

## Chapter 182. Wetlands

### § 182-1. Statement of purpose.

#### A.

The Village Board of Trustees hereby finds and declares that the public interest and general welfare of the residents of Pleasantville will be served through the creation of procedures for the preservation, proper maintenance and utilization of natural resources within the Village of Pleasantville and for the protection of said natural resources from encroachment upon, spoiling, pollution or elimination resulting from population growth attended by commercial development, housing, roads and other construction.

#### B.

The preservation and maintenance of wetlands and watercourses in an undisturbed and natural condition will protect important physical, ecological, social, aesthetic, recreational and economic assets necessary to promote the health, safety and general welfare of present and future residents of the Village and of downstream drainage areas.

#### C.

The protection of wetlands and watercourses will retain for the people of Pleasantville the many and multiple benefits derived from wetlands, to wit:

##### (1)

Control of floods and storms by the hydrologic absorption and storage capacity of freshwater wetlands.

##### (2)

Wildlife habitats which provide breeding, nesting and feeding grounds and predator escape cover for many forms of wildlife, wildfowl and shorebirds, including migratory wildfowl and rare species.

##### (3)

Protection of subsurface water resources, providing valuable watersheds and recharging groundwater supplies.

##### (4)

Recreation provided by areas for fishing, boating, hiking, bird-watching, photography, camping and other uses.

##### (5)

Pollution treatment in basins for biological and chemical oxidation.

##### (6)

Erosion control provided by sedimentation areas and filtering basins which absorb silt and organic matter.

(7)

Opportunity for education and scientific research provided by readily accessible outdoor biophysical laboratories, living classrooms and education resources.

(8)

Open space and opportunities for aesthetic appreciation.

(9)

Sources of nutrients in freshwater food cycles and the nursery ground and sanctuary for fish.

D.

It is therefore the intent of this chapter to promote the public purposes identified in this section by providing for the protection, proper maintenance and use of the wetlands and watercourses located within the Village by preventing or minimizing erosion due to flooding and stormwater runoff; maintaining the natural groundwater supplies; protecting subsurface water resources and providing valuable watersheds; preserving and protecting the purity, utility, water-retention capability, ecological functions, recreational usefulness and natural beauty of all wetlands, watercourses and other related natural features of the terrain.

## § 182-2. Applicability.

This chapter shall affect such land within the Village of Pleasantville and activities conducted thereon as are set forth and defined hereafter and shall be binding upon all departments, boards and official acts of the Village of Pleasantville.

## § 182-3. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

### **BUILDING DEPARTMENT**

The Building Department of the Village of Pleasantville, New York.

### **CONSERVATION ADVISORY COUNCIL**

The Conservation Advisory Council of Pleasantville, New York.

### **DEPOSIT**

To fill, place, eject, discharge or dump any material, but not including stormwater.

### **MATERIALS**

Soil, sand, gravel, clay, bog, peat, mud, debris and refuse or any other organic or inorganic substance, whether liquid, solid or gaseous, or any combination thereof.

### **PERSON**

Any individual, firm, partnership, association, trust, corporation, company, organization or legal entity of any kind, including municipal corporations, governmental agencies or subdivisions thereof.

### **PLANNING COMMISSION**

The Planning Commission of the Village of Pleasantville, New York.

### **VILLAGE BOARD**

The Village Board of Trustees of the Village of Pleasantville, New York.

### **VILLAGE ENGINEER**

The Engineer of the Village of Pleasantville, New York.

### **VILLAGE LEGAL DEPARTMENT**

The Legal Department of the Village of Pleasantville, New York.

### **WATERCOURSE**

Any water body, natural or artificial, such as but not limited to a pond, reservoir, lake, river, stream or brook.

## **WETLANDS**

### **A.**

Includes all lands and submerged lands known as "bogs," "marshes," "swamps," "fresh meadows" and estuarine areas having types of soils such as Alden or Sun of glacial till origin, Carlisle or Palms muck or alluvial soils (fluvaquental), including adjacent and peripheral land with vegetation evidencing the same habitat, whether inundated at any given time or not, and shall more specifically mean and include:

#### **(1)**

### **FLOODPLAINS**

Flat, low-lying areas bordering a watercourse which are seasonally flooded to the limits expected in a ~~one~~five-hundred-year flood and areas of special flood hazard as defined by the Federal Emergency Management Agency on the latest Flood Insurance Study Maps prepared for the Village of Pleasantville.

