

CHESTERVILLE WATER QUALITY ORDINANCE



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AMENDED: March 24, 2014

ATTESTED:

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PURPOSE

The Legislature has declared “that the protection of ground water resources is critical to promote the health, safety and general welfare of the people of the state... and further finds and declares that ground water resources are endangered by unwise uses and land use practices”.

“The legislature finds that sand and gravel aquifers and all ground water are important public and private resources for drinking water supplies and other industrial, commercial and agricultural uses. All ground water is particularly susceptible to contamination by pollutants and, once polluted, may not recover for hundreds of years.”

Title 30-A of the Maine Revised Statutes grants municipalities all powers necessary to protect the health, safety and welfare of its residents. All residents of the Town of Chesterville possess a fundamental right to access, use, consume and preserve water to sustain life within the town.

WATER EXTRACTION

No corporation, business or persons shall engage in groundwater withdrawals for commercial sale in the Town of Chesterville without the approval of a town meeting/ballot vote by the citizens. A yes vote of a majority is needed to pass and allow water to be extracted. If passed, the permitting process will be handled at the state level.

POTENTIAL CONTAMINANTS IN EXTRACTION SITES

The following requirements apply only to commercial operations. All fuels or hazardous materials of more than 100 gallons must be stored within a spill-proof secondary containment with sufficient capacity to contain 110% of the volume of the single largest container. Oil changes on mobile equipment must take place over impervious surfaces. Routine maintenance operations are allowed for fixed equipment, such as screens, crushers and wash facilities, provided that precautionary measures such as portable drip pans or vacuum devices are used. No persons, or equipment shall discharge, or permit the discharge of any treated, untreated or inadequately treated liquid, gaseous or solid materials of such nature, quantity, toxicity or temperature that will run off, seep, percolate or wash into surface or ground waters so as to contaminate, pollute, or harm such waters or be harmful to human, plant, animal or aquatic life.

This requirement **does not** include subsurface wastewater storage systems such as approved septic systems and gray water systems.

MINERAL EXTRACTION

Existing mineral extraction pits may be expanded only in accordance with State Law, existing state permits, and the Town of Chesterville Water Protection Ordinance. Mineral, soil, and gravel extraction may be permitted only after an Extraction permit for such operation has been issued by the Planning Board. Although a site under (5) five acres does not require a site plan, they must fill out the permit and submit it to the Planning Board to insure they are familiar with the Town of Chesterville’s Water Ordinance (existing extraction sites under (5) five acres are exempt from a. and c. under Mineral Extraction.). Such a permit may only be issued provided that:

- a. A site plan is submitted by the applicant and approved by the Planning Board showing existing grades in the area from which the materials are to be removed and finished grades at the conclusion of the operations.
- b. When the removal of materials is completed, the finished grade [slope is to be (3) three to (1) one unless approved by the Planning Board in no case to be less than (2) two to (1) one], as specified in the plan and approved, is to be covered with not less than (4) four inches of topsoil and seeded with (90) ninety percent suitable cover crop except where ledge is exposed.
- c. Funds sufficient to satisfy the Planning Board in the amount sufficient to recover costs typically required for reclamation and/or damages, must be posted with the town to guarantee conformance with the requirements of the permit and this Ordinance.
- d. No excavation may occur within (5) five feet of the high water table without a waiver or variance granted by the Planning Board/Appeals Board. No ditches, trenches, pumping or other methods shall be used to lower the water table to permit more gravel or other mineral extraction than could occur under natural conditions.
- e. A (200) two hundred foot separation must be maintained between an excavation and private drinking water supply, or (1000) one thousand feet from public drinking water supply that is point-driven or dug, or an existing septic field, that was in existence prior to the excavation. A (100) one hundred foot separation must be maintained between an excavation and a private drinking water supply, or (1000) one thousand feet from public drinking water supply that is drilled into saturated bedrock and was in existence prior to excavation.
- f. If the extraction site is (5) five acres or larger a natural buffer strip at least (100) one hundred feet wide must be maintained between an excavation and any property boundary. A (100) one hundred foot buffer must be maintained if the pit is under (5) five acres. This natural buffer may be reduced on pits under (5) acres to (10) feet with written permission from the abutter, except a (25) twenty five foot natural buffer must be maintained from the boundary of a cemetery or burial ground. Any written permission remains in effect until mining is complete and must be recorded in the Registry of Deeds.

