

APPENDIX D

FRESHWATER WETLANDS ORDINANCE

(Adopted: March 9, 1993)

FRESHWATER WETLANDS

Chapter 17B

FRESHWATER WETLANDS

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[HISTORY: Adopted Stony Point Town Board 8-11-76.
Amendments noted where applicable.]

GENERAL REFERENCES

Building construction — See Ch. 6.
Building construction administration — See Ch. 7.
Filling or diverting of streams and watercourses — See Ch. 15.
Subdivision regulations — See Appendix, Part III.

17B01

5-25-82

Amendments to the Freshwater Wetland Law of the Town of Stony Point, Adopted March 9, 1993

1. Section 17B-2, Definitions, is amended to read as follows:

"Freshwater wetlands. The term freshwater wetlands shall mean lands and waters of the Town of Stony Point which meet the definition established in Section 24-0107(1) of the New York State Freshwater Wetlands Act, and which have an area less than 12.4 acres.

2. Section 17B-3 Definitions, is amended to read as follows:

"The Town administrative agency which shall approve or disapprove permits to be issued under this ordinance. The Board of Review shall consist of the members of the Planning Board."

3. Section 17B-4B is amended to read as follows:

"Any wetland which is less than one (1) acre in size."

4. Section 17B-5B(3) is amended to read as follows:

"(3) A map showing the boundary of the freshwater wetlands, the location of flags for the purposes of identifying the freshwater wetlands boundary for the purpose of a site inspection, and the location of the proposed regulated activity."

5. Section 17B-5, Application for permit; processing is amended to read as follows:

"J. The Board of Review may retain, as necessary, a person, firm or agency qualified in the identification and evaluation of freshwater wetlands, to assist in the review of wetlands permit applications."

6. A new section, 17B-18, Freshwater Wetlands Map, is added to read as follows:

"This ordinance is accompanied by a map entitled, "Freshwater Wetlands Map of the Town of Stony Point, dated March 9, 1993," which map is hereby made a part of this ordinance. Said map identifies the location of wetlands, provided that if there is a conflict as to the precise location of a wetlands, the precise location thereof shall be determined by reference to the definitions contained in this Ordinance. Said Freshwater Wetlands Map may be amended from time to time by the Planning Board for any of the following reasons:

- a. To correct or clarify the location of wetlands;
- b. To eliminate from the jurisdiction of this Ordinance particular wetlands deemed to be insignificant for the purpose of this Ordinance.
- c. To incorporate supplementary maps that correct, clarify or affirm in detail the location of any wetlands."

17B01(A)

§ 17B-1. Legislative intent.

- A. The Town Board of the Town of Stony Point finds that freshwater wetlands are invaluable town resources in that, if preserved in an undisturbed natural condition, they provide flood protection, wildlife habitats, open spaces, water resources and recreation and other benefits.
- B. It is the intent of the Town Board to protect the citizens of the Town of Stony Point by preserving, protecting and conserving freshwater wetlands to prevent their depoliation and destruction and to regulate the use and development of such wetlands consistent with the general welfare and beneficial development of the town.

§ 17B-2. Title.

This ordinance shall be known and may be cited as the "Freshwater Wetlands Ordinance of the Town of Stony Point."

§ 17B-3. Definitions.

The following terms shall have the meanings given herein:

APPLICANT — Any person who files an application for any permit issued by Board of Review pursuant to this ordinance, including the agent of a real property owner or a contract vendee.

BOARD — The Freshwater Wetlands Appeals Board established by Article 24 of the State Environmental Conservation Law.

BOARD OF REVIEW — The town administrative agency which shall approve or disapprove permits to be issued under this ordinance. The Board of Review shall consist of the Town Engineer and two (2) other members who shall serve without compensation for terms of four (4) years each. Such members shall be selected by a majority vote of the Town Board. Within thirty (30) days of the effective date of this ordinance, the Town Board shall select the non-

Engineer members of this Board, one (1) of whom shall serve for two (2) years and one (1) of whom shall serve for four (4) years. All subsequent appointments shall be for four (4) years.

FRESHWATER WETLANDS — Lands and waters designated as "freshwater wetlands" of the town by the final Freshwater Wetlands Map prepared by the Department of Environmental Conservation of the State of New York and filed with the County Clerk, and as further defined by § 24-0107 of the New York State Environmental Conservation Law.

