

Section 10.611 states the rules for overlay districts:

Overlay districts apply special rules to manage land use in specific areas that may be portions of a single zoning district or that may overlap two or more zoning districts. The rules for overlay districts supplement the regulations contained in other sections of this Ordinance. **Except as specifically provided otherwise in the regulations for an overlay district, all regulations of the underlying zoning district shall apply. Where there is a conflict between the regulations of an overlay district and those of the underlying district, the overlay district regulations control.**

Thus, the rules for the overlay districts “trump” (to use Appellants’ word) the rules for an underlying zoning district in the event of a conflict.

Section 10.5A46 states that in the Incentive Overlay Districts “certain specified **development standards may be modified** as set forth in Section 10.5A46.10 ... **if the development provides community space** in accordance with section 10.5A46.20.”

Section 15-13 defines “**development**” as “Any man-made alteration of land, **a lot, a building or other structure whether horizontal, vertical,** surface or subsurface.”

Section 10.5A46.10 provides that the building footprint may be increased to 30,000 sf and the building height may be increased by 1 story.

Section 10.5A.46.20 provides the “Requirements to Receive Incentives to the Development Standards.”

Sections 10.5A46.21 and 10.5A46.22 state the requirements. **Most importantly, the difference between 10.5A46.21 and 10.5A46.22 is that:**

10.5A46.21 states the requirements “**For a lot located adjacent to, or within 100 feet of, North Mill Pond.**”

10.5A46.22 states the requirements “**For a lot that is more than 100 feet from North Mill Pond.**”

The critical point is the recognition that **the development standards apply to lots located adjacent to, or within 100 feet of, North Mill Pond.**

That recognition means that it cannot reasonably be argued that the development standards of the North Overlay District required to be met to achieve the incentives in 10.5A46.10 do not extend to lots adjacent to or within 100 feet of North Mill Pond. The plain language provides that as long as the development is in the overlay district, if it

involves a lot that extends adjacent to, or within 100 feet of North Mill Pond, the development is eligible for the building height and footprint incentives set forth in 10.5A46.10.

It also cannot gainfully be argued that the zoning map itself controls. The zoning map became part of the zoning ordinance in April 2014. It was amended in August 2015 and July 2016. None of the amendments since that time have impacted the North Overlay District.

The amendments to sections 10.5A46.21 and 10.5A46.22 became part of the zoning ordinance in August 2018.

It is a basic rule of statutory (or ordinance) construction that when a later ordinance is passed, the governmental body is presumed to be aware of the existing ordinances. Thus, **the fact that the requirements for incentives for a lot adjacent to or within 100 feet of North Mill Pond were amended after zoning map B already was part of the ordinance means that it controls in a conflict between the two.**

8/20/18 Zoning Amendment

Amend Section 10.5A46.20 – **Requirements to Receive Incentives to the Development Standards to clarify 10.5A46.21 public greenway requirements for lots within 100 feet of the North Mill Pond or Piscataqua River.**

The intent of the 2018 Zoning Amendment was to provide public access to the North Mill Pond via the greenway/open space and to have the buildings step down towards the water. This development achieves both of those goals and the Planning Board properly applied the Zoning Ordinance.