

Minutes of the **By-Law Review Committee** meeting held  
**February 13, 2013**  
**7:30 PM**

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BELMONT, MA

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Board of Registrars Conference Room, Town Hall, 455 Concord Avenue

Attendees: Charles Hamann, Chair, Mark Thurber, Raymond Miyares, ,  
Robert Gallant, Ellen O'Brien Cushman (ex-officio)

Others attending: Glenn Clancy, Director of Office of Community  
Development (at 8 PM)

Agenda:

Status update on the General Code project

The Committee reviewed the latest submission by General Code for the complete recodification of the General By-Laws. The work is on track for inclusion in a Special Town Meeting warrant for May 29, 2013. Ellen continues to perform proofreading on the Committee's behalf, working with Ray Miyares as drafting questions arise.

Annual Town Meeting Articles –

Electronic Voting at Town Meeting –

2.7.6.2 Electronic Voting. Notwithstanding the provisions of the foregoing sections 2.7.6 and 2.7.6.1, subject to the availability of a system to enable electronic voting by Town Meeting Members using wireless handheld mobile devices, the Moderator may count the vote, or conduct a roll call vote, on any matter before the Town Meeting by the use of such an ~~electronic vote counting~~ system.

Motion to approve as to form and placement after making the strike-outs above.

Unanimous vote.

Stormwater Management

The Committee reviewed the current draft of the Stormwater By-Law as provided by Glenn Clancy, Director - Office of Community Development. Glenn has been working with Town Counsel. Glenn will continue to draft; Ray will contact the Attorney General about specific issues and will connect with Town Counsel. Glenn will return to the Committee for another meeting, or even two, later in the month.

Minutes of the September 25, 2012 meeting were approved  
Meeting adjourned at 9:20 PM.

Respectfully submitted,  
Ellen O'Brien Cushman

## **Article 34**

### **Stormwater Management and Erosion Control By-Law**

#### **34.1 Purpose**

The purpose of this By-Law is to:

- (a) Prevent pollutants from entering the Town of Belmont's Municipal Separate Storm Sewer System (MS4);
- (b) Prohibit illicit connections and unauthorized discharges to the (MS4) and to require the removal of all such illicit connections
- (c) Comply with state and federal statutes and regulations relating to stormwater discharges;
- (d) Establish the legal authority to ensure compliance with the provisions of this By-Law through permitting, inspection, monitoring, and enforcement;
- (e) Control runoff and prevent soil erosion and sedimentation resulting from construction site stormwater runoff,
- (f) Promote infiltration and the recharge of groundwater;
- (g) Protect, maintain and enhance the public safety, environment, health, and general welfare by establishing minimum requirements and procedures to manage stormwater runoff;
- (h) Ensure that soil erosion and sedimentation control measures and stormwater runoff control practices are incorporated into the site planning and design process and are implemented and maintained.

#### **34.2 Definitions**

For the purpose of this By-Law, the following definitions shall apply:

**ALTERATION** — Any activity, which will change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Examples include, but are not limited to, construction of new structures, earthmoving, paving, and modification of existing vegetation.

**BEST MANAGEMENT PRACTICES (BMPs)** — Structural, non-structural, and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment.

**BOARD OF SELECTMEN** – Shall mean the collective elected members and/or its designee.

**CLEAN WATER ACT** — The Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.) as hereafter amended.

**CONSTRUCTION SITE:** Any site where activity is proposed or occurs that involves the alteration of more than 2,500 square feet of land.

DEVELOPMENT – The alteration of land to accommodate a new use or expansion of use

HAZARDOUS MATERIAL OR WASTE — Any material, which because of its quantity, concentration, chemical, corrosive, flammable, reactive, toxic, infectious or radioactive characteristics, either separately or in combination with any substance or substances, constitutes a present or potential threat to human health, safety, welfare, or to the environment. Toxic or hazardous materials include any synthetic organic chemical, petroleum product, heavy metal, radioactive or infectious waste, acid and alkali, and any substance defined as Toxic or Hazardous under M.G.L.A. c.21C and c. 21E, and the regulations at 310 CMR 30.000 and 310 CMR 40.0000.

ILLCIT CONNECTION: A surface or subsurface drain or conveyance, which allows an illicit discharge into the municipal storm drain system, including without limitation sewage, process wastewater, or wash water and any connections from indoor drains, sinks, toilets, or laundry facilities, regardless of whether said connection was previously allowed, permitted, or approved before the effective date of this bylaw.

