

**South Berwick Town Council
Public Hearing
Zoning Ordinance – Solar Farms
February 14, 2023**

Vice-Chair Jeffrey Minihan opened the hearing at 6:30pm. Councilors present included John James, Jessica Cyr and Melissa Costella. Council Chair Mallory Cook participated by Zoom. Mr. Minihan made note that all votes would be taken by roll call. Town Manager Tim Pellerin and Assistant Town Manager Jennifer Janelle were also in attendance.

The purpose of the hearing was to receive public comment on the proposed amendments to the Zoning Ordinance adding a definition and performance standards for Commercial Solar Energy Facilities.

-Brett Cropp, Liberty St, commented that the ordinance does not address invasive species. When ground areas are cleared, it makes it easier for invasive plants to take hold. Mr. Cropp asked how this ordinance would affect the existing 'farm' on Junction Road. It was explained that any existing facilities are grandfathered and not affected by the ordinance. Mr. Cropp also expressed his concerns with the ground clearance of fencing. Currently recommended at 6", it was confirmed that amendments can be made in the future if the 6" is found to be insufficient.

Mr. Pellerin explained that ordinances can always be amended.

Mr. Pellerin also made note that the grid is full. Without approximately \$6 million of upgrades to the substations, there is no place for a new solar facility to connect.

The hearing was closed at 6:40pm.

Attest:

Barbara Bennett, CCM

**South Berwick
Board of Assessors
February 14, 2023**

Vice-Chair Jeffrey Minihan called the meeting to order at 6:41pm. Assessors present included John James, Jessica Cyr, and Melissa Costella. Chair Mallory Cook participated by Zoom. All votes will be taken by roll call. Town Manager Tim Pellerin and Assistant Town Manager Jennifer Janelle were also in attendance.

1. The Board discussed the Delegation of Authority to the Assessing Agent. It was agreed that bullet A should be amended.

On a motion by Mrs. Cook, seconded by Mr. James, it was unanimously voted to amend the Delegation by changing the language in bullet A to read "including dollar amounts up to and including \$50,000 (regardless of property valuation) and to include original bullet B, regarding offsetting abatements and supplements. [Clerk note: original bullet B was omitted from the updated Delegation in error.]

2. Abatements:

#2023-09 (O'Neil) On a motion by Mr. James, seconded by Mrs. Costella, it was unanimously voted to grant abatement to Map 15 Lot 45, Account #1658 by decreasing the assessed value by \$33,900, equating to \$492.91 in taxes. The abatement is granted based on a revue of the level of completion.

#3023-10 (Theos) On a motion by Mr. James, seconded by Mrs. Costella, it was unanimously voted to grant abatement to Map 10 Lot 43-2, Account #3315 by decreasing the assessed value by \$6,400, equating to \$93.06 in taxes. The abatement is granted based on 6 acres not properly classified as "very poorly drained soils".

#2023-11 (Eaton) On a motion by Mr. James, seconded by Mrs. Costella, it was unanimously voted to grant abatement to Map 2 Lot 25A, Account #215 by decreasing the assessed value by \$109,800, equating to \$1,596.49 in taxes. The abatement is granted based on a data entry error causing her living space to be entered as 4823sqft. The actual amount of living space is 2610sqft.

Mr. Minihan closed the meeting at 6:58pm.

Attest:

Barbara Bennett, CCM
Town Clerk

**South Berwick
Town Council Meeting
February 14, 2023**

Vice-Chair Jeffrey Minihan called the meeting to order at 6:59pm. Councilors present included John James, Jessica Cyr, and Melissa Costella. Mallory Cook participated by Zoom; all votes will be by roll call. Town Manager Tim Pellerin and Assistant Town Manager Jennifer Janelle were also in attendance.

Approval of Minutes

1. Town Council 01-31-23: On a motion by Mrs. Cook, seconded by Mrs. Costella, it was unanimously voted to adopt the minutes as written.

Treasurer's Warrant

1. On a motion by Mr. James, seconded by Mrs. Cook, it was unanimously voted to sign the warrant dated February 9, 2023, in the amount of \$1,430,385.09. This warrant includes the monthly school payment of \$728,737 and the annual county taxes of \$383,913.

Reports & Presentations

Paul Schumacher of Southern Maine Planning & Development gave the Council an overview of the Comprehensive Plan Update. The group is approaching the end of the 1st phase of 3. Will be working on strategies and ideas over the spring and summer. The Sebago Technics traffic study will have some impact; and Mr. Schumacher recommended holding a public information meeting. He added that the goal is to have the public hearing and council action in the fall.

The Council also discussed the results of the survey conducted last fall. We received 1230 survey responses. Most respondents were concerned with traffic congestion, maintaining the historic village and small-town atmosphere, preservation of open space and natural resources, and were in support of reasonable development and growth.

