

CHAPTER XVII

CONSERVATION

APPLICATION: THE PURPOSE OF THIS BY-LAW IS TO PROTECT THE WETLANDS AND FLOODPLAINS OF THE TOWN OF HAMILTON BY CONTROLLING ACTIVITIES DEEMED TO HAVE SIGNIFICANT EFFECT UPON WETLAND VALUES INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING: PUBLIC OR PRIVATE WATER SUPPLY, GROUNDWATER, FLOOD CONTROL, SOIL EROSION CONTROL, STORM DAMAGE PREVENTION, WATER POLLUTION, FISHERIES, WILDLIFE, RECREATION AND AESTHETICS (COLLECTIVELY, THE "VALUES PROTECTED BY THIS BY-LAW").

REQUEST FOR WRITTEN DETERMINATION OF APPLICABILITY; WITHIN TWENTY ONE DAYS AFTER RECEIPT OF A WRITTEN REQUEST, THE COMMISSION SHALL MAKE A WRITTEN DETERMINATION WHETHER THIS BY-LAW IS APPLICABLE TO ANY LAND OR WORK THEREON. WHEN THE PERSON REQUESTING A DETERMINATION IS OTHER THAN THE OWNER, NOTICE OF THE DETERMINATION SHALL BE SENT TO THE OWNER AS WELL AS TO THE REQUESTING PERSON.

No person shall remove, fill, dredge, alter or build upon or within one hundred feet of any bank, fresh water wetland, flat, beach, marsh, meadow, bog, swamp, or lands bordering on any estuary, creek, river, stream, pond or lake, or any land under said water or any land subject to storm flowage, flooding, inundation, or within one hundred feet of the one hundred year storm line, other than in the course of maintaining, repairing or replacing, but not substantially changing or enlarging, an existing or lawfully located structure or facility used in the service of the public and used to provide electric, gas, water, telephone, telegraph, and other telecommunication services without filing written notice of intent to so remove, fill, dredge, alter or build, including such plans as may be necessary to describe such proposed activity and its effect on the environment and without having received and complied with conditions issued pursuant to this by-law.

Such notice shall be sent by certified mail to the Hamilton Conservation Commission (the "Commission"). Fees, to defray costs and expenses of reviewing submissions, shall be set by regulation of the Commission pursuant to this By-law. Plans included should conform to applicable regulations of the Department of Environmental Protection, and to such regulations as may be promulgated by the Commission. No such notice shall be sent before all permits, variances and approvals required by local by-law with respect to the proposed activity which are obtainable at the time of such notice have been obtained. Copies of such notice of intent shall be sent at the time of filing by certified mail to the Hamilton Board of Selectmen and Hamilton Planning Board and the Hamilton Board of Health.

Hearings: The Commission shall hold a public hearing on the Notice of Intent within twenty-one days or receipt of the completed filing. Notice of the time and place of the

hearing shall be given by' the Commission at the expense of the applicant not less than five days prior to the hearing, by publication in a newspaper of general circulation in Hamilton and by mailing a notice to the applicant, Hamilton Board of Selectmen, Hamilton Planning Board, Hamilton Board of Health and to such other persons as the Commission may by regulation determine.

Permit and Conditions: If, after the public hearing, the Commission determines that the area which is the subject of the application is significant to the values protected by this by-law, the Commission shall, within twenty-one days of such hearing, issue or deny a permit for the work requested. If it issues a permit after making such determination, the Commission shall impose such conditions as it determines are necessary or desirable for protection of those values, and all work shall be done in accordance with those conditions. If the Commission determines that the area which is the subject of the application is not significant to the interests protected by this by-law, or that the proposed activity does not require the imposition of conditions, it shall issue a permit without conditions within twenty-one days of the public hearing. Due consideration shall be given to possible effects of the proposal on all values to be protected under this by-law, permits shall expire one year from date of issuance, unless renewed prior to expiration, and all work shall be completed prior to expiration.

Emergency Projects: This by-law shall not apply to any Emergency Project as defined by General Laws Chapter 131, Section 40, mosquito control work under the provisions of clause (36) of Section 5 of Chapter 40, Chapter 252 or of any special act, or to work performed for normal maintenance or improvement of lands in agricultural use as of the effective date of this by-law.

Entry: The Commission, its agents, employees, Officers, and auxiliary members may enter upon land as to which a written determination or a Notice of Intent has been filed and may make such examinations and surveys as deemed necessary by the Commission.

Pre-Acquisition Violation: Any person who purchases, inherits or otherwise acquires Real Estate upon which work has been done in violation of the provisions of the By-Law or in violation of any permit issued pursuant to this By-law shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless commenced within three years following the date of acquisition of the Real Estate by such person.

Regulations: After due notice and public hearing, the Commission may promulgate rules and regulations to effectuate the purposes of this by-law. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this by-law.

Burden of Proof: The applicant shall have the burden of proving by a preponderance of the credible evidence that the work proposed by the application will not harm the interests protected by this by-law. Failure to provide adequate evidence to the

Commission supporting a determination that the proposed work will not harm the interests protected by this by-law shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions, or in the Commissions discretion, to continue the hearing to another date to enable the applicant or others to present additional evidence.

Security: The Commission may require, as a permit condition, that the satisfactory performance and observance of other conditions be secured by one or both of the following methods:

(A) By bond, deposit of money, negotiable securities or such other evidence of financial responsibility as is satisfactory to the Commission, in an amount determined appropriate by the Commission.

(B) By a Conservation restriction, easement or other covenant running with the land, executed and properly recorded, or registered in the case of registered land.

The amount of security required hereunder shall not exceed the estimated cost of the work required to restore affected lands and properties to their original condition if the work is not performed as required. Such bond or other security shall be released upon issuance of a certificate of compliance.

Definitions: The following definitions shall apply in the interpretation and implementation of this by-law:

(A) the term "person" shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town by-laws, administrative agencies, public or quasi-public corporations or bodies, the Town of Hamilton, and any other legal entity, its legal representatives, agents or assigns.

All other terms and definitions shall be understood and applies in the manner set forth in General Laws, Chapter 131, Section 40, in applicable regulations promulgated by the Department of Environmental Protection, and as further defined by the Commission by regulation or amendment.

Enforcement: A person who violates any provision of this by-law or any other provision of a permit issued hereunder, shall be punished by a fine of not more than \$300. Violation of each provision of this by-law and each provision of a permit issued hereunder shall constitute a separate offense. As an alternative to initiating criminal proceedings in a specific case, the Commission may elect to utilize the non-criminal disposition procedure established by General Laws Chapter 40, Section 21D which is incorporated herein by reference in its entirety.