For existing mineral extraction pits that are currently closer to a property line setback or buffer than stated in Section “f” above, the applicant may maintain the same distance or buffer for the permitted area provided it is in compliance with State Law. Any new expansion of the footprint shall follow the rules of Section “f” and all other requirements of the Water Quality Ordinance. The Planning Board may require a professional surveyor to determine the existing distance of the mineral extraction pit to property lines and/or the buffer.

- g. No oiling of the road for dust control shall be permitted. Dust generated by activities at an extraction site must be controlled by sweeping, paving, watering or other best management practices for control of fugitive emissions.
- h. Appropriate fencing or landscaping may be required to screen the site of digging from any public right of way and from any dwelling within (250) two hundred and fifty feet of the property lines of the excavation site.

- i. No part of any excavation operation, including drainage and runoff control features, shall be permitted within (100) one hundred feet horizontal distance of the normal high water line of a Great Pond and within (75) seventy five feet, horizontal distance of a normal high water line of any other water body, tributary, or upland edge of a wet land.
- j. Existing mineral extraction pits are permitted to dig no deeper than five (5) feet above the high water table. Digging deeper than five feet above the water table constitutes a vertical expansion and is prohibited under Section “d” without a waiver and/or variance as granted by the Planning Board/Appeals Board. Vertical expansions must comply with section “d”.

For existing mineral extraction pits with a footprint under five (5) acres that are currently below five feet of the high water table, the applicant may maintain the same depth for the existing area. Any new expansion shall follow the rules of Section “d” and all other requirements of the Water Quality Ordinance. The Planning Board may require a professional engineer to determine the existing depth of the mineral extraction pit.

Horizontal excavation outside the approved footprint constitutes an expansion. Horizontal expansion causes the existing pit to fall under the ordinance, requiring a permit from the Chesterville Planning Board. Horizontal expansion must comply with Sections “f” and “i”.

- k. The operator of a mineral extraction operation that affects either a private or public drinking water supply by contamination, interruption, or diminution must restore or replace the affected water supply with an alternate source of water adequate in quantity and quality for the purpose served by the supply. The operator will also be held financially responsible for the testing necessary to determine the contamination, interruption, or diminution.
- l. This ordinance does not regulate Farm Ponds or Frog Ponds.

APPLICATION PROCESS

An application for excavation for a permit shall be filed with the Planning Board and accompanied by the application fee as established by the Planning Board. Within (30) thirty days the Planning Board may hold a public hearing. The Planning Board shall publish the time, date, and place of the hearing set by the town meeting post requirements. The applicant shall notify the abutting owners by registered or certified mail of the public hearing. The applicant must provide proof to the Planning Board of such notification at or prior to the public hearing.

The Planning Board, within thirty days from the public hearing or within sixty days of receiving a complete application, if no hearing is held, shall make written findings of the fact, conclusions relative to the review criteria in this Ordinance. If the Planning Board finds that all criteria have been met, they shall approve the application. If the Planning board finds that any of the criteria have not been met, the Planning board shall deny the application or approve the application with conditions to ensure all criteria will be met. The reasons for any conditions shall be stated in written findings of fact and conclusions.

WAIVERS

Where the Planning Board makes written findings of fact and the applicant can show that such requirements are not relevant to the proposed project or will suffer an undue economic or other hardship if the requirements of this ordinance are strictly applied, it may waive the necessity for strict compliance with the application requirements and/or review criteria of this ordinance in order to provide relief to permit a more practical and economical development, provided, however, that the public health, safety, and welfare will not be compromised, and further provided that the waivers in question will not have the effect of nullifying this ordinance.

