

TOWN OF KNOX
LOCAL LAW NO. 1 OF 1976

Section 1. Title.

This law shall be known as the wetlands protection law of the Town of Knox.

Section 2. Declaration of Policy.

It is declared to be the policy of the Town of Knox to exercise its authority pursuant to Article 24 of the State Environmental Conservation Law.

Section 3. Definitions.

The following terms, phrases, words and their derivatives wherever used in this local law shall have the following meanings:

(1) "Adjacent area" means any land in the Town of Knox immediately adjacent to a freshwater wetland lying within 100 feet of the boundary of a freshwater wetland.

(2) "Board" means the Freshwater Wetlands Appeals Board established by Article 24 of the State Environmental Conservation Law.

(3) "Boundary of a freshwater wetland" means the outer limit of the vegetation or of the waters, as the case may be, specified in the definition of freshwater wetlands herein provided.

(4) "Freshwater wetlands" means lands and waters as defined in subsection 1 of Section 24-0107 of the Environmental Conservation Law of the State of New York as the same may be from time to time amended and as such lands and waters are shown on the freshwater wetlands map.

(5) "Freshwater wetlands map" means the map on which are indicated the boundaries of any freshwater wetland and which has been filed with the clerk of the Town of Knox by the State Department of Environmental Conservation pursuant to Section 24-0301 of the State Environmental Conservation Law.

(6) "Person" means any corporation, firm, partnership, association, trust, estate, one or more individuals, and any unit of government or agency or subdivision thereof.

(7) "Pollution" means the presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, plants, animals or property.

(8) "Project" means any action which may result in direct or indirect physical impact on a freshwater wetland, including but not limited to, any regulated activity.

(9) "Regulated activity" means any form of draining, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; 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 or 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, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes directly into or so as to drain into a freshwater wetland; that portion of any subdivision of land that involves any land in any freshwater wetland or adjacent area; 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 Section 24-0105 of the Environmental Conservation Law of the State of New York as the same may be from time to time amended.

(10) "Selective cutting" means the annual or 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 or more particular species of trees.

(11) "State" means the State of New York.

(12) "Planning board" means the planning board of the Town of Knox.

Section 4. Permits.

A. Except as provided in subdivision B of this section, no person shall conduct a regulated activity on any freshwater wetland or adjacent area unless such person has first obtained a permit pursuant to this law.

B. No permit under this law shall be required for:

(1) The depositing or removal of the natural products of freshwater wetlands and adjacent areas by recreational or commercial fishing, aquiculture, hunting or trapping, where otherwise legally permitted and regulated.

(2) The activities of farmers and other landowners in grazing and watering livestock, making reasonable use of water resources, harvesting natural products of wetlands or adjacent areas, selective cutting of timber, draining land or wetlands for growing agricultural products, and otherwise engaging in the use of wetlands or other land for growing

agricultural products provided, however, (a) that structures not required for enhancement or maintenance of the agricultural productivity of the land and any filling activities shall not be excluded from the requirement of a permit hereunder, and (b) that any farmer or other landowner who intends to conduct an activity described in this subdivision which would otherwise be a regulated activity shall notify the planning board in writing, prior to conducting the activity, of his or her intention to engage in such activity, stating the approximate acreage of freshwater wetland or adjacent area affected, the location thereof, the methods to be employed, and the uses to be made of such land.

(3) Public health activities, pursuant to orders or regulations of the State Department of Health, Albany County Department of Health or health officer of the Town of Knox undertaken in compliance with Section 24-0701(5) of the State Environmental Conservation Law.

(4) Activities subject to review by the Public Service Commission of the State of New York or the New York State Board on Electric Generation Siting and the Environment under Article 7 or Article 8 of the Public Service Law of the State of New York.

(5) Any actual and ongoing emergency activity which is immediately necessary for the protection or preservation of natural resource values including search and rescue operations, preventive or remedial activities related to large-scale contamination of streams or other bodies of water, floods, storms and public health concerns.

Section 5. Permit Application; Processing.

A. A person proposing to conduct or cause to be conducted a regulated activity upon any freshwater wetland or adjacent area shall file

an application for a permit with the zoning administrator of the Town of Knox which application shall be in such form as the planning board may prescribe and shall set forth the full name and address of each applicant and of the person or persons interested in or intending to engage in such activity, the full name and address of the owner or owners of the lands upon which activity is proposed to be conducted, a detailed description of the proposed activity, the location thereof, and the purpose, character and extent thereof, and the names of the owners of record of all lands adjacent to the freshwater wetlands or adjacent areas upon which the proposed activity is to be conducted, and the names and addresses of any claimant or claimants to water rights affecting such wetlands or adjacent areas known to the applicant. The application shall be accompanied by a map showing the freshwater wetland or adjacent area affected and the precise location of the proposed activity thereon, and by a legal description of the premises upon which the proposed activity is to be conducted.