Public Comment

1. None.

Unfinished Business

1. On a motion by Mr. James, seconded by Mrs. Cook, it was unanimously voted to award the Town Office Facility Study & Needs Assessment to Port City Architecture in an amount not to exceed \$48573, to be funded from the Town Hall CIP Account.

New Business

1. On a motion by Mr. Minihan, seconded by Mr. James, it was unanimously voted to amend the Zoning Ordinance to include a definition and performance standards for Commercial Solar Energy Facilities and to include such facilities in Land Use Table A, as presented to the Board as draft revision #8, dated February 6, 2023.

2. The Flynn's have petitioned the Town to accept Bittersweet Lane as a public way. Appropriate staff has reviewed the construction of the road and necessary documentation for the transfer of ownership. There are some non-road related items that needs to be addressed in the spring.

On a motion by Mr. James, seconded by Mrs. Cook, it was unanimously voted to accept Bittersweet Lane as a public way; provided that the six items listed in the Oldfields LLC letter dated January 20, 2023, are completed as soon as possible in the spring.

3. Denise Clavette, Economic Development, participated by Zoom. She explained that we only received 1 bid for the Market Analysis & Implementation Plan Matrix. Mrs. Clavette stated that she has worked with the company before and highly recommends them.

On a motion by Mrs. Cook, seconded by Mr. Minihan, it was unanimously voted to authorize the Town Manager to negotiate a contract with Camoin Associates for the Analysis & Plan; funds not to exceed \$30,000 from the Punkintown TIF District.

Town Manager's Report

- Highway: Have used 1280 tons of salt so far this season. Still working on storm clean-up; have spent \$30,000 on clean-up. Beginning to plan for this year's road work.
- Police: 5 arrests, 6 accidents and 66 traffic stops. Lt. Upton attended the Coalition for Health & Safety in Washington DC. Officer Pelkey has been honored by being pinned South Berwick's first Police Chaplain.
- Fire: Attended 18 calls; 139 year-to-date. Driver certifications are complete. First Due software is up and running.
- Code Enforcement: Issued 4 building permits, 2 renovations, 1 addition, and 6 plumbing permits.
- Planning: Currently working on 1 site plan and 3 major site plans. Continue to work on ordinances.
- Library: Held a Valentine's celebration on the 14th. The Coding program is going well. Suspending new book donations.
- Recreation: The Maine Mariners trip is scheduled for the 18th. AARP is set up for tax preparation on Fridays at the Community Center; not many vacancies left.
- Assessing: Sent out 195 Personal Property Tax Declaration letters. Working on growth estimate and tax map changes for April 1st.
- Town Clerk: Still having a hard time filling the office position. There will not be a state election in June.
- Transfer Station: More people trying to avoid paying; some are using plain blue bags. Tire disposal and fuel charges have increased. People are bringing hazardous waste.
- Economic Development: Continue working on final approval of the TIFs. Volunteer started on February 13th. Working with CEO on ordinance language revisions for road frontage in the Industrial Zones.
- Finance/HR: Work continues on the budget. Getting ready to send out tax reminder notices. Job descriptions have been compiled and are being reviewed.
- Administration: Staff evaluations are complete. Leadership training for department heads will begin in March. The new maintenance custodian will start on February 21st.

Councilor Comments

1. Mrs. Cook:

-Enjoyed attending the staff meeting.

2. Mrs. Costella:

-Considering the difficulty of getting new employees; should we consider position sharing with another town? Comment was made that it probably wouldn't work in the Clerk's Office.

-Will the Town be receiving any funds to help cover the costs of the storm clean-up? Mr. Pellerin stated that the storm only affected 4 towns, South Berwick the hardest; and doesn't meet the threshold for disaster funding.

3. Mr. James:

-Asked if the ice rink is available for use. Unfortunately, not. It has been cold enough, long enough.

4. Ms. Cyr:

-Attended the County District meeting. Currently working on facilitating a job fair. This could help with increasing awareness of municipal job availability.

-Happy to attend the staff meeting. Sharing of information, increased HR functions, and budget awareness help keep the staff engaged.

Adjournment

On a motion by Mr. James, seconded by Mrs. Costella, it was unanimously voted to adjourn the meeting at 8:10pm.

