

MINUTES OF A PUBLIC HEARING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF
MAMARONECK HELD ON MONDAY, JULY 9, 2007 AT 7:30 P.M. IN THE COURTROOM AT VILLAGE
HALL, MAMARONECK, NEW YORK

PRESENT:	Mayor	Philip Trifiletti
	Trustees	Thomas A. Murphy Toni Pergola Ryan John M. Hofstetter Anthony Fava
	Village Manager	Leonard M. Verrastro
	Deputy Village Attorney	Joseph Messina
	Police Chief	Edward Flynn
	Clerk-Treasurer	Agostino A. Fusco
ABSENT:		None

NOTICE OF PUBLIC HEARING

PLEASE TAKE NOTICE that a public hearing will be held by the Board of Trustees of the Village of Mamaroneck on the 9th day of July, 2007, at 7:30 p.m., or as soon thereafter as all parties can be heard, at the municipal building located at 169 Mount Pleasant Avenue, Mamaroneck, New York, to consider PROPOSED LOCAL LAW NO. 13-2007, a local law amending Chapter 192 to include both freshwater and saltwater wetlands and to amend the definition of wetland of the Code of the Village of Mamaroneck.

PLEASE TAKE FURTHER NOTICE that a copy of Proposed Local Law No. 13-2007 is on file with the Clerk-Treasurer of the Village of Mamaroneck.

PLEASE TAKE FURTHER NOTICE that at said public hearing, all persons interested will be given an opportunity to be heard.

BY ORDER OF THE BOARD OF TRUSTEES OF
THE VILLAGE OF MAMARONECK, NEW YORK

Agostino A. Fusco
Clerk-Treasurer

Dated: July 2, 2007

On motion of Trustee Murphy, seconded by Trustee Ryan:

RESOLVED that the Public Hearing on Proposed Local Law 13-2007, is hereby opened.

Ayes:	Fava, Hofstetter, Ryan, Murphy, Trifiletti
Nays:	None

Tom Yardley, with BJB Planning Consultants stated that there is an existing Local Law on the protection of wetlands (only fresh water) and that this proposed law is being amended to include both freshwater and saltwater wetlands and to amend the definition of wetlands as having a minimum area of 2,500 square feet. The previous minimum area deferred to the state standard which was 12.8 acres.

Mr. Yardley stated that a similar law has been enacted in the Town of Mamaroneck and they have found it very effective in protecting their wetlands. Mr. Galvin, Chair of the Planning Board stated that when the

Planning Board receives an application this would allow them to ask applicants to have a wetland expert go on site and map the wetlands and they in turn can use this map to determine lot counts.

On motion of Trustee Fava, seconded by Trustee Ryan:

RESOLVED that the Public Hearing on Proposed Local Law 13-2007 is hereby closed.

Ayes: Fava, Hofstetter, Ryan, Murphy, Trifiletti
Nays: None

On motion of Trustee Hofstetter, seconded by Trustee Ryan:

RESOLVED that this is an Unlisted Action under SEQRA and the Short Environmental Assessment Form completed by BJB Planning has determined that it has no environmental impact, therefore the Board of Trustees is declaring a Neg Dec.

Ayes: Fava, Hofstetter, Ryan, Murphy, Trifiletti
Nays: None

On motion of Trustee Fava, seconded by Trustee Ryan:

RESOLVED that Proposed Local Law 13-2007 is hereby enacted as Local Law 10-2007 and shall read as follows:

A Local Law amending Chapter 192 to include both freshwater and saltwater wetlands and to amend the definition of wetlands.

Be it enacted by the Board of Trustees of the Village of Mamaroneck as follows:

§ 192-1. Legislative intent.

The Board of Trustees of the Village of Mamaroneck hereby finds that wetlands play a fundamental role in the environment of the Village of Mamaroneck. Wetlands provide a natural habitat for many forms of wildlife; aid flood control and storm drainage by absorbing and storing excess precipitation; protect subsurface water resources and recharge groundwater supplies; protect water quality by functioning as sedimentation and filtration basins; facilitate recreational and educational activities; and offer natural open spaces where such open spaces are in very short supply. Therefore, the Board of Trustees of the Village of Mamaroneck, pursuant to Article 24 of the Environmental Conservation Law of the State of New York, declares that it is the intent of this chapter to promote these public purposes through the creation of procedures to ensure the preservation, restoration, enhancement and proper utilization of wetlands and the natural resources and processes attendant thereto. This chapter shall be known as the " Wetlands Protection Law."