In granting waivers to any of these requirements the Planning Board shall require such conditions as will assure that the objectives of this ordinance are met.

When the Board grants a waiver to any of the improvements required by this ordinance, the final plan shall indicate the waiver(s) granted and the date on which it (they) was (were) granted.

APPEALS

An appeal may be taken to the Board of Appeals by an aggrieved party from any decision of the CEO or the PB, except for enforcement-related matters. Such an appeal shall be taken within thirty (30) days of the date of the official, written decision appealed from, and not otherwise, except that the Board, upon a showing of good cause, may waive the thirty (30) day requirement.

When the Board of Appeals reviews a decision of the CEO the Board of Appeals shall hold a “de novo” hearing. At this time the Board may receive and consider new evidence and testimony, be it oral or written. When acting in a “de novo” capacity the Board of Appeals shall hear and decide the matter afresh, undertaking its own independent analysis of evidence and the law, and reaching its own decision.

When the Board of Appeals hears a decision of the Planning Board, it shall hold an appellate hearing, and may reverse the decision of the Planning Board only upon finding that the decision was contrary to specific provisions of the Ordinance or contrary to the facts presented to the Planning Board. The Board of Appeals may only review the record of the proceedings before the Planning Board. The Board Appeals shall not receive or consider any evidence which was not presented to the Planning Board, but the Board of Appeals may receive and consider written or oral arguments. If the Board of Appeals determines that the record of the Planning Board proceedings are inadequate, the Board of Appeals may remand the matter to the Planning Board for additional fact finding.

Except as provided by 30-A M.R.S.A. section 2691(3)(F), any aggrieved party who participated as a party during the proceedings before the Board of Appeals may take an appeal to Superior Court in accordance with State laws within forty-five (45) days from the date of any decision of the Board of Appeals.

ENFORCEMENT

NUISANCES: Any violation of this Ordinance shall be deemed to be a nuisance.

CODE ENFORCEMENT OFFICER

It shall be the duty of the Code Enforcement Officer to enforce the provisions of this Ordinance. If the Code Enforcement Officer shall find that any provision of this Ordinance is being violated, he or she shall notify in writing the person responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. A copy of such notices shall be submitted to the municipal officers and be maintained as a permanent record.

The Code Enforcement Officer shall conduct on-site inspections to insure compliance with all applicable laws and conditions attached to permit approvals. The Code Enforcement Officer shall also investigate all complaints of alleged violations of this Ordinance. The Code Enforcement Officer shall keep a complete record of all essential transactions of the office, including applications submitted, permits granted or denied, variances granted or denied, revocation actions, revocation of permits, appeals, court actions, violations investigated, violations found, and fees collected.

LEGAL ACTIONS

When the above action does not result in the correction or abatement of the violation or nuisance condition, the Municipal Officers, upon notice from the Code Enforcement Officer, are hereby directed to institute any and all actions and proceedings, either legal or equitable, including seeking injunctions of violations and the imposition of fines, that may be appropriate or necessary to enforce the provisions of this Ordinance in the name of the municipality. The municipal officers, or their authorized agent, are hereby authorized to enter into administrative consent agreements for the purpose of eliminating violations of this Ordinance and recovering fines without Court action. Such agreements shall not allow an illegal structure or use to continue unless there is clear and convincing evidence that the illegal structure or use was constructed or conducted as a direct result of erroneous advice given by an authorized municipal official and there is no evidence that the owner acted in bad faith, or unless the removal of the structure or use will result in a threat or hazard to public health and safety or will result in substantial environmental damage.

FINES

Any person, including but not limited to a landowner, a landowner's agent or a contractor, who violates any provision or requirement of this Ordinance shall be penalized in accordance with 30-A, M.R.S.A. section 4452.

