

ARTICLE IV. - WATERWAY PROTECTION [16]

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Sec. 30-80. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Permitted use means any use of a waterway which does not disturb the natural and indigenous character of the waterway and is for the purpose of maintenance, conservation or restoration of property and drainage of soil, vegetation, water, fish, shellfish and wildlife, gardening or landscaping and does not involve disposition of material or fill.

Waterway means any river, stream, brook, watercourse or tributary, both fluvial and tidal, including any contiguous backwater, pond or other body of water or any floodplain, swamp, marsh, bog or other wetlands.

Waterway protection lines means those lines defining the limits of a waterway between which no person shall carry on, or permit to be carried on, an activity except as may be permitted by this article.

(Code 1981, § 148-2)

Sec. 30-81. - Purpose.

This article is hereby adopted by the RTM of the Town in order to protect all waterways of the Town from activities that would cause hazards to life and property and/or activities having adverse impact upon the flood-carrying and water-storage capacity of the waterways and floodplains, the flood heights and the natural resources and ecosystems of the Town, including but not limited to groundwater and surface water, animal, plant and aquatic life, nutrient exchange and energy flow, with due consideration given to the results of similar encroachments constructed along the reach of the waterway.

(Code 1981, § 148-1)

Sec. 30-82. - Violations and penalties.

Whoever violates any provisions of this article shall be punished by a fine of not more than \$90.00, and shall be liable to the Town for the cost of restoring the affected area as closely as possible to its condition prior to the violation. For the purposes of the fine provisions of this section, each day after the violator has received written notice that he or she is in violation of the article shall constitute a separate violation.

(Code 1981, § 148-18)

State law reference— Penalties for ordinance violations, C.G.S. § 7-148(c)(10)(A).

Sec. 30-83. - Appeals.

Any person aggrieved by a final decision of the Flood and Erosion Control Board, Conservation Commission or the RTM made in accordance with this article may, within 30 days from receiving notice of its decision, appeal from such decision in the manner provided by C.G.S. § 8-8 for appeals from decisions of a municipal Zoning Board of Appeals.

(Code 1981, § 148-14)

Sec. 30-84. - Enforcement.

The First Selectman shall designate agents who are members of the Conservation Department to enforce the provisions of this article. The enforcement agent(s) may seek such injunctive relief as may be necessary to halt any violation of this article by any person.

(Code 1981, § 148-15)

Sec. 30-85. - Notice of violation; time limit for corrections; extensions.

Any violator of this article shall be given written notice of the violation by the Conservation Department. This notice shall be sent by certified mail, return receipt requested, and the violator shall have 14 days from receipt of the notice in which to correct the violation before action is taken to enjoin the violation or to fine the violator in accordance with the provisions of [Section 30-86](#) of this article. A further extension of time may be granted by the enforcement agent(s) for good cause shown by the violator. When a violation has been corrected, the enforcement agent(s) shall so certify in writing to the property owner and shall so note in his or her records.

(Code 1981, § 148-16)

Sec. 30-86. - Authority of other bodies.

- (a) Nothing in this article shall limit or restrict the State Commissioner of Transportation in exercising his or her authority over the harbors and navigable waters of the State, nor apply to dams, bridges, pipelines or other similar structures and appurtenances thereto, extending across any waterway, which otherwise comply with current laws and regulations.
- (b) The provisions of this section shall not be construed to limit or alter the authority of the State Commissioner of Environmental Protection over the tidal, coastal and navigable waters of the State and within stream channel encroachment lines established by said Commissioner pursuant to regulations of the Department of Environmental Protection promulgated pursuant to C.G.S. § 22a-343.

(Code 1981, § 148-17)

Sec. 30-87. - Establishment and determination.

- (a) Waterway protection lines are hereby established on both sides of all waterways in the Town and are set at the 25-year storm flood elevation (mean sea level datum) along each edge of the waterway, except that the clear horizontal distance from the 25-year storm flood elevation of any such waterway shall be 15 additional feet on each side of the following waterways:
 - (1) Saugatuck River.
 - (2) West branch of the Saugatuck River.
 - (3) Aspetuck River.
 - (4) Stony Brook.
 - (5) Muddy Brook.
 - (6) Deadman's Brook.
 - (7) Sasco Brook.
 - (8) Indian River.