§ 192-2. Definitions.

The following terms, phrases, words and their derivatives shall have the meanings given herein:

ADJACENT AREA — Any land in the Village of Mamaroneck immediately adjacent to a wetland or lying within one hundred (100) feet, measured horizontally, of the boundary of a wetland.

AGENCY — The Planning Board.

APPLICANT — Any person who files an application for any permit issued by the Agency pursuant to this chapter, and includes the agent of the owner or a contract vendee.

BOARD — The Wetlands Appeals Board established by Article 24 of the State Environmental Conservation Law.

BOUNDARIES OF A WETLAND — The outer limits of the vegetation specified in Subdivisions 1(a) and (b) of § 24-0107 of the State Environmental Conservation Law and of the waters specified in Subdivision 1 (c) of such section.

CONTROLLED AREA — A wetland and its adjacent area, as defined herein.

DEPOSIT — To fill, place, eject or dump any liquid, solid or gaseous material, but not including stormwater.

WETLANDS — Any area which meets one or more of the following criteria:

- A. Lands and waters of the state that meet the definition provided in § 25-0103.1 of the New York State Tidal Wetlands Act (Article 25 of the Environmental Conservation Law). The approximate boundaries of such lands and waters are indicated on the official tidal wetlands inventory promulgated by the Commissioner pursuant to § 25-0201 of the Act or such an inventory that has been amended or adjusted pursuant to § 25-0201.6 of said Act.
- B. All other areas, 2,500 square feet or larger, that comprise hydric soils or are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of hydrophytic vegetation, as defined by the technical publication, Federal Manual for Identifying and Delineating Jurisdictional Wetlands (1989).

FRESHWATER WETLANDS MAP — A map on which are indicated the boundaries of any freshwater wetland and which has been filed with the Clerk of the Village of Mamaroneck by the State Department of Environmental Conservation pursuant to § 24-0301 of the State Environmental Conservation Law, as such map, may from time to time, be amended.

LOCAL GOVERNMENT — A city, county, town or village.

PARTY IN INTEREST — The applicant, the Agency, the State Department of Environmental Conservation, each local government in which the regulated activity or any part thereof is located and any person who appears and wishes to be a "party in interest" at the public hearing held pursuant to § 192-13.

PERSON — Any corporation, firm, partnership, association, trust, estate, one (1) or more individuals and any unit of government or agency or subdivision thereof.

POLLUTION — 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.

PROJECT — Any action which may result in direct or indirect physical impact on a freshwater wetland, including but not limited to any regulated activity.

REGULATED ACTIVITY — Any form of draining, dredging, excavation or removal of soil, mud, sand, shells, gravel or other aggregate from any 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 the 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 and discharging sewage treatment effluent or other liquid wastes directly into or so as to drain into a wetland; that portion of any subdivision of land that involves any land in any wetland or adjacent area; and any other activity which substantially impairs any of the several functions served by wetlands or the benefits derived therefrom, which are set forth in § 24-0105 of the State Environmental Conservation Law.

REMOVE — To dig, dredge, bulldoze, dragline, blast or otherwise excavate or regrade.

SELECTIVE CUTTING — 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 (1) or more particular species of trees.

SOLID WASTE — Ashes, rubbish, refuse, grass cuttings, tree cuttings, leaves, garbage, waste matter, offal or discard matter of any type.

STATE — The State of New York.

STATE AGENCY — Any state department, bureau, commission, board or other agency, public authority or public benefit corporation.

SUBDIVISION OF LAND — Any division of land into two (2) or more lots, parcels or sites, whether adjoining or not, for the purpose of sale, lease, license or any form of separate ownership or occupancy, including any grading, road construction, installation of utilities or other improvements or any other land use and development preparatory or incidental to any such division, by any person or by any other person controlled by, under common control with or controlling such person or by any group of persons acting in concert as part of a common scheme or plan. "Subdivision of land" shall include any map, plat or other plan of division of land, whether or not previously filed. "Subdivision of land" shall not include the lease of land for hunting and fishing and other open space recreation uses and shall not include the division of land by bona fide gift, devise or inheritance.

VILLAGE — The Village of Mamaroneck.

§ 192-3. Prohibitions.

