



TOWN OF LEICESTER MASSACHUSETTS BY-LAW COMMITTEE

Marjorie A. Cooper, Chairman

Justina R. Lachapelle
John Kachadorian
Ruth White Kaminski, Clerk

MEETING OF STORM WATER EXPANDED BYLAW COMMITTEE July 12, 2007

The meeting of the bylaw committee in conjunction with the Storm water (SW) Bylaw Sub Group began at 7 p.m. on July 12, 2007 in the Police Station meeting room with the following persons present: Marjorie Cooper, Justine Lachapelle, Ruth Kaminski, Michelle Buck, Town Planner, Darlene O'Connor, Town Health Agent, Ed Himlan, MWC, and Rob McNeil, P.E.

Not present: James Coughlin, Highway Superintendent and Glenda Williamson, Conservation Commission

Ed sent the draft and an invoice to Town Administrator Bob Reed and Midge Cooper. He felt that after their comments he would send to the full committee before sending to the state.

Ed reported that the town put in \$1000 and he will continue to work on this with the committee based on that cash.

Ed explained to Rob what the draft report to the state on the process contained.

Rob asked about the agreement with the town. Ed explained that he met with the town last summer and there was an agreement to submit an EOE grant. The expanded bylaw committee was formed and the state awarded a grant of \$7,300 to the town and the town added \$1,000 plus an in kind match which included things like Michelle's time etc. Total budget was \$8300 which includes \$600 for town counsel to review the final bylaw.

Ed's cost is \$7700 total which is approximately 154 hours.

Michelle questioned where the \$1000 comes from. Generally it was discussed that this was mentioned in the summer coming from Board of Selectmen's engineering account.

General discussion was held on state organizational structure as it relates to grants

A motion was made by Ruth to pay the \$7700 invoice which was 2nd by Michelle. So voted. A general discussion of whether or not there will be a special town meeting was held.

The minutes of the May 31, 2007 meeting were approved. Motion Justina which was 2nd by Michelle.

Rob commented on the cost of storm water plans in general. He said that they start at \$4,000 to \$5,000 and a homeowner small plan would be in the \$1200 to \$1500 range. A full sub division could be as high as \$10,000

Michelle asked if having more detailed regulations would minimize the time involved and the need to return to the applicant for revisions.

Rob felt that certain regulations could help to clarify the DEP regulations which can be vague.

Comparing existing conditions to as built conditions and making up the difference in run off etc., recharging back to groundwater was discussed.

If water hits the road and runs in a swale it goes into the ground right away and takes time to saturate. Curb and gutter systems stop saturation and puts the water many feet away so you are stealing water from the ground that used to be there.

Rob and Ruth gave some real life examples and a general discussion ensued.

A general discussion of Conservation Commission was held.

The regulation summary being worked on tonight is the summary of the regulations and leaves out the real technical talk so-to-speak.

Regulations are voted on by the Planning Board so the final regulation draft would be available to voters prior to the town meeting.

Michelle spoke to the Planning Board about the Storm Water bylaw and she felt this could be paired down still.

Michelle planned on calling Ed to appear at a meeting of the planning board for purposes of shortening the existing storm water draft bylaw and/or regulation.

A general discussion of 6.0.

6.0 PERMIT PROCEDURES AND REQUIREMENTS: Projects requiring a permit shall submit the materials specified in this section, and meet the stormwater management criteria specified in Section 7. Permit applications shall include a Stormwater Management Plan, and an Operations and Maintenance Plan, as part of the required information for the review of the proposed project or activity.

Applicants shall not receive any building or land development permits until the stormwater permit is issued. *The project shall begin within [180 days, or one year]* after issuance of the stormwater permit. *If the project does not begin within [180 days, or one year]* and the *Planning Board* finds that the approved Stormwater Management Plan is no longer valid, the applicant shall submit a modified Plan that requires approval prior to the commencement of land-disturbing activities.

Michelle felt that 1 year was appropriate. Rob felt longer was better as DEP regulations do not change very often and development is either in the ground the next day or they sit on it for up to 3 years, more time, thus more money to revamp. Rob felt a trigger was needed in the regulations.

Ed felt that the trigger was built in already.

Rob felt that the permit does not end and there was a ridiculous list of permits needed to build in Massachusetts. Either they are one timers or others who are developers who do this for a living and they have ongoing tickler files as constant reminders of permit expiration etc.

