

Proposed Revisions to Existing Wetlands Law Town of Poughkeepsie, New York

Introduction

The Conservation Advisory Council (“CAC”) to the Town Board seeks to replace existing Town laws with what it deems is comprehensive aquatic resources legislation. A coalition of business leaders from the Poughkeepsie area including leading Realtors, developers, attorneys, engineers and the Poughkeepsie Area Chamber of Commerce, the Builders Ass’n of the Hudson Valley and the Dutchess County Ass’n of Realtors have reviewed and considered this legislation.

It is the Coalition’s position that major new legislation only adds a significant additional regulatory burden on the public, and resource and financial burdens on the Town. Existing State and Federal laws thoroughly regulate wetlands and water resources within the Town. The Town’s laws regulating wetlands can be enhanced to provide the necessary protection and enforcement without adopting massive legislative changes.

The CAC claims that the U.S. Corps of Engineers is non-responsive and is not enforcing the wetlands permits it issues. They also claim that the Town Planning Board overlooks wetlands issues in reviewing applications and is not properly allocating setbacks and buffer areas surrounding wetland areas. Additionally, the CAC claims that the existing Town laws are not being enforced and that new laws are needed to supplement them.

Professional wetland scientists educate the public that enforcement is the “key element” to preservation of important and critical wetlands. The supposition that adding multiple layers of new laws will improve enforcement is erroneous. Adding new laws will not solve the enforcement issue.

The Town can enforce existing Federal and State wetland regulations with the approach outlined below. Only minor modifications to the Town Code are required. A comprehensive education program directed to the Town Planning and Zoning Boards will place necessary information and data in the hands of the proper decision makers to ensure that important wetland and water resources are protected. Enforcement will be re-directed from the Town’s Building and Zoning departments to the office of the Town Engineer.

Background

NYSDEC regulates wetlands of 12.4 acres or larger as well as smaller wetlands of significance. Permits are required from NYSDEC for any activities in or within 100 feet of wetlands regulated by the NYSDEC.

The Federal Government regulates all wetlands and watercourses and reviews any activity that impacts more than 0.1 acre of wetlands or watercourses. Permits are required from the U.S. Corps of Engineers for any activities in wetlands and watercourses regulated by the Federal Government.

The Town of Poughkeepsie regulates wetlands under Chapter 116 of the Town Code as well as under a number of other existing laws including Chapters 97, 113, 205 and 210. The Short and Long Form EAF’s (submitted with every application to the Planning and Zoning Boards) requires all applicants to

identify if wetlands and/or watercourses exist on a parcel of land. Applications submitted to these Boards are reviewed and field checked by members of the applicable Planning and/or Zoning Departments as well as their members. Thus, every application to the Planning and Zoning Boards in the Town brings all applicable wetlands and watercourses under the review jurisdiction of the Town of Poughkeepsie through the SEQRA process.

Proposal

1. The Town Planning & Zoning Boards can and should be actively issuing permit conditions to protect important wetland and water resources as a part of all land use approval, special use and variance permitting as the majority of wetland impacts occur during construction. Preserving important wetlands should be the responsibility of these Boards. The following suggestions are presented:

- (i) Revise the "Application Forms" submitted to the Planning & Zoning Boards to request the following information:
 - Does the Project involve wetlands, watercourses or floodplains and/or their buffer areas? Yes ___ No ___
Describe: _____
 - Are they protected by Federal or State laws? Yes ___ No ___
 - If Yes, has the Applicant submitted the applicable permit applications to the U.S. Corps of Engineers? Yes ___ No ___ N/A ___
 - If Yes, has the Applicant submitted the applicable permit applications to the NYSDEC? Yes ___ No ___ N/A ___
 - What U.S. Corps of Engineers and/or NYSDEC permits are required for work in or near the wetlands, watercourses or floodplains?
Describe: _____

- (ii) Require applicants for Site Plan, Subdivision and Zoning Approvals to provide evidence of submittals and permit applications to the NYSDEC and the U.S. Corps of Engineers whenever wetlands or water resources are present. Revise the "Checklist" submitted to the Planning & Zoning Boards to provide the following information:
 - If permit applications have been submitted, provide evidence of the Applicants submittals and permit applications to the NYSDEC and the U.S. Corps of Engineers.

