



TOWN OF ARLINGTON
MASSACHUSETTS

DEPARTMENT OF PLANNING
AND COMMUNITY DEVELOPMENT

To: Arlington Town Meeting Members

From: Claire Ricker, Director
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Subject: Article 28: Zoning Bylaw Amendment / Delete Inland Wetland Overlay District

The Arlington Department of Planning and Community Development proposes removing the Inland Wetland District (IWD) from the Zoning Bylaw. Established before the Conservation Commission, the IWD overlaps in jurisdiction and is superseded by stricter law and regulations at the state and local levels. The IWD's definitions are unclear and unenforceable, requiring data and field evaluations that are impractical at a municipal scale. Existing permitting processes adequately address wetland protection. The development conditions set by the IWD are more comprehensively addressed by the Town at multiple points, including through the Conservation Commission and the Department of Public Works, as well as the Zoning Board of Appeals and Arlington Redevelopment Board.

In December of 2023, DPCD proposed to remove the Inland Wetland District (IWD) overlay from the Town's Zoning Bylaw. A request was made to the Arlington Redevelopment Board (ARB) to advance the proposal to Town Meeting as a bylaw amendment. ARB favored the change and repeal of the IWD is now before Town Meeting as Article 28.

DPCD advanced the proposal to remove the IWD for multiple reasons. First, the overlay is outmoded by current law and regulations. Second, it is internally inconsistent. Third, it is procedurally redundant.

The IWD predates the state's Wetlands Protection Act (WPA) and the establishment of the Conservation Commission. Its original intent was to regulate land use within wetland areas in lieu of other legal protections. However, the Conservation Commission now possesses robust authority to protect wetlands under state and local laws. The WPA and the Arlington Bylaw for Wetlands Protection are protective of more wetland interests and values and have stricter performance standards. The Commission's fine-grained approach is considerably more protective of wetlands than the IWD. Similarly, where the IWD considers the flood resilience of

the built environment, it has been superseded by the Massachusetts State Building Code, which requires the elevation of structures above the base flood elevation. Arlington also has its own Stormwater Management Bylaw, which applies town wide (not just for wetland areas) and is stricter than the relevant portions of the IWD, as described in detail below.

The IWD overlay is congruent with the Conservation Commission's jurisdiction with two exceptions. The Commission oversees slightly more area along riverfronts. The jurisdictional 200-foot Riverfront Area is measured from the riverbank, rather than the measurement required by the IWD, which is the center line of the river. The Conservation Commission's jurisdiction thus extends slightly further inland and, along the length of a river, that difference becomes sizeable. The second difference is that the Conservation Commission does not oversee lands with shallow depth to the water table. As will be shown below, this criterion of the IWD is inapplicable.

The advantage of having a separate permitting process for uses within the IWD is that it allows Inspectional Services to enforce wetlands protection through zoning. However, numerous internal inconsistencies render the IWD unenforceable. Per the definition at 5.8.2., the IWD includes:

All lands within the elevations shown on the Wetland and Floodplain Overlay Map of the Zoning Map

Neither Arlington's Zoning Map nor the Wetland and Floodplain Overlay include elevations. As written, the IWD does not apply to any land in Arlington. Adding elevations to the map would not remedy this issue, as elevations are not particularly relevant to wetlands protection. There are springs in Arlington Heights that are jurisdictional to the Conservation Commission just as there are rivers in low-lying east Arlington.

Further, the definition includes the following at 5.8.2.(C):

All lands designated on the zoning map as having a shallow depth to water table. These lands are the poorly and very poorly drained mineral soils, and very poorly drained soils formed in organic deposits. Poorly drained mineral soils have a water table at or near the surface for at least 7 to 9 months during the year. The water table remains at or close to the surface of very poorly drained mineral and organic soils throughout most of the year.

As in the case above, no such designation exists on Town maps. The depth to the groundwater table cannot be effectively evaluated at the municipal scale because it is site specific. The Town's Conservation Commission and Department of Public Works commonly evaluate evidence of the depth to the water table as part of permitting procedures. Moreover, in part to establish the depth to the water table, the IWD requires that test borings be dug. However, to be

subject to this Development Condition, an applicant's project must already be considered within the IWD, which is logically impossible.

Establishing the depth to groundwater is also a requirement of Arlington's Stormwater Management Bylaw. Developments that meet the bylaw's threshold are considered significant to stormwater management. The law applies town wide, not just within designated wetlands areas. Existing conditions plans for proposed developments must include the locations of:

“soil tests including test pits, borings, groundwater determinations . . . and/or other soil testing procedures.”

This procedure is preferable for its specificity, strictness, and broader applicability than the IWD.

The IWD's Development Conditions also includes the following consideration at 5.8.6.(A)(3).

“If the basement floor level is below the seasonal high water table . . . adequate perimeter drainage and foundation shall be installed”

The State Building Code limits construction within the seasonal high groundwater table. Therefore, this condition of the IWD is covered therein.

Finally, ensuring compliance with the requirements of the IWD is procedurally redundant. The IWD's Procedures section requires applicants to obtain the Conservation Commission's approval such that conditions of that order/permit are incorporated into the approval under the IWD. The responsible authority for issuing the IWD Special Permit (either the Zoning Board of Appeals or the Arlington Redevelopment Board) has weaker authority, and therefore is bound to duplicate the Conservation Commission's decision. Additionally, applications for Comprehensive Permits and Special Permits under Environmental Design Review screen for wetlands and stormwater impacts, with submittal requirements that anticipate the Conservation Commission's later review.

In summary, wetlands protection is better accomplished through non-zoning means. Recognizing this, the Conservation Commission unanimously voted at the February 15, 2024, public meeting to support Article 28 to remove the Inland Wetland District overlay.

The Inland Wetland District served its purpose but is now redundant and can be removed from the Zoning Bylaw.