Michelle felt she would not want more than 2 years but she would rather deal with this by way of extension allowance. **Ed will change to include site plan extension language provided by Michelle.**

SURETY BOND REMOVED FROM 6.0 per consensus of the group present.

The applicant shall file **[three] copies** of an application for a Stormwater Management Permit (SMP). The SMP Application package shall include:

- a. A completed application form with original signatures of all owners;
- b. A list of abutters, certified by the Assessors Office, including owners of land within 300 feet of the property line of the applicant, including any in another municipality;
- c. Stormwater Management Plan and project description;
- d. Operation and Maintenance Plan;
- e. Payment of the application and review fees;
- f. Inspection and Maintenance agreement;
- g. Erosion and Sediment Control Plan;
- h. **~~Surety bond [decide if this will be part of application]~~**

Rob indicated that the reduction in plan size requirement and the number of copies required is very helpful. Michelle explained where the copies submitted are distributed. Rob felt that the number of copies should be justified.

Storm Water regulations say 3 copies. Language will change to read “**number of copies as required by the Planning Board**”.

A discussion was held regarding the establishment of the fees by the Planning Board.

Association with other town boards discussed. Con Com resource area work needs a storm water plan for instance. The new Storm Water state regulations coming forward were discussed.

A general discussion of town boards adoption of the regulations was held
Darlene questioned difference between a ConCom project and a Planning Board project under storm water regulations.

Rob questioned the fees. Will site plan and sub division fees include storm water fees? Michelle felt that the existing fee structure would cover the storm water review. She felt that **a line in the fees may have to be added to cover rare plans that would no trigger a site plan or other review** but still are in need of a storm water permit.

Michelle then generally discussed fees and that they are used for construction review for periods of up to 5 years or more.

Discussion of the Zoning Board of Appeal (ZBA) on existing lack of regulations for handling cases in overlay protection district that for whatever reason do not trigger other town reviews.

Rob discussed possibilities of waivers etc. that could occur. Discussion of houses built on contiguous lots.

Discussion for minor provision addition but group felt that summary and regulation should be left as is for now.

Consider adding Minor Plan Application (as discussed at 5/31/07 Committee meeting). No addition at this time.

Actions - The *Planning Board* may take one of the following actions for a permit application: "approval", "approval with conditions", "disapproval", or "**withdrawal** without prejudice". A written report of the decision shall be made. **The failure of the *Planning Board* to take action within 30 days of receipt of a complete application shall be deemed approval of that application.**

Discussion of 30 days discussed. Concern with coexistence with site plan review and section 4.0. Ed discussed potential possible language otherwise. Michelle said site plan is 60 days, for preliminary sub division is 45 days and definitive plans are either 90 or 145 depending on whether you submitted a preliminary plan.

Consensus was to change to 60 days under actions. Then Rob suggested changing to 145. Michelle did not have a problem with that and the **consensus was 135 days change under action.**

Justine asked what the implication the 135 days has on section 4. Rob explained by giving basic scenarios.

General discussion of state law for appeals stating 60 days. Ed explained MGL Section 249 again.

Stormwater Management Plan Contents – A Stormwater Management Plan submitted with the permit application shall contain sufficient information to evaluate the environmental impact and effectiveness of the measures proposed for reducing adverse impacts from stormwater runoff. This plan shall comply with the criteria established in these regulations and must be submitted with the stamp and signature of a Professional Engineer (PE) licensed in the Commonwealth of Massachusetts.

The Plan shall fully describe the project in drawings, narrative, and calculations. It shall include:

- contact information for the applicant; and the assessor's parcel number;
- a locus map; existing zoning and land use; and the proposed land use;
- location of existing and proposed easements; location of existing and proposed utilities;
- site topography at 2 foot contours; and delineation of 100-year floodplains;
- site hydrology; existing stormwater conveyances; and proposed stormwater management system;
- a drainage map and calculations for pre and post development conditions;
- soils information for locations of proposed stormwater facilities;
- vegetation to be used within and adjacent to the stormwater facilities;
- post-development analysis of downstream areas if deemed necessary by the *Planning Board*.
- **estimated seasonal high water table to be determined in retention areas**

General discussion of page 3 SW management plan contents. It was felt that a new bullet that reads: **estimated seasonal high water table to be determined in retention areas**, should be added.

Rob felt that in configuring road grades this is also helpful.

OPERATIONS AND MAINTENANCE PLANS SUMMARY DISCUSSED.

SECTION 7 is the heart of the SW bylaw and consistent with state storm water policy. Ed felt that the committee wanted consistency with the SW policy but not more stringent and that is the option he used in the summary.

