

## Deerfield Zoning Ordinance Proposed Amendment

### To see if the Town will vote to amend the Zoning Ordinance, Section 210 Wetlands Conservation District.

**Amendment Overview:** Revisions to Section 210 Wetlands Conservation District include updated language consistent with current definitions in the State of New Hampshire Wetlands Regulations which are based on definitions established by the U.S. Army Corps of Engineers. The revisions clarify existing subsections such as the purpose, permitted uses, conditional use, and general provisions. One new section on prohibited uses was added to specify potential threats to wetlands and surface waters, such as salt sheds and hazardous waste facilities. Finally, the district boundaries have been revised to include wetlands as well as areas within 100 feet of the wetland area. The boundaries also specify what is not included in the wetland district – manmade ditches and ponds and other similar manmade water bodies. The revised section 210 can be obtained in its entirety from the Town Clerk's Office. The Planning Board voted to support the following revisions by a vote of 4-0-1.

## Section 210 Wetlands Conservation District

### 210.1 Purpose

~~The purpose of this ordinance is to protect the public health, safety and general welfare by controlling and guiding the use of land areas that have been found to be subjected to high water tables for extended periods of time.~~ Wetlands are critical for wildlife habitat, flood storage and protection, groundwater recharge, sediment trapping, pollution abatement, retaining and cycling nutrients, and preventing erosion. Wetlands also provide recreational opportunities and scenic value. The purpose of this ordinance is to maintain or improve the functions and values of wetlands by outlining those uses that can be located appropriately and safely in the vicinity of wetland areas without infringing on their proper functioning.

It is intended that this ordinance shall:

- A. Control the development of structures and land uses ~~in the vicinity of wetlands, on naturally occurring wetlands which will contribute to pollution of surface and ground water by sewage or toxic substances.~~
- B. Prevent the destruction of or significant changes to natural wetlands ~~and related water bodies, which provide flood protection, groundwater recharge, pollution abatement, and augmentation of stream flow during dry periods.~~
- C. Protect ~~sensitive~~, unique and unusual natural areas.

- D. Protect wildlife habitats ~~and maintain ecological balances.~~
- E. Prevent expenditure of municipal funds for the purposes of providing and/or maintaining essential services and utilities which might be required as a result of misuse or abuse of wetlands.
- F. ~~Allow for~~ Encourage those low intensity ~~low intensity~~ uses that can be harmoniously, appropriately and safely located in ~~the vicinity of~~ wetlands.
- G. ~~Docks, Open Decks, and Stairways: Docks, Open Decks, and Stairways proposed to be located within the building setback from any body of water, including rivers, streams, lakes, or ponds shall be subject to obtaining a Special Exception from the Zoning Board of Adjustment. No such improvement shall be enclosed. All other required permits from other regulatory agencies shall be obtained before making application to the Board of Adjustment.~~

## 210.2 Wetlands Defined

A wetland is an area that is inundated or saturated by surface or ground water at a frequency and duration that supports, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include, but are not limited to swamps, marshes, bogs, and similar areas. This definition is in accordance with the current State of New Hampshire Wetlands Regulations which uses the definition established by the U.S. Army Corps of Engineers. ~~Soil series and land types commonly associated with wetlands, as described by the "Soil Information for Resource Planning, Town of Deerfield, Rockingham County, New Hampshire" dated June, 1985; include the following "very poorly drained" and "poorly drained soils". In addition, for the purpose of this ordinance, wetlands include those areas which are determined to be wetlands in accordance with the current State of New Hampshire Wetlands Regulations (New Hampshire Code Administrative Rules Wt 100-800) (Adopted March 14, 2006)~~

### **~~"Very Poorly Drained" Soils:~~**

~~Searboro, fsl 15  
Greenwood and Ossipee soils, ponded 197  
Chocorua mucky peat 6 and 395  
Greenwood mucky peat 295  
Searboro muck, very stony 549  
Ossipee mucky peat 495~~

### **~~"Poorly Drained" Soils:~~**

~~Ridgebury very fine sandy loam 646  
Ridgebury very fine sandy loam, very stony 647~~

Walpole very fine sandy loam, very stony—547  
Rayham silt loam—533  
Pipestone sand—214  
Rippowam-Pootatuck complex—4 & 5

### 210.3 District Boundaries

The Deerfield Wetlands Conservation District is defined as those areas of the town that contain wetlands as defined in 210.2, as well as all areas within 100 feet of the jurisdictional wetland area.

