

Public Hearing
7:00 p.m., Wednesday, June 3, 2015
Meeting Room, Durham Volunteer Fire House, 41 Main Street

Meeting Minutes

In attendance: Laura Francis, First Selectman; William Milardo, Sanitarian-Assistant Health Director; Vicky Carrier, DPH/Drinking Water Section; Patrick Bowe, CT DEEP/Director/Remediation Division/Bureau of Water Protection and Land Reuse; Jing Chen, CT DEEP/Environmental Analyst; Anni Loughlin, EPA New England/Section Chief; Ed Hathaway, EPA New England/Project Manager and approximately 45 members of the public; Attorney Ken Slater, Halloran & Sage LLP.

The purpose of this public hearing is to present information and discuss proposed Groundwater Ordinance and to provide an opportunity for public comment.

PROPOSED TOWN OF DURHAM, CONNECTICUT
GROUNDWATER ORDINANCE
May 2015

I. Title

This Ordinance shall be known and be cited as the Groundwater Management Zone Ordinance of the Town of Durham, Connecticut.

II. Purpose

The purpose of this Ordinance is to protect the health and safety of the residents of Durham and to protect the integrity of the Durham Meadows Superfund Site remedy by identifying a Groundwater Management Zone ("GMZ") to prevent the use of and public exposure to contaminated groundwater drawn from the GMZ. In consultation with the United States Environmental Protection Agency (EPA) and the Connecticut Department of Energy & Environmental Protection (CT DEEP), the boundaries of the GMZ are set forth on Figure 1 attached hereto.

III. Scope and Authority

As authorized by Connecticut General Statutes Section 7-148, once this ordinance is applicable to a property located within the boundaries of the GMZ, comprised as set forth in this Ordinance, no groundwater shall be extracted, consumed or utilized from the ground at that property, except as otherwise provided within this Ordinance. This Ordinance shall apply to the GMZ notwithstanding the provisions of any other Town ordinance adopted.

IV. Applicability

This Ordinance shall become applicable to any property within the GMZ on the date that the City of Middletown's water supply becomes available for connection to the property, by virtue of the presence of a curb box at the property boundary and the initiation of water delivery to the Durham Meadows Superfund Site.

V. Definition

Groundwater: All the water found beneath the surface of the ground including all subsurface water stored in bedrock and overburden aquifers and recharge areas within the GMZ. Groundwater does not include waters found in fire ponds or any other surface water bodies within the GMZ.

VI. Groundwater Management Zone ("GMZ")

There is hereby established within the Town of Durham the GMZ as depicted in Figure 1. The particular properties contained within the GMZ are generally located on or adjacent to Main Street as depicted in Figure 1 and can be identified using assessor's maps that are on file at the Town of

Durham Office of Assessor, and can be viewed on the Town of Durham's website. The GMZ depicted in Figure 1 is subject to future amendment. Any future amendment in Figure 1 of this Ordinance is subject to all notice and procedural requirements applicable to a municipal ordinance amendment in the Town of Durham.

VII. Use Regulations

Within the GMZ, except as specifically provided in Section VIII (Exceptions), the following regulations shall apply:

- A. The extraction, consumption, or utilization of groundwater for any purpose, including residential wells is prohibited in the GMZ. However, groundwater in the GMZ may be used for the purpose of evaluating groundwater quality for environmental investigation.
- B. All existing groundwater wells must be abandoned in accordance with the provisions of the Connecticut Well Drilling Code and Rules, Sections 25-126 through 25-137 of the General Statutes and Regulations of the State of Connecticut and all applicable regulations of the Town of Durham Health Department within thirty (30) days of the date this Ordinance becomes applicable to the property.
- C. Properties located within the GMZ that contain any habitable structures (residential, commercial or industrial) with running water shall connect to the public water supply within thirty (30) days of the date this Ordinance becomes applicable to the property.
- D. This Ordinance shall not apply to any investigation or monitoring wells installed or required to be installed, by any federal, state, or local government authority.
- E. Nothing in this regulation shall prohibit any party from developing property within the GMZ provided that any development proposal requiring on-site drinking water shall demonstrate the ability to connect to public water at such party's expense and be approved by the Town of Durham Health Department.
- F. Nothing in this regulation shall prohibit the use of a closed-loop system for geothermal heating purposes.