#### **(2)**

### **FRESH MEADOWS**

Waterlogged soil containing such vegetation as sedges, rushes, grasses and various broad-leaved plants.

#### **(3)**

### **SHALLOW FRESH MARSHES**

Areas bordering on lakes, ponds, deep marshes and wet areas of a depth of six inches, with vegetation such as cattails or hybrids thereof, bulrushes or hybrids thereof and arrowheads or other species of sagitaria.

#### **(4)**

### **DEEP FRESH MARSHES**

Area covered with water of depths from six inches to three feet with such vegetation as cattails or hybrids thereof, reeds or other species of sparganium, wild rice and bulrushes.

#### **(5)**

### **SHRUB SWAMPS**

Waterlogged soil with vegetation such as alders, buttonbush and dogwoods.

#### **(6)**

### **WOODED SWAMPS**

Waterlogged soil with vegetation such as red maple and elm.

(7)

**BOGS**

Usually waterlogged, acid soil with both woody and herbaceous plants in the heath family, as well as sedges and sphagnum mosses.

B.

Notwithstanding definitions of wetlands based on vegetation [Subsection **A(1)** through **(7)** above], wetlands in general shall be defined by types of soil, when such information is available.

**WETLANDS CONTROL DISTRICT**

Any area designated by the Conservation Advisory Council as containing a wetland or watercourse.

**WETLANDS CONTROL DISTRICT MAP**

The map of Pleasantville prepared by the Conservation Advisory Council and now on file in the Village Office which shows all Wetlands Control Districts within the Village. This map shall serve as a guide to the approximate boundaries of wetlands and watercourses, but shall not, in itself, define the boundaries (see § **182-7**).

**ZONING BOARD OF APPEALS**

The Zoning Board of Appeals of the Village of Pleasantville, New York.

**§ 182-4. Nonregulated activities.**

The following activities may be carried out within or adjacent to a Wetland Control District as a matter of right except where the Village Board of Trustees may determine that the activity violates or threatens to violate the intent of this chapter.

A.

Outdoor recreation, including use of existing play and sporting areas; the use of existing field trails for nature study, hiking or horseback riding; and swimming, skin diving, boating, trapping, hunting or fishing where otherwise legally permitted.

B.

Maintenance of existing roads, lawns, plantings and walls without an increase in dimensions.

C.

Conduct of agricultural operations such as grazing, farming, gardening and harvesting of crops where otherwise permitted, including prudent and legal use of chemicals [see § **182-5A(5)**].

D.

Operation and maintenance of such dams, retaining walls, terraces, sluices, culverts or other water control structures or devices as were in existence on the effective date of this chapter or were later approved under other provisions of this chapter.

E.

~~Incidental removal of brush and small trees (the trunk less than three inch diameter at four feet from the ground) which would result in no appreciable effect upon the runoff or drainage into any wetland, water body or watercourse.~~

E.F.

Removal of debris or refuse.

G.

Any action taken by a legally empowered public body to preserve and protect the public health and well-being.

§ 182-5. Regulated activities.

A.

Activities requiring Village Engineer approval. The following activities are permitted in, upon or within **100 feet** of any wetland, water body or watercourse situated in a Wetland Control District only if conducted pursuant to terms and conditions approved by the Village Engineer and upon application to the Building Department pursuant to the procedure set forth in § **182-8A**, except that the Village Engineer approval shall not be required where the activity is conducted pursuant to terms and conditions of an application approved by the Planning Commission.

(1)

Removal of water-deposited silt, sand or other material in order to restore the preexisting elevations, provided that the total quantity removed does not exceed 15 cubic yards of material.

(2)

Restoration of elevations that have been altered by erosion or storm drainage.

(3)

The construction, expansion or improvement of private or public recreation facilities, as otherwise legally permitted, provided that the amount of material removed or added does not exceed 15 cubic yards.

(4)

The construction of driveways where alternative means of access are proven to be impractical, provided that the amount of material to be deposited or regraded in connection with such construction does not exceed 100 cubic yards and they do not restrict flood flows and provide for normal flows.

