

Ordinance # 1109

CITY OF WESTFIELD

IN CITY COUNCIL

May 20, 1993

AN ORDINANCE AMENDING THE CODE OF ORDINANCES, CITY OF WESTFIELD, ADOPTED JANUARY 21, 1971.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WESTFIELD, AS FOLLOWS:

That Code of Ordinances, City of Westfield, Division 1 of Article IV of Chapter 13, Wetlands Protection, be amended by deleting Division 1 of Article IV of Chapter 13, Sections 13 – 60 through 13 – 69.2 in their entirety and substituting therefore the following:

DIVISION 1. WETLAND PROTECTION ORDINANCE

SECTION 13-60. PURPOSE

The purpose of this ordinance is to protect the wetlands, related water resources, and adjoining land areas in the City of Westfield by controlling activities deemed to have impact upon wetland values, and contributing to the following interests: protection of public and private water supply, protection of ground water supply, flood control, storm damage prevention, prevention of pollution, protection of fisheries and protection of wildlife interests.

SECTION 13-61. JURISDICTION

Except as permitted by the Westfield Municipal Conservation Commission (hereafter referred to as Conservation Commission) or as provided in this ordinance, no person shall remove, fill, dredge, alter or build upon or within 100 feet of any bank or beach; or within 100 feet of any marsh, wet meadow, bog, or swamp; upon or within any lake, pond, river, stream, or intermittent stream; upon or within any land under said waters; upon any land subject to flooding or groundwater inundation. This ordinance and the jurisdiction of the Conservation Commission as conferred herein shall not apply to those lands or projects subject to the provisions of the Massachusetts Environmental Policy Act.

SECTION 13-62. DEFINITIONS

ALTER – Shall include, without limitation, the following actions when undertaken in resource areas subject to this ordinance:

- (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 materials.
- (e) Driving of piles, erection of buildings, or structures of any kind.
- (f) Placing of obstructions or objects in water.
- (g) Destruction of plant life including cutting of trees.
- (h) Any activities, changes or work which pollute in any way, any body of water or groundwater, which includes changing water temperature, or biochemical oxygen demand.

BOG – area where standing or slowly running water is near or at the surface during a normal growing season and where a vegetational community has a significant portion of the ground or water surface covered with sphagnum moss (*Sphagnum*) and where the vegetational community is made up of a significant portion of one or more of, but not limited to nor necessarily including all, of the following plants or group of plants: aster (*Aster nemoralis*), azaleas (*Rhododendron canadense* and *R. viscosum*), black spruce (*Picea mariana*), bog cotton (*Eriophorum*), cranberry (*Vaccinium macrocarpon*), high – bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), laurels (*Kalmia angustifolia* and *K. polifolia*), leatherleaf (*Chamaedaphne calyculata*), orchids (*Arethusa*, *Calopogon*, *Pogonia*), pitcher plants (*Sarracenia purpurea*), sedges (*Cyperaceae*), sundews (*Droseraceae*), sweet gale (*Myrica gale*), white cedar (*Chamaecyparis thyoides*).

MARSH – area where a vegetational community exists in standing or running water during the growing season and where a significant part of the vegetational community is composed of, but not limited to nor necessarily including all, of the following plants or groups of plants: arums (*Araceae*), bladder warts (*Utricularia*), bur reeds (*Sparganiaceae*), button bush (*Cephalanthus occidentalis*), cattails (*Typha*), duck weeds (*Lemnaceae*), eelgrass (*Vallisneria*), frog bits (*Hydrocharitaceae*), horsetails (*Equisetaceae*), hydrophilic grasses (*Gramineae*), leatherleaf (*Chamaedaphne calyculata*), pickerel weeds (*Pontederiaceae*), pipeworts (*Ericocaulon*), pond weeds (*Potamogeton*), rushes (*Juncaceae*), sedges (*Cyperaceae*), smartweeds (*Polygonum*), sweet gale (*Myrica gale*), water milfoil (*Halragaceae*), water lilies (*Nymphaeaceae*), water starworts (*Callitrichaceae*), water willow (*Decodon verticillatus*).