No person shall be allowed to undertake or cause to be undertaken in the wetlands and the adjacent areas to such wetlands any of the following activities:

- A. Placement or deposition of any solid waste.
- B. Discharge of any organic or inorganic chemical, diluted or undiluted, or of any chemical waste which will

cause deleterious environmental consequences.

- C. Discharge of any effluents having a temperature of sixty-five degrees Celsius (65° C.) or more in the wetland, pond, lake, reservoir or tributary thereto deleterious to indigenous plants, fish and/or wildlife.

§ 192-4. Permit required; exceptions.

- A. Except as provided in Subsection B below, no person shall conduct a regulated activity on any controlled area unless such person has first obtained a permit pursuant to this chapter. No permits can be issued for activities prohibited by § 192-3 above.
- B. No permit under this chapter shall be required for:
- (1) The deposition or removal of the natural products of wetlands and adjacent areas of recreational or commercial fishing, shellfishing, agriculture, hunting or trapping where otherwise legally permitted and regulated.
 - (2) Maintenance of lawns, grazing, farming, gardening and harvesting of crops where otherwise legally permitted, except for the use of chemicals as provided in § 192-3B.
 - (3) Public health activities, orders and regulations of the State Department of Health or the County Department of Health undertaken in compliance with § 24-0701, Subsection 5, of the State Environmental Conservation Law.
 - (4) Activities subject to the review jurisdiction of the State Public Service Commission or the New York State Board on Electric Generation Siting and the Environment under Article 7 or Article 8 of the State Public Service Law, respectively. The standards and restrictions of this chapter will be applied by said bodies in determining whether to issue a certificate of environmental compatibility and public need under such Articles.
 - (5) Any emergency activity which is immediately necessary for the protection of life, property or natural resources. Within forty-eight (48) hours of the commencement of such emergency activity, the person conducting such activity shall notify the Agency that such activity is being conducted. Within five (5) days of the cessation of such emergency activity, the person conducting such activity shall provide the Agency with a full written report specifying the need for the activity and including the information required in § 192-5.
 - (6) Any activity located in a wetland where such wetland is located in more than one (1) city, town or village.
 - (7) The conservation of soil, water, vegetation, fish and wildlife.
 - (8) Outdoor recreation, including play and sporting activities, field trails for nature study, hiking, horseback riding restricted to trails established for that purpose, swimming, camping, boating, trapping, hunting and fishing where otherwise legally permitted and regulated.
 - (9) Ordinary repair and maintenance of existing structures or improved areas which does not involve expansion or substantial restoration, reconstruction, rehabilitation, or modification, including but not limited to bridges, roads, highways, railroad beds, bulkheads, docks, pilings or paved areas.
 - (10) Scientific and educational pursuits not inconsistent with the intent of this chapter.

§ 192-5. Application for permit.

- A. Any person proposing to conduct or cause to be conducted a regulated activity requiring a permit under this chapter upon any controlled area shall file an application for a permit with the Clerk of the Village of Mamaroneck. The Clerk shall immediately forward such application to the Agency.
- B. Information required.
- (1) An application for a permit shall be filed by the applicant on a form prescribed by the Agency. Such application shall set forth the purpose, character and extent of the proposed regulated activity. The application shall include a detailed description of the regulated activity, a map showing the area of wetland or adjacent area directly affected, with the location of the proposed regulated activity thereon, a deed or other legal description describing the subject property and such additional information as the Agency deems sufficient to enable it to make the findings and determinations required under this chapter.
 - (2) The application shall be accompanied by a list of the names of the owners of record of lands adjacent to the wetland or adjacent area upon which the project is to be undertaken and the names of known claimants of water rights, of whom the applicant has notice, which relate to any land within or within one hundred (100) feet of the boundary of the property on which the proposed regulated activity will be located.
 - (3) An application shall not be deemed to be completed or received until the Agency determines that all such information, including any additional information requested, has been supplied in a complete and satisfactory form.

- C. The Clerk of the Village of Mamaroneck shall cause a copy of such completed application to be mailed to all local governments where the proposed activity or any part thereof is located.

§ 192-6. Notice of application.