AMENDMENTS

This ordinance may be amended by a majority vote of the town meeting. Amendments may be initiated by a majority vote of the Planning Board, by request of Selectmen to the Planning Board, or on petition of a number of voters equal to or greater than ten (10) percent of the votes cast in the last gubernatorial election in the town. The Planning Board shall conduct a public hearing on any proposed amendment.

VALIDITY AND SEVERABILITY

Should any article or provision of this ordinance be declared by any court to be invalid, such decision shall not invalidate any other article or provision of this ordinance.

CONFLICT WITH OTHER ORDINANCES

Whenever the requirements of this ordinance are inconsistent with the requirements of any other ordinance, code, or statute, the more restrictive requirements shall apply.

EFFECTIVE DATE

The effective date of this Ordinance is the date of its adoption at either a town meeting or by an election. Permits are in effect until extracting is complete.

APPLICATION REQUIREMENTS

An application for excavation permit shall consist of the following:

- a. Name and address of the property owner.
- b. Name and address of operator of excavation if different from the property owner.
- c. Right, title or interest in the property.
- d. Names and addresses of all people owning property abutting the subject property.

NOTE: Water extraction permits STOP HERE; applicants only need to fill out a. through d. of the permitting process at the town level. The remainder of the water extraction permitting process will be handled at the State level after voter approval.

- e. A site plan at scale of not less than (1) one inch = (100) one hundred feet with the following information:
 1. Boundaries of the subject property.
 2. Existing wells, rivers, brooks, streams, freshwater wetland and depth of groundwater as by determined by test boring, wells or pits.
 3. Existing site features such as fields, wooded areas, structures, roads and driveways.
 4. Residents and wells within (250) two hundred and fifty feet of subject property.
 5. Existing and proposed excavation sites including acreage, phasing, depth of excavation and final grades.
 6. Locations of proposed access and any roads to be constructed within the site and sight distances of intersection or access with a public road.
 7. Improvements for the control of drainage, sedimentation and erosion.
 8. Removal plan for all oils/hazardous waste from excavation site when mining is complete.
- f. Proposed rehabilitation plan including temporary and final seeding, planting and permanent drainage improvements.
- g. Spill prevention and cleanup controls for hazardous materials.
- h. A plan for screening excavation from direct view from residents and public roads.
- i. Estimate of the costs rehabilitating the site when excavation is complete.

REVIEW CRITERIA

The Planning board shall approve an application for excavation if it finds that the proposed operation:

- a. Will not unreasonably result in unsafe or unhealthful conditions.
- b. Will not unreasonably result in erosion or sedimentation.
- c. Will not unreasonably result in water pollution nor adversely affect existing groundwater, springs, ponds, rivers, brooks or streams.
- d. Will not adversely affect public ways.
- e. Will not adversely affect surrounding properties
- f. Is in conformance with this ordinance.

EXTRACTION PERMIT APPLICATION

Applicant(s) _____ Phone # _____

Applicant Mailing Address _____

Property Owner(s) _____ Phone # _____

Owner's Mailing Address _____

Agent/ Contractor _____ Phone # _____

Extraction site Map _____ Lot _____ Acres _____

Attach Site Plan (mineral extraction only)

Signature of Applicant _____ Date _____

Date of Review: _____

Approved: _____

Denied: _____

Motion Made and Seconded by: _____

Water extraction vote results Yes ___ No ___ Abstain ___ Date _____

Conditions of Approval: _____

Reason for Denial: _____

DEFINITIONS

Abutter - The owner of any property with at least one common boundary or point, or across the road, driveway or stream from the property in an application or appeal.

Brooks- (see definition of Streams and Brooks)

Commercial Operations - Any activity which involves the buying or selling of goods or services, or the exchange or attempt or offer to exchange goods or services for money, barter, or for anything of value.

Damages – Loss or harm to property.

Expansion/Expanded – Excavation operation that exceed the approved area footprint.

Extraction - Any operation within any (12) twelve month period which removes more than (500) five hundred cubic yards of soil, topsoil, loam, sand, gravel, clay, rock, peat, or other like material from its natural location and transports the removed material away from the extraction site.