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 city ordinance, administrative agencies, public or quasi-public corporations or bodies, this municipality, and any other legal entity, its legal representatives, agencies or assigns.

SWAMP – area where ground water is at or near the surface of the ground for a significant part of the growing season or where runoff water from surface drainage

frequently collects above the soil surface, and where a significant part of the vegetational community is made up of, but not limited to nor necessarily include all of the following plants or groups of plants: alders (*Alnus*), ashes (*Fraxinus*), azaleas (*Rhododendron canadense* and *R. visosum*), black alder (*Ilex verticillata*), black spruce (*Picea mariana*), button bush (*Cephalanthus occidentalis*), American or white elm (*Ulmus americana*), White Hellebore (*Veratrum viride*), hemlock (*Tsuga canadensis*), high-bush blueberry (*Vaccinium corymbosum*), larch (*Larix laricina*), maple (*Acer rubrum*), skunk cabbage (*Symplocarpus foetidus*), sphagnum mosses (*Sphagnum*), spicebush (*Lindera benzoin*), black gum tupelo (*Nyssa sylvatica*), sweet pepper bush (*Clethra alnifolia*), white cedar (*Chamaecyparis thyoides*), willow (*Salicaceae*).

WET MEADOW – where ground water is at the surface for a significant part of the growing season and near the surface throughout the year and where a significant part of the vegetational community is composed of various grasses, sedges and rushes; made up of, but not limited to nor necessarily including all, of the following plants or groups of plants: blue flag (*Iris*), vervain (*Verbena*), thoroughwort (*Eupatorium*), dock (*Rumex*), false loosestrife (*Ludwigia*), hydrophilic grasses (*Graminaceae*), loose-strife (*Lythrum*), marsh fern (*Dryopteris thelypteris*), rushes (*Juncaceae*), sedges (*Cyperaceae*), sensitive fern (*Onoclea sensibilis*), smartweed (*Polygonum*).

SECTION 13-63. REGULATIONS

The Westfield Conservation Commission incorporates the regulations of the Massachusetts Department of Environmental Protection as contained in 310 CMR 10.00, et seq. Wetlands Protection, as may be amended from time to time hereafter, unless otherwise specifically noted herein.

The Westfield Conservation Commission may adopt local regulations provided same are not inconsistent or incompatible with the provisions of M.G.L. Ch. 131, S40, 310 CMR 10.00, et seq., or of this ordinance pursuant to the following procedure. The Westfield Conservation Commission shall provide to the City of Westfield Law Department a copy of all proposed local regulations for its review and comment. Thereafter, the Westfield Conservation Commission shall hold a public hearing on the proposed local regulations, said public hearing to be held no sooner than fourteen (14) days after notice of the date, time, location and summary of the substance of the proposed regulations is posted on a public bulletin board at the City of Westfield Municipal Building and is published in a newspaper of general city-wide circulation. At said public hearing or at an open meeting subsequent thereto, the Westfield Conservation Commission shall be empowered to vote to adopt the proposed local regulations, said vote to adopt to be a two-thirds vote of those Commission members present. All local regulations heretofore adopted by the Westfield Conservation Commission are hereby rescinded but may be restored, subject to the limitations and through the process, as set forth herein.

SECTIONS 13-64. ARTIFICIAL WETLANDS

In Order to promote the wetlands values and interests listed in Section 13-61, no removal, filling, dredging, or altering shall be mitigated by or compensated for in any way by creation of a substitute or artificial wetland except as approved by the Westfield Conservation Commission.