- A. Within five (5) days of its receipt of a completed application for a permit regarding a proposed regulated activity, the Agency shall provide the applicant with a notice of application, which the applicant shall publish, at his or her own expense, at least once in the official newspaper of the Village of Mamaroneck.
- B. Said notice of application shall be in a form prescribed by the Agency and shall:
- (1) Specify that persons wishing to object to the application should file a notice of objection by a specified date, together with a statement of the precise grounds of objection to the application, with the Agency.
 - (2) Specify that if no notices of objection are timely filed or if the Agency determines that the proposed activity is of such a minor nature as to not affect or endanger the balance of systems within any wetland, then the Agency, in its discretion, may determine a hearing is not necessary and dispense with the public hearing.
 - (3) Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Village of Mamaroneck.
- C. Notwithstanding any other provisions of this section, the Agency may, in its discretion, dispense with the requirement for a public notice of application and require a notice of hearing pursuant to § 192-8.

§ 192-7. Public hearing required; exceptions.

- A. No sooner than thirty (30) days and not later than sixty (60) days after its receipt of a completed application for a permit regarding a proposed regulated activity and after the publication of a notice of application pursuant to § 192-6, the Agency shall hold a public hearing on such application at a suitable location in the Village of Mamaroneck, which hearing shall be held pursuant to the provisions of § 192-13.
- B. Notwithstanding the provisions of Subsection A above, where no notice of objection to the notice of application published pursuant to § 192-6 shall have been filed within the time specified by that notice or where the Agency determines that the proposed activity is of such a minor nature as not to affect or endanger the balance of systems within any wetland, the Agency may, in its discretion, dispense with such hearing. Where the Agency finds that a public hearing is not necessary, it shall publish a decision setting forth its reasons therefor, which decision shall be a matter of public record and shall be mailed to each local government where the proposed regulated activity or any part thereof will be located. Public notice of such decision that a public hearing is not necessary shall be provided in the same manner as notice of application set forth in § 192-6.

§ 192-8. Notice of hearing.

- A. The Agency shall, within twenty-one (21) days of receipt of a completed application, provide the applicant with a notice of hearing, which the applicant shall publish, at his or her own expense, at least fifteen (15) days prior to the date set for the hearing, at least once in the official newspaper of the Village of Mamaroneck.
- B. At least fifteen (15) days prior to the date set for the hearing, the Agency shall, by certified mail, provide a notice of hearing to each local government within whose boundaries the proposed regulated activity or any portion thereof will be located.
- C. At least fifteen (15) days prior to the date set for the hearing, the Agency shall, by certified mail, provide notice of hearing to all owners of record of land adjacent to the affected wetland or adjacent area and to all known claimants of water rights, of whom the applicant has notice, which relate to any land within or within one hundred (100) feet of the boundary of the property on which the proposed regulated activity will be located.
- D. The notice of hearing shall:
- (1) State the name of the applicant.
 - (2) Specify the location and outline the scope of the proposed regulated activity.
 - (3) Specify the date, time and place of the public hearing on the application.
 - (4) Specify that persons wishing to be parties in interest and eligible to be heard at such public hearing, if any, should file a notice of appearance by a specified date, together with a statement of the precise grounds of support of, opposition to or interest in the application, with the Agency.
 - (5) Specify that any person who wishes to be a party in interest without filing a notice of appearance may do so by appearing at the public hearing and indicating his or her desire to be a party in interest, if a public hearing is held.
 - (6) Specify that if no notices of appearance are timely filed by any party in interest and if the applicant

waives any public hearing, then the public hearing may be canceled by the Agency.

- (7) Specify that the application, including all documents and maps therewith, is available for public inspection at the office of the Clerk of the Village of Mamaroneck.

§ 192-9. Public access to application.

The Agency shall make the application, including all documents and maps associated with it, available for public inspection at the office of the Clerk of the Village of Mamaroneck.

§ 192-10. Waiver of hearing; notice of cancellation.

- A. If no timely notice of appearance has been filed as provided in the notice of hearing published pursuant to § 192-8 and the applicant waives, in writing, any public hearing on his or her application, the Agency may dispense with a public hearing and, in such instance, shall provide public notice of the cancellation of the hearing.
- B. For any notice canceling a hearing which has been scheduled, notice shall be given on the same basis as the notice of public hearing provided in § 192-8.

§ 192-11. Application fee. [Amended 3-23-1987 by L.L. No. 5-1987, effective 4-2-1987]

An application fee in the amount as set forth in Chapter A347, Fees, shall be required at the time application for a wetland permit is submitted to the Agency. Any inspection costs required and incurred in inspecting the property are to be charged to the applicant and are payable prior to the issuance of a permit. Said costs shall be determined by the Village Engineer.