Attest:

Barbara Bennett, CCM

A / P Warrant

South Berwick
9:17 AM

Bank: KENNEBUNK - Operating

02/23/2023
Page 1

Type	Check	Amount	Date	Wrnt	Payee
P	46136	22,450.79	02/10/23	51	0132 BUREAU OF MOTOR VEHICLES
P	46137	184.84	02/14/23	51	1176 TREASURER STATE OF MAINE
P	46138	5,645.28	02/15/23	51	0182 CARD MEMBER SERVICE
P	46139	21,305.33	02/17/23	51	0132 BUREAU OF MOTOR VEHICLES
P	46140	184.84	02/21/23	51	1176 TREASURER STATE OF MAINE
R	46141	410.62	02/22/23	51	0042 ADMIRAL FIRE & SAFETY
R	46142	64.00	02/22/23	51	1195 AHM-NORTHERN LIGHT DRUG TESTING
R	46143	182.28	02/22/23	51	0920 ALLEGIANCE TRUCKS
R	46144	267.46	02/22/23	51	0407 ALLEN UNIFORM SALES, INC.
R	46145	610.47	02/22/23	51	0054 BAKER & TAYLOR
R	46146	213.50	02/22/23	51	0686 Beauregard Equipment, INC.
R	46147	4,000.00	02/22/23	51	0018 BURKE'S TREE SERVICE LLC
R	46148	613.17	02/22/23	51	0062 BUSINESS EQUIPMENT UNLIMITED
R	46149	4,138.11	02/22/23	51	0183 CENTRAL MAINE POWER
R	46150	103.51	02/22/23	51	1026 CHADWICK-BAROSS
R	46151	200.53	02/22/23	51	1158 CINTAS CORP
R	46152	1,432.50	02/22/23	51	1189 COACH COMPANY
R	46153	318.00	02/22/23	51	0911 FADDEN CUSTOM PEST SERVICES LLC
R	46154	79.53	02/22/23	51	0354 FALLON, TOM
R	46155	21.75	02/22/23	51	0164 FASTENER WAREHOUSE
R	46156	2,615.48	02/22/23	51	0036 FIRE TECH & SAFETY OF NE, INC
R	46157	325.00	02/22/23	51	0030 GINO'S PLUMBING & HEATING
R	46158	7.35	02/22/23	51	0526 GRAINGER
R	46159	1,348.26	02/22/23	51	1222 GROGG, GARY & BETHANY
R	46160	90.00	02/22/23	51	0045 GROUP DYNAMIC, INC.
R	46161	945.33	02/22/23	51	0867 HANNAFORD
R	46162	500.00	02/22/23	51	0077 HUSSEY EXCAVATION INC
R	46163	240.00	02/22/23	51	0452 KONE, BROOKLYN
R	46164	552.55	02/22/23	51	0251 LAWSON PRODUCTS
R	46165	100.00	02/22/23	51	1095 LEXISNEXIS RISK SOLUTIONS
R	46166	107.00	02/22/23	51	0169 M W GRENIER ENTERPRISES LLC
R	46167	1,584.00	02/22/23	51	0092 MAD SCIENCE OF MAINE
R	46168	439.41	02/22/23	51	0127 MAINE MUNICIPAL ASSOCIATION
R	46169	5,083.51	02/22/23	51	0141 MAINE MUNICIPAL ASSOCIATION
R	46170	223.76	02/22/23	51	0193 MAINE OXY
R	46171	245.00	02/22/23	51	0595 MAINE TREASURER
R	46172	3.50	02/22/23	51	0081 MAINE TURNPIKE AUTHORITY
R	46173	2,000.00	02/22/23	51	0857 MCLAUGHLIN YOUNG EMPLOYEE SERVICES
R	46174	290.00	02/22/23	51	0084 MICK BODYWORKS INC
R	46175	857.14	02/22/23	51	0243 MOTOROLA SOLUTIONS
R	46176	785.40	02/22/23	51	1061 NEGM ELECTRIC, LLC
R	46177	163.90	02/22/23	51	0255 NORTHEAST HYDRAULICS INC
R	46178	16.26	02/22/23	51	0944 O'REILLY FIRST CALL
R	46179	2,660.71	02/22/23	51	0088 P GAGNON & SONS INC
R	46180	115.20	02/22/23	51	0089 PIKE INDUSTRIES INC
R	46181	241.14	02/22/23	51	0915 PINE STATE ELEVATOR COMPANY
R	46182	182.58	02/22/23	51	0219 PITNEY BOWES GLOBAL FINACIAL SERVICES
R	46183	95.98	02/22/23	51	0232 QUILL CORPORATION