(5)

The use of chemicals, dyes, fertilizers, herbicides or other similar materials ~~of a kind or in an amount not generally accepted in the community~~ for use in the nonregulated activities of § **182-4**, provided that approval shall be given only after consultation with or pursuant to the guidelines of the Conservation Advisory Council. Such approvals must be in accord with applicable county, state and federal laws.

(6)

Any activity requiring Planning Commission approval by the terms of the law which the Commission refers to the Village Engineer for disposition or an advisory recommendation.

B.

Activities requiring Planning Commission approval. The following activities are permitted in, upon or within **100 feet** of any wetland, water body or watercourse situated in a Wetland Control District only after approval by and subject to the terms and conditions specified by the Planning Commission as a part of a subdivision application, a site development plan application, a special permit application or certain application submitted pursuant to the procedure set forth in § **182-8A**. Such Planning Commission approval, terms and conditions are to be given and imposed so as to enhance or cause the least possible damage, encroachment or interference with the natural resources or functions of the wetland, water body or watercourse, consistent with the purpose of the law.

(1)

Any activity listed in Subsection A, but involving a scale of operation beyond that which the Village Engineer is empowered to approve.

(2)

Any activity normally nonregulated as set forth in § 182-4 or normally requiring Village Engineer approval as set forth in Subsection A, where the Village Board of Trustees may determine that the activity violates or threatens to violate the purpose of this chapter.

(3)

The construction of roads where alternative means of access are proven to be impractical, provided that they do not impede flood flows and provide for normal flows.

(4)

The construction of facilities for municipal or utility uses, such as water supply facilities, park and recreation facilities sewage treatment facilities, which involve any alteration of existing conditions.

(5)

Installation of any service lines or cable conduits.

(6)

Clear cutting of any area of trees. Removal or cutting of any vegetation.

(7)

The introduction of any form of pollution, including but not limited to the installation of a septic tank, the running of a sewer outfall, or the discharging of sewage treatment effluent or other liquid wastes into or so as to drain into a wetland.

(8)

Any other activity that would affect the environment that is not specifically covered by § 182-4A above or § 182-6.

(9)

The construction of an addition to an existing residential structure, provided that the existing structure was completed prior to the effective date of the Wetlands Control Law.

## § 182-6. Prohibited activities.

A.

Except as provided in §§ 182-4, 182-5 and 182-9, the following activities shall be prohibited and unlawful:

(1)

To deposit directly or indirectly or permit to be deposited any material into, upon or within **100 feet** of the edge of any wetland, water body or watercourse situated in a Wetland Control District.

(2)

To remove or permit to be removed any material (other than debris or refuse) from any wetland or watercourse which is situated in a Wetland Control District or from the land within **100 feet** of the edge of any such wetland or watercourse.

(3)

To construct or permit to be constructed any building or structure of any kind within, upon or within **100 feet** of the edge of any wetland or watercourse situated in a Wetland Control District.

(4)

To drain or alter any wetland or watercourse or alter the velocity or volume of any wetland or watercourse except as specified in §§ **182-4** and **182-5**.

B.

Additions to residential structures within the regulated area as shown on the Wetlands Control Map shall for purposes of this chapter be considered a regulated activity, not a prohibited activity, provided that such existing residential structure was completed before the effective date of the Wetlands Control Law.

## § 182-7. Wetlands Control District Map.

General boundaries of Wetlands Control Districts are shown on the Pleasantville Wetlands Control District Map. Exact boundaries will be interpreted by the Planning Commission when necessary, according to the definitions of "wetlands" and "watercourse" in § **182-3**. Exact boundaries shall be interpreted after appropriate field survey work by qualified staff members of the United States Department of Agriculture Soil Conservation Service assigned to the Westchester County Soil and Water Conservation District or the New York State Department of Environmental Conservation, subject to recommendations submitted by the Conservation Advisory Council.

## § 182-8. Permits.

A.

