

## IPSWICH STORMWATER ADVISORY COMMITTEE

### Meeting Summary: June 15, 2009

The Stormwater Advisory Committee met in the Town Manager's conference room at 5 PM on Monday, June 15, 2009 with the following appointed members in attendance: Bob Markel, Wayne Castonguay (Shellfish Subcommittee), Pat McNally (interim representative and Chair of the Board of Selectmen), Glenn Gibbs (Planning Director), Bob Gravino (DPW Director), Jim Sperber (Code Enforcement), Larry Graham, George Tougas and David Standley (Conservation Commission). Ellie Baker of Horsley Witten Group, Consultants to DPW for storm water management, and Rick Clark (DPW Operations Manager) were also present.

David Standley reported discovering a problem with the ability of the Conservation Commission to adopt a regulation under the Ipswich Wetlands Protection Bylaw, to further the intent of the Ipswich Storm Water Management Bylaw to have the Commission regulate storm water management associated with land disturbances exceeding the thresholds established by Section 5 A of the Storm Water Management Bylaw.

Conservation Commissions derive their powers and duties from Mass. Gen. Laws Chapter 40 Section 8C and Chapter 131 Section 40; the Ipswich Conservation Commission was established pursuant to said Section 8C by Chapter XVI I of the Ipswich General Bylaws, the Ipswich Wetlands Protection Bylaw. That Bylaw established the Commission, the scope of its jurisdiction, and its further powers and duties. Section 3 of the Bylaw, quoted here in part *"Except as otherwise provided in this Bylaw or regulations of the Commission, the definition of terms, exemptions, limited projects, performance standards, time frames, and requirements in this Bylaw shall be as set forth in the Wetlands Protection Act, MGL Chapter 131, Section 40, and in 310 CMR 10.00 ("the State regulations") as may be amended from time to time."* Among other things, the effect of this section is to automatically incorporate under the bylaw provisions any amendments to the state act and regulations, including the 2008 amendments to the State regulations establishing the storm water management provisions and standards. No further action by the Commission is required to bring those provisions under its Bylaw authority.

However, the Bylaw Section 19: Effective Date imposed a limitation on the application of the bylaw, as follows *"This Bylaw shall not apply to those projects or activities which are exempt from the provisions of the Wetlands Protection Act, Massachusetts General Laws, Chapter 131, Section 40, as amended, and 310 CMR 10.00, as amended."* This quoted provision, overlooked by him during the drafting of the Storm Water Management Bylaw, is the crux of the problem.

The Massachusetts DEP storm water management regulations and requirements are found in 310 CMR 10.05 and in the Massachusetts Storm Water Management Standards

(adopted by reference). The application of those Standards is limited by the provisions of subsection 10.05 (6) (l) & (m), which are set forth below:

*”310 CMR: DEPARTMENT OF ENVIRONMENTAL PROTECTION*

*10.05: continued*

*(l) The Stormwater Management Standards shall not apply to:*

- 1. A single -family house;*
- 2. Housing development and redevelopment projects comprised of detached singlefamily dwellings on four or fewer lots, provided that there are no stormwater discharges that may potentially affect a critical area;*
- 3. Multi-family housing development and redevelopment projects, with four or fewer units, including condominiums, cooperatives, apartment buildings and townhouses, provided that there are no stormwater discharges that may potentially affect a critical area; and*
- 4. Emergency repairs to roads or their drainage systems.*

*(m) The Stormwater Management Standards shall apply to the maximum extent practicable to the following:*

- 1. Housing development and redevelopment projects comprised of detached singlefamily dwellings on four or fewer lots that have a stormwater discharge that may potentially affect a critical area;*
- 2. Multi-family housing developments and redevelopment projects with four or fewer units, including condominiums, cooperatives, apartment buildings, and townhouses, that have a stormwater discharge that may potentially affect a critical area;*
- 3. Housing development and redevelopment projects comprised of detached singlefamily dwellings, on five to nine lots, provided there is no stormwater discharge that may potentially affect a critical area; and*
- 4 Multi-family housing development and redevelopment projects, with five to nine units, including condominiums, cooperatives, apartment buildings and townhouses, provided there is no stormwater discharge that may potentially affect a critical area.*
- 5. Marinas and boatyards provided that the hull maintenance, painting and service areas are protected from exposure to rain, snow, snowmelt, and stormwater runoff; and*
- 6. Footpaths bikepaths and other paths for pedestrian and/or nonmotorized vehicle access.”*

It therefore appears clear that at present the Commission, acting under either the Wetlands Protection Act or the Ipswich Wetlands Protection Bylaw, cannot regulate for storm water management purposes any projects or activities within its jurisdiction that are exempted or partially exempted under 10.05 (6) (l) or (m) set forth above; notwithstanding the much lower limits of the applicability provision of Section 5A of the Storm Water Management Bylaw.

Standley suggested three alternatives to solve this problem:

1. Accept the limitations currently imposed upon Commission jurisdiction, interpreting the language of the Storm Water Management Bylaw to declare that projects or activities proposed or taking place within lands normally under the geographic jurisdiction of the Commission and exceeding the applicability

- thresholds established by the Storm Water Management Bylaw but exempted from Commission regulatory authority for storm water management purposes by 10.05 (6) (1) are therefore within the regulatory jurisdiction and authority of the Office of Code Enforcement under the Storm Water Management Bylaw.
2. Amend the Storm Water Management Bylaw as necessary to effect alternative 1.
  3. Amend Section 19 of the Wetlands Protection Bylaw to modify or delete the sentence quoted above, so as to allow the Commission to fulfill the intent of the Stormwater Management Bylaw.

The unanimous recommendation of the Storm Water Advisory Committee was to adopt alternative 3. Standley was instructed to prepare a draft of a warrant article for the fall town meeting to effect that very limited recommendation and purpose.

Ellie Baker presented her preliminary draft storm water regulations, handing out a one-page outline and a 25-page draft for review and comment. The draft regulations seek to encompass in one document both Storm Water Management Permits and Connection and Discharge Permits, and to cover both "major" and "minor" projects. This "single-document" approach is the first of the major issues Ms. Baker sought comments on. Another is the proposed Performance Standards presented as Section 7 (pp. 16-19). As the hour was late, and the committee had just received this extensive document, she requested we each review it carefully and submit comments directly to her with a copy to the chair well in advance of the next meeting. **THIS IS VERY IMPORTANT.**

Two specific items generated some discussion. The first was the definition of "lot", which the committee felt should be expanded to include "leaseholds". The second was the suggested schedule in section 13 Effective Date for requirements for obtaining Connection and Discharge Permits, and the matter of whether the Storm Water Management Bylaw actually authorizes the Permitting Authority to require "permit applications" for all sump pump discharges (see Section 6 Exemptions and Waivers, Subsection B. Allowable Non-Storm Water Discharges, of the Storm Water Management Bylaw).

Jim Sperber raised a question concerning the probable and potential workloads associated with implementing these regulations, contending that the numbers could be quite large and constitute a challenge that his office was unequipped to address. He was advised to examine his own records, and David Standley would examine the records of the Conservation Commission, for the purpose of estimating probable workloads.

The next meeting of the Storm Water Advisory Committee will be held on Wednesday, July 1 at 4 PM (note the change in date from Monday to Wednesday and the change in time from 5 PM to 4 PM) in the town manager's conference room.

David Standley