A / P Warrant

South Berwick
9:17 AM

Bank: KENNEBUNK Operating

02/23/2023
Page 2

Type	Check	Amount	Date	Wrnt	Payee
R	46184	384.00	02/22/23	51	0531 ROCHE LOCKSMITH SERVICES INC.
R	46185	18.58	02/22/23	51	0254 SANEL AUTO PARTS
R	46186	1,636.18	02/22/23	51	0195 SOUTHERN MAINE PLANNING & DEVLOPMENT, INC
R	46187	968.48	02/22/23	51	0041 STAPLES
R	46188	517.40	02/22/23	51	0095 STELLAR NETWORKS
R	46189	240.84	02/22/23	51	0397 SULLIVAN TIRE CO.
R	46190	344.08	02/22/23	51	0594 TREASURER STATE OF MAINE
R	46191	127.93	02/22/23	51	0371 UPTON, JEFF
R	46192	16,000.00	02/22/23	51	0366 US BANK CORPORATE TRUST BOSTON
R	46193	59,282.50	02/22/23	51	0344 US BANK ST. PAUL
R	46194	704.53	02/22/23	51	0097 VERIZON WIRELESS
R	46195	912.91	02/22/23	51	1089 VILLAGE MOTORS
R	46196	1,986.17	02/22/23	51	1221 WALKER, NORMAN
R	46197	1,101.00	02/22/23	51	1175 WELCH OIL, LLC
R	46198	333.99	02/22/23	51	0100 WEX BANK
R	46199	929.92	02/22/23	51	0480 WITMER PUBLIC SAFETY GROUP, INC.
R	46200	874.63	02/22/23	51	1220 YANKEE LAUNDRY EQUIPMENT
R	46201	21.00	02/22/23	51	0066 YORK COUNTY REGISTRY OF DEEDS
Total		170,629.11			

Count

Checks	66
Voids	0

This is to certify that there is due and chargeable to the appropriations listed above the sum set against each name and you are directed to pay unto the parties name in this schedule as signed by the Town Council below:

Melissa Costella _____

John James _____

Jeff Minihan _____

Jessica Cyr _____

Mallory Cook _____

APPROVED _____

DATE _____

TOWN MANAGER _____

TOWN COUNCIL
Agenda Information Sheet

Meeting Date: February 28, 2023	NB #1
Agenda Item: Planning Board resignation	
Staff Recommendation:	
Town Manager's Recommendation:	
Requested Action:	
Motion & vote to accept Burnell Bailey's resignation from the Planning Board.	
Vote	

TOWN COUNCIL
Agenda Information Sheet

Meeting Date: Feb 28, 2023	NB #2
Agenda Item: Planning Board Member	
Staff Recommendation:	
<p>Chris Prunier is currently an alternate Planning Board Member and wishes to take the seat vacated by Burnell Bailey.</p> <p>The Planning Board would then have a full five-member board, with two alternate seats available.</p>	
Town Manager's Recommendation:	
Requested Action:	
<p>Appoint Chris Prunier to the Planning Board as a full voting member with a term to expire June 30, 2024</p>	
Vote	



Town of South Berwick

Planning Department

180 MAIN STREET
SOUTH BERWICK, MAINE 03908

TEL. 207-384-3012

To: South Berwick Town Council
From: South Berwick Planning Board
Date: 2/16/2023

RE: MS4 Stormwater Ordinance Changes

On January 4th the Planning Board heard a presentation from Kristie Rabasca regarding required ordinance changes to comply with our MS4 permit along with a general recommendation to put the Low-Impact Development ordinance changes on hold until Summer or Fall of 2023 because the DEP is currently making changes to Chapter 500 which may affect our LID standards. The Planning Board voted to send a recommendation to the Town Council to adopt the changes as presented with one minor change and general commentary as noted below. A copy of Kristie's December 30, 2022, memo is attached for reference. The December 30th memo offers a clear path forward.

In summary, the required changes affect the following chapters of the South Berwick Code:

1. Chapter 96 - Non-Stormwater Discharge Changes
2. Chapter 108 - Post-Construction Stormwater Management
3. Chapter 121 - Subdivision of Land
4. Chapter 140 - Zoning

After deliberations with Kristie, the Planning Board discussed the process for adopting ordinances. Accordingly, the planning Board conducted a public hearing on February 15th. At the conclusion of the public hearing the voted to send the proposed changes to the Town Council.

In making this recommendation, the planning Board did make one change on page 5 changing definition of Qualified Post Construction Inspector to include a restriction that the inspector does not have any ownership, or financial interest in the infrastructure being inspected. Also, in the context of revisions to Chapter 108 the Planning Board would strongly recommend that the Council review the current impact fee structure as contained within the ordinances to make sure they are up-to-date and sufficient. The Planning Board has been reviewing multiple subdivision applications, some of them being rather large, and feel that the Town could be taking on an inordinate amount of work and record keeping complying with these imposed requirements.

Sincerely,

Greg Zinser, Chair



South Berwick Town Council
180 Main Street
South Berwick, ME 03908

January 9, 2023

Subject: MS4 Stormwater Ordinance changes required to be implemented by 6/30/2023, and Low Impact Development Changes update – For Town Council Consideration.

Dear Council Members:

This letter provides materials related to three ordinance changes required by the General Permit for Stormwater Discharges from the Municipal Separate Storm Sewer Systems (MS4s), as well as an update related to a fourth ordinance change for Low Impact Development.

Changes required by 6/30/2023: The changes listed below are required to be updated by June 30, 2023:

1. amend Chapter 96 Non-Stormwater Discharge to require timely removal of non-stormwater discharges from the Town's separated storm drain system,
2. amend Chapter 108 Post-Construction Stormwater Management to require timely maintenance of private stormwater infrastructure after construction and updating schedules for enforcement, and
3. adopt specific erosion and sedimentation control standards for proposed developments (affecting Chapter 121 Subdivision and Chapter 140 Zoning).