Construction disturbance is not in the current DEP SW policy but it is in the new DEP SW policy.

Rob felt that this was the biggest disturbance. Good design, control of construction disturbance and long term maintenance is the 3 most important things needed.

Phosphorous generally discussed. 80% of total suspended solids discussed and this is the standard in the state.

Ed omitted from the model the hydrologic basis of best management practices. He felt that we should want it in the regulations but not in the executive summary.

Rob discussed the handling of water in swales etc. as it relates to the regulations. Sensitive area was defined as a place you want to protect that you are draining into. Adding development must produce acceptable levels.

Hot spot means that the development itself is a danger such as a gas station etc. This is the USE.

Darlene said that in hot spots and sensitive areas more storm water operation and maintenance is needed.

Storm water credits discussed.

[Stormwater Credits - Improved site design and nonstructural controls are encouraged to minimize use of structural stormwater controls. The applicant may request credit for site design practices that can reduce other requirements in these regulations. The Planning Board may adopt criteria for site design practices that qualify as stormwater credits.]

Ed said if a bio retention area was installed you can deduct that from the volumes of water you are dealing with as it relates to water quality etc. New DEP regulations call this low impact development credits.

Rob explained that there are really no credits exchanged. He gave real life examples. Low impact design is encouraged and should be used rather than the phase credits which is easier understood by the lay person. **It was the consensus of all present that low impact design should be used and the term credits should not be used.**

Waivers were discussed. Michelle felt that this **should be 35 days**. Consensus agreed.

8.0 WAIVERS

The *Planning Board* may waive strict compliance with these regulations if: such action is allowed by federal, state and local statutes; is in the public interest; and is consistent with the purpose of the Stormwater Bylaw. Any applicant may submit a written request for a waiver, accompanied by supporting information explaining how the waiver will comply with the purpose of the Stormwater Bylaw. All waiver requests shall be acted on within **[30 days]** and the *Planning Board* will provide a written decision. If additional information is required, the *Planning Board* may extend the review period. If the applicant objects to an extension, or fails to provide the requested information, the waiver request may be denied "without prejudice" by the *Planning Board*.

Surety discussed.

9.0 SURETY

The *Planning Board* may require the permittee to post a bond, cash, or other acceptable surety. The form of the bond shall be **approved by town counsel**, in an amount deemed sufficient to ensure that the work will be completed in accordance with the permit. A portion of the bond may be released as each phase of the project is completed in compliance with the permit, but the bond shall not be fully released until the *Planning Board* has issued a Certificate of Completion.

Shall be approved by town counsel should say **by the town instead**. All agreed.

When the inspections should take place was discussed. Rob said that this is at the discretion of the *Planning Board* so on going inspections are not required.

Most felt that as-built is more important (to avoid done instead of as built on small projects). Rob felt that the design engineer should sign off that it is built properly. Rob explained by way of examples.

SECTION 10. CONSTRUCTION INSPECTIONS 2ND PARAGRAPH NEEDS WORK.
FINAL:

Inspections and written reports of the SW system construction shall be conducted by the applicants professional engineer. Planning Board may also require inspections during constructions by the town or a professional engineer AT THE EXPENSE OF THE APPLICANT.

10.0 CONSTRUCTION INSPECTIONS

The applicant must notify the *Planning Board* before starting a land disturbing activity. The applicant must also notify the *Planning Board* before constructing the key components of the stormwater management system.

At the discretion of the *Planning Board*, inspections of the stormwater system construction shall be conducted by the Town or a professional engineer approved by the *Planning Board*. Written reports shall include: the inspection date and location; evaluation of compliance with the stormwater permit; any variations from approved specifications, or violations of the Stormwater Management Plan.

The following paragraphs need work before draft is done. Rob felt that this needed to be carefully written because once back filled this cannot be checked and 2 years later you can have sediment, erosion etc. so this is very important.

At a minimum, inspections shall include: an initial site inspection prior to permit approval; inspection of site erosion controls; inspection of the stormwater system prior to backfilling of underground drainage or conveyance structures; and a final inspection before the surety is released. The stormwater system shall be inspected to verify its as-built features, and the inspector shall also evaluate the system during a storm event. If the inspector finds the system adequate, this shall be reported to the *Planning Board* which will issue a Certificate of Completion.

