Article 23

SECTIONS 255-35D AND 255-35E and USE REGULATIONS SCHEDULE

Article 23. To see if Town Meeting will amend Chapter 255 (the Zoning Bylaw) in Section 255-35D – Permitted Uses - by deleting the existing item (8) regarding “Excavation” and inserting a new item (8) indicating that only Earth Removal, Extraction, and/or Fill Activities identified as exempt in § 255-84A(2) may be permitted; in Section 255-35E – Prohibited Uses - by inserting “Major and Other Earth Removal, Extraction, and/or Fill Activities” where a permit by the Building Commissioner is required in Section 255-84 as a Prohibited Use; and in the Use Regulations Schedule (Attachment A) by changing Major Earth Removal, Extraction, and/or Fill Activities and Other Earth Removal, Extraction, and/or Fill Activities (as defined in Section 255-84) within the Water Supply Protection District from allowed by Special Permit and Permitted by Right to Prohibited as detailed in the Planning Board’s Report to Town Meeting, or take any other action relative thereto.

The changes to be made in the Zoning Bylaw are as follows:

1. Amend Section 255-35D - “Permitted Uses” of the South Hadley Zoning Bylaw by deleting the following:

“(8) Excavation for earth removal, provided that the requirements of Subsection F of this section and § 255-84 are met, and an earth removal permit is granted by the Building Commissioner.”

2. Amend Section 255-35D “Permitted Uses” of the South Hadley Zoning Bylaw by inserting the following:

“(8) Earth Removal, Excavation, and/or Fill Activities as defined in § 255-84 for which a Permit from the Building Commissioner is not required due to the activity being part of an exempt development under Section 255-84A(2) and the associated excavation/earth removal shall not be nearer than 10 feet of the seasonal high groundwater.”

3. Amend Section 255-35E – “Prohibited Uses” of the South Hadley Zoning Bylaw by inserting the following:

“(10) Major and Other Earth Removal, Excavation and/or Fill activities (as defined in Section 255-84 including “mining” of gravel, soil, loam, sand and/or other minerals.”
REPORT OF PLANNING BOARD ON PROPOSED ARTICLE MAKING REVISION TO THE ZONING BYLAW IN REGARDS TO EARTH REMOVAL, EXTRACTION, AND FILL ACTIVITIES IN THE WATER SUPPLY PROTECTION DISTRICT
(Article 23)

4. Amend Section 255 of the South Hadley Zoning Bylaw, Attachment 1 “Use Regulations Schedule” in regard to the “Other” Use Classification by changing the use “Major Earth Removal, Excavation and/or Fill activity” in the Water Supply Protection District from permitted by Special Permit to Prohibited; by changing the use “Other Earth Removal, Excavation and/or Fill activity” in the Water Supply Protection District from permitted by Right to Prohibited; and deleting footnote “b”.

OBJECTIVE: The proposed amendments seek to better protect the public water supply by prohibiting Major and Other Earth Removal, Extraction, and Fill Activities in the WSPD and requiring at least 10 feet of separation from the lowest point of any Earth Removal or Extraction and the seasonal high ground water.

EXISTING PROVISIONS: The existing Section 255-35D, 255-35E, and Section 255-19 of the Zoning Bylaw (Attachment 1) in regard to “Other Use Classification” are in Attachment A.

SUMMARY: This article makes changes in Section 255-35 and the Use Regulations Schedule to prohibit Major and Other Earth Removal, Excavation and/or Fill activities for which a permit from the Building Commissioner is required in the Water Supply Protection District.

BACKGROUND: In July 2018, Chicopee Concrete Services, Inc. submitted a Special Permit application to expand the earth removal/excavation operation they have located off Hadley Street within Zone II of the District 2 Dry Brook Public Water Supply Well. During the course of the public hearings, many residents of the Town, the Board of Health, Conservation Commission, District 2 Board of Water Commissioners, and representatives of Mount Holyoke College expressed deep and passionate concerns regarding the potential impact which such an operation may have on the public water supply serving a third of South Hadley’s residents and several of our major developments and institutions. Additionally, during the review process, there were issues raised which suggested that some portions of the Water Supply Protection District were not strong enough nor clear enough to adequately serve the town. In January 2019, the applicant withdrew their application for the Special Permit.