B. Within five (5) days of his receipt of an application completed as herein provided the zoning administrator shall cause a copy of such completed application to be mailed to any local government outside of the Town of Knox having jurisdiction in any area where any part of the proposed activity is located, shall provide the applicant with a notice of application in such form as the planning board may prescribe which the applicant shall at his own expense cause to be published at least once in each of at least two newspapers having a general circulation in the Town of Knox, and shall deliver a copy of such application and notice to the chairperson of the planning board. Such notice shall state (a) that notices of objection stating the grounds of objection may be filed with the planning board on or before a specified date, (b) that in the absence of a filed

notice of objection or upon the planning board's determination that the proposed activity is of such a minor nature as to not affect or endanger the balance of systems within any freshwater wetland the planning board may, in its discretion, dispense with a public hearing upon the application, and (c) that the application including all maps and documents accompanying and made a part of the same is available for public inspection at the office of the zoning administrator of the Town of Knox. Notwithstanding any other provision of this section, the planning board may, in its discretion, dispense with the requirement of a notice of application and conduct or cause to be conducted a public hearing upon notice as hereinafter provided.

C. Unless a public hearing upon the application shall have been dispensed with as herein provided the planning board shall, after the publishing of notice of the application as hereinbefore provided, and no sooner than thirty (30) days nor later than sixty (60) days after receipt by the zoning administrator of a completed application, cause a public hearing upon the application to be conducted upon notice as herein provided. Such notice shall be published at least once in each of at least two newspapers of general circulation within the Town of Knox not less than fifteen (15) days prior to the date of hearing and shall state the name of the applicant, the time and the place of the hearing on the application, the location and in general terms the scope of the proposed regulated activity. Such notice shall also state that persons wishing to be heard may on or before a specified date file with the planning board a notice of appearance setting forth such person's interest in, and reasons for support of opposition to the application. Such notice shall also state that any person may

be heard at such hearing without filing a notice of appearance provided, however, that in the absence of a timely filed notice of appearance and upon a waiver of public hearing by the applicant the planning board may cancel such hearing and determine the application without such hearing. Such notice shall further state that the application together with all maps and other documents accompanying the same is available for public inspection at the office of the zoning administrator of the Town of Knox. At least fifteen (15) days prior to the date of hearing a copy of such notice shall be mailed by registered or certified mail to all owners of record of land adjacent to the affected freshwater wetland or adjacent area and to all known claimants of water rights affecting the same and to the clerk of any municipality outside of the Town of Knox wherein any part of such proposed activity is located. All costs of publication and mailing of such notice shall be borne by the applicant.

D. Notwithstanding any other provision of this section the planning board may, in its discretion, dispense with or cancel such public hearing where (1) no notice of objection to the notice of application has been filed as provided in subdivision B. of this section, or (2) no notice of appearance has been filed as provided in subdivision C. of this section and the applicant has waived such public hearing, or (3) the planning board determines that the proposed activity is of such a minor nature as not to affect or endanger the balance of systems within any freshwater wetland. Whenever a notice of public hearing has been published and served as provided in subdivision C. of this section, a notice of cancellation shall be published and mailed at least three (3) days before such public hearing in the manner and to the persons prescribed in respect of the notice of public hearing.

Section 6. Public Hearing on a Permit Application.

A public hearing held pursuant to this local law shall be conducted by the planning board. The planning board shall permit all persons filing notices of appearance to be heard and shall admit such testimony from other persons as it deems relevant and material to the issues. The applicant and all persons filing notices of appearance shall be given opportunity to examine and cross-examine witnesses on issues of fact and to present oral and written arguments on issues of law and policy. Persons not filing notices of appearance may, in the discretion of the planning board, be permitted to participate to the extent of submitting oral or documentary evidence whenever the planning board deems such evidence relevant or material to any issue raised by the application or where the planning board finds such participation to be in the public interest. Every act, motion or resolution shall require for its adoption the affirmative vote of a majority of all members of the planning board.

Section 7. Decision on Permit Application.

A. Whenever a public hearing has been had upon a permit application the planning board shall, within thirty (30) days, by written decision either issue the permit with or without conditions or deny the application.

B. Where a public hearing has been dispensed with, the planning board shall, within thirty (30) days from the filing of a completed application for a permit, and based upon the application and any further documents and materials deemed relevant or material submitted to the planning board by the applicant or otherwise obtained and relied upon by the planning board, shall by written decision either issue the permit with or without conditions or deny the application.

C. The planning board's determination with or without a public hearing shall be based upon the entire record of the application including the application and all accompanying documents and materials submitted with it, oral, written or other evidence submitted upon a public hearing, and any additional documents or materials required or otherwise obtained by the planning board.

D. The planning board's determination shall require for its adoption the affirmative vote of a majority of all members of the planning board.

