

# Local Law 1 of 2012

## *Local Law Filing*

NEW YORK STATE DEPARTMENT OF STATE  
41 State Street, Albany, New York 12231

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### Village of Muttontown

#### Local Law 1 of 2012

**A local law amending Chapter 74 (Freshwater Wetlands), section 74-2 (Definitions) of the Code of the Village of Muttontown to revise the definition of “freshwater wetland”; and amending Chapter 158 (Subdivision of Land), Article IV (Design Standards), section 158-16 (General requirements) of the Code of the Village of Muttontown to preserve and protect slope lands, freshwater wetlands and natural buffers between subdivisions, and section 158-28 (Recreation areas and public uses) to designate the Board of Trustees as the agency responsible for granting waivers of the requirement that land be dedicated or reserved for recreation.**

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

If any section, provision or part of this local law shall be adjudged invalid or unconstitutional by a court of competent jurisdiction, then such adjudication shall not affect the validity of the local law as a whole or any section, provision or part thereof not so adjudged invalid or unconstitutional.

This local law shall take effect immediately upon filing with the Secretary of State.

#### **Chapter 74, FRESHWATER WETLANDS**

##### § 74-2. Definitions.

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

**ADJACENT AREA** -- The area surrounding the freshwater wetland, measured a horizontal distance of 100 feet from the boundary thereof.

**APPLICANT** -- Includes the owner of the affected property, his agent or contract vendee who files an application for a permit pursuant to this chapter.

**BOUNDARY** -- The outer limit of the physical feature that constitutes a wetland resource in terms of vegetation, soils and hydrologic conditions specified herein in the definition of "freshwater wetland."

**FRESHWATER WETLAND** -- An area of at least 2,000 square feet that is naturally or artificially inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, under normal circumstances, a prevalence of vegetation typically adapted for life in saturated conditions (called "hydrophytes;" see definition of "hydrophytic vegetation" herein), or contains hydric soils. Freshwater wetlands are commonly referred to as "swamps," "marshes," "bogs" or "vernal pools." Regulated freshwater wetlands for the purpose of this chapter include water bodies and watercourses.

**HYDROPHYTIC VEGETATION** -- Plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content, as set forth in the Federal Manual of Identifying and Delineating Jurisdictional Wetlands, as amended or updated. Most common hydrophytes are listed and categorized in Wetlands Plants of the State of New York, published by the United States Fish and Wildlife Service in cooperation with the National and Regional Wetlands Plant List Review Panels, as amended or updated.

**PERMIT** -- A freshwater wetlands permit for the conduct of a regulated activity.

**PERSON** -- Any corporation, firm, partnership, association, trust or estate, one or more individuals and any unit of government or agency or subdivision thereof.

**PLANNING BOARD** -- The Planning Board of the Incorporated Village of Muttontown designated by the village to be responsible for administering the provisions of this chapter and promulgating rules, regulations and procedures necessary to implement and administer properly the provisions herein.

**POLLUTION** -- The presence in the environment of human-induced conditions or contaminants in quantities or characteristics which are or may be injurious to humans, vegetation, wildlife or property.

**PROJECT** -- Any action resulting 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, either directly or indirectly; any form of dumping, filling or deposition of any soil, stones, sand, gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, constructing roads, the driving of pilings or placing of any other obstructions, whether or not changing the ebb and flow of the water; and 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 into or so as to drain into a freshwater wetland and any other activity which substantially impairs any of the several functions served by the freshwater wetlands or the benefits derived therefrom.

**WATER BODY** -- Any surface water element, including but not limited to ponds and intermittent streams, covering an area of at least 2,000 square feet. A water body may be periodically, seasonally or permanently covered by water.

WATERCOURSE -- Any brook, creek, stream, river, rivulet, floodway or other such waterway flowing in a defined channel.

## **Chapter 158, SUBDIVISION OF LAND**

### ARTICLE IV, Design Standards

#### § 158-16. General requirements.

A. Considerations. In considering applications for subdivision of land and/or development, the Board shall be guided by the standards set forth herein. Said standards shall be deemed to be minimum requirements for the convenience, health, safety and welfare of the village.

B. Character of land. Land to be subdivided and/or developed shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace. Land subject to such hazards shall not be subdivided nor developed for residential purposes nor for such other uses as may increase danger to health, life or property or aggravate a flood hazard, but such land may be set aside for such uses as shall not involve such danger nor produce unsatisfactory living conditions.

C. Conformance to Comprehensive Plan and Official Map. Subdivisions and/or developments shall conform to the Official Map and shall be properly related to the proposals shown on the Comprehensive Plan. The plat shall include all streets, shown on the said plan and map, which are within the site and such other streets as the Board may require.

D. Frontage on improved street. The area proposed to be subdivided and/or developed shall have frontage on and direct access to a street duly placed on the Official Map and, if such street is private, it shall be improved to the satisfaction of the Board or there shall be a bond held by the village covering such improvement.

E. Preservation of natural cover. Land to be subdivided and/or developed shall be laid out and improved in reasonable conformity to existing topography, in order to minimize grading, cut and fill and to retain, insofar as possible, the natural contours, limit stormwater runoff and conserve the natural cover and soil. No topsoil, sand or gravel shall be removed from any lots shown on any subdivision plat except for the purpose of improving such lots and for the laying out of streets shown thereon. Topsoil so removed shall be restored to a depth of six inches and properly seeded and fertilized on the areas of such lots not occupied by buildings or structures. No excess topsoil so removed shall be disposed of outside of the boundaries of the village except upon the approval of the Board of Trustees of the village.