ILLCIT DISCHARGE: Direct or indirect discharge to the municipal storm drain system that is not composed entirely of stormwater, except as exempted in Section 34.5.3. The term does not include a discharge in compliance with an NPDES Stormwater Discharge Permit or a Surface Water Discharge Permit.

IMPERVIOUS SURFACE — Any material or structure on, above or below the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved surfaces (e.g., parking lots, sidewalks, and driveways), roof tops, swimming pools.

MAINTENANCE OF EXISTING LANDSCAPING, GARDENS OR LAWN AREAS – The act of trimming, pruning, mowing and edging of existing vegetation.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS — The latest version as may be amended from time to time of the Stormwater Management Standards and accompanying Stormwater Handbook(s) issued by the Massachusetts Department of Environmental Protection pursuant to authority under the Wetlands Protection Act, M.G.L. c. 131, section 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, sections 26 - 53.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4) OR MUNICIPAL STORM DRAIN SYSTEM — The system of conveyances designed or used for collecting or conveying stormwater, including any road with a drainage system, street, gutter, curb, inlet, piped storm drain, pumping facility, retention or detention basin, natural or man-made or altered drainage channel, swale, culvert, channel, catch basin, outfall, outlet, reservoir, and other drainage structure that together comprise the storm drainage system owned or operated by the Town of Belmont.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

**STORMWATER DISCHARGE PERMIT** — A permit issued by the United States Environmental Protection Agency or jointly with the state that authorizes the discharge of pollutants to waters of the United States.

**NONPOINT SOURCE POLLUTION:** Any source of water pollution that does not meet the legal definition of "point source" in section 502(14) of the Clean Water Act.

**NON-STORMWATER DISCHARGE** — Discharge to the municipal storm drain system not composed entirely of stormwater.

**OPERATION AND MAINTENANCE PLAN** - A plan setting up the functional, financial and organizational mechanisms for the ongoing operation and maintenance of a stormwater management system to insure that it continues to function as designed.

**PERSON** — An individual, partnership, association, firm, company, trust, corporation, agency, authority, department or political subdivision of the Commonwealth of Massachusetts or the federal government, to the extent permitted by law, and any officer, employee, or agent of such person.

**POINT SOURCE** - Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural storm water discharges and return flows from irrigated agriculture.

**POLLUTANT:** Any element or property of sewage, agricultural, industrial or commercial waste, runoff, leachate, heated effluent, or other matter whether originating at a point or nonpoint source, that is or may be introduced into Belmont's MS4 or waters of the Commonwealth. Pollutants shall include, but not be limited to:

- a) paints, varnishes, and solvents;
- b) oil and other automotive fluids;
- c) non-hazardous liquid and solid wastes and yard wastes;
- d) refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordnances, accumulations and floatables;
- e) pesticides, herbicides, and fertilizers;
- f) hazardous materials and wastes;
- g) sewage, fecal coliform and pathogens;
- h) dissolved and particulate metals;
- i) animal wastes;
- j) rock, sand, salt, silt, soils;
- k) construction wastes and residues; and
- l) noxious or offensive matter of any kind.

**RECHARGE** — The process by which groundwater is replenished by precipitation.

**REDEVELOPMENT** — Alteration of previously developed land.

**RUNOFF** —The water from rain, snowmelt or irrigation that flows over the land surface and is not absorbed into the ground, instead flowing into the municipal storm drain system or streams or other surface waters or land depressions.

**STORMWATER:** Stormwater runoff, snow melt runoff, and surface water runoff and drainage.

**STORMWATER MANAGEMENT** — The use of structural or non-structural practices that are designed to reduce and control stormwater runoff pollutant loads, discharge volumes and/or peak flow discharge rates. Stormwater Management includes the use of Low-Impact Development (LID) management practices.

**STORMWATER MANAGEMENT AND EROSION CONTROL PERMIT** — A permit issued by the Town of Belmont Office of Community Development, after review of an application, plans, calculations, and other supporting documents, approving a system that is designed to protect the environment of the Town from the deleterious effects of uncontrolled and untreated stormwater runoff.

**STORMWATER UTILITY** – Entity used for funding the operation, construction and maintenance of stormwater management devices, for stormwater system planning, and management. A stormwater utility generates its revenue through user fees and the revenues from the stormwater charges will go into a separate fund that may only be used for stormwater services.

**VEGETATION** – Trees, shrubs, bushes and ground cover including grass.

**WATERS OF THE COMMONWEALTH** — All waters within the jurisdiction of the Commonwealth, including, without limitation, rivers, streams, lakes, ponds, springs, impoundments, estuaries, wetlands, coastal waters, and groundwater.