E. A copy of the planning board's determination shall be mailed within five (5) days of its issuance to the applicant and to the clerk of any municipality outside of the Town of Knox within the boundaries of which any part of the proposed regulated activity is located and, if a public hearing has been held, to each person who shall have filed a notice of appearance.

Section 8. Standards for Permit Determinations.

A. In granting, denying or conditioning any permit, the planning board shall consider the effect of the proposed activity with reference to the public health and welfare, fishing, flood, hurricane and storm dangers, and protection or enhancement of the several functions of the freshwater wetlands and the benefits derived therefrom set forth in Section 24-0105 of the Environmental Conservation Law.

B. No permit shall be issued pursuant to this law unless it shall be found that:

(1) the proposed regulated activity is consistent with the preservation, protection and conservation of freshwater wetlands and the

benefits derived therefrom, the prevention of the despoliation and destruction of freshwater wetlands, and the regulation of the development of such wetlands to secure the natural benefits thereof consistent with the general welfare, economic, social and agricultural betterment of the Town of Knox.

(2) The proposed regulated activity is consistent with the land use regulations applicable in the Town of Knox pursuant to Section 24-0903 of Article 24 of the Environmental Conservation Law;

(3) the proposed regulated activity is compatible with the public health and welfare;

(4) the proposed regulated activity is reasonable and necessary; and

(5) thereis no reasonable alternative for the proposed regulated activity on a site which is not a freshwater wetland or adjacent area.

The applicant shall have the burden of demonstrating that the proposed regulated activity will be in accord with the standards set forth in this subdivision.

C. Duly filed notice in writing that the State or any planning board or subdivision thereof is in the process of acquiring any freshwater wetland, which is the subject of any such application for a permit, by negotiation or condemnation shall constitute sufficient basis for a denial of any permit.

Section 9. Permit Conditions and Limitations.

In the granting of a permit conditions or limitations may be imposed designed to carry out the purposes of this law in preserving and protecting affected freshwater wetlands including, but without limitation

to, provisions for the inspection of a regulated activity from time to time, the posting of security conditioned upon compliance with the terms and conditions of the permit, advance notification of the commencement of construction, and reasonable time limitations.

Section 10. Planning Board.

In order to carry out the purposes and provisions of this law the planning board shall have the power to adopt, amend and repeal rules and regulations consistent with this law for the purpose of administering the same; to contract for professional and technical assistance and advice; to hold hearings and subpoena witnesses in the exercise of its powers, functions and duties; to recommend the posting of a bond or other security by a permittee conditioned upon faithful compliance with the terms and conditions of such permit and for indemnification to the Town of Knox for any restoration costs resulting from a failure of such compliance; and to establish a schedule of costs and fees chargeable to applicants to defray the costs of postage, service of process, publication, stenographic services and technical and professional services as the planning board may determine.

Section 11. Compliance with Other Laws and Regulations.

No permit granted pursuant to this local law shall abrogate any obligation to comply with any other law, ordinance, rule or regulation applicable to or affecting land use and development. Wherever possible the planning board shall, in the exercise of its functions hereunder, coordinate the same with such functions as it may exercise under any other state or local law, rule or regulation.

Section 12. Suspension or Revocation of Permit.

The planning board may suspend or revoke any permit issued pursuant to this law upon a finding that the permittee has failed to comply with any order, rule or regulation of the planning board or any other law, ordinance, rule or regulation pertaining to land use and development in the affected area, has exceeded the authority granted by such permit, has failed to post any bond or security required by the planning board or has failed to undertake or conduct the regulated activity in the manner set forth in the application.

Section 13. Violations.

The provisions of Title 1, Title 3 and Title 5 of Article 71 of the Environmental Conservation Law except as herein modified shall be applicable to the enforcement of this local law. In addition, any person who violates, disobeys or disregards any provision of this law or of any permit issued hereunder shall be liable to a civil penalty of not more than \$3,000.00 for each such violation and an additional penalty of not more than \$500.00 for each day during which such violation continues, and in addition thereto, such person may be enjoined from continuing such violation. Penalties and injunctive relief provided herein shall be recoverable in an action brought by the Attorney General at the request of the planning board or the Commissioner of Environmental Conservation of the State of New York. Such action may be brought in the name of the planning board or in the name of such commissioner.

Section 14. Review and Appeal.

Any determination of the planning board under this local law may be reviewed in accordance with the provisions of subdivision 5 of

Section 24-0705 and Title 11 of Article 24 of the Environmental Conservation Law and the provisions of such sections shall be applicable to any such review.

Section 15. Severability.

The provisions of this local law shall be severable, and if any clause, sentence, paragraph, subdivision or part of this local law shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision or part thereof directly involved in the controversy in which such judgment shall have been rendered.

Section 16. Effective Date.

This local law shall take effect immediately.