F. Preservation of natural buffer. In granting approval of any application for a subdivision other than a partitioning as defined in section 158-8 (Word usage and definitions) of this Chapter, the subdivider shall set aside and reserve a perimeter buffer of fifty feet which shall remain undisturbed, except as may be required for access or such augmentation of the existing flora or other existing natural features as the Planning Board may require or permit in accordance with the planning objectives set forth in the Village Comprehensive Master Plan, as amended from time to time.

G. Preservation of existing natural features. Existing natural features that enhance the attractiveness of the site and which would add value to residential or other development or to the village as a whole, such as trees, watercourses, ponds and similar irreplaceable assets, shall be preserved insofar as possible by harmonious design of the subdivision. The Board may make reasonable modifications in standards for layout of streets to accomplish such purposes as well as the objectives noted in Subsection E. For purposes of computing the number of lots that a subdivision will yield, the following features shall be excluded: all "slope lands" as defined by Chapter 190 (Zoning), Article I (Purpose, Title and Definitions), section 190-2 (Word usage and definitions) of the Code of the Village of Muttontown; and all "freshwater wetlands" and "adjacent areas" as defined by Chapter 74 (Freshwater Wetlands), section 74-2 (Definitions) of the Code of the Village of Muttontown.

§ 158-28. Recreation areas and public uses.

A. Features shown on Comprehensive Plan. Where a proposed park, playground, school or other public use is shown on the Comprehensive Plan in a location which is entirely or partially within a subdivision or development, the Board shall require the dedication or reservation of such area within the subdivision.

B. Recreation area not shown on Comprehensive Plan. In cases where the Comprehensive Plan does not show a recreation area within a proposed subdivision, the Board shall require the dedication or reservation of designated sites for park, playground or other recreation purposes, subject to review by the Board of Trustees pursuant to subsection C, below. Such sites shall be of suitable size, dimension, topography, location and general character for the particular purposes envisioned by the Board. In no case shall the Board require that more than 10% of the gross area of the subdivision be dedicated or reserved for recreation purposes. In calculating such percentage, the Board may give due credit for open areas reserved, by covenants in all deeds, for the common use of all property owners in the proposed subdivision.

(1) Minimum size of recreation area. Land in subdivisions dedicated or reserved for recreation purposes generally shall have an area of at least five acres. When a proposed subdivision is too small to require such an area, the Board may require that the recreation area be located on the edge of the subdivision so that additional land may be added at such time as the adjacent land is subdivided. In no case shall an area of less than three acres be dedicated or reserved for recreation purposes if the Board deems it unlikely that additional lands can be secured to increase such area.

(2) Recreation sites. Land offered for dedication or reservation for recreation purposes shall be of a character, shape and location suitable for such purposes. In the case of a play field or playground, the land shall be relatively level and dry, and no dimension of the site shall be less than 200 feet. Generally, a recreation site shall have a frontage of at least 200 feet on one or more streets.

C. Waiver of land for recreation. The Board of Trustees of the Incorporated Village of Muttontown, in the exercise of the powers conferred by New York Municipal Home Rule Law section 10, hereby supersedes New York Village Law section 7-730 to the extent that, in cases

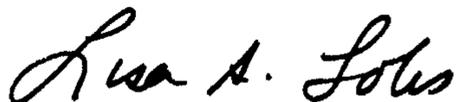
where the Board of Trustees finds that the proposed subdivision plat presents a proper case for requiring a park or parks suitably located for playgrounds or other recreational purposes, but that, due to the size, topography or location of the subdivision or for other reasons, a requirement that land be dedicated or reserved for recreation would be unreasonable or undesirable, the Board of Trustees may waive such requirement, subject to the condition that the subdivider shall, in lieu of such dedication or reservation, pay to the village in cash an amount as provided in Chapter 67, Fees and Deposits. Such moneys shall be deposited in a special village recreation site and improvement fund to be used by the village exclusively for park, playground or other recreational purposes, including the acquisition of property.

D. Public use not shown on Comprehensive Plan. The Board may require that land in a subdivision be temporarily reserved for a public school or other essential community facility, although not shown on the Comprehensive Plan, when the Board deems it desirable and appropriate. In such cases, if the agency having jurisdiction does not acquire such land within two years after the date of the signing of the plat by the Board, the subdivider, upon written notice to the Board, shall, 30 days after such notice, be relieved of the responsibility of further reservation of said land for said public purpose.

**Final adoption by the Board of Trustees of the Incorporated Village of Muttontown.**

I hereby certify that the local law annexed hereto, designated as Local Law 1 of 2012 of the Village of Muttontown was duly passed by the Board of Trustees on March 6, 2012, in accordance with the applicable provisions of law.

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript thereof and of the whole of such original local law, and was finally adopted by the Board of Trustees of the Incorporated Village of Muttontown.



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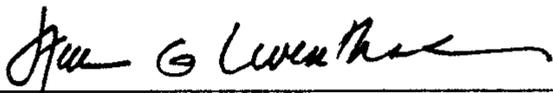
Lisa A. Lolis  
Village Clerk/Treasurer  
Village of Muttontown  
Date: March 6, 2012

*Seal*

**Certification by the Village Attorney**

STATE OF NEW YORK  
COUNTY OF NASSAU

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.



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Steven G. Leventhal  
Village Attorney  
Village of Muttontown  
Date: March 6, 2012