~~A. The Deerfield Wetlands Conservation District is defined as those areas of the town that contain wetlands as defined as these areas of the Town that contain wetlands as defined in 210.2 including, but not limited to, marshes, ponds, bogs, lakes, streams and rivers as well as soils that are defined as poorly or very poorly drained by the National Cooperative Soil Survey conducted by the U.S. Department of Agriculture Soil Conservation Service. (Adopted March 14, 2006)~~

~~Poorly drained soils less than one quarter (1/4) acre in area shall be excluded from definition provided that these soils are at least one hundred feet (100') from any wetlands.~~

~~B.~~ A. "Town of Deerfield Wetlands Conservation District Map" is hereby deemed to be a part of the official zoning map of the Town of Deerfield.

~~C.~~ B. ~~Wetlands incorrectly delineated: The Planning Board shall determine whether the regulations contained in the ordinance apply when~~ where it is alleged that an area has been incorrectly delineated as a wetland; or that an area not so designated meets the criteria for wetland designation.; ~~the Planning Board shall determine whether the regulations contained here apply herein have application.~~ The Planning Board shall make their judgment under this section only upon the determination by a qualified **wetland scientist** ~~soil scientist(s) and/or plant scientist(s)~~ on the basis of additional on-site investigation or other suitable research ~~that the information contained on the Wetlands Map is incorrect.~~ This evidence shall be acceptable only when presented in written form ~~by said scientist(s)~~ to the Planning Board. Any necessary **wetland** ~~soil~~ testing procedures shall be conducted at the expense of the **applicant** ~~landowner or developer.~~

C. Wetlands as defined in 210.2 do not include manmade ditches and swales, sedimentation/detention basins or ponds, manmade agricultural/irrigation ponds and swales, fire ponds, septic or manure lagoons, or silage pits.

### 210.4 Relation to Other Districts

Where the Wetlands Conservation District is superimposed over another zoning district, the more restrictive regulations shall apply.

## 210.5 Permitted Uses in the Vicinity of Wetlands

A. ~~Poorly Drained Soils:~~ Permitted uses in areas of poorly drained soils are as follows:

1. Agriculture, including grazing, hay production, truck gardening and silage production provided that such use ~~does is shown not to cause~~ **or contribute to soil erosion or significant increases in** surface or groundwater contamination by pesticides, **fertilizers** or other toxic or hazardous substances ~~and that such use will not cause or contribute to soil erosion.~~
2. Forestry and tree farming to include the construction of access roads for said purposes, **provided that such use does not cause or contribute to soil erosion.**

Forestry shall be carried out in accordance with all applicable local, state and federal laws and regulations, and, to the extent reasonably practicable, in accordance with the then current, generally accepted best management practices for the sites, soils and terrain of the Property. (For references, see *Best Management Practices for Erosion Control on Timber Harvesting Operations in New Hampshire* (New Hampshire Division of Forests and Lands and UNH Cooperative Extension, 2016), *Good Forestry in the Granite State: Recommended Voluntary Forest Management Practices for New Hampshire* (New Hampshire Forest Sustainability and Standards Work Team, 2010) or similar successor publications.)