PERSON — Any corporation, firm, partnership, association, trust, estate, individual or any unit of government or agency or subdivision thereof.

POLLUTION — The presence in the environment of man-induced conditions or contaminants in quantities or characteristics which are or may be injurious to property or to plant or animal life.

PROJECT — Any action resulting in direct or indirect physical impact on a freshwater wetland, including but not limited to any regulated activity.

REGULATED ACTIVITY — This term includes:

- A. Any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate, either directly or indirectly, from any freshwater wetland.
- B. Any form of dumping, filling or depositing of any soil, mud, sand, gravel, rubbish or fill of any kind, either directly or indirectly, into a freshwater wetland.
- C. Erecting any structures or roads, the driving of pilings or placing of any other obstructions in a freshwater wetland, whether or not changing the ebb and flow of the water.
- D. Any form of pollution of a freshwater wetland, including but not limited to installing a septic tank.

running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland.

- E. Any other activity which substantially impairs any of the several functions and benefits of freshwater wetlands as set forth in § 24-0105 of the New York State Environmental Conservation Law.

SELECTIVE CUTTING — The periodic removal of trees, individually or in small groups, in order to realize the yield and establish a new crop and to improve the forest, which removal does not involve the total elimination of one (1) or more species of trees.

§ 17B-4. Permits required; exceptions.

- A. Except as provided in Subsection B of this section, no person shall conduct a regulated activity unless such person has first obtained a permit pursuant to this ordinance.
- B. No permit under this ordinance shall be required for:
- (1) The depositing or removal of the natural products of freshwater wetlands by recreational or commercial fishing, shellfishing, aquaculture or hunting or trapping where otherwise legally permitted.
 - (2) The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selective cutting of timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of the wetlands or other land for growing agricultural products. This Subsection B(2) shall not exclude structures not required for enhancement or maintenance of the agricultural productivity of the land or any filling activities. Such farmer or landowner conducting an activity excluded by this Subsection B(2) shall notify the Board of Review, in writing, prior to conducting

the activity, of his intention to engage in same, stating the approximate acreage of freshwater wetland affected, the location thereof, the methods to be employed and the uses to be made of such land. A soil and water conservation plan prepared by a Soil and Water Conservation District and filed with the Board of Review shall be deemed sufficient notification for the purposes of this subsection.

- (3) Public health activities, orders and regulations of the State or County Department of Health.
- (4) Activities subject to the review jurisdiction of the State Public Service Commission or the New York State Board on Electric Generation Siting and the Environment under Article VII or Article VIII of the State Public Service Law, respectively. The standards and restrictions of this ordinance will be applied by said bodies in determining whether to issue a certificate of environmental compatibility and public need under such Articles.
- (5) Any actual and ongoing emergency activity which is immediately necessary for the protection and preservation of life or property or the protection or preservation of natural resource values. Such emergency activities include, for example, search and rescue operations, preventive or remedial activities related to large-scale contamination of streams or other bodies of water, floods, hurricanes and other storms and public health concerns. Within five (5) days of the end of such an emergency involving the undertaking of any activity which otherwise would be treated as a regulated activity under this ordinance, the person chiefly responsible for undertaking such emergency activity shall send a written statement to the Board of Review, setting forth the pertinent facts regarding such emergency, including an explanation of the life, property or resource values such activity was designed to protect or preserve.

- (6) Any activity located in a freshwater wetland where such wetland is located in more than one (1) town.

§ 17B-5. Application for permit; processing.

- A. Any person proposing to conduct or cause to be conducted a regulated activity not exempt under § 17B-4B hereof shall file an application for a permit with the Town Clerk, in quadruplicate. The Clerk shall retain one (1) copy and immediately forward the other three (3) to the members of the Board of Review.
- B. Such application shall include the following information:
- (1) A detailed description of the regulated activity.
 - (2) The purpose of the activity.
 - (3) A map showing the freshwater wetland affected and the location of the proposed regulated activity.
 - (4) The owners of record of lands covered, in whole or in part, by the affected freshwater wetland or adjoining same, and the names of known claimants of water rights from such freshwater wetland.
- C. An application shall not be deemed to be completed until the Board of Review receives all such information and any additional information reasonably requested of the applicant in a reasonably complete and reasonably satisfactory form.
- D. No sooner than thirty (30) days and not later than sixty (60) days after its receipt of a completed application for a permit regarding a proposed regulated activity and after the publication of a notice of hearing pursuant to Subsection E of this section, the Board of Review shall hold a public hearing on such application at a suitable location in the town.
- E. Notice of hearing.
- (1) The Board of Review, within twenty-one (21) days of receipt of a completed application, shall provide the

applicant with a notice of hearing which the applicant shall publish at his or her own expense at least fifteen (15) days prior to the date set for the hearing, at least once in each of at least two (2) newspapers of general circulation in the Town of Stony Point.