Exceptions

- A. Any person who owns property within the GMZ in the Town of Durham may request an exception to Sections VII.A and VII.B of this Ordinance for continued use of a well in existence on the effective date of this Ordinance and used exclusively for agricultural irrigation ("Irrigation Well"). Prior to the date this Ordinance becomes applicable to such existing Irrigation Well, the owner must provide notice to CT DEEP, the Connecticut Department of Public Health (CT DPH), the Town of Durham Health Department, and the Town of Durham Agriculture Commission, and receive written approval from the Town of Durham Health Department that (i) there is no possibility for cross-connection between the Irrigation Well(s) and the public water supply; and (ii) that levels of contamination in groundwater being used for irrigation purposes, raw or treated, will not adversely affect the health and safety of agricultural workers or other persons exposed to the water or agricultural products raised or grown on the property, as determined by the Town of Durham Health Department, demonstrated by testing and analysis conducted by a state certified laboratory; or (iii) that levels of contamination in groundwater being used for irrigation purposes, raw or treated, will meet Maximum Contaminant Levels described in Sec. 19-13-B102 of the State of Connecticut Public Health Code, Drinking Water Action Levels established by the State of Connecticut Department of Public Health pursuant to Section 22a-471 of Connecticut General Statutes, and Groundwater Protection Criteria as described in Connecticut Remediation Standard Regulations pursuant to Section 22a-133k-through 22a-133k-3 of the Regulations of Connecticut State Agencies, whichever is more stringent. The owner of the Irrigation Well(s) must demonstrate to the Town of Durham Health Department and the Town of Durham Agriculture Commission that the agricultural activities at the property meet the definition of Agriculture as defined by the Connecticut Department of Agriculture in Section 1-1(q) of the Connecticut General Statutes. After

approval of the continued use of any Irrigation Well by the Town of Durham Health Department, the owner shall provide additional documentation on these matters to the Town of Durham Health Department and Agriculture Commission on a pre-approved schedule determined by these entities, or at least annually, and comply with such other conditions imposed by these entities for continued operation of the Irrigation Well, including, but not limited to, ensuring the water is suitable for its intended agricultural uses. Groundwater used from any such irrigation well must meet all applicable legal requirements and the terms of any applicable State discharge permits during use and if discharged or emitted, and the associated plumbing must comply with cross connection prohibitions and other requirements pursuant to Connecticut Public Health Code Regulations, state and local building codes, and/or health codes.

Prior to sale of a property for which the Town of Durham Health Department has approved continued use of an Irrigation Well(s), the property owner shall provide written notice to the purchaser of the property of the condition of the Irrigation Well(s) and any and all limitations and conditions on its use. Failure to receive notice does not relieve any subsequent owners of the responsibility to maintain treatment and ensure the groundwater meets required contamination levels for agricultural use in accordance with this Ordinance.

- B. Any person who owns property within the GMZ in the Town of Durham that uses a groundwater well in existence on the effective date of this Ordinance exclusively for industrial purposes (“Industrial Process Well”) may request an exception to Sections VII.A and VII.B of this Ordinance for continued use of such Industrial Process Well. Prior to the date that this Ordinance becomes applicable to such existing Industrial Process Well, and annually thereafter, the owner must (i) provide documentation to the operator of the Durham public water system to confirm such Industrial Process Well complies with cross connection prohibitions; and (ii) provide documentation to CT DEEP and EPA to confirm that groundwater used from any such Industrial Process Well meets all applicable legal requirements and the terms of any applicable State discharge permits during use and if discharged or emitted.

Prior to sale of a property for which CT DEEP and EPA have approved the continued use of an Industrial Process Well, the property owner shall provide written notice to the purchaser of the property of the condition of the Industrial Process Well and any and all limitations and conditions on its use. Failure to receive notice does not relieve any subsequent owners of the responsibility to comply with all applicable laws for the intended use of the groundwater supply in accordance with this Ordinance.

- C. A property owner may apply for an exception to install and use a new well for non-potable purposes at the property owner’s expense provided the following conditions are met:
1. Such new well must be greater than 200 feet from the water line, measured along a street, alley or easement, for the installed water line and any associated domestic lines connecting to the water line.
 2. The property owner shall submit a plan to the Town of Durham Health Department requesting permission to install a well for non-potable use. The plan shall include, but not be limited to, the property boundaries, the location of the proposed well, all other water lines and connections, septic systems, a detailed description of the anticipated non-potable use of the well, and the anticipated maximum pumping rate. The plan shall be signed by a person qualified as a Licensed Environmental Professional (LEP) in the State of Connecticut who certifies that the location of the proposed well is not within an area of contamination and use of this new well is not reasonably likely to cause migration of the groundwater contamination plumes at the Durham Meadows Superfund Site and other areas of contamination.

