

Water Resources Advisory Committee
Minutes of Meeting
July 28, 2010
Town Hall Room 126

Members present: Ron Beck (chair), Barry Rosen, Helen Probst, Jeff Clymer, Carol Holley (clerk)

Staff present: Justin Snair, Michelle Pallicer (intern)

The meeting opened at 6:55 p.m.

The minutes of June meeting were reviewed. Ms Probst moved to approve, Mr. Beck seconded, and all voted in favor.

Members discussed the new Open Meeting Law requirements. Ms Holley and Mr. Rosen had been to the first session of training; Ms Holley recommended that others go also. Mr. Snair felt that the UNH study should be included in the packet for the prior meeting, as it had been mentioned. Ms Holley will forward a copy to the Town Clerk's office. Email was brought up, and it was noted that the rules regarding email seem to be essentially the same.

Mr. Beck stated that the group had agreed to start with a review the EPA model bylaw, specifically the purpose and section 5. Ms Probst observed that Concord's CWRMP included language that it was development neutral. It was agreed that the bylaw should be development neutral.

Mr. Beck noted that at the prior meeting, the group discussed which town department should "own" this bylaw, Health or Planning. The group spent a great deal of time regarding Planning, and Mr. Snair felt that it should be Health, and Mr. Beck agreed. Mr. Snair observed that staffing would be required, and he was going to be working on the other stormwater matters anyway. Mr. Snair noted that initially, the reason to put it in Planning was that a lot of the process was currently under the purview of the Planning department; in Concord, it's Public Works, which governs the sewers, but Acton doesn't really have a Public Works department. Lots of this by-law relates to development permitting, and there is a lot of discussion around stormwater management. Now the discussion is mainly in Conservation, Planning and occasionally Historic District Commission. If the developer is going to get approval, why not have all the approvals in the same place? How are you going to actually monitor compliance and reporting to municipal agencies? Mr. Snair continued, the Board of Health can do the sampling and the GIS entries. In any case, there will be a lot of cross-discussion required.

It was noted that the critical department was engineering – they are the people who know by looking at the models to determine their validity. The whole package comes in with the development proposal, and there is this water balance software. Like any model, Mr. Beck observed, it can be garbage in/garbage out. The developer decides the parameters to put into the model. There is a lot of room for engineers to fudge data. Mr. Beck found that a critical fact was calibrations based on impervious surface – what's impervious? Is packed dirt impervious, like

paved area? Who is the person who can review the model and determine if there is mischief going on? Does the town take a copy of the model and assume it's correct?

Ms Probst noted that another selling point in putting this process into the Health Dept. is that Health is doing the other stormwater by-law. Due to sampling and follow-through from the other by-law they are more likely to have staff.

Mr. Beck recommended a book he recently read entitled *On the Grid* (full title *On the Grid: A Plot of Land, an Average Neighborhood, and the Systems that Make our World Work*, author Scott Huler – clerk's note) and it has an interesting chapter on stormwater. If you start spreading things out along multiple departments there is more expertise involved.

Mr. Clymer observed that Planning now gets comments from Engineering on developments. This is just one more box to make on a form to be sure the matter gets covered.

Mr. Snair related that he had talked to Mr. Bartle about the custodial department and board. This has nothing to do with development. Planning would strip out the site plan elements from the subdivision regulations and zoning by-law. Mr. Clymer noted that then the Health Dept. could provide the comments regarding stormwater.

Mr. Beck related that he had followed a couple of projects through several different committees, especially with the water thing – it's definitely part of what happens in the ConsCom with wetlands – they don't have any way of evaluating that. Developers play one board against another.

Mr. Snair noted that this bylaw is more of a monitoring and quality program. The Health Dept. is responsible for the flow-neutrality. Ms Probst noted that the Health Dept. could inject some science into it.

Mr. Snair felt it would come down to how the department costs out this program. Between the two by-laws, they should be able to fund an agent just to do stormwater. Mr. Beck said, suppose you are the guy. There is software that is supposed to be run by an engineer. If you were the guy, you should get the software. Mr. Clymer noted that there is now a civil engineer on the Planning Board. Mr. Snair stated that the Town has the tools, and it's an existing or new hire, they will need to be able to run that tool.

Mr. Beck thought the group needed to have a water balance model for the watersheds and subwatersheds. Maybe one was done during the subwatershed study.

Mr. Snair noted that developers have data. Ms Probst was concerned that some of the data was "made up". What the water balance for the entire town of Acton right now – they have to use our model in their model. Mr. Snair related one issue – the developers are using septic design flow as part of recharge calculations, usually half of the Title 5 number – and they are taking it off of the runoff number, but it's not stormwater. Some water balance calculations don't make sense – a formula needs to be generated. Right now, there is no standard.