Farm/Frog Pond - A water impoundment made by constructing a dam or embankment or by excavating a pit or "dug out" not larger than (1) one acre for the purpose of serving livestock or decoration.

Freshwater Wetland- Means fresh water swamps, marshes, bogs and similar areas which are:

1. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils; and
2. Not considered part of great pond, river, stream or brook.

These areas may contain small stream channels or inclusions of land that do not conform to the criteria.

Freshwater wetland (Shoreland Zone) - Freshwater swamps, marshes, bogs and similar areas, other than forested wetlands, which are:

1. Of ten or more contiguous acres; or of less than 10 contiguous acres and adjacent to a surface water body, excluding any river, stream or brook, such that in a natural state, the combined surface area is in excess of 10 acres; and
2. Inundated or saturated by surface or ground water at a frequency and for duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

Great Pond - Any inland body of water which in a natural state has a surface area in excess of ten acres, and any inland body of water artificially formed or increased which has a surface area in excess of thirty (30) thirty acres except for the purposes of this Ordinance, where the artificially formed or increased inland body of water is completely surrounded by land held by a single owner.

High Water Table - As determined by a registered soil scientist, certified site evaluator, or licensed professional engineer.

Natural Buffer Strip - "Natural buffer strip" means an undisturbed area or belt of land that is covered with trees or other vegetation.

Normal High Water Line- The line that marks the limit of the soil so affected by water of a lake or river as to have a nature and vegetation distinct from that of the banks. That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land.

Private Drinking Water Supply – Surface water supply, a dug well, a spring or a hole drilled, driven or bored into the earth that is used to extract drinking water for human consumption and that is not part of the public drinking water supply.

Private Road - A route or track consisting of a bed of exposed mineral soil, gravel, asphalt, or other surfacing material constructed for or created by the repeated passage of motorized vehicles, excluding a driveway as defined, not accepted by the voters of the town.

Property Line – A line dividing a parcel of land from another.

Property Line, Rear – The line opposite the line that forms the lot frontage or the shore frontage.

Property Line, Side – Any property line that is not a rear property line or that does not form the lot frontage or the shore frontage.

Public Drinking Water Source – Any groundwater well or any surface water source that directly serves a water distribution system that has at least (15) fifteen service connections or regularly services an average of at least (25) twenty five individuals daily for at least (60) sixty days of the year.

Roads - Any State or County Road. Roads which are maintained by the Town of Chesterville, the State of Maine and/or County.

Reclamation. "Reclamation" means the rehabilitation of the area of land affected by mining, including, but not limited to, the stabilization of slopes and creation of safety benches, the planting of forests, the seeding of grasses and legumes for grazing purposes, the planting of crops for harvest, the enhancement of wildlife and aquatic habitat and aquatic resources and the development of the site for residential, commercial, recreational or industrial use.

Right-of-Way – An easement for vehicular access and pedestrian access.

Right-of-Way Line – The outer limits of the traveled way of a driveway or road or the limits of the easement of a driveway or road, where defined.

River (Shoreland Zone) A free-flowing body of water including its associated floodplain wetlands from that point at which it provides drainage for a watershed of (25) twenty five square miles to its mouth.

Setback - The nearest horizontal distance from the normal high-water line of a water body or tributary stream, or upland edge of a wetland, to the nearest part of a structure, road, parking space or other regulated object or area.

Shoreland Zone - The land area located within (250) two hundred and fifty feet, horizontal distance, of the normal high-water line of any great pond or river; within (250) two hundred and fifty feet of the upland edge of a freshwater wetland; or within seventy-five (75) seventy five feet, horizontal distance, of the normal high-water line of a stream.

Shoreline – The normal high-water line, or upland edge of a freshwater wetland.

Streams and Brooks (Shoreland Zone)- A free-flowing body of water from the outlet of a great pond or the confluence of two (2) perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5 minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wet lands within the shoreland area.