STATE OF NEW YORK

1366

2017-2018 Regular Sessions

IN ASSEMBLY

January 11, 2017

Introduced by M. of A. CUSICK, ROSENTHAL, TITONE, ENGLEBRIGHT, ABINANTI, LUPARDO, OTIS, TITUS -- read once and referred to the Committee on Environmental Conservation

AN ACT to amend the environmental conservation law, in relation to requiring notice to adjacent landowners where certain development is proposed in wetlands in a city with a population of one million or more

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 25-0402 of the environmental conservation law, as added by chapter 790 of the laws of 1973, subdivision 2 as added by chapter 233 of the laws of 1979, is amended to read as follows:

§ 25-0402. Application for permits.

1. Any person proposing to conduct or cause to be conducted an activity regulated under this [~~act~~] **article** upon any inventoried tidal wetland shall file an application for a permit with the commissioner, in such form and containing such information as the commissioner may prescribe. The applicant shall have the burden of demonstrating that the proposed activity will be in complete accord with the policy and provisions of this [~~act~~] **article**. Such application shall include a detailed description of the proposed work and a map showing the area of tidal wetland directly affected, with the location of the proposed work thereon, together with the names of the owners of record of adjacent lands and the known claimants of water rights in or adjacent to the tidal wetlands of whom the applicant has notice. The commissioner shall cause a copy of such application to be mailed to the chief administrative officer in the municipality where the proposed work or any part of it is located. **Upon receipt of such application by a city with a population of one million or more, such city shall cause a notice of such application to be mailed to owners of record of land which is located within one thousand feet of the proposed activity.**

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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2. No sooner than thirty days and not later than sixty days after the receipt of an application by a city with a population of one million or more, and after notice of application has been published by the applicant in two newspapers having a general circulation in the area, the commissioner shall hold a public hearing on such application at a suitable location in such city where the affected wetland is situated unless no notice of objection has been filed or unless the commissioner finds the activity to be of such a minor nature as not to affect or endanger the balance of systems within the wetlands, in which case the commissioner may, in the exercise of discretion, dispense with such hearing. Where the commissioner finds that a hearing is not necessary, a decision setting forth reasons therefor shall be prepared, shall be a matter of public record and shall be mailed to the city and the owners of record of property located within one thousand feet of the wetlands where the proposed work or any part of it is located and to all persons who filed a statement following the publication of such notice of application. All owners of record of land which is located within one thousand feet of the proposed activity and the local governments where the proposed activity is located shall be notified by certified mail of the hearing not less than twenty-one days prior to the date set for such hearing. The applicant shall cause notice of such hearing to be published in two newspapers having a general circulation in the area where the affected wetlands are located at least twenty-one days prior to the hearing. All applications and maps and documents relating thereto shall be open for public inspection at the office of the clerk of the county in which the wetland is situated. At such hearing any person or persons filing a request for a hearing or a timely notice of appearance may appear and be heard.

3. The rules and regulations adopted by the department to implement this article and the provisions of article 70 of this chapter and rules and regulations adopted thereunder shall govern permit applications, renewals, modifications, suspensions and revocations under this article, provided however, that after the department has given notice to an applicant that an application is complete, or the application is deemed complete, the applicant shall cause a notice of completion of the application to be published in a newspaper of general circulation in the affected area as provided in rules and regulations of the department.

§ 2. Subdivisions 1, 2 and 3 of section 24-0703 of the environmental conservation law, subdivisions 1 and 2 as amended and subdivision 3 as added by chapter 233 of the laws of 1979, are amended to read as follows:

1. Any person proposing to conduct or cause to be conducted a regulated activity upon any freshwater wetland shall file an application for a permit with the clerk of the local government having jurisdiction or the department, as the case may be. Review of the application shall be made by the local government or the commissioner, as the case may be, in accordance with applicable law and such rules hereunder as may be adopted by the commissioner. Such application shall include a detailed description of the proposed activity and a map showing the area of freshwater wetland directly affected, with the location of the proposed activity thereon. The clerk or commissioner shall cause notice of such application to be mailed to all local governments where the proposed activity or any part of it is located. Upon receipt of such application by a city with a population of one million or more, such city shall cause a notice of such application to be mailed to owners of record of land which is located within one thousand feet of the proposed activity.

2. No sooner than thirty days and not later than sixty days after the receipt by a local government of an application, and after notice of application has been published by the applicant in two newspapers having a general circulation in the area, the local government **or the commissioner** shall hold a public hearing on such application at a suitable location in the local government where the affected wetland is situated unless no notice of objection has been filed or unless the [~~local government finds the~~] activity **has been found** to be of such a minor nature as not to affect or endanger the balance of systems within the wetlands, in which case the local government **or the commissioner** may, in the exercise of discretion, dispense with such hearing. Where the local government **or the commissioner** finds that a hearing is not necessary, a decision setting forth reasons therefor shall be prepared, shall be a matter of public record and shall be mailed to all local governments**, and in a city with a population of one million or more to owners of record of property located within one thousand feet of the wetlands,** where the proposed work or any part of it is located and to all persons who filed a statement with the local government **or the commissioner,** following the publication of such notice of application. All owners of record of the adjacent land**, and, in a city with a population of one million or more all owners of record of property which is located within one thousand feet of the proposed activity,** and the local governments where the proposed activity is located shall be notified by certified mail of the hearing not less than [~~fifteen~~] **twenty-one** days prior to the date set for such hearing. The local government **or the commissioner** shall cause notice of such hearing to be published in two newspapers having a general circulation in the area where the affected freshwater wetlands are located. All applications and maps and documents relating thereto shall be open for public inspection at the office of the clerk of the local government**, or in a city with a population of one million or more, in the office of the clerk of the county** in which the wetland is situated. At such hearing any person or persons filing a request for a hearing or a timely notice of appearance may appear and be heard.

3. In addition to the provisions of article 70 of this chapter and rules and regulations adopted thereunder, the rules and regulations adopted by the department pursuant to this article to implement its processing of permit applications, renewals, modifications, suspensions and revocations shall govern permit administration by the department under this article, provided however, that after the department has given notice to an applicant that an application is complete, or the application is deemed complete, the applicant shall cause a notice of **completion of the** application to be published in a newspaper of general circulation in the affected area as provided in rules and regulations of the department.

§ 3. This act shall take effect immediately.