- (2) At least fifteen (15) days prior to the date set for the hearing, the applicant shall, by certified mail, provide notice of hearing to all owners of record of land covered by or adjoining the affected freshwater wetland and to all known claimants of water rights from said freshwater wetland.
- (3) The notice of hearing shall:
 - (a) State the name of the applicant.
 - (b) Specify the location and outline the scope of the proposed regulated activity.
 - (c) Specify the date, time and place of the public hearing on the application.
 - (d) Specify that persons wishing to be parties in interest and eligible to be heard at such public hearing, if any, should file a notice of appearance with the Town Engineer by a specified date, together with a statement of the precise grounds of support of, opposition to or interest in the application.
 - (e) Specify that any person who wishes to be a party in interest without filing a notice of appearance may do so by appearing at the public hearing and indicating his or her desire to be a party in interest if a public hearing is held.
 - (f) Specify that if no notices of appearance are timely filed by any party in interest and if the applicant waives any public hearing, then the public hearing may be cancelled by the Board of Review.
 - (g) Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Town Clerk.

- F. The Board of Review shall make the application, including all documents and maps associated with it, available for public inspection at the office of the Town Clerk.
- G. If no timely notice of appearance has been filed as provided in the notice of hearing published pursuant to Subsection E of this section and the applicant waives, in writing, any public hearing on his or her application, the Board of Review may dispense with a public hearing and in such instance shall provide public notice of the cancellation of the hearing.
- H. For any notice cancelling a hearing which has been scheduled, notice shall be given on the same basis as the notice of public hearing provided in Subsection E of this section.
- I. The Board of Review may establish reasonable application fees to assist in its implementation of this ordinance.

§ 17B-6. Public hearing.

- A. Any person may appear as a party in interest at a public hearing, notwithstanding the failure of such person to file a timely notice of appearance, by appearing at the hearing and making known his desire to be a party in interest.
- B. All parties in interest shall be afforded an opportunity to present oral and written arguments on issues of law and policy and an opportunity to call witnesses in their behalf and to present oral and written evidence on issues of fact. The Board of Review may permit the parties in interest to cross-examine witnesses.

§ 17B-7. Decision on permit application.

- A. Where a public hearing has been held regarding a permit application, the Board of Review shall either issue the permit requested, with or without conditions, or deny the

application. The decision by the Board of Review to issue or deny a permit after public hearing shall be made, in writing, within thirty (30) days after said hearing is held. If no decision is rendered, the application shall be deemed approved.

- B. Where no public hearing regarding a permit application has been held, because no notice of appearance was filed with regard to the public hearing and a hearing was canceled pursuant to § 17B-5G of this ordinance, the Board of Review shall compile an official file consisting of documents submitted by the applicant and any additional documents relied on by the Board of Review with respect to the application. The Board of Review may also take notice of general, technical or scientific facts within the specialized knowledge of the Board of Review. Any document made part of such official file shall be available for inspection by the applicant and any interested member of the public. On the basis of such file, the Board of Review shall either issue the permit requested, with or without conditions, deny the application or order a public hearing to be held pursuant to the provisions of this ordinance. The decision by the Board of Review to issue or deny a permit or to order that a hearing be held shall be based on the official file and shall be made, in writing, within thirty (30) days of its completion of the official file and, in any event, within sixty (60) days of its receipt of a completed application. If no decision is rendered within such time period, the application shall be deemed approved. Where there have been no objections filed regarding a proposed project, the issuance of a permit shall be deemed to be a written decision by the Board of Review.
- C. A copy of the decision of the Board of Review on each application for a permit under this ordinance shall be mailed by the Board of Review as soon as practicable following such decision to the applicant and, if a public hearing has been held regarding the application, to each party in interest.

§ 17B-8. Standards for making determinations.