The Planning Board immediately initiated discussions to review the Water Supply Protection District (WSPD). This included a request that the District 2 Board of Water Commissioners review the WSPD provisions and provide the Planning Board with their suggestions on how to improve the Zoning Bylaw protections. Subsequently, Neva Tolopeko, Conservation Commission member offered a significant number of proposed edits to the WSPD Zoning Bylaw provisions and worked with the Planning Director to develop a set of recommendations which are largely reflected in Articles 23, 24, and 25. The Planning Board invited the members of the Board of Health, Conservation Commission, and District 2 Board of Water Commissioners to attend the March 25, 2019 Planning Board meeting to engage in a discussion as to a comprehensive set of recommended General and Zoning Bylaw revisions which would better protect the District 2 public water supply. One of the outcomes of the March 25, 2019 meeting was general agreement on the revisions which Ms. Tolopeko and the Planning Director had developed.
REPORT OF PLANNING BOARD ON PROPOSED ARTICLE MAKING REVISION TO THE ZONING BYLAW IN REGARDS TO EARTH REMOVAL, EXTRACTION, AND FILL ACTIVITIES THE WATER SUPPLY PROTECTION DISTRICT  
(Article 23)

This current article #23 focuses on one objective – Prohibiting Major and Other Earth Removal, Excavation and/or Fill activities from being permitted in the Water Supply Protection District.

We anticipate there will be benefit derived by coming back to Town Meeting and making further revisions to other parts of the Zoning Bylaw – specifically Section 255-84 – when more time can be devoted to developing those changes.

RELATIONSHIP TO MASTER PLAN: There is not a direct, clear relationship to the Master Plan, adopted in 2010. The Land Use and Community Design Chapter, describes this area as consisting “primarily of single-family residences and farmland with patches of commercial development”. It states that the “gravel pit operation in this area (which is considered grandfathered) should be considered an exception, rather than a predominant feature of this neighborhood.” It further describes this area scenic noting “[r]eflecting its predominately rural and scenic character, Route 47 has been designated a Scenic Byway by the Federal government . . . “. In speaking of future changes, the plan states that “[t]he character of this corridor should remain in keeping with its current pattern . . .” with a commercial center of the Town Common & Village Commons area while the rest of the corridor should remain “rural with scenic vistas and single-family residences”.

Several goals and actions in the Master Plan support actions to enhance the visual appearance of the community as well as align the regulatory framework with the community’s goals including the goal of improved aesthetic quality and environmental sustainability.

This proposed amendment is supportive of the stated vision for this corridor. It would preclude new earth removal operations from being permitted within the Water Supply Protection District.

PUBLIC HEARING: The Planning Board conducted a public hearing on this article on Monday April 22, 2019. While no specific comments were offered during the public hearing on this particular article, the general comments offered during the public hearing was support for making changes which offer stronger protection for the public water supply than is currently afforded by the Zoning Bylaw. No opposition to this article was offered during the public hearing.

RECOMMENDATION: The Planning Board, at their April 22, 2019 meeting, unanimously voted to recommend adoption of this Article as presented. The Planning Board, at their April 29, 2019 meeting, unanimously voted to approve this report.

ANNOTATED PROVISIONS: An annotated version of the existing provisions of Section 255-35D, 255-35E, and Section 255-19 of the Zoning Bylaw (Attachment 1) in regards to “Other Use Classification” are in Attachment B. Letters and words proposed to be deleted are identified with “strike through markings” while letters and words proposed to be inserted are identified as “italicized, underlined”.

3
## District Use Regulations Schedule (Other Uses Excerpt)

**KEY:**
- Y Permitted use
- N Excluded or prohibited use
- SP Use permitted only with a special permit approved by the Planning Board as provided in Article IX of the Zoning Bylaw
- SPR Use permitted only with site plan review from the Planning Board as provided in Article XII of the Zoning Bylaw

### DISTRICTS

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Other Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessory uses to permitted principal uses, as provided in Article VII</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Major earth removal, extraction, and/or fill activities</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Other earth removal, extraction, and/or fill activities</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Extension or alteration of existing non-conforming use or structure</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Wireless Communications Antennas/e/d</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Wireless Communications Tower/d</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
</tbody>
</table>

### NOTES:

- Subject to the criteria and provisions specified in Subsection 255-51 and also (when the activity is located within the Water Supply Protection District) subject to the criteria and provisions contained in Subsection 255-35.
- Both uses are subject to the provisions of Subsection 255-40 of the Zoning By-Law and include any and all equipment (including Equipment Shelters), cable, and related fixtures.
- The Wireless Communications Antennas’ use only applies to such antennas and related equipment (including Equipment Shelters), cable, and related fixtures to be affixed to existing structures not primarily erected or used for wireless communications purposes. If such antennas are to be affixed to structures the use is to be considered as requiring a Special Permit approved by the Planning Board.

