art. 21]

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

E. The Commission in an appropriate case may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.

F. No permit application, including determinations and resource area delineations, which have missed their appeal period under the local ordinances and which have been unfavorably or favorably determined and finally acted upon by the Commission shall be re-filed with the Commission until the three-year life of that permit has expired. In cases where distinct changes in the plan, use of the land, or if the applicant can prove that a delineation was performed in negligence, it is at the discretion of the Commission whether to allow for a new filing to be submitted and to hold a new hearing. [Added 6-12-2000 ATM, Art. 21]

§ 161-8. Regulations.

A. After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. 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 chapter.

B. At a minimum these regulations shall define key terms in this chapter not inconsistent with this chapter.

§ 161-9. Definitions.

The following definitions shall apply in the interpretation and implementation of this chapter.

A. 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 assigns.

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

(1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.

(2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.

(3) Drainage or other disturbance of water level or water table.

(4) Dumping, discharging or filling with any material which may degrade water quality.

(5) Placing of fill or removal of material which would alter elevation.

(6) Driving of piles, erection or repair of buildings or structures of any kind.

(7) Placing of obstructions or objects in water.

(8) Destruction of plant life, including cutting of trees.

(9) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.

(10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

§ 161-10. Security.

As part of a permit issued under this chapter, 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 sufficient in the opinion of 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.

§ 161-11. Enforcement; violations and penalties.

A. Enforcement.

(1) 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 chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.

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

(3) 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.

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

B. Violations and penalties.

(1) Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the chapter, regulations or permit violated shall constitute a separate offense.

(2) In the alternative to criminal prosecution the Commission may elect to utilize the noncriminal procedure set forth in MGL c. 40, § 21D.

§ 161-12. Burden of proof.

The applicant for a permit shall have the burden of proving by a preponderance of evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter. 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.

§ 161-13. Relation to the Wetlands Protection Act.

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, MGL c. 131, § 40, and regulations thereunder.

§ 161-14. Severability.

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