Ms Probst asked if the Town had a right in the by-law or regulations to be able to say you have to use actual flows? Mr. Beck noted that one of the most valuable things would be to have some people talk to us about how they do this. It would be a valuable service to this group. Right now, town staff is in a very weak position. Mr. Snair agreed that it's easier to take people on if you have credentials. You don't need a PhD in engineering, however, to come up with a bottom line.

Mr. Snair noted that any water balance calculations are now being verified by Engineering, and that can still happen because that is their expertise. That could be part of the process.

Mr. Rosen felt that Building could go to the site and check things. Mr. Snair noted that there is currently no inspection process for stormwater management inspections. You can find a way to leverage existing departments.

Mr. Rosen asked if current permit fees were flat fees or scaled to the size of a project, like the number of square feet being disturbed. Mr. Snair felt that amount of impervious cover could be added as a sliding fee. Does this translate into a justifiable cost to do the inspection? It would be like number of gallons/day for septic systems. Mr. Rosen asked, water over a half acre or acre or acre and a half – which is going to require more staff time? Mr. Snair asked, but what is the inspector doing? Bigger plans could take more time – you just have to justify the fee.

Mr. Beck noted that what is getting to be more common is treating stormwater like a utility. You charge a property owner a fee to manage the best management practices based on impervious surface of the property. Mr. Snair noted that this leads to less flow off the property because recharge is increased. Mr. Rosen noted that the ideal is to recharge almost all stormwater onto the property. We get paid to make sure that it is designed properly. Mr. Snair noted that fees are also for monitoring and annual inspections.

Mr. Beck related the case of River Street where originally there was going to be a 40B with a common bioretention area with maintenance funded from condo fees. However, the plan changed into individual lots without any provisions for the bioretention maintenance – there has to be an entity charged with this. Mr. Snair noted that you could have user based, hybrid user based, or contract based maintenance.

Mr. Snair noted that, up until this past January, there were IA system maintenance requirements in place but there were lots of streams of information coming in over the year and things were getting left out. Now there is an IA operation permit. If you need annual/ongoing maintenance, you need to submit documentation. You get a permit and somebody reviews the maintenance and function of the system. Now it's a \$75 fee/year for IA systems. In response to a query from Ms Holley, Mr. Snair clarified that not all IA systems need this kind of oversight.

Ms Holley noted that the group had to figure out a whole lot of by-law changes. Mr. Bartl had said that a consolidated effort would be ok with him. The group's consensus was the Board of Health will be the new oversight entity. Department chairs have been consulted and have agreed to the potential change.

Mr. Clymer stated he would brief the Planning Board on this matter. Mr. Snair will talk to the Board of Health, although they already know this will probably happen. If the Health Dept. can cost it out and make sense to the Board of Health they won't have a problem with it.

Ms Probst noted that we are trying to not just remediate stormwater but effect verification of quality. You have to have some degree of testing, so you need staff to do the testing. Or, Mr. Snair replied, the town can require the developer to do testing or cover the cost of third party testing via a permit fee.

Mr. Beck read the email from Selectman Adachi regarding her conversations with the town manager and some department heads regarding the assistance the WRAC will need in drafting and implementing this bylaw.

Mr. Beck reminded the committee that at the last meeting it was agreed to start with the EPA model document. What does the EPA say we need to do for a minimum? Then, where do we want to go from there? Do we really want to do more in this area or not? We were going to start with the purpose and then section 5.

Ms Probst noted the EPA document said "minimize". What is minimal? Mr. Snair asked, is zero increase practical? Mr. Beck felt you could work toward it. This is pre-and post-construction. Do we want a combination or separate post and during? Maybe since we have existing separate models we should consider them separately at first. Mr. Snair noted that the documents need to agree. Ms Probst felt that during is different from pre- and post-. Mr. Beck felt that the issues are construction and post. The town already has some rules in place – Planning rules. The second one concerns Mr. Beck because there is a gap.

Mr. Snair would like to look at existing regulations to see if they make sense. Ms Probst did not like the title of "post-construction", and Mr. Beck agreed, suggesting "Acton Stormwater control ordinance" or something like that. Mr. Snair noted that this involves redevelopment and development.

Mr. Rosen noted that Sudbury determined the area to be under the bylaw based on slope, if the slope is a certain amount, the area can be as small as 200 square feet.