---

**Zoning**

**255 Attachment 1**

**Town of South Hadley**

Use Regulations Schedule (Other Uses Excerpt)

[Amended 5-10-2017 ATM by Art. 24; 1-10-2018 by Art. 5; 5-9-2018 ATM by Art. 17; 5-9-2018 ATM by Art. 18]
**Attachment A**

**Existing Provisions of Section 255-35D and Section 255-35E**

The following Code does not display images or complicated formatting. Codes should be viewed online. This tool is only meant for editing.

§ 255-35 **Water Supply Protection District.**

D. Permitted uses. The following uses are permitted within the Water Supply Protection District, provided that they comply with all applicable restrictions in this bylaw, including but not limited to Subsections E through H:

1. Single-family residences, provided that where not serviced by public sewer, lot size shall be 10,000 square feet of lot area per bedroom or 40,000 square feet, whichever is greater. For cluster development, minimum lot size may be calculated on a net density for an entire development, which includes individual lots and common open space of varying size. Where serviced by public sewerage, minimum residential lot size shall comply with the residential requirement of the underlying district.

2. Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems.

3. Agricultural uses such as farming, grazing and horticulture.

4. Forestry and nursery uses.

5. Outdoor recreational uses, including fishing, boating and play areas.


7. Wildlife management areas.

8. Excavation for earth removal, provided that the requirements of Subsection F of this section and § 255-84 are met, and an earth removal permit is granted by the Building Commissioner.

9. Wireless communications facilities when approved pursuant to §§ 255-20 and 255-40, subject to the conditions of the Planning Board as set forth in the special permit decision.

E. Prohibited uses. The following uses are prohibited within the Water Supply Protection District:

1. Business and industrial uses, not agricultural, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair, which generate, use, treat, process, store or dispose of hazardous wastes, except for the following:

   a. Very small quantity generators of hazardous waste, as defined by 310 CMR 30.00, which generate less than 20 kilograms or six gallons of hazardous waste per month may be allowed by special permit in accordance with Article IX of this bylaw;

   b. Household hazardous waste collection centers or events operated pursuant to 310 CMR
Attachment A

Existing Provisions of Section 255-35D and Section 255-35E

30.390;

(c) Waste oil retention facilities required by MGL c. 21, § 52A; and

(d) Treatment works approved by the Massachusetts Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground and surface waters.

(2) Business or industrial uses, not agricultural, which dispose of process wastewaters on-site.

(3) Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops, commercial fuel oil storage and sales.

(4) Solid waste landfills, dumps, auto recycling, auto graveyards, junk and salvage yards, landfiling or storage of sludge and septage, with the exception of the disposal of brush or stumps.

(5) Storage of liquid petroleum products of any kind, except for the following:

(a) Storage which is incidental to: 1] normal household use and outdoor maintenance or the heating of a structure; 2] waste oil retention facilities required by MGL c. 21, § 52A; 3] emergency generators required by statute, rule or regulation; or 4] treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters; provided that such storage shall be in a freestanding aboveground container within a structure or within the basement of a structure, within a diked, impermeable area sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater, and provided that the storage tank and piping must comply with all applicable provisions of 527 CMR 1.00, the Massachusetts Board of Fire Prevention regulations.

(b) Replacement of storage tanks or systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this bylaw, provided that:

[1] All such replacement storage tanks or systems shall be located underground as required by Massachusetts Board of Fire Prevention regulations 527 CMR 14;

[2] All such storage systems be protected by one of the secondary containment systems specified in Massachusetts Board of Fire Prevention regulations 527 CMR 9.08(3);

[3] The head of the respective Fire Department may deny an application for tank replacement, or approve it subject to conditions, if he or she determines that it constitutes a danger to public or private water supplies in accordance with 527 CMR 9.26(4)(d). Replacement of all other storage tanks for liquid petroleum products other than gasoline must be above ground in accordance with Subsection E(5)(a).