If the system is found to be inadequate due to operational failure, even though built according to the Stormwater Management Plan, the system shall be corrected by the applicant. If the applicant fails to act, the *Planning Board* may use the surety bond to complete the work. If the system does not comply with the Plan, the applicant shall be notified in writing of the violation and the required corrective actions. A Stop Work Order shall be issued until any violations are corrected and all work previously completed has received approval by the *Planning Board*.

The finality of these paragraphs will be controlled by email from Rob to the group.

Michelle wants inspections before surety release or occupancy permit.

12. PERPETUAL INSPECTION AND MAINTENANCE DISCUSSED

12.0 **PERPETUAL** INSPECTION AND MAINTENANCE

Structures and practices used to manage stormwater shall be inspected to ensure compliance with Operation and Maintenance Plan (O & M Plan) approved by the *Planning Board*. The owner of the property, or other person in control of such property, shall maintain in good condition and promptly repair and restore all grade surfaces, walls, drains, structures, vegetation, erosion controls, and other protective measures. Repairs and maintenance shall comply with the approved O & M Plan.

At a minimum, inspections shall occur during the first year of operation and every *[three years]* thereafter. An agreement between the property owner and the *Planning Board* shall be executed for privately-owned stormwater systems, which specifies the responsible party for conducting long term inspections.

Inspection reports shall be submitted to and maintained by the *Planning Board*. Inspection reports shall include: the date of the inspection; an evaluation of the condition of structures and practices used to manage stormwater; and a description of any needed maintenance.

The inspection agreement shall allow the *Planning Board* or its designee to enter the property at reasonable times and in a reasonable manner for the purpose of inspection. Parties responsible for the operation and maintenance of a stormwater management facility shall provide records of all maintenance and repairs to the *Planning Board*, upon request, and shall retain those records for *[five]* years.

If a responsible person fails to meet the requirements of the inspection agreement, the *Planning Board* may take action to restore a stormwater facility or practice after *[30 days]* written notice. If the violation is an immediate threat to public health or public safety, 24 hours notice shall be sufficient prior to actions required to return the facility or practice to proper working condition. The *Planning Board* may assess the owner(s) of the facility for the cost of repair work which shall be a lien on the property.

3 Years is ok.

General discussion of operation and maintenance.

Michelle will look up last paragraph of section 12 and see how it is similar to the conditions of approval by planning board and include in email to all.

General discussion of liens.

It was agreed that the word **perpetual will be removed from the heading of section 12.**

Enforcement was discussed. Fine of not more than what? Darlene questioned the amount.

It was the consensus that the **\$300 will be inserted.**

13.0 **ENFORCEMENT**

The *Planning Board* or its designee shall enforce these Regulations, and may pursue all remedies for violations, including a written enforcement order. If remediation is required, the order may set forth a deadline when work shall be completed. Said order may advise that failure to remedy violations may require the Town of Leicester to correct violations and to obtain reimbursement from the property owner. Within thirty days after correcting the violation, the violator and the property owner shall be notified of the costs incurred by the Town of Leicester including administrative costs.

Any person who violates the Stormwater Bylaw, or any regulation, or permit issued thereunder, may be punished by a fine of not more than **than [\$_____]**. Each day or part thereof that such violation continues shall constitute a separate offense. The decisions or orders of the *Planning Board* may be appealed to a court of competent jurisdiction. The remedies described in these regulations do not exclude other remedies available under any applicable federal, state or local law.

Ruth brought up that we needed to go before the Conservation Commission, ZBA and Board of Health and that we needed the full Planning Board agreement of all this before we go to town meeting. Then we can concentrate on public hearings.

Ruth will construct a draft letter to the boards mentioned and email to the membership. It will then go out to the boards requesting time on their August agendas.

Tentative August agendas discussed:

Planning Board 7TH

Conservation Commission 15TH

Board of Health 14TH

Zoning Board of Appeals not known

Ruth will assist in coordination of appearing before the boards/commissions and who from SW group attends so that a good representation is evident. Ed will be on vacation.

Among ourselves – all will help coordinate who talks about what.

NEXT MEETING WILL BE AUGUST 23RD THURSDAY 7 PM

Marjorie will coordinate room use with Police Chief.

Ruth will get information to:

LAKE AND POND ASSOCIATIONS

WATER DISTRICTS

CITY OF WORCESTER WATER

Regarding the Highway Department: Ruth will meet with Bob Reed.

Meeting adjourned at 10 p.m.

Respectfully submitted,

Ruth Kaminski

Ruth Kaminski, member/clerk

Cc: SWM sub group
Bylaw committee
Town Administrator