

**RULES AND REGULATIONS OF THE PLANNING COMMISSION
ADOPTED PURSUANT TO CHAPTER 195, WETLANDS AND WATERCOURSES,
OF THE CODE OF THE CITY OF RYE.**

WHEREAS, it is desirable for the Planning Commission of the City of Rye to adopt rules and regulations for the purposes of administering Chapter 195, Wetlands and Watercourses, of the Code of the City of Rye, and

WHEREAS a public hearing was held on January 12, 1999, it is

THEREFORE, DULY RESOLVED that, subject to the approval of the City Council, the following rules and regulations are hereby adopted as the Rules and Regulations of the Planning Commission Adopted Pursuant to Chapter 195, Wetlands and Watercourses, of the Code of the City of Rye and that the rules and regulations currently in effect, which were adopted by Planning Commission Resolution #6-98, dated February 3, 1998, are hereby rescinded.

SECTION 1. BY-LAWS

The By-Laws of the Planning Commission of the City of Rye, as adopted on December 18, 1990, by Planning Commission Resolution #36-90, dated December 18, 1990, and as from time to time hereafter amended, are hereby included by reference.

SECTION 2. DETERMINATION BY CITY NATURALIST

A request for a determination by the City Naturalist shall be made on forms provided by the City Naturalist.

The City Naturalist, in consultation with the Conservation Commission/Advisory Council and the City Planner, shall within 5 business days of receiving a written request for a determination, determine if the proposed activity is in an area that may be subject to the requirements of this Chapter.

The form provided by the City Naturalist to applicants shall contain space for the applicant to provide the following information:

- A. Name and address of the owner.
- B. Street address and tax map designation of the property.

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- C. Date.
- D. Statement of authority from the owner for any agent making an application.
- E. Brief statement of the proposed work.

The form provided by the City Naturalist to applicants shall also contain the following statement:

By requesting a determination, the owner thereby consents to entry onto his land by the City Naturalist, City Planner, or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey, or other activity necessary for the purposes of Chapter 195. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees, are empowered to apply to the City Court for an Administrative Search Warrant, permitting such inspection.

The form shall also provide space for the City Naturalist to write his determination and the date on which the determination was made. When fully completed, a copy of the form shall be provided to the person making the request and to the City Planner.

SECTION 3. APPEAL OF CITY NATURALIST'S DETERMINATION THAT A PROPERTY IS NOT SUBJECT TO THE REQUIREMENTS OF THIS CHAPTER

A. Appeal of City Naturalist's Determination that a Property is Not Subject to the Requirements of this Chapter

In the case of a subdivision or site development plan application, a resident or property owner in the City of Rye may petition the Planning Commission to reverse a determination of the City Naturalist, made pursuant to §195-4.B, that a property is not subject to the requirements of this Chapter. Said petition must be filed within 15 business days of the City Naturalist's determination. The petition shall be in the form of a letter to the Planning Commission, and shall set forth the reasons why the petitioner feels that the determination made by the City Naturalist was incorrect, which letter shall be accompanied by a copy of the City Naturalist's written determination, any factual data, studies, tests or maps in support of the appeal, and a filing fee of \$75. The petitioner shall have the burden of demonstrating that the City Naturalist's determination should be reversed.

B. Appeal of City Naturalist's Determination that a Property May be Subject to the Requirements of this Chapter

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As set forth in §195-4B(3), if the City Naturalist determines that an area may be subject to the requirements of this Chapter, the property owner may petition the Planning Commission to determine that the activity or property is not subject to the requirements of this Chapter. Said petition shall be in the form of the permit application as set forth in §195-5B, but the application need only provide the data required under §195-5B(2)(b) for a waiver, and a filing fee of \$75. If additional information is needed by the Planning Commission to decide the petition, the petitioner shall provide said additional information. The petitioner shall have the burden of demonstrating that the City Naturalist's determination was incorrect. Such petition must be filed within 15 business days of the City Naturalist's determination. If the Planning Commission determines that the decision of the City Naturalist was correct, the property owner may complete the application by paying the permit application filing fee and submitting all other required permit information or withdraw the application.

SECTION 4. PERMIT APPLICATION FORM

The wetlands and watercourses permit application form provided by the City Planner to applicants shall contain space for the applicant to provide the following information:

- A. Name and address of the owner.
- B. Street address and tax map designation of the property.
- C. Statement of authority from the owner for any agent making an application.
- D. Statement of proposed work and purpose thereof and, if applicable, an explanation why the proposed activity cannot be located at another site, including an explanation of how the proposed activity is dependent upon wetlands or water-related resources.
- E. In the case of applications for projects where the total amount of disturbed area is less than one-quarter acre, or projects whose total cost does not exceed \$10,000 or projects which propose encroachment into the wetland/watercourse buffer only, the Planning Commission may, pursuant to §195-5.B.(2)(b), waive the requirements for complete plans and estimates set forth in its rules and regulations adopted pursuant to this Chapter, provided a plan clearly showing the extent and details of the project, its location with respect to the wetland, watercourse and wetland/watercourse buffer, the actual

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acreage of the area to be disturbed, and the total cost of the proposed project is submitted with this application.