3. Wildlife habitat development and management.
4. ~~Recreational uses consistent with the purpose and intent of this section as defined in part A.~~
- 5.4. Conservation areas and nature trails.
- 6.5. Water impoundment and the construction of well water supplies.
7. ~~Drainage ways to include streams, creeks, or other paths of normal runoff water and common agricultural land drainage.~~
- 8.6. Any use otherwise permitted by the Zoning Ordinance and state and federal laws that does not involve the erection of a structure or that does not alter the surface configuration of the land by the addition of fill or by dredging except as a common treatment associated with a permitted use.

B. ~~Very Poorly Drained Soils:~~ Permitted uses in areas containing very poorly drained soils, marshes, bogs, open water and major streams are as follows:

1. ~~Use specified under Part 210.5.A (1 through 8) above shall be permitted except that no alteration of the surface configuration of the land by filling or dredging and no use which results in the erection of a structure, except as provided for in Part 210.5.B.2 below shall be permitted.~~
2. ~~The construction of fences, foot bridges, catwalks, and wharves only, provided: (1) said structures are constructed on posts or pilings so as to permit the unobstructed flow of water; (2) the natural contour of the wetland is preserved; and, (3) the Planning Board has reviewed and approved the proposed construction.~~

C. ~~**Vernal Pools:** Vernal pools are small scattered temporary springtime ponds fed by snowmelt and spring rains. Proposed uses shall avoid, minimize or mitigate any filling of a vernal pool.~~

## **210.6 Prohibited Uses in the Wetlands Conservation District**

Land uses that pose a particular threat to wetlands and surface waters are prohibited within the Wetland Conservation District including, but not limited to:

- a. Salt storage sheds
- b. Use of fertilizer, except lime and/or wood ash
- ~~a.c.~~ c. Bulk storage of chemicals, petroleum products, or hazardous materials
- ~~b.d.~~ d. Earth excavations (as defined in NH RSA 155E) or processing of excavated materials
- e. Dumping or disposal of snow collected from roadways or parking areas
- ~~e.f.~~ f. Solid or hazardous waste facilities, landfills, solid waste transfer stations, recycling facilities, incinerators, composting facilities, automobile junk yards/salvage, laundromats, car washes, automotive service and/or repair shops, or commercial animal feedlots;
- g. Wastewater disposal systems, disposal of solid waste, liquid or leachate wastes, or storage or disposal of animal waste or byproducts
- h. Trails, paths, tracks, or other ways, if the traffic caused by these uses compacts and erodes soils

## **210.7 Conditional Use**

- A. A Conditional Use Permit may be granted by the Planning Board (RSA 674:21, II) for the construction of roads and other access ways, and for utility pipelines, power lines, and other transmission lines, **as well as the construction of additions and extensions to one- and two-family dwellings**, -provided that all of the following conditions are found to exist:
1. The proposed construction is essential to the productive use of land not within the Wetlands Conservation District.
  2. Design and construction methods will be such as to minimize detrimental impact upon the wetland and will include restoration of the site as nearly as possible to its original grade and condition.
  3. **Regarding access, No** alternative route which does not cross a wetland or has less detrimental impact on the wetland is feasible.
  4. Economic advantage alone is not reason for the proposed construction.
  5. **Regarding of additions to one and two family dwelling units:**
    - A. the dwelling lawfully existed prior to the **effective date** of this Section; and
    - ~~4.B. that~~ **the proposed construction conforms with all other applicable ordinance and regulations of the Town of Deerfield.**
- B. Prior to granting of a Conditional Use Permit under this Part, the applicant shall agree to submit a performance security to the Board of Selectmen. The security shall be submitted in a form and amount, with surety and conditions satisfactory to the Selectmen and approved by Town Counsel, to ensure that the construction has been carried out in accordance with the approved design. The security shall be submitted and approved prior to the issuance of any permit authorizing construction.
- C. The Planning Board, with the concurrence of the Conservation Commission, may require the applicant to submit an environmental impact assessment when necessary to evaluate an application made under this Part. The cost of this assessment shall be borne by the applicant.

The Planning Board may also assess the applicant reasonable fees to cover the costs of other special investigative studies and for review of documents required by particular applications.