After a detailed review of the EPA model purpose, the group came to the consensus that they didn't like the language. Mr. Rosen presented purpose language from the Center for Watershed Protection (CWP) model, which had been used in New York State, and read as follows:

The purpose of this ordinance is to establish minimum stormwater management requirements and controls to protect and safeguard the general health, safety, and welfare of the public residing in watersheds within the [JURISDICTION]. This ordinance seeks to meet that purpose through the following objectives:

- (1) To inhibit the deterioration of water resources resulting from development.

- (2) To protect the safety and welfare of citizens, property owners, and businesses by minimizing the negative impacts of increased stormwater discharges from new land development and redevelopment.
- (3) To control the rate, quality and volume of stormwater originating from development and redevelopment sites so that surface water and groundwater are protected and flooding and erosion potential are not increased.
- (4) To control nonpoint source pollution and stream channel erosion.
- (5) To maintain the integrity of stream channels and networks for their biological functions, drainage, and natural recharge of groundwater.
- (6) To protect the condition of state (and U.S.) waters for all reasonable public uses and ecological functions.
- (7) To provide long-term responsibility for and maintenance of stormwater BMPs.
- (8) To facilitate the integration of stormwater management and pollution control with other ordinances, programs, policies, and the comprehensive plan of [JURISDICTION].
- (9) To establish legal authority to carry out all the inspection and monitoring procedures necessary to ensure compliance with this ordinance.

The group all agreed that this language was preferable.

Mr. Beck noted that comparing the Acton and Concord CWRMP documents show that Concord's is purposefully "development neutral" while Acton's is silent on that matter. Both Messrs Beck and Rosen liked the "development neutral" language. Mr. Beck noted that, for the time being, the group will substitute 1-9 of the CWP document for the 1-4 of the EPA document, and turned the focus to section 5 of the EPA document.

Ms Probst observed that, now the town has had a couple of 100-year storms, people know what we are talking about. The group all liked the concept of 24-hr retention capacity for a 100-year storm.

Mr. Snair felt the goal was to help Zone IIs. Ms Probst thought that function should be noted in the purpose language. Mr. Snair suggested language "as close to natural as possible", which sparked a conversation of the meaning of "natural". The group concluded that the word "natural" had to mean "pre-development" as opposed to "Acton in 1635". It was noted that Acton's public water supply depends on shallow wells, and recharge needs to be maximized.

Mr. Clymer did not believe that this sounded "development neutral". Mr. Beck noted that standards should be achievable minimum standards. Mr. Rosen noted that the state has minimum standards defined, and Mr. Snair reminded him that our permit is with the federal government.

Mr. Beck felt that as long as the group sets the rules up so that they are not unachievable cost-wise, we should be ok. You can set a standard that isn't achievable but you can't require somebody to do something that isn't achievable with the current technology. Mr. Snair noted that you have a menu of BMPs to select from. Mr. Beck noted that there must be a way the group can manage this better. In the WAVE development in West Acton, they put in a big bioretention area right next to a wetland.

Mr. Snair noted that the town is doing something right now – if a development is in a sensitive area, they can put in all kinds of monitoring, or put money into a fund and let the town do the monitoring. There could be common recharge areas where it's most effective to take water to an off-lot BMP. Mr. Snair thought the bylaw had to be development neutral but also improve the current situation.

Mr. Beck read from the CWP document, where decision trees were delineated. The discussion of the by-law was tabled because time had run over. The group agreed that they liked the CWP document. Next meeting, a topic of discussion will be how large a minimum area needs to be.

The topic turned to Selectmen oversight, scheduled for September 13 at 7:45 p.m. Ms Holley suggested the group ask for funds for consultant support for this by-law. Mr. Snair noted that Health Dept. staff was working on grants, and environmental protection was one eligible field.

Ms Probst thought it appropriate to ask the Selectmen for guidance in writing the by-law. We are 5,6,7 people in a room. Do you want this to be development neutral or not? Do they want 200 square feet or an acre? Mr. Beck thought that presenting them with choices would be a good idea.

Mr. Rosen noted that this by-law is also a quality of life issue. Mr. Snair noted that the by-law can be development neutral but there are BMPs that can change the character of the community. It will change curbs, there could be treed retention basins, etc. He thought that one lesson learned from the last bylaw was that the group needed more outreach and public meetings. Ms Probst added, more money.

Mr. Beck felt that you needed a consultant to be able to show people what we are talking about. Maybe the DRB could provide input. Mr. Beck gave the sign by-law as an example of a regulation that hadn't been enforced in years and now that it is being enforced, there are repercussions.

It was decided that a Selectmen Oversight subcommittee will form and meet on August 25 at 4:30 p.m. Ms Holley will request a room and post the meeting.

At 9:09 p.m., Ms Probst moved to adjourn, Mr. Clymer seconded, and all voted in favor.

Respectfully submitted,

Carol Holley
Clerk