### **34.3 Authority and Administration**

**34.3.1** This By-Law is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, the Home Rule statutes, and pursuant to the regulations of the federal Clean Water Act found at 40 CFR 122.34, and as authorized by the residents of the Town of Belmont at Town Meeting, dated XXXXXX .

**34.3.2** The Board of Selectmen shall adopt, and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), fines and penalties, application requirements, procedures and administration of this By-Law, after conducting a public hearing to receive comments on any proposed rules and regulations. Failure to promulgate such rules and regulations, or a legal declaration of their invalidity by a court, shall not act to suspend or invalidate the effect of this

By-Law.

**34.3.3** The Office of Community Development – Engineering Division (OCD) shall be responsible for the day-to-day administration of this By-Law and shall be the Stormwater Management and Erosion Control Permit Granting Authority.

**34.3.4** The OCD shall have the authority to investigate suspected illicit discharges and eliminate illicit discharges.

#### **34.4 Applicability**

**34.4.1** This By-Law shall apply to flows entering the MS4 of the Town of Belmont except as exempted in Section 34.5.3.

**34.4.2** This bylaw shall apply to all construction activities described in Section 34.6.1 except as exempted in Section 34.6.2.

**34.4.3** Stormwater discharges from construction activities (such as clearing, grading, excavating, and stockpiling) that disturb one or more acres, or smaller sites that are part of a larger common plan of development or sale, are also regulated under the National Pollutant Discharge Elimination System (NPDES) stormwater program. Prior to discharging stormwater, construction operators must also obtain coverage under a NPDES permit.

#### **34.4 Permit Process**

**34.4.1** Permit procedures and requirements, including permit submittals, right-of-entry, fee schedule, and public hearing process, shall be defined and included as part of the Regulations promulgated under 34.5 of this bylaw. At a minimum, the applicant must meet standards 1 through 10 of the Massachusetts Department of Environmental Protection Stormwater Management Standards and Handbook using current best management practices and the following;

**34.4.2** A completed application for a Stormwater Management and Erosion Control Permit shall be filed with OCD. A permit must be obtained prior to the commencement of any work regulated by this By-Law.

**34.4.3** The OCD may secure the services of a Licensed Professional Engineer with expertise in stormwater management and erosion control to assist with the administration of this By-Law. This service shall be funded from application and review fees charged to applicants during the Stormwater Management and Erosion Control Permit process.

**34.4.4** The OCD shall take final action within thirty (30) days from the receipt of a complete application. In response to an application for a Stormwater Management and Erosion Control Permit, the OCD may approve the application; approve the application with conditions; or disapprove the application. Failure by the OCD to take final action on an application within 30

days following the submittal of a complete application shall be deemed to be approval of the application, unless this timeframe is extended by mutual agreement of the OCD and applicant.

**34.4.5** The applicant, or their agent, must notify OCD in writing of any change or modification of an activity authorized in a Stormwater Management and Erosion Control Permit before any change or modification occurs. The OCD will review the request for change or modification and approve the request if the change or modification is consistent with the interests of this By-Law. The OCD has the right to amend the existing permit and require additional stormwater runoff and erosion control measures prior to approval of the change or modification.

### **34.5 Illicit Connection Detection & Elimination**

#### **34.5.1 Prohibited Activities**

**Illicit Discharges.** No person shall dump, discharge, cause or allow to be discharged any pollutant or non-stormwater discharge into the municipal separate storm sewer system (MS4), into a watercourse, or into the waters of the Commonwealth.

**Illicit Connections.** No person shall construct, use, allow, maintain or continue any illicit connection to the municipal storm drain system, regardless of whether the connection was permissible under applicable law, regulation or custom at the time of connection.

**Obstruction of Municipal Storm Drain System.** No person shall obstruct or interfere with the normal flow of stormwater into or out of the municipal storm drain system without prior written approval from the Board of Selectmen or its designee.

#### **34.5.2 Regulated Activities**

No person shall connect a pipe or other appurtenance to the Town of Belmont sanitary sewer or storm drain system, or otherwise perform any modification, repair, rehabilitation, or replacement work on either system, without a Stormwater Management and Erosion Control Permit.