Are you requesting a waiver? (circle 1) YES NO

F. In granting, denying, or conditioning any permit, the Planning Commission must evaluate wetland functions and the role of the wetland in the hydrologic and ecological system, and must determine the impact of the proposed activity upon public health and safety, rare and endangered species, water quality and additional wetland functions listed in Section 1 of Chapter 195. They must find that impacts and losses are avoided to the maximum extent practicable or, if they can not be avoided, they must find that they have been minimized to the maximum extent practicable. In this determination, the Planning Commission must consider the following factors, and issue written findings with respect to those factors which are applicable. Please give any pertinent information which will permit the Planning Commission to make findings on the following factors:

(1) the impact of the proposed activity, and existing and reasonably anticipated similar activities, upon neighboring land uses and wetland functions as set forth in Section 1 of Chapter 195, including but not limited to the following:

- [a] filling of a wetland or other modification of natural topographic contours;
- [b] disturbance or destruction of natural flora and fauna;
- [c] influx of sediments or other materials causing increased water turbidity and/or sediment build up;
- [d] removal or disturbance of wetland soils;
- [e] reductions in wetland water supply;
- [f] interference with wetland water circulation;
- [g] damaging reduction or increases in wetland nutrients;
- [h] influx of toxic chemicals and/or heavy metals;
- [i] damaging thermal changes in the wetland water supply;
- [j] destruction of natural aesthetic values;

(2) any existing wetland impacts and the cumulative effect of reasonably anticipated future wetland activities in the wetland subject to the application;

(3) the impact of the proposed activity and reasonably anticipated similar activities upon flood flows, flood storage, storm barriers, and water quality;

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(4) the safety of the proposed activity from flooding, erosion, hurricane winds, soil limitations, and other hazards and possible losses to the applicant and subsequent purchasers of the land;

(5) the adequacy of water supply and waste disposal for the proposed use;

(6) consistency with Federal, State, County, and local comprehensive land use plans and regulations; and

(7) the availability of preferable alternative locations on the subject parcel or, in the case of activity which cannot be undertaken on the property without disturbance to wetlands, the availability of other reasonable locations for the activity.

The permit application form provided by the City Planner to applicants shall also contain the following statement:

By filing an application, the applicant thereby consents to entry onto his land by the City Naturalist, City Planner, or other agents designated by the Planning Commission for the purpose of undertaking any investigation, examination, survey, or other activity necessary for the purposes of Chapter 195. If the owner of the property bars such entry, the City Naturalist, Planning Commission and their agents or employees, are empowered to apply to the City Court for an Administrative Search Warrant, permitting such inspection.

SECTION 5. MATERIALS WHICH MUST ACCOMPANY A PERMIT APPLICATION

If a waiver pursuant to §195-5.B.(2)(b) is being requested, the permit application shall be accompanied by the items set forth in subsection A, B and C of this section, a plan clearly showing the extent and details of the project, its location with respect to the wetland, watercourse and wetland/watercourse buffer, the actual acreage of the area to be disturbed, and the total cost of the proposed project.

If a waiver pursuant to §195-5.B.(2)(b) is not being requested, the permit application shall be accompanied by the following materials:

A. A Full Environmental Assessment Form shall be submitted with each application, except that a short environmental assessment form may be submitted at the discretion of the Planning Commission.

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B. An application fee as per the approved fee schedule shall be paid at the time the application is filed, and an inspection as per the approved fee schedule shall be paid prior to the issuance of the permit. In addition, the Planning Commission in the review of the application may refer such application to the Westchester County Soil and Water Conservation District for a written review. Fees charged by the Westchester County Soil and Water Conservation District for their written review shall be paid by the applicant before action is taken on the application. Payment of the fee shall be a check made payable to the Westchester County Soil and Water Conservation District, and shall be submitted to the City Planner for transmittal to the Westchester County Soil and Water Conservation District.

C. Copies of all applicable County, State or Federal permits or permit applications that are required for such work.

D. Complete plans and estimates for the proposed activity certified by an engineer, architect, land surveyor, or landscape architect licensed in the State of New York, drawn to a scale no less detailed than one inch equals thirty feet, and showing the following:

(1) The location of all wetlands shown on the Rye City Wetlands and Watercourses Zone Map and such other wetlands and watercourses that may exist on the property but are not shown on the map, and verified in the field by a qualified ecologist/botanist and/or soil scientist no earlier than 12 months prior to the date of filing of the application.

