

Chapter 50

FRESHWATER WETLANDS

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[HISTORY: Adopted by the Town Board of the Town of New Baltimore 8-26-76. Amendments noted where applicable.]

§ 50-1. Legislative intent.

- A. The Town of New Baltimore finds that freshwater wetlands are invaluable resources for flood protection, wildlife habitat, open space, water resources and recreation and other benefits associated therewith which, if preserved and maintained in an undisturbed, natural condition, constitute important assets to existing and future residents of the town.
- B. It is the intent of the Town Board to protect the citizens of the Town of New Baltimore by preserving, protecting and conserving freshwater wetlands and the benefits derived therefrom, to prevent the despoilation and destruction of freshwater wetlands and to regulate use and development of such wetlands consistent with the general welfare and beneficial economic, social and agricultural development of the town.

§ 50-2. Title.

This chapter shall be known and may be cited as the "Freshwater Wetlands Ordinance of the Town of New Baltimore."

§ 50-3. Definitions.

The following terms, phrases, words and their derivatives shall have the meanings given herein:

ADJACENT AREA - All lands within one hundred (100) feet, horizontally, of the vegetative boundary of any freshwater wetland.

ALTER - Any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate, or any form of dumping, filling or depositing of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings or placing of any other obstructions, whether or not changing the ebb and flow of the water; any form of pollution; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set forth in § 24-0105. of the New York State Environmental Conservation Law.

APPLICANT - Any person who files an application for any permit issued by the town pursuant to this chapter, and shall include the agent of the owner or a contract vendee.

FRESHWATER WETLANDS - Lands and waters of the town, as shown on the Freshwater Wetlands Map prepared by the State of New York and filed with the Town Clerk, which contain any or all of the following:

A. Lands and submerged lands commonly called "marshes," "swamps," "sloughs," "bogs" and "flats" supporting aquatic or semiaquatic vegetation of the following vegetative types:

(1)Wetland trees which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other trees, including, among others, red maple (*Acer rubrum*), willows (*Salix* spp.), black spruce (*Picea mariana*), swamp white oak (*Quercus bicolor*), red

ash (*Fraxinus pennsylvanica*), American elm (*Ulmus americana*), and Larch (*Larix laricina*).

- (2) Wetland shrubs which depend upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other shrubs, including, among others, alder (*Alnus* spp.), buttonbush (*Cephalanthus occidentalis*), bog rosemary (*Andromeda glaucophylla*), and leatherleaf (*Chamaedaphne calyculata*).
- (3) Emergent vegetation, including, among others, cat tails (*Typha* spp.), pickerelweed (*Pontederia cordata*), bulrushes (*Scirpus* spp.), arrow arum (*Peltandra virginica*), arrowheads (*Sagittaria* spp.), reed (*Phragmites communis*), wild rice (*Zizania aquatica*), bur reeds (*Sparganium* spp.), purple loosestrife (*Lythrum salicaria*), swamp loosestrife (*Decodon verticillatus*), and water plantain (*Alisma plantago aquatica*).
- (4) Rooted, floating leaved vegetation, including, among others, water lily (*Nymphaea odorata*), water shield (*Brasenia schreberi*), and spatterdock (*Nuphar* spp.).
- (5) Free-floating, vegetation, including among others, duckweed (*Lemna* spp.), big duckweed (*Spirodela polyrrhiza*), and watermeal (*Wolffia* spp.).
- (6) Wet meadow vegetation which depends upon seasonal or permanent flooding or sufficiently waterlogged soils to give them a competitive advantage over other open land vegetation, including, among others, sedges (*Carex* spp.), rushes (*Juncus* spp.), cattails (*Typha* spp.), rice cut-grass (*Leersia oryzoides*), reed canary grass (*Phalaris arudinaceae*), swamp loosestrife (*Decodon verticillatus*), and spike rush (*Eleocharis* spp.).
- (7) Bog mat vegetation, including, among others, sphagnum mosses (*Sphagnum* spp.), bog rosemary (*Andromeda glaucophylla*), leatherleaf (*Chamaedaphne calyculata*), pitcher plant (*Sarracenia purpurea*), and cranberries (*Vaccinium macrocarpon* and *Vaccinium oxycoccus*).
- (8) Submergent vegetation, including, among others, pondweeds (*Potamogeton* spp.), naiads (*Najas* spp.), bladderworts (*Utricularia* spp.), wild celery (*Vallisneria americana*), coontail (*Ceratophyllum demersum*), water milfoils (*Myriophyllum* spp.),

muskgrass (*Chara*), stonewort (*Nitella* spp.), waterweeds (*Elodea* spp.), and water smartweed (*Polygonum amphibium*).