#### **34.5.3 Exemptions**

The following non-stormwater discharges or flows are exempt from this By-Law provided that the source is not a significant contributor of a pollutant to the municipal storm drain system:

- a) Water line flushing;
- b) Landscape irrigation;
- c) Diverted stream flows;
- d) Rising ground waters,
- e) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005[20]);

- f) Uncontaminated pumped ground water;
- g) Discharge from potable water sources;
- h) Foundation drains;
- i) Air conditioning condensation;
- j) Irrigation water, springs;
- k) Water from crawl space pumps;
- l) Footing drains;
- m) Lawn watering;
- n) Individual resident car washing;
- o) Flows from riparian habitats and wetlands;
- p) Dechlorinated swimming pool discharges;
- q) Street wash water and residential building wash waters, without detergents;
- r) Discharges or flows from firefighting activities;
- s) Dye testing, provided verbal notification is given to the OCD prior to the time of the test;
- t) Non-stormwater discharges permitted under an NPDES permit, waiver, or waste discharge order administered under the authority of the United States Environmental Protection Agency, provided that the discharge is in full compliance with the requirements of the permit, waiver, or order and applicable laws and regulations, and
- u) Discharges for which advanced written approval is received from the OCD if necessary to protect public health, safety, welfare or the environment.

#### **34.5.4 Emergency Suspension of Storm Drain System Access**

The OCD may suspend municipal storm drain system access to any person or property without prior written notice when such suspension is necessary to stop an actual or threatened discharge of pollutants that presents imminent risk of harm to the public health, safety, welfare or the environment. In the event any person fails to comply with an emergency suspension order, the OCD may take all reasonable steps to prevent or minimize harm to the public health, safety, welfare or the environment.

### **34.6 Stormwater Management and Erosion Control**

#### **34.6.1 Regulated Activities**

A Stormwater Management and Erosion Control Permit will be required prior to starting any land disturbance within the person's property for the following:

- (a) Any alteration that will result in land disturbances of 2,500 square feet of total area or more, or which is part of a common plan for development that will disturb 2,500 square feet or more;



- (b) Any alteration that will increase the amount of impervious surface area to more than 25% of the lot; or
- (c) Storage or permanent placement of more than 100 cubic yards of excavate, fill or snow or ice.

### **34.6.2 Exempt Activities**

Existing residential properties with three or fewer dwelling units shall be exempt from this Section 34.6.

In addition, the following activities are exempt from the jurisdiction set forth above in Section 34.6.1:

- (a) Activities that disturb less than 2,500square feet of land or less than 25% of the lot, whichever is less;
- (b) Any work or projects for which all necessary approvals and permits have been issued before the effective date of this By-Law;
- (c) Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act, M.G.L. c. 131, section 40, and its implementing regulations at 310 C.M.R. 10.04;
- (d) Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture, or the use, expansion, or reconstruction of existing structures for the primary purpose of agriculture, horticulture, floriculture, or viticulture, as protected under the Zoning Act, M.G.L. c. 40A, section 3;
- (e) Customary cemetery management;
- (f) Stormwater discharges that are wholly subject to jurisdiction under the Wetlands Protection Act and demonstrate compliance with the Massachusetts Stormwater Management Standards as most recently revised and updated in accordance with revisions to the Wetlands regulations 310 C.M.R. 10.00, and as reflected in an Order of Conditions or in a Determination of Applicability issued by the Conservation Commission;
- (g) Repair or replacement of an existing roof, patio, deck, or walkway that will not alter existing terrain or drainage patterns;
- (h) Maintenance of existing landscaping, gardens or lawn areas;**
- (i) The construction, reconstruction, or repair of any fence or wall, that will not alter the existing terrain or drainage patterns;
- (j) Construction of utilities (e.g., gas, water, electric, telephone) other than drainage, that will not permanently alter terrain, ground cover, or drainage patterns;
- (k) Normal maintenance of Town owned public land, ways, utilities and appurtenances;
- (l) Emergency activities necessary to protect public health or safety, so long as all necessary emergency permits or emergency certifications have been or will be obtained;

### **34.6.3 General Requirements**

**34.6.3.1** An Operation and Maintenance Plan shall be submitted and approved prior to the issuance of a Temporary or Final Certificate of Occupancy. The Operation and Maintenance Plan

shall be designed to ensure compliance with the Stormwater Management and Erosion Control Permit, this By-Law, and the Massachusetts Surface Water Quality Standards, 314 C.M.R. 4.00, in all seasons and throughout the life of the system. The OCD shall make the final decision of what maintenance options are appropriate. The Operation and Maintenance Plan shall remain on file with the OCD and shall be an ongoing requirement.

**34.6.3.2** As-built drawings showing all stormwater management systems are required at the completion of a project prior to the issuance of a Temporary or Final Certificate of Occupancy.