## **210.78 General Provisions**

- A. For lots created after the adoption of this amendment no septic tank or leach field may be constructed or enlarged closer ~~then~~**than** one hundred (100) feet of any wetlands. (*Adopted March 14, 2006*).

For lots in existence prior to March 14, 2006, no septic tank or leach field may be constructed or enlarged closer than seventy-five (75) feet to any wetland.

~~B.~~ **B.** No **bodies of water** part of areas designated as having very poorly drained soils, or bodies of water, may be used to satisfy minimum lot size.

C. Areas designated as **wetlands** having poorly drained soils may be used to fulfill up to 25% of the minimum lot size required by town ordinances and subdivision regulations, provided that the non-wetland area is sufficient in size and configuration to adequately accommodate all required utilities such as sewage disposal and water supply, including primary and auxiliary leach field locations.

D. All land included in the Wetlands Conservation District shall be appraised for tax purposes at its full and true value in money, based on its market value as undevelopable land required to remain in open space.

E. For lots created after the adoption of this amendment no **structurebuilding** shall be erected within one hundred (100) feet of any wetland.

**F.** For lots in existence at the time of the adoption of this amendment, March 14, 2006, no **structurebuilding** shall be erected within seventy five (75) feet of any wetland.

~~F.~~ All newly created lots shall contain a minimum of 1 acre of contiguous upland soils (soils other than that described in 210.3A).

### **210.89 Separability**

If any section, provision, portion, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by any court or competent authority, such holding shall not affect, impair or invalidate any other section, provision, portion, clause or phrase of this ordinance.

### **210.910 Conflict with Other Regulations**

Where any provision of this ordinance is in conflict with State law or other local ordinance, the more stringent provision shall apply.

### **210.1011 Special Exception for Non-Conforming Lots**

Upon application to the Board of Adjustment, a special exception ~~shall~~**may** be granted to permit the erection of a structure within the Wetlands Conservation District on vacant lots, provided that all of the following conditions are found to exist:

A. The lot upon which an exception is sought is an official lot of record, as recorded in the Rockingham County Registry of Deeds, prior to the date on which this amendment was posted and published in the town.

- B. The use for which the exception is sought cannot feasibly be carried out on a portion or portions of the lot which are outside the Wetlands Conservation District.
- C. Due to the provisions of the Wetlands Conservation District, no reasonable and economically viable use of the lot can be made without the exception.
- D. The design and construction of the proposed use will, to the extent practical, be consistent with the purpose and intent of this Section.
- E. The proposed use will not create a hazard to individual or public health, safety and welfare due to the loss of wetland, the contamination of groundwater, or other reason.

The Board of Adjustment may themselves, or upon petition from the Building Inspector, Conservation Commission or abutters, hire a qualified consultant or consultants to prepare such studies as are necessary to determine whether the conditions set forth above have been met. The cost of such studies shall be borne by the applicant.

#### **~~210.11 Exemption for Residential Structures~~**

~~Notwithstanding other provisions of this Section, the construction of additions and extensions to one and two family dwellings shall be permitted within the Wetlands Conservation District provided that: (1) the dwelling lawfully existed prior to the effective date of this Section; and (2) that the proposed construction conforms with all other applicable ordinance and regulations of the Town of Deerfield.~~

#### **210.12 Exemption for Existing Septic System Permits**

Any septic system design approved for construction by the State of New Hampshire ~~Subsurface Systems Bureau~~ **Water Supply and Pollution Control Commission**, for which date of approval is prior to the effective date of this Section, will be valid for building permit approval.

#### **~~210.13 Docks, Open Decks, and Stairways~~**

~~Docks, open decks, and stairways proposed to be located within the building setback from any body of water, including rivers, streams, lakes, or ponds shall be subject to obtaining a Special Exception from the Zoning Board of Adjustment. No such improvement shall be enclosed. All other required permits from other regulatory agencies shall be obtained before making application to the Board of Adjustment.~~