(6) Outdoor storage of salt, deicing materials, pesticides or herbicides.
Attachment A

Existing Provisions of Section 255-35D and Section 255-35E

(7) Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichlorethane, or other household hazardous wastes. (See the list of prohibited chemicals at the Board of Health or Town Clerk’s office.)

(8) Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

(9) Wastewater treatment works subject to 314 CMR 5.00 (those treatment works which discharge over 15,000 gallons per day to the ground), except the following:

(a) The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);

(b) The replacement of an existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);

(c) Treatment works designed for the treatment of contaminated ground or surface waters subject to 314 CMR 5.00.
Zoning
255 Attachment 1
Town of South Hadley
Use Regulations Schedule (Other Uses Excerpt)
[Amended 5-10-2017 ATM by Art. 24; 1-10-2018 by Art. 5; 5-9-2018 ATM by Art. 17; 5-9-2018 ATM by Art. 18]

KEY:
Y       Permitted use
N       Excluded or prohibited use
SP      Use permitted only with a special permit approved by the Planning Board as provided in Article IX of the Zoning Bylaw
SPR     Use permitted only with site plan review from the Planning Board as provided in Article XII of the Zoning Bylaw

<table>
<thead>
<tr>
<th>USE CLASSIFICATIONS</th>
<th>Residential</th>
<th>Agric.</th>
<th>Business</th>
<th>Industrial</th>
<th>Water Supply Protection Overlay</th>
</tr>
</thead>
<tbody>
<tr>
<td>A-1</td>
<td>A-2</td>
<td>B</td>
<td>C</td>
<td>A</td>
<td>A</td>
</tr>
<tr>
<td>Other Uses</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accessory uses to permitted principal uses, as provided in Article VII</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Major earth removal, extraction, and/or fill activities/b</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Other earth removal, extraction, and/or fill activities/b</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>Extension or alteration of existing non-conforming use or structure as provided in Subsection 255-7</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Wireless Communications Antennas/e/d</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
<td>SP</td>
</tr>
<tr>
<td>Wireless Communications Tower/d</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>SP</td>
</tr>
</tbody>
</table>

NOTES:

b. Subject to the criteria and provisions specified in Subsection 255-51 and also (when the activity is located within the Water Supply Protection District) subject to the criteria and provisions contained in Subsection 255-35.
c. Both uses are subject to the provisions of Subsection 255-40 of the Zoning By-Law and include any and all equipment (including Equipment Shelters), cable, and related fixtures.
d. The Wireless Communications Antennas’ use only applies to such antennas and related equipment (including Equipment Shelters), cable, and related fixtures to be affixed to existing structures not primarily erected or used for wireless communications purposes. If such antennas are to be affixed to structures the use is to be considered as requiring a Special Permit approved by the Planning Board.
§ 255-35 Water Supply Protection District.

D. Permitted uses. The following uses are permitted within the Water Supply Protection District, provided that they comply with all applicable restrictions in this bylaw, including but not limited to Subsections E through H:

1. Single-family residences, provided that where not serviced by public sewer, lot size shall be 10,000 square feet of lot area per bedroom or 40,000 square feet, whichever is greater. For cluster development, minimum lot size may be calculated on a net density for an entire development, which includes individual lots and common open space of varying size. Where serviced by public sewerage, minimum residential lot size shall comply with the residential requirement of the underlying district.

2. Residential accessory uses, including garages, driveways, private roads, utility rights-of-way, and on-site wastewater disposal systems.

3. Agricultural uses such as farming, grazing and horticulture.

4. Forestry and nursery uses.

5. Outdoor recreational uses, including fishing, boating and play areas.


7. Wildlife management areas.

8.  Earth Removal, Excavation, and/or Fill Activities as defined in § 255-84 for which a Permit from the Building Commissioner is not required due to the activity being part of an exempt development under Section 255-84A(2) and the associated excavation/earth removal shall not be nearer than 10 feet of the seasonal high groundwater.

