

TOWN OF THOMASTON
December 18, 2007

**ORDINANCE ESTABLISHING CITATION PROCEDURES AND FINES FOR
VIOLATIONS OF THE INLAND WETLANDS AND WATERCOURSES
REGULATIONS.**

SECTION 1. AUTHORIZATION. This Ordinance is adopted pursuant to Connecticut General Statutes, §§7-152c, and 22a-42g, as amended.

SECTION 2. DEFINITIONS. As used in this Ordinance:

(a) “Wetlands Violation” means any violation of the Thomaston Inland Wetlands and Watercourses Regulations originally adopted March 5, 1979, revised May 1, 2006, as amended, as determined by the Thomaston Inland Wetlands and Watercourses Commission or its duly authorized Wetlands Enforcement Officer.

(b) “Wetlands Agent”, also known as the “Wetland Enforcement Officer”, means that person appointed by the Thomaston Inland Wetlands and Watercourses Commission to enforce the Inland Wetlands and Watercourses Regulations pursuant to Connecticut General Statutes, §22a-42a (c)(2) and §22a-44, as amended.

(e) “Hearing Officer” means any person(s) appointed by the Board of Selectmen pursuant to Connecticut General Statutes §7-152c (b), as amended, to conduct hearings of contested citations issued pursuant to this Ordinance. No person who serves as a Wetlands Enforcement Officer, building official, police officer, an employee or person who issues citations or a member of the Inland Wetlands and Watercourses Commission shall serve as a Hearing Officer.

SECTION 3. WETLANDS VIOLATIONS. (a) The Wetlands Enforcement Officer is authorized to issue citations for wetlands violations as authorized by this Ordinance. The citation may be served by hand delivery, Marshall, or by certified mail, return receipt requested, to the owner or lawful occupant of the premises where the violation exists. The costs of such services will be paid by the violator. If the person named in the citation refuses to accept certified mail, the citation shall be served by first class mail to the person’s last known address of record.

(b) The fine for each violation shall be ONE HUNDRED DOLLARS (\$100.00). Multiple violations may result in multiple fines on the same premises, and for continuing violations, each day of violation shall be considered a separate offense, but only one citation need be served for either multiple or continuing violations arising from the same condition, act or activity. The maximum fine for a wetlands violation under this Ordinance shall not exceed ONE THOUSAND DOLLARS (\$1,000.00); and no such fine shall be levied against the State of Connecticut, the Town of Thomaston or any employee, officer, agency or department of the State or the Town.

(c) The fine shall not become due until thirty (30) days following the date of issuance of the citation. The owner or occupant may correct the violation to the satisfaction of the Wetlands Enforcement Officer within the thirty (30) day period in which case the fine shall abate and the citation shall be withdrawn.

(d) The Wetlands Enforcement Officer shall have the authority to issue a written warning prior to issuing a citation.

SECTION 4. CITATION PROCEDURE. (a) Any person receiving such a citation shall be allowed a period of thirty (30) days from receipt of the citation to make an uncontested payment of the fine specified in the citation to the Town Treasurer. If the citation has been sent by regular mail pursuant to the provisions of this Ordinance, the day of receipt of the citation shall be deemed to be three business days after the day of mailing of the citation.

(b) If a person who has been issued a citation does not make uncontested payment of the fine specified in the citation to the Town Treasurer within the time allowed under this Ordinance, the Wetlands Enforcement Officer, shall send a notice to the person cited by certified mail, return receipt requested, informing such person: (1) of the allegations against such person and the amount of the fines; (2) that the person cited may contest liability before a Hearing Officer appointed by the Board of Selectmen of the Town of Thomaston as provided in this Ordinance, by delivering, in person or by certified mail, return receipt requested within ten (10) days of the date of the notice, a written demand for a hearing; (3) that if the person cited does not demand such a hearing, an assessment and judgment shall be entered against such person; and (4) that such judgment may issue without further notice.