Integrated Environmental provided a brief overview of these requirements to the Town Council at their March 8, 2022 meeting, and more detailed overviews to the Planning Board at their April 20, 2022 and 1/4/2023 meetings. The redline strikethrough proposal attached to this letter addresses the comments provided by the Planning Board, and are being provided to the Town Council at the Planning Board's request.

Because these changes must be codified by 6/30/2023, we suggest the Town Council review them at their earliest convenience.

LID Ordinance Change Updates: On 8/17/2022 we held a brief workshop with the Planning Board to review the MS4 requirements to adopt Low Impact Development Standards. We presented a draft set of standards that the Town intended to adopt, which the Planning Board sent to the Town Council. The Town Council gave preliminary approval of these, and they were subsequently sent to the Maine Department of Environmental Protection (DEP) for Clean Water Act-based Public Comment. Maine DEP sent these out for Public Comment in September 2022. Though there were comments from Friends of Casco Bay on the standards, the Maine DEP approved the Town's submittal without change.

The DEP approval letter provided to the Town stated:

The Department has no objection to the proposal as written. However, the Department would like the Town to be aware that the Department is in the process of commencing rulemaking to revise 06-096 Chapter 500, Stormwater Management. The rulemaking process will include stakeholder meetings to receive input from regulated entities, consulting firms, non-governmental organizations and other interested parties. Kerem Gungor in the Bureau of Land Resources will be the Department contact for this rulemaking and he will be reaching out to stakeholders for their participation in early to mid-March 2023.

The final rule is likely to contain clear, specific and measurable LID measures and techniques that the Town may want to incorporate into the final LID Ordinance to clarify expectations and the enforceability of the ordinance.

Although the Town is clear to commence adoption of these standards, the Town may want to wait to adopt the LID changes until the Chapter 500 Rulemaking process has progressed so they can ensure there are no conflicts between the LID standards proposed by the Town and the LID standards that may be adopted statewide.

At the Planning Board 1/4/2023 meeting, Integrated Environmental recommended the Town hold on any LID ordinance changes until the summer of 2023. This will allow the Town to assess what the schedule and scope of the Chapter 500 changes will be, and may avoid any potential conflicts between the Town's proposed LID standards, and the Chapter 500 LID standards.

Closing: I plan to attend any subsequent meetings to assist in the understanding of these changes.

If/when the proposed changes are acceptable to the council, we suggest the Council hold a public hearing for the three changes required to be implemented by 6/30/2023, but hold on the LID ordinance changes until approximately August 2023.

If you have any questions about this information or need changes in advance of the meetings, please let me know. I can be reached at 207-415-5830 or via email krabasca@integratedenv.com.

Sincerely,

Integrated Environmental Engineering, Inc.



Kristie L. Rabasca, P.E.

Attachments: Redline Strikeout proposed changes to South Berwick Code to address MS4 General Permit requirements.

1/9/2023 PROPOSED CHANGES TO SOUTH BERWICK CODE TO ADDRESS MS4 REQUIREMENTS BY 6/30/2023

CHAPTER 96 NON-STORMWATER DISCHARGE CHANGES

Non-stormwater discharge prohibitions have been part of the Town's code since 2006 to ensure that pollutants are not discharged into the storm drain system (either by dumping or by direct connection).

The 2022 MS4 General Permit requires that an illicit discharge into the storm drain system is eliminated as expeditiously as possible, and that if elimination is not possible within 60 days of discovery that the discharge be eliminated in accordance with a schedule that is approved by the Code Enforcement Office.

We have updated § 96-8 Enforcement and some definitions in § 96-2, and the Statutory authority section in § 96-10.

Proposed new text is shown as italics and underlined. Proposed text for deletion is shown in strikethrough.

§ 96-2. Definitions.

REGULATED SMALL MS4 — Any small municipal separate storm sewer system (MS4) regulated by the State of Maine general permit for the discharge of stormwater from small municipal separate storm sewer systems, ~~dated June 3, 2003~~ renewed October 15, 2020, modified November 23, 2021 including any amendment or renewal thereof; ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

URBANIZED AREA (UA) — The areas of the State of Maine so defined by the ~~latest~~ inclusive sum of the 2000 decennial census and the 2010 decennial census by the U.S. Bureau of the Census.

§ 96-8. Enforcement.

A. Notice of violation.

- (1) Whenever the enforcement authority believes that a person has violated this chapter, the enforcement authority may order compliance with this chapter by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
 - (a) The elimination of non-stormwater discharges to the storm drainage system as expeditiously as possible, including, but not limited to, disconnection of the premises from the MS4;
 - (b) The cessation of discharge practices or operations in violation of this section;

- (c) At the person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-stormwater discharges to the storm drainage system and the restoration of any affected property; and/or
 - (d) The payment of fines, of the municipality's remediation costs, and of the municipality's reasonable administrative costs and attorneys' fees and costs.
- (2) If abatement of a violation and/or restoration of affected property is required, or if elimination of the Non-Stormwater Discharge is not possible within 60 days of identification of the source, the notice shall set forth a deadline within which such elimination, abatement, or restoration must be completed.