- (9) Poplar Plains Brook.
 - (10) Pussy Willow Brook.
 - (11) Silver Brook.
 - (12) Willow Brook.
 - (13) New Creek.
- (b) The determination of the elevation of the 25-year storm shall take into consideration the effects of probable future developments.
 - (c) The position of the lines may vary from the 25-year storm elevation so as to minimize the area of land to be regulated when a portion of the inundated area below said elevation does not contribute to the flood-carrying capacity of the waterway.
 - (d) When the existing waterway, because of natural or manmade constrictions, is such that such lines cannot be established by standard engineering methods, a channel may be adopted, whereby the removal of such constrictions may be anticipated so that a reasonable delineation of the 25-year storm elevation may be established.
 - (e) When the 25-year flood boundary falls along the channel banks, the lines shall be placed at the top of each bank along the waterway.
 - (f) In no case shall a waterway protection line be less than 15 horizontal feet from each edge of the waterway or top of bank, whichever is greater.

(Code 1981, § 148-3)

Sec. 30-88. - Stream improvement projects.

Notwithstanding the provisions of [Section 30-87](#), in areas in which Muddy Brook or West Parish tributary are improved under a stream-improvement project to hold a 25-year storm within its banks, the waterway protection lines shall be set at three horizontal feet from the top of the bank of the improved waterway.

(Code 1981, § 148-4)

Sec. 30-89. - Regulated activities.

The following activities are regulated within said waterway protection lines: dumping, filling and transferring of any materials and the encroachment by any construction, building or portion of a building or other permanent structure(s) within said waterway protection lines.

(Code 1981, § 148-5)

Sec. 30-90. - Permitted activities.

- (a) If the Town Engineer finds that the proposed use, activity or project does not have adverse impact on flooding, drainage, erosion or the natural carrying and water-storage capacity of the waterway and involves only a permitted use as defined herein, then a recommendation for administrative approval, subject to the appropriate conditions, shall be made by the Town Engineer and forwarded to the Conservation Director. If the Conservation Director finds that the proposed use, activity or project does not have adverse impact on the natural resources and ecosystems of the waterway and the project involves only a permitted use as defined herein, then an administrative approval shall be issued by the Conservation Director, subject to the appropriate conditions.
- (b) Replacement or repair of any previously existing buildings or structures which do not conform to this article, which are subsequently damaged or destroyed due to natural causes, shall be permitted, provided that the replacement or repair of any such nonconforming building or structure shall be commenced within nine months after the damage or destruction. In addition, the plans for such replacement or repair must be approved by the Conservation Director and the Town Engineer. Such nonconforming buildings or structures shall not be extended or expanded, except to raise the finished floor elevations to conform to the requirements of the federal government which are imposed as conditions for the construction of flood control projects.
- (c) Projects involving maintenance of existing structure(s) or restoration of natural resources which are approved by the Conservation Director and the Town Engineer shall be permitted within said waterway protection lines, provided that they are in compliance with current laws and regulations. Such nonconforming building or structure shall not be extended or expanded, except to raise the finished floor elevations to conform to the requirements of the federal government which are imposed as conditions for the construction of flood control projects.

(Code 1981, § 148-6)

Sec. 30-91. - Approval required for conduct of regulated activities.

Written applications to conduct a regulated activity shall be filed with the Conservation Department. Applications for regulated activities that are not permitted pursuant to [Section 30-90](#) shall be considered by the Flood and Erosion Control Board and the Conservation Commission. Only those regulated activities that are not permitted pursuant to [Section 30-90](#) will require the approval by both the Flood and Erosion Control Board and the Conservation Commission. Only completed applications, on the form supplied by the Town, shall be considered by the Flood and Erosion Control Board and the Conservation Commission. Failure of an applicant or his or her representative to sufficiently answer inquiries at a meeting of either the Flood and Erosion Control Board or Conservation Commission may be sufficient grounds for denial of an application. Each body shall render a written decision to the RTM Moderator within 15 days after the second regularly scheduled meeting following the date the application is filed. Each body shall notify the applicant by certified mail of its decision within 15 days from the date of the decision. Failure of either body to act within the prescribed time period shall be deemed an approval of the application by that body.

(Code 1981, § 148-7)

Sec. 30-92. - Information to be submitted to Flood and Erosion Control Board.

An applicant shall submit information to the Flood and Erosion Control Board showing that such activity will not cause flooding, drainage, erosion and/or related conditions hazardous to life and property and will not have an adverse impact upon the flood-carrying and water-storage capacity of the Town's waterways, including but not limited to the impact upon flood heights, hydrological energy flow, maintenance of essential and natural patterns of water circulation, drainage and basin configuration and maintenance of freshwater and saltwater exchange through the placement of culverts, tide gates or other drainage or flood-control structures.

(Code 1981, § 148-8)

Sec. 30-93. - Information to be submitted to Conservation Commission.

