

Q and A on Proposed Update to Zoning Ordinances, Article IX-A, Aquifer and Wellhead Protection District

Q. Why is the Aquifer and Wellhead Protection District Ordinance being updated?

A. For two reasons: **first** to make the ordinance easier to understand and use by improving its language and organization and **second** to correct legally dubious rules regarding public water supply wells in the current ordinance. This Q and A will focus on the second reason.

Q. What's the legal concern with the current ordinance?

A. Section 6 could result in Regulatory Taking. Under Regulatory Taking, government rules effectively deprive a property owner of the reasonable use of their property to such an extent that it deprives them of value of that property without compensation.

Q. Why is Regulatory Taking a concern?

A. Such a taking could drive legal action against the Town and property owners. It's doubtful that the Town could enforce it. And it's fundamentally unfair and inequitable for an ordinance to eliminate reasonable use of a person's property without compensation.

Q. How could Section 6 result in Regulatory Taking?

A. Section 6 currently places a set 400 foot radius around all public water supply wellheads. Land uses are very limited within this area. The problem arises when this 400 foot radius extends onto a neighbor's property. In these cases, neighbors can be prevented from using their land in a reasonable way, such as to build a house, place a shed, or install a driveway. This could make the neighbor's property virtually unusable and could constitute Regulatory Taking.

Q. How does the update to Section 6 correct this problem?

A. The update considers the size of the well when establishing the area that must be kept in a natural state instead of using the current one-size-fits-all rule. To set an appropriate area, the update uses the State's sanitary wellhead protective radii rules, which range from 75 to 400 feet based on the draw rate of the well. This approach will reduce encroachment onto a neighbor's property and provide a legally defensible standard while continuing to provide strong protection to public water supply wellheads.

Q. Won't this change endanger our public water supplies?

A. No. In addition to the State's protective radii explained above, the area within 400 feet of a public water supply wellhead will be regulated under Section 5 of this ordinance. This will limit land uses near wellheads to keep sources of contamination well away from public water wells.

Q. Will the changes affect our residential wells?

A. No. Residential wells are not affected by these changes.

Q. Will the changes allow denser development in Madbury?

A. No. Density and type of development are governed by different ordinances. These ordinances have not been changed nor have proposals been made to change them.

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Q. Are developers driving these changes?

A. No. No developers suggested these changes or were involved their creation. The Planning Board's goals have nothing to do with helping developers. The goals are instead to improve an ordinance that protects our water and to improve the ordinance's fairness.

Q. What process was used to create these updates?

A. The Planning Board followed applicable in house rules and NH RSAs including 674:1 and 675:7. Draft updates were considered over numerous public meetings. To promote public participation at these meetings, agendas and minutes were posted to the Planning Board website and a mailing list was offered to those who wanted to be made aware of Planning Board activities.

Q. Where can I get more information?

Additional information including the draft ordinance and a summary of changes is available on the Planning Board's website under Meetings, 2021-01-16, Handouts linked here: http://www.madburynh.org/MadPlan/show_meetinghandouts.php?item=308