§ 192-12. Distribution of application.

Where determined appropriate, the Agency may forward one (1) copy of the application to the Village Engineer, the Building Inspector, the Department of Public Works, the applicable Fire District, the Police Department, the Westchester County Soil and Water Conservation District and any other local, state, county, regional and federal agencies having jurisdiction, for their report and recommendations, prior to the holding of a hearing.

§ 192-13. Public hearing procedure.

- A. Any public hearing held on a permit application received under this chapter shall be conducted by the Agency. The Agency shall have full authority to control the conduct and procedure of the hearing and shall be responsible that a complete record of the hearing is kept. The public hearing shall be held within the Village of Mamaroneck.
- B. Any person may appear as a party in interest, notwithstanding the failure of such person to file a timely notice of appearance, by appearing at the hearing and making known his or her desire to be a party in interest. Persons who are not parties in interest may be allowed to participate in the hearing where the Agency finds that such participation would be in the public interest.
- C. All parties in interest shall be afforded an opportunity to present oral and written arguments on issues of law and policy and an opportunity to call witnesses in their behalf and to present oral and written evidence on issues of fact. The Agency shall permit the parties in interest to cross-examine witnesses but may limit such cross-examination to avoid the introduction of irrelevant or repetitious material in the record of the hearing.

§ 192-14. Decisions on permits; formulation, standards and distribution.

- A. Where a public hearing has been held regarding a permit application, the Agency shall either issue the permit requested, with or without conditions, or deny the application. The decision by the Agency to issue or deny a permit after public hearing shall be based on the record of the hearing and shall be made, in writing, within thirty (30) days of the Agency's receipt of the hearing record.
- B. Where no public hearing regarding a permit application has been held, either because a hearing was determined not to be necessary pursuant to § 192-7B or because no notice of appearance was filed with regard to the public hearing and a hearing was canceled pursuant to § 192-10, the Agency shall compile an official file consisting of documents submitted by the applicant and any additional documents relied on by the Agency with respect to the application. The Agency may also take notice of the general, technical or scientific facts within the specialized knowledge of the Agency. Any document made part of such official file shall be available for inspection by the applicant and any interested member of the public. On the basis of such file, the Agency shall either issue the permit requested, with or without conditions, deny the application or order a public hearing to be held pursuant to the provisions of this chapter. The decision by the Agency to issue or deny a permit or to order that a hearing be held shall be based on the official file and shall be made, in writing, within thirty (30) days of its completion of the official file and, in any event,

within sixty (60) days of its receipt of a completed application, provided that, in the case where there have been no objections filed regarding a proposed project, the issuance of a permit shall be deemed to be a written decision by the Agency.

- C. A copy of the decision of the Agency on each application for a permit under this chapter shall be mailed by the Agency, as soon as practicable following such decision, to the applicant and to each local government within whose boundaries the proposed regulated activity or any portion thereof is located and, if a public hearing has been held regarding the application, to each party in interest.
- D. In granting, denying or conditioning any permit, the Agency 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 wetlands and the benefits derived therefrom which are set forth in § 24-0105 of the State Environmental Conservation Law.
- E. Specific standards of consideration.
 - (1) No permit shall be issued by the Agency pursuant to this chapter unless the Agency shall find that:
 - (a) The proposed regulated activity is consistent with the policy of this chapter to preserve, protect and conserve wetlands and the benefits derived therefrom, to prevent the despoliation and destruction of wetlands and to regulate the development of such wetlands in order to secure the natural benefits of wetlands consistent with the general welfare and beneficial economic, social and agricultural development of the Village of Mamaroneck.
 - (b) The proposed regulated activity is consistent with the land use regulations applicable in the Village of Mamaroneck pursuant to § 24-0903 of Article 24 of the State Environmental Conservation Law.
 - (c) The proposed regulated activity is compatible with the public health and welfare.
 - (d) The proposed regulated activity is reasonable and necessary.
 - (e) There is no reasonable alternative for the proposed regulated activity on a site which is not a wetland or adjacent area.
 - (2) The applicant shall have the burden of demonstrating that the proposed regulated activity will be in accord with the standards set forth in this section.
- F. Duly filed written notice by the state or any agency or subdivision thereof to the Agency that the state or any such agency or subdivision is in the process of acquiring the affected wetland on which a proposed regulated activity would be located by negotiation or condemnation shall be sufficient basis for denial of a permit for such regulated activity. Such notice may be provided at any time prior to the Agency's decision to issue or deny a permit for the regulated activity.