An applicant shall submit information to the Conservation Commission showing that such activity will not cause water pollution, erosion and/or environmentally related hazards to life and property and will not have an adverse impact on the preservation of the natural resources and ecosystems of the waterway, including but not limited to impact on groundwater and surface water, aquifers, animal, plant and aquatic life, nutrient exchange and supply, thermal energy flow, natural pollution filtration and decomposition, habitat diversity, viability and productivity and the natural rates and processes of erosion and sedimentation.

(Code 1981, § 148-9)

Sec. 30-94. - Final decision; commencement of activity.

- (a)** The Conservation Commission may grant or deny permission to conduct a regulated activity based on a finding of the effect of the obstruction or encroachment on the flood-carrying and water-storage capacity of the waterways and floodplains, flood heights, hazards to life and property, the protection and preservation of the natural resources and ecosystems of the municipality, including but not limited to groundwater and surface waters, animal, plant and aquatic life, nutrient exchange and energy flow, with due consideration given to the results of similar encroachments constructed along the reach of the waterway.
- (b)** The applicant may commence any permitted activity no earlier than 30 days after receipt of the final decision of the Conservation Commission.

(Code 1981, § 148-10)

Sec. 30-95. - Review of decisions by RTM.

The RTM shall have the right to review any decision(s) of the Flood and Erosion Control Board and/or the Conservation Commission. Such right of review shall include the ability to reverse any decision of either or both reviewing bodies. Such right of review shall be exercised only upon the written petition for review submitted by two members of the RTM or 20 electors of the Town of Westport, which petition must be received by the RTM Moderator or Town Clerk within 30 days from the date a decision is rendered by the latter of the two reviewing bodies. The receipt of such a petition for review shall prohibit any applicant from commencing the proposed activity until receipt of the RTM decision. The right to review of the RTM must be exercised within 90 days after receipt of the petition for review. The Town Clerk shall give written notice of the decision of the RTM by certified mail to the applicant within 15 days of the RTM action. If the RTM fails to act on the petition for review within the prescribed time period, the application shall be deemed approved.

(Code 1981, § 148-11)

Sec. 30-96. - Submission of applications for final approval.

All applications submitted by the Town of Westport or by any board, commission, department or other subdivision of the Town shall be submitted to the RTM for final approval; however, such applications must first be filed with the Conservation Department. The Conservation Department will submit the application to the Flood and Erosion Control Board and the Town Engineer for comments and recommendations. Each reviewing body shall submit its written decision and recommendations to the Moderator of the RTM within 15 days after the RTM's second regularly scheduled meeting following the date the application is filed with the Town Engineer. Failure of either body to submit such written decision and recommendations within the prescribed period shall be deemed an approval. In the event that one or both of the bodies fails to act within the prescribed time period, that body shall give notice to the Moderator of the RTM that the application has been deemed approved by that nonreviewing body. The RTM shall then give final approval or denial to the application within 90 days from the date of receipt by the Moderator of the latter of the written decision or notice by each body. Failure of the RTM to act within the prescribed time period shall constitute an approval of the application.

(Code 1981, § 148-12)

Sec. 30-97. - Notification of applicant and adjacent property owners required.

An applicant shall be given written notice by certified mail at least 14 days prior to the date on which his/her initial application shall be reviewed by a municipal board or commission acting under this article. If the board or commission extends review of the initial application, the applicant shall be given written notice by certified mail at least seven days prior to the date on which his/her initial application shall be given continued review; and further, such seven-day notice shall be required for every continuance thereafter. In addition, the applicant shall submit the names and addresses of all property owners adjacent to the applicant's property. Said adjacent property owners shall also be given written notice at least 14 days prior to the date the initial application is scheduled to be reviewed by a municipal board or commission acting under this chapter. If the board or commission extends review of the initial application, any adjacent property owners shall also be given written notice at least seven days prior to the date on which the initial application is scheduled for continued review; and further, such seven-day notice shall be required to be provided for said adjacent property owners for every continuance thereafter.

(Code 1981, § 148-13)

Editor's note—

The 1981 Code stated this section was adopted on October 2, 1990 (with an effective date of October 12, 1990).

Secs. 30-98—30-122. - Reserved.

FOOTNOTE(S):

⁽¹⁶⁾ *Editor's note—* The 1981 Code stated this article was adopted on December 6, 1988 (with an effective date of December 16, 1988). [\(Back\)](#)

⁽¹⁶⁾ **State Law reference—** Municipal regulation of wetlands and watercourses, C.G.S. § 22a-42 et seq. [\(Back\)](#)