**34.6.3.3** The OCD may require the applicant to contribute to the design cost, construction, and maintenance of a public or shared stormwater facility in lieu of an onsite stormwater facility where OCD determines that there are not sufficient site conditions for onsite stormwater best management practices in order to meet the minimum design criteria described in Section 34.6.4.1 of this By-Law and the performance standards set forth in the regulations promulgated under this By-Law. Funds may be used to design, construct, and maintain stormwater projects that will improve the quality and quantity of surface waters in Belmont by treating and recharging stormwater from existing impervious surfaces that is now discharged to said waters with inadequate treatment or recharge. The contribution to the fund shall be determined by the OCD pursuant to standards established in the Regulations adopted pursuant to this By-Law

#### **34.6.4 Design Criteria**

**34.6.4.1** The development or redevelopment of land shall meet the following minimum design criteria:

- (a) Compliance with Standards 1 through 10 of the Massachusetts Stormwater Management Standards, regardless of the proximity of the development to resource areas or their buffer zones under the Massachusetts Wetlands Protection Act.
- (b) Erosion and sediment controls must be implemented to prevent adverse impacts during disturbance and construction activities.
- (c) There shall be no change to the existing conditions of abutting properties from any increase in volume of stormwater runoff or from erosion, silting, flooding, sedimentation or impacts to wetlands, ground water levels or wells.
- (d) When any proposed discharge may have an impact upon streams, wetlands and/or storm sewers, the OCD may seek to minimize or eliminate this impact based on site conditions and existing stormwater system capacity.

#### **34.7 Severability**

If any court of competent jurisdiction declares that any section, provision, paragraph, sentence, or clause of this By-Law, or any rule or regulation promulgated hereunder, is invalid or unconstitutional, any other section, provision, sentence or clause thereof, or other rule or regulation promulgated hereunder, shall remain in full force and effect.

#### **34.8 Enforcement**

The OCD shall enforce this By-Law, and any regulations, orders, violation notices, and enforcement orders made pursuant to this By-Law, and may pursue all civil and criminal remedies for such violations. Enforcement may be further defined and included as part of the regulations adopted pursuant to this By-Law.

(a) If a person violates the provisions of this By-Law, or any regulation, permit, notice, or order issued thereunder, the OCD, with the approval of the Board of Selectmen, may seek injunctive relief in a court of competent jurisdiction restraining the person from activities that would create further violations or compelling the person to perform abatement or remediation of the violation.

(b) The OCD may issue a written order to enforce the provisions of this By-Law or the regulations thereunder, which may include an order to:

- (i) eliminate illicit connections or discharges to the MS4;
- (ii) perform monitoring, analyses, and reporting;
- (iii) cease and desist unlawful discharges, practices, or operations; and
- (iv) remediate contamination in connection therewith.

(c) If the OCD determines that abatement or remediation of contamination is required, the order shall set forth a deadline by which such abatement or remediation must be completed. Said order shall further advise that, should the violator or property owner fail to abate or perform remediation within the specified deadline, the OCD may, at its option, authorize such work, and the expenses thereof shall be charged to the violator.

(d) Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner will be notified of the costs incurred by the OCD, including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Town Administrator within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Town Administrator affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate provided in M.G.L. Ch. 59, section 57 after the thirty-first day at which the costs first become due.

- (i) As an alternative to other criminal and non-criminal remedies set forth in Section 34.12, the OCD may elect to utilize noncriminal disposition procedures set forth in Massachusetts General Laws, Chapter 40, Section 21D. The penalty for the first violation shall be \$100.00. The penalty for the second violation shall be \$200.00. The penalty for the third and subsequent violations shall be \$300.00. Each day or part thereof that such violation occurs or continues, shall constitute a separate offense.
- (ii) To the extent permitted by state law, or if authorized by the owner or other party in control of the property, the OCD, its agents, officers, and employees may enter

upon privately owned property for the purpose of performing their duties under this section and regulation, and may make or cause to be made such examinations, surveys or sampling as the OCD deems reasonably necessary.

(iii) Except as otherwise expressly noted in Section 34.12 (d), the decisions or orders of the OCD shall be final. Further relief shall be to a court of competent jurisdiction.

(iv) The remedies listed in this section are not exclusive of any other remedies available under any applicable federal, state, or local law.

### **34.9 Stormwater Utility**

The Board of Selectmen shall adopt, through the Rules and Regulations authorized by this By-Law, a Stormwater Utility pursuant to M.G.L. Chapter 83 Section 16 and Chapter 40 Section 1A. The Board of Selectmen shall administer, implement and enforce this Utility. Failure by the Board of Selectmen to promulgate such a Stormwater Utility through its Regulations or a legal declaration of its invalidity by a court shall not act to suspend or invalidate the effect of this By-Law.