- (iii) Condition Final Site Plan and Zoning approvals on submittal of authorizations or permits from the NYSDEC and U. S. Corps of Engineers.

- (iv) Impose avoidance, minimization and mitigation measures through the SEQRA process, as well as through conditions to site plans, subdivision approvals, and zoning variances.

- (v) Require submittals of Construction Pollution Prevention Plans for any activity that results in more than 5 acres of soil disturbance on a site, regardless of the presence of wetlands or watercourses.

- (vi) Require submittals of Soil Erosion control Plans for any activity that results in more than 1 acre of soil disturbance on a site, regardless of the presence of wetlands or watercourses.
- (vii) Work with Applicants to obtain setbacks and/or buffers to important wetlands and water resources in site plan and subdivision approval applications.
- (viii) Become an active participant in any permit applications filed with NYSDEC and/or the U.S. Corps of Engineers. In addition, the Town can ask to be placed on the U. S. Corps of Engineers Public Notice mailing list, gaining the ability to comment on any project requiring an individual permit (more than 0.5 acre of wetland impacts). Town law needs to be enhanced to provide that it can enforce permits issued by NYSDEC and the U. S. Corps of Engineers.

The Coalition desires to sponsor an educational program to be presented to the Planning and Zoning Boards at a Special Joint Meeting with the assistance of numerous other agencies and groups, including the NYSDEC and the U. S. Corps of Engineers. We would intend to arrange for experts in the wetlands and water resource fields to appear and provide an educational program with suggestions regarding avoidance, minimization and mitigation measures and permitting conditions.

2. Town Law should be enhanced to appoint the Town Engineer as the Code Enforcement Officer with regard to protection of wetland and water resources within the Town.

The Coalition suggests that the Town Engineer actively enforce conditions on the permits issued by the Town, NYSDEC and U. S. Corps of Engineers. The Town Engineer would monitor construction activities, with funding for the monitoring paid for by the developer out of the existing escrow fund mechanism. Review and enforcement, at any level, should also permit the Town Engineer to engage the services of a certified wetlands scientist to assist his efforts. This would minimize adverse impacts from project construction and provide a major improvement to the Planning & Zoning Boards capabilities in reviewing and assessing wetlands and water resources.

3. The Town should use the current Master Planning process to complete the following:
 - (i) Identify, map and classify all wetland and water resources of significant or special local importance and Critical Environmental Areas (as defined by NYSDEC). The Town Board would direct this effort with assistance from the Planning and Zoning Boards and the CAC. A special task force would be formed to conduct this project with its members consisting of business owners (large and small), farmers, major land owners, developers, land use attorneys, and certified professional wetlands scientists. It should be noted that funding grants for such a project may be available from outside sources.
 - (ii) Prepare a plan to preserve these wetland and water resources of significant or special local importance and Critical Environmental Areas (i.e.: preserving wetlands is more critical than regulating them). It should be noted that grants for such acquisitions may be available from outside sources.
 - (iii) Link the above efforts to the Town of Poughkeepsie Local Waterfront Revitalization Plan.

4. It is recommended that this legislative proposal be enacted in the form of a local law for maximum enforceability. The local law should declare it to be the policy of the Town of Poughkeepsie that site plan and subdivision powers of the Planning Board should be employed to protect and perpetuate important wetlands and water resources, and that no site plan or subdivision plan should be approved unless the Planning Board has fully assessed the impacts of such application on wetlands. In all such applications, the Planning Board should evaluate reasonable mitigation measures to reduce impacts, and to weigh and balance all remaining impacts against social, economic and other considerations as required by the State Environmental Quality Review Act. To that end, the local law to be enacted should require the Planning Board of the Town of Poughkeepsie to undertake to protect the wetlands of the Town by incorporating the procedures and policies set forth herein into the processing of applications for site plan and subdivision approval. In addition, the resulting local law should be incorporated by the Town Board into the environmental review of all application for change of zoning district classification of land, where the Town Board is lead agency of such environmental review as provided at 6 NYCRR Part 617.6.