SECTIONS 13-65. EXCEPTIONS

The permit and application required by this ordinance shall not be required for maintaining, repairing, or replacing an existing and lawfully located structure or facility which is used in the service of the public to provide electric, gas, water, sanitary sewer, storm drainage, public roadway, telephone, telegraph or other telecommunication services, provided that written notice has been given to the Conservation Commission prior to the commencement of work, that the structure or facility will not be, in the opinion of the Conservation Commission, substantially changed or enlarged, and provided that any work done conforms to the performance standards and design specifications in regulations adopted by the Conservation Commission.

The permit and applications required by this ordinance shall not apply to the harvesting of forestry products under the provisions of M.G.L. ch. 132 sec. 40-46 when an approved forest cutting plan has been properly filed with the Conservation Commission.

The permit and application required by this ordinance shall not apply to emergency projects necessary for the protection of the health or safety of the public provided that the person requesting permission to do an emergency project specifies why the project is necessary for the protection of the health or safety of the public and the agency or department of the Commonwealth or of any subdivision thereof which is to perform the project or has ordered its performance shall notify the Chairman of the Westfield Conservation Commission or, in his/her absence, any member thereof, prior to commencing the project and said chairman or member shall be authorized, after site inspection, to certify the project as an emergency project. The certification of the project as an emergency shall be placed on the agenda of the next regularly scheduled Westfield Conservation Commission meeting and said Commission shall vote as to whether or not to ratify the certification of the project as an emergency. If ratification is withheld, all work on the project shall cease and the usual permit and application process followed. If ratification is approved, no further action shall be required. No work on any emergency project shall be conducted after the expiration of thirty (30) days from the initial certification of the project as an emergency project.

SECTION 13-66. APPLICATION FOR PERMITS

- (a) Request for Determination. Any person desiring to know whether or not proposed work or an area is subject to this ordinance or M.G.L. ch. 131, S40 shall file a Request for Determination Form One (1) with the Westfield Conservation Commission. Should the person so filing not also be the owner of the real estate where the proposed work is to be done or upon which a determination is being requested, said owner must be notified that a determination is requested and proof of

said notification must be filed with and certified to the Westfield Conservation Commission. Upon the petition of ten (10) residents of the City, alleging that a person is undertaking activity regulated herein or doing work in an area within the jurisdiction of the Conservation Commission, the Conservation Commission shall require the person allegedly engaged in such activity or such work to file a Request for Determination. There shall be no filing fee required for a Request for Determination.

- (b) Notice of Intent. Written application shall be filed with the Conservation Commission to perform any work which will or which, in the opinion of the Conservation Commission, may affect resource areas within the jurisdiction of this ordinance. The application shall include such plans as are deemed necessary by the Conservation Commission to describe the proposed activities and their effects on the environment. No work or alteration shall commence within any area subject to the requirements of this ordinance without receiving and complying with a permit issued pursuant to this ordinance.

The Conservation Commission may require application and plans under this ordinance in addition to the Notice of Intent and plans filed pursuant to the Wetlands Protection Act, M.G.L. c. 131 sec. 40.

SECTION 13-67. NOTICE OF HEARING

Any person filing a Notice of Intent with the Conservation Commission shall provide a list of immediate abutters according to the most recent records of the City of Westfield assessors; including those across a traveled way, or any other persons as the Conservation Commission shall require.

The Conservation Commission shall combine its hearing under this ordinance with the hearing conducted under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40. Notice shall be given as for hearing under the Wetlands Protection Act, M.G.L. Ch. 131, Sec. 40. The applicant shall pay for the notice to be published and mailed.

The Westfield Conservation Commission shall, no later than five (5) days in advance of a public hearing, deliver copies of each notice of public hearing to the City of Westfield Department of Public Works, Water Department, Health Department, the Planning Board, the Municipal Flood Control Commission and to the City Engineer, and may deliver copies of same to such other City officers, departments, boards or commissions as it deems pertinent. Each said City Officer, department, board or commission may participate in the public hearing in person or by submission of written material and the Westfield Conservation Commission shall take the information into account but shall not be bound thereby.