§ 192-15. Conditions binding permits.

- A. Any permit issued pursuant to this chapter may be issued with conditions. Such conditions may be attached as are necessary to assure the preservation and protection of affected wetlands and to assure compliance with the policy and provisions of this chapter and the provisions of the Agency's rules and regulations adopted pursuant to this chapter.
- B. Every permit issued pursuant to this chapter shall contain the following conditions:
 - (1) The Agency shall have the right to inspect the project from time to time.
 - (2) The permit shall expire on a certain date.
 - (3) The permit holder shall notify the Agency of the date on which project construction is to begin at least five (5) days in advance of such date.
 - (4) The Agency's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.
- C. The Agency shall set forth, in writing, in the file it keeps regarding a permit application, its findings and reasons for all conditions attached to any permit.

§ 192-16. Agency powers.

In order to carry out the purposes and provisions of this chapter, the Agency shall have the following powers:

- A. To adopt, amend and repeal, after public hearing, except in the case of rules and regulations that relate to the organization or internal management of the Agency, such rules and regulations consistent with this chapter as it deems necessary to administer this chapter and to do any and all things necessary or convenient to carry out the purpose and policies of this chapter.
- B. To request the Village of Mamaroneck to contract for professional and technical assistance and advice.
- C. To hold hearings and subpoena witnesses in the exercise of its powers, functions and duties provided for by this chapter.

§ 192-17. Effect of additional laws and regulations.

- A. To the greatest extent practicable, any public hearing held pursuant to § 192-13 shall be incorporated with any public hearing required by or pursuant to the New York State Town Law, Village Law, General City Law, General Municipal Law, or Environmental Conservation Law relating to approvals or permits otherwise required for the undertaking of regulated activities on the wetland or adjacent area in question.
- B. No permit granted pursuant to this chapter shall remove any person's obligation to comply in all respects with the applicable provisions of any other federal, state or local law or regulation, including but not limited to the acquisition of any other required permit or approval.

§ 192-18. Bonding requirements.

- A. The Agency may require that, prior to commencement of work under any permit issued pursuant to this chapter, the permittee shall post a bond with the Agency in an amount determined by the Agency, conditioned upon the faithful compliance with the terms of such permit and for the indemnification of the Village of Mamaroneck for restoration costs resulting from failure to so comply. Such bond shall be issued by a corporate surety authorized to do business in the state and shall be in favor of the Village of Mamaroneck. It shall remain in effect until the Agency certifies that the work has been completed in compliance with the terms of the permit or the bond is released by the Agency or a substitute bond is provided.
- B. The Agency shall set forth, in writing, in the file it keeps regarding a permit application, its findings and reasons for imposing a bond pursuant to this section.

§ 192-19. Revocation and suspension of permits.

- A. The Agency may suspend or revoke a permit issued pursuant to this chapter where it finds that the permittee has not complied with any or all terms of such permit, has exceeded the authority granted in the permit or has failed to undertake the project in the manner set forth in the application.
- B. The Agency shall set forth, in writing, in the file it keeps regarding a permit application, its findings and reasons for revoking or suspending a permit pursuant to this section.

§ 192-20. Sanctions and penalties.