§ 96-10. Statutory authority.

The Town of South Berwick enacts this chapter pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the "Wastewater Discharge Law"), 33 U.S.C. § 1251 et seq. (the "Clean Water Act"), and 40 CFR Part 122 [U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System ("NPDES")]. The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems ~~dated June 3, 2003~~, has listed the Town of South Berwick as having a regulated small municipal separate storm sewer system ("small MS4"); under this General Permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the municipality's stormwater management program.

CHAPTER 108 POST-CONSTRUCTION STORMWATER MANAGEMENT CHANGES

Chapter 108 Post-Construction Stormwater Management requirements have been part of the Town's code since 2009 to ensure that stormwater infrastructure that is owned by private developments is inspected and maintained. This portion of the Town's code requires maintenance in accordance with a Post-Construction Stormwater Plan, annual inspections on the infrastructure and certification annually to the Town that the system has been maintained, inspected and is functioning as intended.

The 2022 MS4 General Permit requires that we update this ordinance to ensure any corrective measures identified by the owner or inspector are implemented within 60 days of identification or if that is not possible, in accordance with a schedule that is approved by the Code Enforcement Office.

The 2022 MS4 General Permit also requires that any inspector (whether the Owner/Operator or a third-party) be a Qualified Inspector and that a copy of the inspection report be provided to the Town.

At the 1/4/2023 Planning Board meeting, the Board asked that the Definition of Qualified Post Construction Inspector include a restriction that the inspector not have any ownership or financial interest in the infrastructure being inspected. This restriction has been adopted by other MS4 municipalities to ensure an objective inspection is conducted. This change has been added here for Council consideration.

Additionally at the 1/4/2023 Planning Board meeting, the Board questioned the impact of this ordinance on Town staff. Section 108-5 of this Chapter requires commercial, industrial and retail developments to pay a fee at the time of application equal to 1.0% of the total infrastructure costs including but not limited to: roads, utilities and stormwater management features. The fee is intended to cover the cost of Town staff sending out reminder emails that the annual certification and report are due, reviewing the certifications and reports, and following up with any required maintenance. Chapter 121 for Subdivisions also requires the 1% fee (Section 121-7 Performance Guarantees). The specific language from Chapter 108 regarding the fee is provided below in the event the Council elects to adjust the fee.

Finally, we are updating several definitions, we are removing the requirement for the annual certification to be notarized, and we have updating the Statutory authority section.

The proposed changes to the affected sections of the Chapter 108 are presented below:

§ 108-3. Terms defined.

REGULATED SMALL MS4 — Any small municipal separate storm sewer system (MS4) regulated by the State of Maine general permit for the discharge of stormwater

from small municipal separate storm sewer systems, ~~dated June 3, 2003 renewed October 15, 2020, modified November 23, 2021 including any amendment or renewal thereof;~~ ("general permit"), including all those located partially or entirely within an urbanized area (UA) and those additional small MS4s located outside an UA that as of the issuance of the general permit have been designated by the DEP as regulated small MS4s.

QUALIFIED POST-CONSTRUCTION STORMWATER INSPECTOR — A person who conducts post-construction stormwater management facilities inspections for compensation and who has received a Certification in Inspection and Maintenance of Stormwater BMPs from the Maine Department of Environmental Protection or is a Professional Engineer in the State of Maine with an understanding of stormwater infrastructure and its required maintenance. The Inspector shall not have any ownership or financial interest in the property being inspected nor be an employee or partner of any entity having an ownership or financial interest in the property.

§ 108-5. Plan approval required.

C. Required actions at time of application; fees.

- (1) At the time of application for approval of the post-construction management plan (whether under this or another ordinance), the applicant shall:
 - (a) Notify the Planning Board and the Public Works Director if its postconstruction stormwater management plan includes any BMP(s) that will discharge to the Town's MS4;
 - (b) Obtain written approval or certification of the post-construction stormwater management plan from the Public Works Director;
 - (c) Shall include in this notification a listing of which BMP(s) will so discharge; and
 - (d) Shall enter into a maintenance agreement with the Town as shown in Appendix 1²
- (2) In addition, any persons required to file an annual certification under this § 108-6 of this chapter shall include with their Planning Board submittal a fee in the following amount to pay the administrative and technical costs of review of the annual certification. For commercial, industrial, and retail developments, the fee shall be 1.0% of the total infrastructure costs, including, but not limited to, roads, utilities, and stormwater management features.

§ 108-6. Compliance with plan.