- B. Lands and submerged lands containing remnants of any vegetation that is not aquatic or semiaquatic that has died because of wet conditions over a sufficiently long period, provided that such wet conditions do not exceed a maximum seasonal water depth of six (6) feet, and provided further that such conditions can be expected to persist indefinitely, barring human intervention.
- C. Lands and waters enclosed by aquatic or semiaquatic vegetation as set forth herein in Subsection A above and dead vegetation as set forth in Subsection B above, the regulation of which is necessary to protect and preserve the aquatic and semiaquatic vegetation.
- D. The waters overlying the areas set forth in Subsections A and B and the lands underlying the areas set forth in Subsection C.

PARTY IN INTEREST - Any person who files an application pursuant to this chapter, is permitted to intervene pursuant to this chapter, or any official within whose area is located the freshwater wetland or adjacent area which is the subject of an application for a freshwater wetlands permit.

PERMIT - That form of town approval required by this chapter for the carrying on of a regulated activity.

PERSON - Any corporation, firm, partnership, association, trust, estate, one (1) or more individuals, and 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 injurious to humans, vegetation, wildlife or property.

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

REGULATED ACTIVITY - Any activity within a freshwater wetland or on an adjacent area which directly or indirectly may substantially alter or impair the natural condition of any freshwater wetland, including any form of pollution, 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; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom.

§50-4. Availability of technical services.

The technical services of the New York State Department of Environmental Conservation shall be made available to municipalities, on a fee basis, in the implementation of the freshwater wetlands program.

§ 50-5. Regulated activities.

- A. Except as hereinafter provided, it shall be unlawful for any person without obtaining a written permit therefor issued by the Town of New Baltimore to alter any freshwater wetland.
- B. The deposition or removal of the natural products of freshwater wetlands by recreational or commercial fishing, shellfishing, aquaculture and hunting or trapping shall be exempt from the regulated activities.
- C. Each farmer or landowner who intends to conduct a regulated activity that includes grazing and watering livestock, making reasonable use of water resources, harvesting natural products of the wetlands, selectively cutting timber, draining land or wetlands for growing agricultural products and otherwise engaging in the use of wetland or other land for growing agricultural products shall be excluded from regulated activities and shall not require a permit. Such individual shall, however, notify the appropriate local agent in writing of the proposed activity. (Any farmer who has filed a plan with the Soil and Water Conservation District is exempt from this notification requirement.)
- D. Public health activities, orders and regulations of the Department of Health shall be excluded from regulated activities. Such agency shall, however, notify the appropriate local agent in writing of the proposed activity.
- E. The Commissioner of the New York State Department of Environmental Conservation may exempt from local implementation those freshwater wetlands which, by reason of their size or special characteristics of

unique environmental value or by reason of common characteristics, are appropriately to be administered by the New York State Department of Environmental Conservation alone.

§ 50-6. Application for permit to conduct regulated activity; contents.

- A. Any person proposing to conducted a regulated activity upon any freshwater wetland shall file an application for a permit with the local government agent. Determination of the application shall be made by the Town Planning Board in accordance with applicable law. Such application shall include a detailed description of the proposed activity and a map showing the area of freshwater wetland directly affected, with the location of the proposed activity thereon.
- B. A permit approved by the town does not relieve the applicant of the necessity to obtain authorization from other agencies which have jurisdiction over the project proposal.

§ 50-7. Action on permit application.