Applications. Application for permits to conduct activities controlled under § **182-5A** or **B** shall be submitted in triplicate to the Building Department. Applications submitted under Subsection **A** will be processed by the Building Department. Applications submitted under Subsection **B** will be referred to the Planning Commission. The Building Department shall file one copy of the application with the Village Clerk, and if the wetland in question is located partially outside of Pleasantville, then one copy of the application shall be filed with the Clerk of the governmental unit responsible for that area. Applications shall include the following information:

(1)

The name and address of the owner and the name and address of the applicant and whether the applicant is the owner, lessee, licensee, etc. If the applicant is not the owner of record, the written consent of the owner must be attached. The application should state the purpose of the application and relief sought and should include a detailed description of the proposed activity and a map showing the area of the wetland directly affected, with the location of the proposed activity thereon. The scale of the map must be acceptable to the Building Department.

(2)

It may be required that the applicant furnish any topographical and perimeter surveys, profiles, hydrological computations, engineering studies and other factual or scientific data and reports as deemed necessary by the approving authority (the Planning Commission or the Village Engineer) to permit it to arrive at a proper determination.

(3)

Applications affecting water-retention capability, water flow or other drainage characteristics of any wetland, water body or watercourse shall include a statement of the area of upstream and downstream watersheds, **detailed map of the wetland incursion area**, impact analysis and information as to rainfall intensity in the vicinity for both two-year and one-hundred-year, twenty-four-hour storms, together with approximate runoff coefficients to determine the capacity and size of any channel sections, pipes or

waterway openings, together with plans for necessary bridges, culverts, stormwater or pipe drains that, in the opinion of the approving authority, are needed to arrive at a proper determination on the application, consistent with the purposes of this chapter. **In addition, the applicant will provide a wetland mitigation plan, including native plants, and to include, if appropriate, the creation of replacement wetlands that recreate as nearly as possible the original wetlands in terms of type, functions and setting, and this larger by a ratio of least 1.5 than the original wetlands.**

(4)

An application fee as set forth in Subsection **E**.

[Added 5-23-1994 by L.L. No. 12-1994]

B.

Referral to Conservation Advisory Council. When a recommendation is desired from the Conservation Advisory Council on any application submitted pursuant to this chapter, the Planning Commission or the Village Engineer shall refer the application to the Conservation Advisory Council specifying a period of not less than 30 days for delivery of a report. The report period may be extended with the agreement of the applicant, the Conservation Advisory Council and the referring agent.

C.

Public hearings and time periods.

(1)

The Planning Commission shall schedule a public hearing on applications for approval of activities listed under § **182-5B** which involve a significant impact. The procedure for the scheduling of a public hearing before the Planning Commission shall be as set forth in § **185-50F(4)** of the Pleasantville Code.

(2)

The Planning Commission may, at its discretion, dispense with such a hearing for activities not involving a significant impact or major effect on a wetland, water body or watercourse. When the Planning Commission finds that a hearing is not necessary, it shall publish this decision setting forth reasons therefor, which shall be a matter of public record and shall be mailed to all adjacent local governments where any part of the proposed work is located. Notice of a waiver of hearing shall be carried out in the same manner as a notice of public hearing.

(a)

All public hearings to be held by the Planning Commission shall commence within 62 days after the receipt of an application with all requested supplementary information and receipt of the report of the Conservation Advisory Council.

[Amended 4-28-1997 by L.L. No. 4-1997]

(b)

The Planning Commission shall cause a notice of the hearing to be published in the official newspaper not fewer than 15 days before the date set for the hearing.

(c)

Notices of the hearing shall be sent by the applicant to adjacent property owners, known claimants to water rights and other adjacent parties by certified mail. The applicant shall file receipts and an affidavit of service by mail not less than 14 days before the hearing.

(d)

All applications, maps and documents relating to this hearing shall be open for public inspection in the office of the Village Engineer.

(e)



Within 62 days of the public hearing or, if no hearing is required, within 62 days of the receipt of an application, the Planning Commission shall render a decision to approve, approve with modifications or disapprove the issuance of a permit for the proposed activity, unless a longer time period is specified in other Village laws. Reasons for the decision shall be included.

[Amended 4-28-1997 by L.L. No. 4-1997]

(f)

The time period for consideration of and requirements for public hearings to be conducted in connection with any application for permission to carry on any activity under § **182-5B** of this chapter which is made in conjunction with a subdivision application, site development plan application or special permit application shall be the same as the time period for consideration of and requirements for a public hearing of the subdivision or site development plan application or special permit application with which it is associated (Chapter **159**, Subdivision of Land, Article **II**).