- A. Any person owning, leasing or having control over stormwater management facilities required by a post-construction stormwater management plan approved under the Town's Subdivision, Site Plan or other Zoning Ordinances shall comply with that plan and shall demonstrate compliance with that plan as follows:
 - (1) At least annually, hire or use a ~~person who is certified in sediment and erosion control practices through MEDEP or hire or use a licensed civil engineer~~ Qualified Post Construction Stormwater Inspector to inspect and oversee

cleaning and maintenance of the stormwater management facilities, including but not limited to any parking areas, catch basins, drainage swales, detention basins and ponds, pipes and related structures, in accordance with all municipal and state inspection, cleaning and maintenance requirements of the approved post-construction stormwater management plan.

- (2) Repair any deficiencies found during inspection of the stormwater management facilities within 60 days of identification of the deficiency. . If 60 days is not possible, then the person shall propose an alternate expeditious schedule to complete the maintenance, which if approved by the Code Enforcement Officer must be met;
- (3) On or by July 1 of each year, provide a copy of the annual inspection and a completed and signed certification to the Code Enforcement Officer in a form identical to that attached as Appendix 2 to this chapter,³ certifying that the person has inspected, cleaned and maintained the stormwater management facilities, describing any deficiencies found during inspection of the stormwater management facilities and certifying that the person has repaired any deficiencies in the stormwater management facilities noted during the annual inspection. If any deficiencies are still outstanding when the certification is submitted in accordance with paragraph [b] of this section, that person or a qualified post construction stormwater inspector shall provide documentation of completion of the maintenance within 30 days of completion.

§ 108-9. Statutory authority.

The Town of South Berwick enacts this Post-Construction Stormwater Management Control Ordinance (the chapter) pursuant to 30-A M.R.S.A. § 3001 (municipal home rule ordinance authority), 38 M.R.S.A. § 413 (the Wastewater Discharge Law), 33 U.S.C. § 1251 et seq. (the Clean Water Act), and 40 CFR Part 122 [U.S. Environmental Protection Agency's regulations governing the National Pollutant Discharge Elimination System (NPDES)]. The Maine Department of Environmental Protection, through its promulgation of the General Permit for the Discharge of Stormwater from Small Municipal Separate Storm Sewer Systems, has listed the Town of South Berwick as having a regulated small municipal separate storm sewer system (small MS4); under this general permit, listing as a regulated small MS4 necessitates enactment of this chapter as part of the Town's stormwater management program in order to satisfy the post construction minimum control measures required by the General Permit. Part IV D 5 (Post-construction stormwater management in new development and redevelopment).

EROSION AND SEDIMENTATION CONTROL CHANGES

The 2022 MS4 General Permit requires that Erosion and Sedimentation Control (ESC) standards be incorporated into the Town's ordinances for any proposed development that disturbs one or more acres of land. The standards are listed in the MS4 General Permit, and are the same as the Maine DEP Chapter 500 standards for erosion and sedimentation control. Staff recommends incorporating the standards by reference to facilitate design and understanding by developers and reviewers.

One change we have made to the standards that is different than the State Chapter 500 regulations is to require that a Qualified Erosion and Sedimentation Control Professional prepare any Erosion and Sedimentation Control Plan.

Chapter 121 Subdivision of Land already requires an erosion and sedimentation control plan with the written endorsement of the Public Works Director during preliminary plan submission. The performance standards contain references to a 2003 Maine DEP ESC guidance document.

Chapter 140 Zoning requires erosion and sedimentation control for minor and major site plan review. Minor site plan review is also explicitly required for any new development or redevelopment that disturbs one acre or more of land (see 140-77. B Applicability). The Minor Site Plan Review Process includes submittal of a formal application to the Planning Board which includes submittal of "all erosion and sediment control measures". These projects are required to meet Performance Standards specified in Chapter 140-77.E.(18) which states: *Erosion of soil and sedimentation of watercourses and water bodies shall be minimized by employing the best management practices specified in the Maine Erosion and Sediment Control BMP Manual, March 2003. The Board may require the review and approval of the Public Works Director for any erosion control plan.*

Several other sections of the Town's ordinances reference the Maine Erosion and Sediment Control BMP Manual dated March 2003 for sediment and erosion control also including: Article V Performance Standard Applicable to all Uses (140.36), and 140.42 Campgrounds.

We are proposing updated language to be more reflective of the MS4 permit requirements for all of these sections. The proposed changes are presented below:

CHAPTER 121 SUBDIVISION OF LAND

§ 121-11. Definitions and word usage.

QUALIFIED EROSION AND SEDIMENTATION CONTROL PROFESSIONAL – A person who is certified by Enviro-Cert International in erosion and sedimentation control practices or is certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.

§ 121-32. Preliminary Plan.

I. A soil erosion and sediment control plan *prepared by a Qualified Erosion and Sedimentation Control Professional* ~~with the written endorsement of the Public Works Director.~~ *(see § 121-44 and 121-47).*

§ 121-44. Street Specifications.