- A. In granting, denying or conditioning any permit, the Board of Review shall consider the effect of the proposed activity with reference to the public health and welfare, fishing and flood, hurricane and storm dangers and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom which are set forth in § 17B-3 of this ordinance. The applicant shall have the burden of demonstrating that the proposed regulated activity will be in accord with the standards set forth in this subsection.
- B. Duly filed written notice by the state or any agency or subdivision thereof to the Board of Review that the state or any such agency or subdivision is in the process of acquiring the affected freshwater wetland on which a proposed regulated activity would be located by negotiation or condemnation shall be sufficient basis for denial of a permit for such regulated activity. Such notice may be provided at any time prior to the Board of Review's decision to issue or deny a permit for the regulated activity.

§ 17B-9. Conditions on permit; recording of findings.

- A. Any permit issued pursuant to this ordinance may be issued with conditions. Such conditions may be attached as are necessary to assure the preservation and protection of affected freshwater wetlands and to assure compliance with the policy and provisions of this ordinance and the provisions of the Board of Review's rules and regulations adopted pursuant to this ordinance.
- B. The Board of Review shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for all conditions attached to any permit.

§ 17B-10. Effect on other laws and regulations.

- A. To the greatest extent practicable, any public hearing held pursuant to § 17B-6 of this ordinance shall be incorporated

with any public hearing required by or pursuant to the New York State Town Law, Village Law, General City Law, General Municipal Law or Environmental Conservation Law relating to approvals or permits otherwise required for the undertaking of regulated activities on the freshwater wetland or adjacent area in question.

- B. No permit granted pursuant to this ordinance shall remove any person's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

§ 17B-11. Bond requirements.

- A. The Board of Review may require that, prior to commencement of work under any permit issued pursuant to this ordinance, the permittee shall post a bond with the Board of Review, in any amount determined by the Board of Review, conditioned upon the faithful compliance with the terms of such permit and for the indemnification of the town for restoration costs resulting from failure to so comply. Such bond shall be issued by a corporate surety authorized to do business in the state and shall be in favor of the town. It shall remain in effect until the Board of Review certifies that the work has been completed in compliance with the terms of the permit or the bond is released by the Board of Review or a substitute bond is provided.
- B. The Board of Review shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for imposing a bond pursuant to this section.

§ 17B-12. Revocation or suspension of permit.

- A. The Board of Review may suspend or revoke a permit issued pursuant to this ordinance where it finds that the permittee has not complied with any or all terms of such permit, has exceeded the authority granted in the permit or

has failed to undertake the project in the manner set forth in the application.

- B. The Board of Review shall set forth, in writing, in the file it keeps regarding a permit application its findings and reasons for revoking or suspending a permit pursuant to this section.

§ 17B-13. Penalties for offenses; enforcement.

Violation, penalties and enforcement of this ordinance shall be as specified by Title 23 of Article 71 of the New York State Environmental Conservation Law.

§ 17B-14. Tax abatement.

Any freshwater wetland as defined herein shall be deemed subject to a limitation on the use of such wetlands for the purposes of property tax evaluations in the same manner as if an easement or the like had been acquired pursuant to the General Municipal Law. Assessed value shall be based, during the duration of such agreement or restriction, on the uses remaining to the owner thereof.

§ 17B-15. Review and appeal.

- A. Any party to any proceeding before the Board of Review may make an appeal to the Board in accordance with Title 11 of Article 24 of the State Environmental Conservation Law from any order or decision of the Board of Review, or any officer or employee thereof, issued or made pursuant to or within the scope of this ordinance, provided that such appeal is commenced by the filing with the Board of a notice of appeal within thirty (30) days after service of such order or after notice of such decision given, as the case may be.
- B. Any decision or order of the Board of Review, or any officer or employee thereof, made pursuant to or within the scope

of this ordinance may be reviewed at the instance of any person, including but not limited to any owner of the affected wetland or adjacent area and any resident or citizen of the town, in accordance with Article 78 of the State Civil Practice Law and Rules, provided that such review is commenced within thirty (30) days of the filing of such decision or order.

§ 17B-16. Severability.

If any section of this ordinance or the application thereof to any person or circumstances shall be adjudged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered and shall not affect or invalidate the remainder of any provision of any section or the application of any part thereof to any other person or circumstances, and to this end the provisions of each section of this ordinance are hereby declared to be severable.

§ 17B-17. When effective.

This ordinance shall take effect upon the filing with the Clerk of the town of the final freshwater wetlands map by the State Department of Environmental Conservation pursuant to § 24-0301 of the New York State Environmental Conservation Law applicable to any or all lands within the town.