- A. Preparation for public hearing.
 - (1) No sooner than thirty (30) days and not later than sixty (60) days after the receipt of such application, and after notice of application has been published by the applicant at least once in at least two (2) newspapers having a general circulation in the area, the Town Board shall authorize a public hearing on such application. The Board shall cause notice of such hearing to be published at least once in at least two (2) newspapers having a general circulation in the area where the affected freshwater wetland is located. The notice of hearing shall be published not more than twenty-eight (28) days nor less than fourteen (14) days prior to the date set for the hearing. The applicant shall also notify all owners of record of adjacent lands and known claimants to water rights by registered mail not less than fifteen (15) days prior to the date set for the hearing.
 - (2) The town may dispense with a public hearing if no notice of objection has been filed or if it finds that the proposed activity is of such a minor nature as not to affect or endanger the balance of systems within the freshwater wetland. If the town finds that a hearing is not necessary, the town shall publish its decision setting forth its reasons therefor.

- (3) The applicant shall pay the costs of the public hearing, including the reporter's fees and the costs of the Department for two (2) copies of the transcript of the hearing and for physical accommodations for the holding of the hearing, if not held in Department facilities. The applicant shall be required, unless waived by the Commissioner, to file, prior to publishing a notice of hearing pursuant to Subsection A(1) of this section, an undertaking in an amount fixed by the regional permit administrator to guarantee payment for the costs of the public hearing.

B. If the permit application is denied or approved:

- (1) Any decision of the Town Board regarding a permit application shall be judicially reviewable by any person wishing to be deemed a party in interest.
- (2) If a permit is approved, approved with conditions or denied and the decision is unacceptable to any person after public hearing, an appeal may be made to the New York State Freshwater Wetlands Board of Appeals. Subsequent appeal and review may be made in accordance with Article 78 of the New York State Civil Practice Law and Rules.

§ 50-8. Availability of approved permit; inspection of operations.

- A. The permit applicant or his agent proceeding with approved operations shall carry on his person or have readily available the approved permit and shall show same to any agency or agent of the Town Board whenever requested.
- B. Operations conducted under a permit shall be open to inspection at any time by any agency or agent designated by the Town Board.

§ 50-9. Bond and insurance requirements; liability of town.

- A. The permit applicant, upon approval of a permit, shall file with the Town Board a performance bond, if required, in an amount and with sureties and in a form approved by the Town Board.
- B. The bond and sureties shall be conditioned on compliance with all

provisions of this chapter and conditions imposed on permit approval.

- C. The applicant shall certify that he has public liability insurance against liability which might result from proposed operations or use covering any and all damages which might occur within three (3) years of completion of such operations.
- D. The applicant shall also submit to the Town Board an affidavit which indemnifies and saves harmless the town or agency or agent thereof from any claims arising out of or connected with operations under the permit and from all acts, omissions, commissions or negligence on the part of the applicant, his agents or employees.

§ 50-10. Right to require permit for uses in certain areas.

The Town Board shall reserve the right to require a permit or license for any operation or use permitted in the watercourses, floodplain lands, watershed lands, water recharge areas or natural drainage systems of the town.

§50-11. Penalties for offenses; corrective action.

- A. Administrative sanctions.
 - (1) Any person, firm, corporation or entity found violating any provision of this chapter or conditions imposed by the Town Board upon an approved permit shall be served with a written notice at the direction of the Town Board stating the nature of the violation and providing a specified time within which the violation shall cease, and satisfactory corrective action shall be taken by the violator.
 - (2) Any person who violates, disobeys or disregards any provision of this chapter shall be liable to the people of the town for a civil penalty of not to exceed three thousand dollars (\$3,000.) for every such violation, to be assessed after a hearing or opportunity to be heard upon due notice and with the rights to specification of the charges and representatives by counsel at such hearing.
 - (3) The Town Board shall have the power, following a hearing, to

direct the violator to cease his violation of this chapter and satisfactorily restore the affected freshwater wetland to its condition prior to the violation.

- (4) Any civil penalty or order issued by the town shall be reviewable pursuant to the Civil Practice Law and Rules.

B. Criminal sanctions.

- (1) Any person who violates any order of the Town Board regulating freshwater wetlands shall, in addition, for the first offense be guilty of a violation punishable by a fine of not less than five hundred dollars (\$500.) nor more than one thousand dollars (\$1,000.).
- (2) For a second and each subsequent offense, he shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000.) nor more than two thousand dollars (\$2,000.) or a term of imprisonment of not less than fifteen (15) days nor more than six (6) months, or both.
- (3) The Town Attorney shall prosecute persons alleged to have violated the provisions of this chapter and shall seek equitable relief to restrain any violation or threatened violation of its provisions.