3. Within 30 days of the completion of the installation and annually thereafter, the well must be sampled and tested for volatile organic compounds at the property owner's expense using methods acceptable to EPA and CT DEEP and testing must be performed at a laboratory certified by the State of Connecticut Department of Public Health or EPA to perform drinking water analytical testing for volatile organic compounds. The property owner shall provide the testing results to the **Town of Durham Health Department** within 30 days after the analytical results become available.
4. If the well water is found to be contaminated, the property owner shall abandon the well at the property owner's expense within 30 days of the notice from the Town of Durham Department of Health. The well abandonment shall be conducted in accordance with the provisions of the Connecticut Well Drilling Code and Rules, Sections 25- 126 through 25-137 of the General Statutes and Regulations of the State of Connecticut and all applicable regulations of the Town of Durham Health Department. The documentation of well abandonment shall be submitted to the Town of Durham Health Department within 30 days after the completion of well abandonment.
5. If EPA or CT DEEP become aware that the groundwater contamination is migrating in the direction of the well that is subject to this exception, the Town of Durham Health Department, upon notification by EPA or CT DEEP, may require that the well be abandoned. If such notification is provided, the property owner must abandon the well at the property owner's expense in accordance with the provisions of the Connecticut Well Drilling Code and Rules, Sections 25- 126 through 25-137 of the General Statutes and Regulations of the State of Connecticut and all applicable regulations of the Town of Durham Health Department within thirty (30) days of the notice from the Town of Durham Health Department.

VIII. Violations

- A. The Town of Durham may institute or cause to be instituted, in the name of the Town, any and all actions, legal and equitable, that shall be appropriate or necessary for the enforcement of the provisions of this Ordinance.
- B. Any person, firm or corporation, being the owner or occupant of, or having control or the use of land within the GMZ who is found to violate any provision of this Ordinance, may be cited in the amount of \$250 per day in accordance with the citation ordinance adopted in accordance with Connecticut General Statutes Section 7-152c. Each day such violation is permitted to exist shall constitute a separate offense.

IX. Effective Date

This Ordinance shall take effect on _____.

Laura Francis called the meeting to order at 8:00 p.m., led with the pledge of allegiance and introduced all in attendance. She noted that the draft ordinance being presented at this meeting was the result of comments received at the last public hearing held on December 16, 2014. The committee is currently working on a consent order with Connecticut State DEP to be eligible for funding to bring water to other areas of the contamination outside of the superfund site. She noted that the next steps would involve the Board of Selectmen bringing to town meeting for vote.

A resident asked how it was fair for the whole town to vote on an issue that affects only some properties. Attorney Ken Slater stated that the democratic process allows for all voters to decide which ordinances will be adopted by their town. This is how municipal law is passed. Laura Francis said that while the ordinance would only affect certain properties, this is a town problem. Property values throughout the town are affected.

Ed Hathaway then opened up the meeting to questions.

- Several residents questioned the need to include the Maple Avenue area within the groundwater management zone (GMZ)
 - areas where there currently is, and never has been contamination are included, and the plume is moving in the opposite direction, so testing could be required instead of this ordinance;
 - the buffer area in the north is in the opposite direction of where the plume is moving, yet wells in the Durham Center area are NOT included – the rule is ambiguous;
 - EPA is not looking at the Durham Center area as cautiously as they are the upper Maple Avenue area – Townhouse Road and the Durham Center area wells are in the line of the plume/contamination, yet they are not subject to the ordinance, but wells that have been tested and found to be not contaminated are subject to the ordinance – this discriminates against the latter.

EPA: It is impossible to predict exactly how the plume will move once homes are connected and pumping is discontinued in the area. There are some homes on Maple Avenue that are on filters, so it is not as though there is no contamination there. If well testing was only required it could be months before anyone would know they are drinking contaminated water.

Resident: Felt that hooking up to the water system is a personal financial decision.

EPA: Explained that if one person's pumping causes someone else's well to become contaminated, that is a problem. Also, when the public water is in, current testing of private wells goes away.

- L. Francis: Spoke in reference to the Durham Center area; the town will look at the area currently served by Durham Center to see if the ordinance should be expanded. Regarding the "other" contaminated areas outside of the superfund site, Durham and DEEP are working on addressing those areas through 471 Orders.

- Resident: Questioned why the northern side of Talcott was removed from the zone.

EPA: Only one home was removed.

- Resident: Felt that the zone changed from meeting to meeting. First, the Fairground wells and school were out, now they're in.

L. Francis: Stated that there was a process involved; with the schools; meetings and votes were required.

EPA: Changes were made based on community input from the last public hearing.

- Resident: Questioned if wells were shut off to the north and to the southwest, and currently operating uncontaminated wells to the south continue pumping, won't that pumping draw the plume in a southeast direction?