(2) A description of the vegetative cover of the regulated area, including dominant species.

(3) A description of the soil types on-site.

(4) Location of the construction area or area proposed to be disturbed, and its relation to property lines, roads, buildings, and watercourses within 250 feet.

(5) The exact locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amount computed from cross-sections, and the procedures to be used.

(6) Location of any well(s) and depth(s) thereof, and any disposal system within 50 feet of regulated area(s).

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(7) Existing and proposed contours at 2-foot intervals in the proposed disturbed area, and to a distance of 200 feet of the disturbed area. In the event that the distance of 200 feet extends beyond the applicant's property, the contours beyond the applicant's property may be taken directly from the Rye City Topographic Maps. All elevations shall be to Rye City Datum.

(8) Details of any drainage system proposed both for the conduct of work, and after completion thereof, including locations of any point discharges, artificial inlets, or other conveyances which would discharge into the wetland or wetland/watercourse buffer, and measures proposed to control erosion both during and after the work.

(9) Where creation of a lake or pond is proposed, details of the construction of any dams, embankments, outlets, or other water control devices; and analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions.

(10) Where creation of a detention basin is proposed, with or without excavation, details of the construction of any dams, berms, embankments, outlets, or other water control devices, and an analysis of the wetland hydrologic system, including seasonal water fluctuation, inflow/outflow calculations, and subsurface soil, geology, and groundwater conditions.

The Planning Commission may require additional information as needed, such as the study of flood, erosion, or other hazards at the site, and the effect of any protective measures that might be taken to reduce such hazards; and other information deemed necessary to evaluate the proposed use in terms of the goals and standards of this Chapter 195.

SECTION 6. REPLACEMENT/COMPENSATION PLAN

If a replacement/compensation plan is required by the Planning Commission, the replacement/compensation plan developed to compensate for the loss of wetlands shall include the following baseline data, as deemed necessary by the Planning Commission.

A. In the cases where losses are less than 2 acres:

(1) Hydrologic Data: Land use history, macrotopography, general surficial geology and streamflow measurements, groundwater levels, and groundwater quality;

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(2) Soils: Soil profile descriptions, general soil survey data, bulk density, porosity, hydraulic conductivity, PH, conductivity, cation exchange capacity, redox potential, total phosphorous, total nitrogen, organic carbon;

(3) Vegetation: The outermost boundary of the wetlands and qualitative measurements of percent plant cover, plant species list, vegetation covertype, relative stem density, animal species list, slope, microtopography, plant vigor, surface water connections, habitat structure, vegetation/open water ratio, surrounding terrestrial covertype.

B. In cases where losses are 2 acres or greater the data required in (a) and all or part of the following additional information at the discretion of the Planning Commission to be determined in consultation with the Conservation Commission:

(1) Hydrologic Data: Microtopography, bedrock geology, surficial geology, streamflow velocity measurements if appropriate, soil pore water storage (organic soils), direct precipitation measurements, water balance analysis (1-year study), groundwater storage, groundwater flow rates, soil pore water level and flow (organic soils);

(2) Soils: Fiber content (organic soils), phosphorous retention, pore water analysis (seasonally), alkalinity, exchangeable acidity, seedbank capacity, soil organisms, clay mineralogy, microbial assessment (seasonally), heavy metals content, pesticides residues, gas/toxin analysis (seasonally), peat features, and soil temperature regime; and

(3) Vegetation: Comprehensive animal species list, potential phosphorous uptake, potential nitrogen uptake, quantitative measurement of stem density, evapotranspiration data and net primary productivity.

C. The requirements for monitoring shall be specified in the plan and shall include but not be limited to the following requirements:

(1) the time period over which compliance monitoring shall occur;

(2) field measurements to verify the size and location of the impacted wetland area and the restored/replacement wetland area;

(3) the date of completion of the restoration/replacement; and

(4) field verification of the vegetative, hydrologic, and soils criteria and goals as specified in the plan and permit.

SECTION 7. FILING OF PERMIT APPLICATIONS

The permit application, and all other required materials shall be presented to the City Planner for filing with the Planning Commission in accordance with the Planning Commission's meeting and application filing date schedule, and be accompanied by a minimum of 18 copies, and as many additional copies as the City Planner determines are needed for referral of the application to other agencies. Plans must be stapled (in sets if more than one sheet) and folded to a size not larger than 11" x 14".