A. Administrative sanctions.

- (1) Any person who violates, disobeys or disregards any provision of this chapter including any provision of any permit issued pursuant to this chapter or any rule or regulation adopted by the Agency pursuant to this chapter, shall be liable to the people of the state for a civil penalty of not to exceed three thousand dollars (\$3,000.) for every such violation, to be assessed, after a hearing or opportunity to be heard, upon due notice and with the rights to specification of the charges and representation by counsel at such hearing, by the Agency. Such penalty may be recovered in an action brought by the Attorney General at the request and in the name of the Agency in any court of competent jurisdiction. Such civil penalty may be released or compromised by the Agency before the matter has been referred to the Attorney General, and such penalty may be released or compromised and any action commenced to recover the same may be settled and discontinued by the Attorney General with the consent of the Agency. In addition, the Agency shall have the power, following a hearing held in conformance with the procedures set forth in § 71-1709 of the State Environmental Conservation Law, to direct the violator to cease his or her violation of this chapter and to restore the affected wetland to its condition prior to the violation, insofar as that is possible, within a reasonable time and under the supervision of the Agency. Any such order of the Agency shall be enforceable in an action brought by the Attorney General at the request and in the name of the Agency in any court of competent jurisdiction. Any civil penalty or order issued by the Agency pursuant to this subsection shall be reviewable in a proceeding pursuant to Article 78 of the State Civil Practice Law and Rules.
- (2) No building permit shall be issued within a controlled area unless a wetland permit is first issued pursuant to this chapter.
- (3) No certificate of occupancy for any structure or use within a controlled area shall be issued unless all of the required conditions of a permit issued pursuant to this chapter are first complied with. The continued validity of any certificate of occupancy shall be subject to continued conformance to this chapter and any permit issued pursuant hereto.
- (4) A wetland permit previously issued is subject to suspension or revocation pursuant to the provisions of this chapter.
- (5) Any revision of any approved activities within a controlled area shall be subject to the procedures provided under this chapter.

B. Criminal sanctions.

- (1) Any person who violates an order, permit or rule or regulation of the Agency regulating wetlands and adjacent areas pursuant to this chapter shall, in addition, for the first offense, be guilty of a violation punishable by a fine of not less than five hundred dollars (\$500.) nor more than one thousand dollars (\$1,000.); for a second and each subsequent offense, he or she shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000.) nor more than two thousand dollars (\$2,000.) or a term of imprisonment of not less than fifteen (15) days nor more than six (6) months, or both. Instead of these punishments, any offender may be punishable by being ordered by the court to restore the affected wetland to its condition prior to the offense, insofar as that is possible. The court shall specify a reasonable time for the completion of such restoration, which shall be effected under the supervision of the Agency. 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.
- (2) In addition, any person found violating any provisions of this chapter shall be liable to the Village of Mamaroneck for any expense, loss or damage resulting from the activity, in addition to any fine or other punishment which may be imposed hereunder.

§ 192-21. Enforcement.

- A. The Attorney General, upon his or her own initiative or upon complaint of the Agency, shall prosecute persons alleged to have violated any such order of the Agency pursuant to this chapter.
- B. Notwithstanding the penalties hereinabove provided, the Village of Mamaroneck may maintain an action or proceeding in a court of competent jurisdiction to compel compliance with or to restrain by injunction the violation of any provisions of this chapter or any permit granted hereunder.

§ 192-22. Review and appeal.

- A. Any decision or order of the Agency made pursuant to or within the scope of this chapter may be reviewed at the instance of any person affected thereby, including but not limited to any owner of the affected wetland or adjacent area and any resident or citizen of the Village of Mamaroneck, by the Board in accordance with Title 11 of Article 24 of the State Environmental Conservation Law, provided that such review is commenced by the filing with the Board of a notice of review within thirty (30) days after service of such order or notice of such decision is given, as the case may be.
- B. Any party to any proceeding before the Agency may make an appeal to the Board, in accordance with Title 11 of Article 24 of the State Environmental Conservation Law, from any order or decision of the Agency issued or made pursuant to or within the scope of this chapter, provided that such appeal is commenced by the filing with the Board of a notice of appeal within thirty (30) days after service of such order or after notice of such decision is given, as the case may be.
- C. Any decision or order of the Agency made pursuant to or within the scope of this chapter may be reviewed at the instance of any person, including but not limited to any owner of the affected wetland or adjacent area and any resident or citizen of the Village of Mamaroneck, in accordance with Article 78 of the State Civil Practice Law and Rules, provided that such review is commenced within thirty (30) days of the filing of such decision or order; and the limitation upon the availability of such remedy as prescribed in § 7801 of the Civil Practice Law and Rules shall not be applicable to the applications for review of determinations and orders made pursuant to this chapter.
- D. The institution of a judicial proceeding to review a determination or order of the Agency shall preclude the institution of a proceeding before the Board to review such a determination or order. The availability of such review by the Board shall not affect the right of any person to seek review of a determination of the Agency as provided in Article 78 of the State Civil Practice Law and Rules.

This Local Law shall become effective immediately upon filing in the office of the Secretary of State.

Ayes: Fava, Hofstetter, Ryan, Murphy, Trifiletti
Nays: None

RESPECTFULLY SUBMITTED BY:

AGOSTINO A. FUSCO, CLERK-TREASURER