EPA: Stated that they believe there are only a few properties using wells in the area immediately southwest of the plume and that the presence of the water line would allow EPA to respond quickly if contamination moves in that direction. As opposed to a scenario where the water line is not installed on upper Maple Street and contamination is detected and there may not be a way to get a new water line installed in a timely manner.

- Resident: There are 54 wells in the Superfund Site, who pays for all of the other hook-ups?

EPA: EPA/CT pays for all of the buffer zone wells as well.

- Resident: What will it cost to purchase water from Middletown?

L. Francis: We are in negotiation with Middletown and are looking at other town models.

Resident: Noted that a benefit with the availability of fire protection, homeowners insurance will decrease.

EPA: Explained that because we are interconnecting to another system, the system is being sized for fire as well as potable use.

- Resident: There was a question about the private wells in Durham Center.
DPH: Durham Center has to do a cross connection survey. Either you are on the system or you have a well.
- Resident: Is unhappy that the choice to cap and hook up when you want to at your own expense is no longer viable.
EPA: Those who do not want to be connected will be subject to the ordinance. We don't want people to drink contaminated water; don't want a situation where 3-5 people say "no" and then pull the contamination into the public system.
- L. Francis: If we voted tonight on this proposed ordinance, and it failed, either we would start over or we would start negotiating deed restrictions. She questioned if there was somewhere in the middle.
EPA: Reiterated that they were present to listen to residents' concerns.
EPA: Explained that above Talcott Lane there is another source of contamination that is not that far away from the northern area. EPA is not hooking them up.
Resident: Felt as a homeowner, the only issue should be whether we have to pay for the hookup. I don't think there should be any other issue than just paying for the water from Middletown.
Resident: Who is opposed to the ordinance explained that he was allergic to chlorine and depends on well water.
- Resident: Spoke about current water shortages and felt that someday Durham will experience such shortages and was opposed to the idea of Middletown telling him how much water he could use. He suggested revising the well distance in the proposed ordinance.
EPA: We will take a look at that issue.
- Resident: Questioned requiring well testing any more than annual noting he felt this was too much; that's what's been going on for 15 years; to make it more frequent would make it so onerous and costly that nobody will do it.
- Resident: Asked what interest would the town have if property owners wanted to opt out.
EPA: Reiterated that pumping influence is not limited to your property line and the potential to affect other property owners.
L. Francis: Talked about financial implications; if a property owner opts out, that action affects future owners as well as the current one.
Resident: Asked if upon transfer of the property, the new owner could be required to connect.
Resident: Felt that if someone opts out, it would not affect EPA's analysis.
EPA: Stated that they will be extremely reluctant to have an opt-out in an area where there is contamination; in reference to Maple Avenue they would consider an opt-out but cautioned if many people opt-out, the EPA may not build that loop.
- Resident: Stated that they felt when the water line comes in, Durham will lose its reputation as the worst Superfund Site.

- Resident: Stated that she grew up on Main Street drinking and bathing in what might have been contaminated water; currently no one with children want to purchase homes on Main Street. She currently lives on Maple Avenue near Johns Way and is scared by the contamination. She noted that she has lost a sister to cancer and her adult daughter has recently been diagnosed with cancer; she acknowledged that she doesn't know if the cancer is because of the contaminated water, but it is frightening. She cautioned the residents in attendance to hook up now or it would cost a fortune in the future. She noted that she is grateful that the Federal Government is involved.
- Resident: Asked if Middletown residents who currently are not hooked in hook in with this project. EPA: When the water main is put in, stubs will be put in so that they are not always breaking into the line.
- DEEP: Cautioned that if enough property owners on a street don't want to hook up to the system, it would become too expensive to bring water to just a few homes, so they may not extend the system to that street.
- DEEP: If areas outside of the Superfund site are contaminated they will be 100% State-funded. If these same areas are not contaminated but have another issue, such as supply issue, there would be a cost-share arrangement – Town contribution; will be responsive within the confines of the law.
- Attorney Ken Slater: Asked the residents to compare this to a sewer situation. When groundwater is being contaminated by septic systems and sewer is being brought in, if there is no requirement to connect to the system, then it doesn't make sense to put the sewer line in, as the groundwater could continue to be contaminated by those who don't connect.
- Resident: Stated that he is concerned that if Federal Government requires connection and then doesn't fund the project the resident will be stuck.
- Resident: Suggested surveying property owners on Maple Avenue to see how many do or do not want to connect.
- EPA: Thanked everyone for attending and reassured all that they heard their concerns raised at this meeting and noted that they will take time to reflect on them and consider changes to the draft ordinance.

Respectfully submitted,

Beth Moncata