It is the responsibility of the applicant, after submission of an application and after each meeting of the Planning Commission at which the application is discussed, to contact the City Planner in order to be informed whether any supplemental information or documents are required for further consideration of the application. Failure to submit required supplemental information and documents, as per Planning Commission's meeting and application filing date schedule, may result in a postponement of consideration of the application.

It is recommended that a pre-application conference be held with the City Planner in order to discuss projects and requirements.

SECTION 8. PERMIT CONDITIONS - STANDARD

Every permit issued pursuant to this Chapter shall be in written form and shall contain the following standard conditions:

- A. Work conducted under a permit shall be open to inspection at any time, including weekends and holidays, by the Planning Commission and the City Naturalist, or their designated representative(s).
- B. The permit shall expire on a specified date.
- C. The permit holder shall notify the Planning Commission of the date on which the work is to begin, at least five (5) days in advance of such date.
- D. The Planning Commission's permit shall be prominently displayed at the project site during the undertaking of the activities authorized by the permit.

SECTION 9. PERMIT CONDITIONS - OPTIONAL

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The Planning Commission shall set forth, in writing in the file it maintains regarding a permit application, all conditions attached to any permit. Such conditions may include, but shall not be limited to:

- A. limitations on minimum lot size for any activity;
- B. limitation on the total portion of any lot or the portion of the wetland on the lot that may be graded, filled, or otherwise modified;
- C. modification of waste disposal and water supply facilities;
- D. imposition of operation controls, sureties, and deed restrictions concerning future use and subdivision of lands such as preservation of undeveloped areas in open space use, and limitation of vegetation removal;
- E. dedication of easements to protect wetlands;
- F. erosion control measures;
- G. setbacks for structures, fill, deposit of spoil, and other activities from the wetland;
- H. modifications in project design to ensure continued water supply to the wetland and circulation of waters; and
- I. replanting of wetland vegetation and construction of new wetland areas to replace damaged or destroyed areas.

SECTION 10. PUBLIC HEARINGS AND PUBLIC NOTIFICATION BY APPLICANT

When an activity subject to regulation under this Chapter also requires Planning Commission approval, pursuant to another Chapter of the Code of the City of Rye, the requirements for public hearings and public notification by the applicant shall be the same as required for the other approval, except when the only other approval involves Chapter 73, Coastal Zone Management Consistency Review.

When an activity subject to regulation under this Chapter does not also require Planning Commission approval, pursuant to another Chapter of the Code of the City of Rye, except for review pursuant to Chapter 73 Coastal Zone Management Waterfront Consistency Review, when the public hearing is scheduled by the Planning Commission,

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the applicant shall deliver a copy of the public notice provided by the City Planner to all of the immediate neighbors either personally or by first-class mail, posted within Westchester County at a post office or official depository of the Postal Service. The applicant shall use the most current City of Rye Tax Map and Tax Assessment Roll, to determine the owner's name and owner's mailing address for each immediate neighbor. Immediate neighbors shall include those adjacent to or opposite from the property which is the subject of the application, as identified on Schedule A attached. The delivery or mailing shall be limited solely to the public notice provided to the applicant by the City Planner. In the case of personal delivery, the public notice shall be delivered to all of the immediate neighbors and/or their spouse at least seven (7) days prior to the date of the public hearing. In the case of delivery by mail, the public notice shall be mailed to all of the immediate neighbors by first-class mail, posted within Westchester County at a post office or official depository of the Postal Service, at least ten (10) days prior to the date of the public hearing. Within two (2) business days after the personal delivery or mailing of the public notice, the applicant shall file an affidavit with the City Planner attesting to proper notice.

AMENDMENTS

SECTION 11. AMENDING RULES AND REGULATIONS

These rules and regulations may be amended or repealed at any meeting of the Planning Commission, after a public hearing, and subject to approval by the City Council. Notification of any proposed amendments or repeals shall be given to each member of the Planning Commission, each member of the Conservation Commission/Advisory Council, the City Naturalist, the City Planner, the City Engineer and the City Building Inspector in writing at least two weeks prior to scheduling said hearing.

These rules and regulations shall take effect upon approval of the City Council, and filing in the offices of the City Clerk, City Conservation Commission/Advisory Council, City Naturalist, City Planner, City Engineer and City Building Inspector of the City of Rye.

Upon motion duly made by Michael W. Klemens, and seconded by Peter Larr the resolution set forth above was duly approved by the following votes:

AYES: Michael Klemens, Peter Larr, Brian Spillane,
Philip DeCaro, Joseph P. Cox, Lawrence H. Lehman
NAYES: None
ABSTAIN: None
ABSENT: Kathleen Walsh

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I certify that the foregoing resolution is a correct copy of Planning Commission Resolution #1-99, which was duly adopted by the Rye City Planning Commission on January 12, 1999.

Date

City Planner