(g)

At all times, the applicant will have the responsibility and burden of proving the project complies with the Wetlands Control Law.

D.

Conditions and time limit. In approving any application submitted pursuant to the requirements of this chapter, the approving authority may impose such conditions on the proposed activity as are necessary to assure compliance with this chapter. The approving authority may fix a reasonable time within which any operations must be completed and may also require the filing with the Village Board of Trustees of cash or a surety company performance bond in such amount and form as determined necessary by the approving authority to ensure compliance with the approved permit.

E.

Fee. There shall be a fee for each application as set forth by resolution of the Village Board of Trustees in the Master Fee Schedule, which may be amended from time to time.

[Added 5-23-1994 by L.L. No. 12-1994]

## § 182-9. Adjustment of regulations.

Where the Planning Commission finds that, because of the special circumstances of a particular case, extraordinary hardship may result from strict compliance with the provisions of this chapter, it may adjust, upon request of the applicant, the provisions of §§ **182-4**, **182-5** and **182-6** so that substantial justice may be done and the public interest secured; provided, however, that any such adjustment will implement the spirit and intent of this chapter. In permitting any such adjustment, the Planning Commission shall attach such conditions as are, in its judgment, necessary to secure substantially the objectives of the standard or requirement so adjusted. For purposes of this section, construction of additions to existing residential structures within the regulated area as delineated on the Wetlands Control Map, provided that such existing structure was completed prior to the effective date of the Wetlands Control Law, is to be considered a regulated activity and thus eligible for review and consideration by the Planning Commission pursuant to the procedures of this section. Notwithstanding this section, only the Zoning Board of Appeals is empowered to grant variances to the stipulations of Chapter **185**, Zoning. In all cases where a wetland or watercourse is the basis for considering the granting of a variance, the Zoning Board of Appeals shall refer the matter to the Conservation Advisory Council and other agencies it deems appropriate for review and report.

## § 182-10. Appeals.

All appeals to this chapter shall be carried out according to the Municipal Code of the Village of Pleasantville, which provides for appeal first to the Zoning Board of Appeals, then to the Village Board of Trustees and then to the Supreme Court, Westchester County.

### § 182-11. Penalties for offenses.

[Amended 4-28-1997 by L.L. No. 4-1997]

Any person, as defined herein in § **182-3**, who violates or is an accessory to the violation of any provision of this chapter or who fails to comply with any of the requirements thereof shall be liable for the penalties set forth in § 71-2303 of the Environmental Conservation Law. Each offense shall be a separate and distinct offense, and, in the case of a continuing offense, each day's continuance thereof shall be deemed a separate and distinct offense. Whenever a violation of this chapter is alleged, any person may file a complaint in regard thereto. All such complaints must be in writing and shall be filed with the Building Department, which shall record such complaints and immediately investigate and report thereon to the Village Board of Trustees, which shall refer such complaints to the Village Legal Department.

### § 182-12. Interpretations.

In their interpretation and application, the provisions of this chapter shall be held to be the minimum requirements adopted for the promotion of the public health, safety, general welfare and for the preservation, proper maintenance and utilization of natural resources. Whenever the requirements of this chapter are at variance with the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the highest standards shall govern.

### § 182-13. Amendments.

This chapter or any part thereof, including the Wetlands Control District Map, may be amended, supplemented or repealed from time to time by the Village Board of Trustees on its own motion or on petition as provided in the Village Law. Every such proposed amendment shall be referred by the Village Board of Trustees to the Planning Commission and the Conservation Advisory Council for written reports before any public hearing which may be held by the Village Board of Trustees pursuant to the Village Law. The Village Board of Trustees shall not take action on any such amendment without such reports from the Planning Commission and Conservation Advisory Council unless such Commission or Council shall fail to report within 30 days after its regularly scheduled meeting next following the receipt of such referral, but in no case later than within 45 days after the receipt of such referral by the Village Board of Trustees.

### § 182-14. Effective date.

This chapter shall become effective 60 days after it and its associated Wetlands Control District Map are adopted by the Village Board of Trustees, as provided by the Environmental Conservation Law, Article 24, Title 5, § 24-0501, Paragraph 6.