U. Erosion control.

(1) For sites that disturb one or more acres of land including sites that disturb less than one acre of land if the site is part of a larger subdivision that would disturb one or more acres of land, the soil erosion and sediment control plan will be in conformance with Maine DEP Chapter 500 Appendices A, B, and C.

(2) For all other sites, pProcedures shall be undertaken, both during preparatory, construction and cleanup stages, to prevent soil erosion and water pollution Maine Erosion and Sediment Control BMP Manual, March ~~2003~~2016, or latest revision thereof.

§ 121-47. Surface drainage, topsoil and erosion control.

B. Subdivisions shall be designed, constructed, and maintained in accordance with the following:

(1) For sites that disturb one or more acres of land including sites that disturb less than one acre of land if the site is part of a larger subdivision that would disturb one or more acres of land, the soil erosion and sediment control plan will be in conformance with Maine DEP Chapter 500 Appendices A, B, and C.

(2) For all other sites, procedures shall be undertaken, both during preparatory construction and clean up stages, for erosion and sediment control measures as specified in the Maine Erosion and Sediment Control BMP Manual, ~~October 2016~~ ~~March 2003~~, or latest revision thereof.

CHAPTER 140 ZONING

§ 140-9. Definitions.

QUALIFIED EROSION AND SEDIMENTATION CONTROL PROFESSIONAL – *A person who is certified by Enviro-Cert International in erosion and sedimentation control practices or is certified by completing the Maine Department of Environmental Protection Erosion and Sedimentation Control Practices Workshop, or is a Maine Professional Engineer with at least two years' experience in designing Erosion and Sedimentation Control BMPs.*

§ 140-77. Site Plan Review.

D. Site plan review application and submission requirements.

- (1) Applications for site plan review shall be submitted on application forms provided by the Town. The complete application form, required fees per § 60-3, and the required plans and related information shall be submitted to the Planning Board. Nine copies of written materials plus nine sets of plans or drawings are required. The submission shall contain at least the following exhibits and information:

(j) ~~The location of all erosion and sediment control measures.~~ An erosion and sedimentation control plan.

- (2) For major site plan review, the following information is also required:

(c) An erosion and sedimentation control plan.

E. Criteria and standards. The following criteria and standards shall be utilized by the Planning Board in reviewing applications for site plan approval and shall serve as minimum requirements for approval of the site plan. Upon consideration of the factors listed below, the Planning Board may attach such conditions, in addition to those required elsewhere in this chapter, that it finds legally necessary to further the purposes of this chapter and section and to protect the long-range health, safety and welfare of the Town. The standards are not intended to discourage creativity, invention and innovation. The Planning Board may waive the criteria presented in this section upon a determination by the Planning Board that the application of these criteria is not necessary to carry out the intent of this section. The Planning Board shall approve the site plan unless the plan does not meet the intent of one or more of the following criteria, provided that the criteria were not first waived by the Planning Board.

- (18) Erosion control. Control of eErosion of soil and sedimentation shall conform to MDEP Chapters 500 and 502 or the Maine Construction General Permit, the

Erosion and Sediment Control Standards of Maine DEP Stormwater Rule Chapter 500 Appendix A – Erosion and Sediment Control, Appendix B – Inspections and Maintenance and Appendix C Housekeeping, which are adopted by reference. ~~of watercourses and water bodies shall be minimized by employing the best management practices specified in the Maine Erosion and Sediment Control BMP Manual, March 2003. The Board may require the review and approval of the Public Works Director for any erosion control plan~~

Article V Performance Standards Applicable to all Uses

§ 140-36. Soil erosion control.

All development shall be designed, constructed, and maintained in accordance with the erosion and sediment control measures specified in the Maine Erosion and Sediment Control BMP Manual, October 2016~~March 2003~~, or latest revision thereof.

§ 140-42. Campgrounds.

Campgrounds shall conform to the minimum requirements imposed under state licensing procedures and the following:

- E. A soil erosion and sedimentation control plan meeting the standards of the ~~York County Soil and Water Conservation District and the~~ Maine Erosion and Sediment Control BMP Manual, October 2016~~March 2003~~, or latest revision thereof shall be submitted. In addition to data on soils, slopes and drainage, a vegetation map showing the following items may be required: **[Amended 6-15-2009]**
- (1) The major types of vegetation should be identified and described (as to age, height, openness or density and pattern, either natural or reforested).
 - (2) New planting should be selected to provide screening and shelter, to tolerate existing and proposed site conditions and to blend compatibly with existing natural vegetation.
 - (3) All vegetative clearing should avoid creating straight-line edges between open lands and surviving stands.
 - (4) Areas of activity and/or traffic should be sited so as to avoid wildlife areas, such as thickets for birds and small mammals or deer yards and trails.