(c) If the person who is sent notice pursuant to this Ordinance wishes to admit liability for any alleged violations, such person may, without requesting a hearing, pay the full amount of the fine, either in person or by mail, to the Wetlands Enforcement Officer. All fines shall be made payable to the "Treasurer of the Town of Thomaston". Such payment shall be inadmissible in any proceeding, civil or criminal, to establish the conduct of such person or other person making the payment. Any person who does not deliver or mail written demand for a hearing within ten (10) days of the date of the notice described in this Ordinance shall be deemed to have admitted liability, and the Wetlands Enforcement Officer shall certify to the Hearing Officer that such person has failed to respond. The Hearing Officer shall thereupon enter and assess the fines provided for by this Ordinance and shall follow the procedures hereinafter set forth in this Ordinance.

SECTION 5. HEARING PROCEDURE. (a) Any person who requests a hearing shall be given written notice of the date, time and place for the hearing. Such hearing shall be held not less than fifteen (15) days nor more than thirty days from the date of the mailing of notice, provided the Hearing Officer shall grant, upon good cause shown, any reasonable request by any interested party for postponement or continuance. The presence of the Wetlands Enforcement Officer shall be required at the hearing if requested by the person who was issued the citation. A person wishing to contest liability shall appear at the hearing and may present evidence in such person's behalf. The Wetlands Enforcement Officer may present evidence on behalf of the municipality. If the person who received the citation fails to appear, the Hearing Officer may enter an assessment by default against such person upon finding of proper notice and liability under the applicable provisions of the Inland Wetlands and Watercourses Regulations. The Hearing Officer may accept written information by mail from the person who received the citation and may determine thereby that the appearance of such person is unnecessary. The Hearing Officer shall conduct the hearing in the order and form and with such methods of proof as the Hearing Officer deems fair and appropriate. The rules regarding the admissibility of evidence shall not be strictly applied, but all testimony shall be given under oath or affirmation. The Hearing Officer shall announce the decision at the end of the hearing. If the Hearing Officer determines that the person who received the citation is not liable, the Hearing Officer shall dismiss the matter and enter that determination in writing accordingly. If the Hearing Officer determines that the person who received the citation is liable for the violation, the Hearing Officer shall forthwith enter and assess the fines against such person as provided by this Ordinance.

(b) If such assessment is not paid on the date of its entry, the Hearing Officer shall send by certified mail, return receipt requested, a notice of the assessment to the person found liable and shall file, not less than thirty (30) days nor more than twelve (12) months after such mailing, a certified copy of the notice of assessment with the Clerk of the Superior Court for the Judicial District of Litchfield, GA #18, together with the applicable entry fee. The certified copy of the notice of assessment shall constitute a record of assessment. Within such twelve month period, assessments against the same person may be accrued and filed as one record of assessment. The Clerk shall enter judgment in the amount of such record of assessment and allowable court costs against such person in favor of the municipality. Notwithstanding any other provision of the Connecticut General Statutes, the Hearing Officer's assessment, when so entered as a judgment, shall have the effect of a civil money judgment and a levy of execution on such judgment may issue with further notice to such person.

SECTION 6. APPEAL. A person against whom an assessment has been entered pursuant to this Ordinance is entitled to judicial review by way of appeal. An appeal shall be instituted within thirty days of the mailing of notice of such assessment by filing a petition to reopen assessment, together with an entry fee in an amount equal to the entry fee for a small claims cases pursuant to Connecticut General Statutes, §52-259, in the Superior Court, for the Judicial District of Litchfield, GA #18, which shall entitle such person to a hearing in accordance with the rules of the judges of the Superior Court.

SECTION 7. MISCELLANEOUS PROVISIONS. The remedies set forth in this Ordinance shall be deemed to be in addition to such other remedies as are provided by law. The decision to assess fines under this Ordinance shall be an exercise of municipal discretion, and shall not prevent the Wetlands Enforcement Officer from instituting enforcement action, such as a cease and desist order or order to show cause, concurrently with the assessment of fines, and to seek such relief, including penalties, attorney's fees and costs, as may be allowed by law.

SECTION 8. EFFECTIVE DATE. This Ordinance shall take effect fifteen (15) days after publication of a summary of its provisions in a newspaper having a general circulation of the Town of Thomaston pursuant to Connecticut General Statutes, §7-157(b).

ADOPTED AT TOWN MEETING ON: _____, _____.
PUBLISHED: _____ ON _____, _____.
EFFECTIVE DATE: _____, 200_____
THOMASTON TOWN RECORDS: VOLUME _____, PAGES _____-_____