9. Wireless communications facilities when approved pursuant to §§ 255-20 and 255-40, subject to the conditions of the Planning Board as set forth in the special permit decision.

E. Prohibited uses. The following uses are prohibited within the Water Supply Protection District:

1. Business and industrial uses, not agricultural, including but not limited to metal plating, chemical manufacturing, wood preserving, furniture stripping, dry cleaning and auto body repair, which generate, use, treat, process, store or dispose of hazardous wastes, except for the following:
Attachment B

Annotated Provisions of Section 255-35D and Section 255-35E

(a) Very small quantity generators of hazardous waste, as defined by 310 CMR 30.00, which generate less than 20 kilograms or six gallons of hazardous waste per month may be allowed by special permit in accordance with Article IX of this bylaw;

(b) Household hazardous waste collection centers or events operated pursuant to 310 CMR 30.390;

(c) Waste oil retention facilities required by MGL c. 21, § 52A; and

(d) Treatment works approved by the Massachusetts Department of Environmental Protection and designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground and surface waters.

(2) Business or industrial uses, not agricultural, which dispose of process wastewaters on-site.

(3) Trucking terminals, bus terminals, car washes, motor vehicle gasoline sales, automotive service and repair shops, commercial fuel oil storage and sales.

(4) Solid waste landfills, dumps, auto recycling, auto graveyards, junk and salvage yards, landfilling or storage of sludge and septage, with the exception of the disposal of brush or stumps.

(5) Storage of liquid petroleum products of any kind, except for the following:

(a) Storage which is incidental to: 1] normal household use and outdoor maintenance or the heating of a structure; 2] waste oil retention facilities required by MGL c. 21, § 52A; 3] emergency generators required by statute, rule or regulation; or 4] treatment works approved by the Massachusetts Department of Environmental Protection designed in accordance with 314 CMR 5.00 for the treatment of contaminated ground or surface waters; provided that such storage shall be in a freestanding aboveground container within a structure or within the basement of a structure, within a diked, impermeable area sufficient to contain the volume of the tank plus 10% to prevent spills or leaks from reaching groundwater, and provided that the storage tank and piping must comply with all applicable provisions of 527 CMR 1.00, the Massachusetts Board of Fire Prevention regulations.

(b) Replacement of storage tanks or systems for the keeping, dispensing or storing of gasoline, which existed at the time of adoption of this bylaw, provided that:

[1] All such replacement storage tanks or systems shall be located underground as required by Massachusetts Board of Fire Prevention regulations 527 CMR 14;

[2] All such storage systems be protected by one of the secondary containment systems specified in Massachusetts Board of Fire Prevention regulations 527 CMR 9.08(3);

[3] The head of the respective Fire Department may deny an application for tank replacement, or approve it subject to conditions, if he or she determines that it constitutes a danger to public or private water supplies in accordance with 527 CMR 9.26(4)(d). Replacement of all other storage tanks for liquid petroleum products other
Attachment B

Annotated Provisions of Section 255-35D and Section 255-35E

than gasoline must be above ground in accordance with Subsection E(5)(a).

(6) Outdoor storage of salt, deicing materials, pesticides or herbicides.

(7) Dumping or disposal on the ground, in water bodies, or in residential septic systems of any toxic chemical, including but not limited to septic system cleaners which contain toxic chemicals such as methylene chloride and 1-1-1 trichlorethane, or other household hazardous wastes. (See the list of prohibited chemicals at the Board of Health or Town Clerk's office.)

(8) Stockpiling and disposal of snow or ice removed from highways and streets located outside of the Water Supply Protection District that contains sodium chloride, calcium chloride, chemically treated abrasives or other chemicals used for snow and ice removal.

(9) Wastewater treatment works subject to 314 CMR 5.00 (those treatment works which discharge over 15,000 gallons per day to the ground), except the following:

(a) The replacement or repair of an existing system(s) that will not result in a design capacity greater than the design capacity of the existing system(s);

(b) The replacement of an existing subsurface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);

(c) Treatment works designed for the treatment of contaminated ground or surface waters subject to 314 CMR 5.00.

(10) Major and Other Earth Removal, Excavation and/or Fill activities (as defined in Section 255-84 including “mining” of gravel, soil, loam, sand and/or other minerals.)