SECTION 13-68. PERMIT AND CONDITIONS

The Conservation Commission is empowered to deny permission for any filing, if in its judgement, such denial is necessary to preserve environmental quality of either or both the subject lands and contiguous lands, within the jurisdiction of the Conservation Commission. Due consideration shall be given to possible effects of the proposal on all values to be protected under this ordinance and to any demonstrated hardships on the petitioner by reasons of a denial as brought forth at the public hearing.

The Conservation Commission may, as alternative to a denial, impose such conditions as it deems necessary to contribute to the protection and preservation of both the subject lands and any contiguous lands within the jurisdiction of the Conservation Commission in accordance with the purpose of this ordinance. If the area is deemed not likely to be significant to the interests protected by this ordinance, the Conservation Commission shall so inform the applicant that the work does not require a permit.

For good cause the Conservation Commission may revoke or modify a permit issued under this ordinance.

The Conservation Commission shall issue permits under this section in addition to any Order of Conditions issued under the Wetlands Protection Act.

When issuing a denial or an Order of Conditions, the Conservation Commission shall, for each denial and for each condition imposed, cite whether the source of the denial or condition is M.G.L. ch.131, Section 40 (which shall include 310 CMR 10.00, et seq. which interprets same) or the additional requirements as imposed by this ordinance and any local regulations as adopted hereunder. Review and appeal of a Conservation Commission decision based upon M.G.L. Ch. 131, Section 40 and the Department of Environmental Protection regulations interpreting same shall be pursuant to and governed by M.G.L. Ch. 131, Section 40. Review and appeal of a Conservation Commission decision based upon the Ordinance or local regulations adopted hereunder shall be by review in Superior Court as provided by law.

SECTION 13-69. SECURITY

The Commission may require, as a permit condition, that the performance and observance of other conditions be secured by one or both of the following methods:

- (a) By a bond or deposit of money or negotiable securities in an amount determined by the Commission to be sufficient and payable to the City of Westfield.
- (b) By a conservation restriction, easement or other covenant running with the land, executed and property recorded (or registered, in the case of registered land.)

SECTION 13-70. ENFORCEMENT

The Conservation Commission, and its employees shall have authority to enforce this ordinance, its regulations, and permits issued thereunder by violation notices,

enforcement orders, and civil and criminal court actions. The Police Department and or the Building Inspector, at the requests of the Conservation Commission, may assist in enforcement of this ordinance. Upon request of the Conservation Commission the City Law Department may take legal action for enforcement under Civil law.

In the alternative to criminal prosecution the Conservation Commission may elect to utilize the non-criminal disposition procedure set fourth in G.L. C. 40, sec. 21D. The Chairman of the Conservation Commission or in his absence, a member so designated by the Chairman, shall act as enforcement officer.

Any persons who violates a provision of this ordinance, regulations thereunder, or permits issued thereunder, shall be punished by a fine of not more than \$100.00. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the ordinance, regulations, or permit violated shall constitute a separate offense.

The enforcement powers enumerated above apply to violations of his ordinance. The Westfield Conservation Commission is also empowered to enforce violations of M.G.L. Ch. 131, Section 40 and 310 CMR 10.00, et seq. and may do so pursuant to any authority and procedure as enumerated therein.

SECTION 13-71. BURDEN OF PROOF

The applicant for a permit shall be subject to the pertinent burdens of going forward, burdens of proof and presumptions as are contained in 310 CMR 10.00,et seq. as may be amended from time to time hereafter.

SECTION 13-72. RELATION TO THE WETLANDS PROTECTION ACT

This Ordinance is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes.

SECTION 13-73. SEVERABILITY

The invalidity of any section or provision of this ordinance shall not invalidate any other section or provision thereof, nor shall it invalidate any order of conditions which previously have been issued.

If any Court of the Commonwealth shall invalidate any provision of this ordinance, or any regulation promulgated thereunder, the Conservation Commission shall present to the City Council after such invalidation, amendments to this ordinance which are designed to comply with the court decision.