

**TOWN OF DIGHTON
BOARDS OF SELECTMEN/HEALTH
MARCH 31, 2010**

Nancy Goulart, Chairman, called the meeting to order at 7:45 PM.

Present: Nancy Goulart, Edward D. Reese, Sr., and Thomas Pires

The pledge of allegiance was recited.

Approve Warrants

Motion: Edward D. Reese, Sr., seconded: Thomas Pires, VOTED to approve the following warrants:

Warrant #040A-10	Payroll	\$	46,854.43
Warrant #040B-10	Vendor bills	\$	7,048.60
Warrant #040C-10	Vendor bills	\$	24,689.07

Vote: UNANIMOUS

Correspondence

The following correspondence was read:

Letter from Comcast announcing price increases in programming and other business costs starting April 24, 2010.

Letter of Intent to participate in the Centennial Motorcade on August 5, 2010 from Pilgrim Monument and Provincetown Museum to commemorate the 100th anniversary.

The board commended the police, fire, highway departments and the 911 dispatchers, as well as, the Bristol County Sheriff's Office, State Police and Pavao Construction for their assistance during the March 28-30, 2010 flooding. Townspeople were advised to stay out of pooled water due to possible contamination. It was also reported that Lincoln Avenue remains closed and school has been closed.

Announcements were read.

Animal Control Officer

Upon the board's request, Stacy Ferry, brought the rotti mix to a veterinarian to see if he is adoptable. Upon examination, the veterinarian recommended humane euthanasia because the dog showed signs of aggression and extensive hip problems. Motion: Edward D. Reese, Sr., seconded: Thomas Pires, VOTED to humanely euthanize the rotti mix.

Vote: UNANIMOUS

Upon extensive research, Edward D. Reese, Sr., stated that he does not approve the animal control officer's request to attend the Chemical Immobilization Workshop because it would require maintaining a controlled substance, making the town liable. Furthermore, Mr. Reese received preliminary information regarding a free workshop being offered in Swansea. Mr. Reese will advise Mrs. Ferry as more information becomes available. Mrs. Goulart asked Mrs. Ferry if she was interested in attending the workshop in Swansea. She replied that she was.

Stoney Ridge Estates, Pine Street

On March 29, 2010, the board received a petition from residents residing on Pine Street requesting that the infiltration basins be under ground instead of above ground. Nancy Goulart read the Stormwater Regulation Definitions for infiltration, retention and detention basins. Motion: Nancy Goulart, seconded: Edward D. Reese, Sr., VOTED grant a conditional waiver to Stoney Ridge Estates, a copy of which is attached hereto to become a part hereof these minutes.

Vote: UNANIMOUS

Douglas Clary re: rezoning

Douglas Clary and William Mariano appeared before to the board to discuss rezoning property located on Elm Street. Mr. Mariano stated that limited information can be discussed due to a confidentiality agreement but added that it would involve the elderly. David Araujo, Planning Board, advised Mr. Clary and Mr. Mariano that a hearing shouldn't be scheduled until more information is available. Motion: Edward D. Reese, Sr., seconded: Thomas Pires, VOTED to forward the rezoning request to the Planning Board.

Vote: UNANIMOUS

Nancy Goulart called a recess at 10:46 P.M. Nancy Goulart reconvened the meeting at 10:50 P.M.

Federal Census

Town clerk, Susana Medeiros, announced that the 2010 Decennial Census Questionnaires have been mailed to all residents in the town of Dighton. Any resident that has not received their questionnaire should stop by the town clerk's office to pick up a questionnaire and mailing envelope.

Dighton Police Association

Albert Enos, Treasurer of the Dighton Police Association (DPA), appeared before the board to discuss a letter received from the Dighton Police Officers Local 306 objecting to money being collected at the station for the Association, as well as, objecting the Association's use of the police department insignia on the letterhead. Mrs. Goulart recommended that the board contact town counsel to determine if a locked box can be left in the selectmen's office on a temporary basis. When Attorney Gay returns from vacation, the board will ask him to issue an opinion on the use of the town seal on the DPA's letterhead and also use the police insignia. She explained that the town would be held harmless regarding anything to do with the lock box. It was the consensus of the board to forward the request to Attorney Gay.

402 Spring

Building Inspector, Joseph Lawrence, advised the board that the building located at 402 Spring Street is structurally unsound. Motion: Thomas Pires, seconded: Edward D. Reese, Sr., VOTED to demolish the building located at 402 Spring Street.

Vote: UNANIMOUS

Fire Department – Ambulance Service

Motion: Thomas Pires, seconded: Edward D. Reese, Sr., VOTED to approve that the fire department will provide emergency medical services at the Advanced Life Support Paramedic level under a Paramedic/Basic Staffing Waiver.

Vote: UNANIMOUS

Insurance Proposal for Police & Fire Departments

The renewal price for accidental death and disability insurance for the police and fire departments was quoted in the amount of \$21,929.00. Motion: Thomas Pires, seconded: Edward D. Reese, Sr., VOTED to approve the accidental death and disability insurance premium for the police and fire departments in the amount of \$21,929.00.

Vote: UNANIMOUS

MMA Grant Writer Ad

Motion: Edward D. Reese, Sr., seconded: Thomas Pires, VOTED to publish an advertisement for a Grant Writer in the May BEACON as well as putting it on the MMA website at a cost of \$95.00.

Vote: UNANIMOUS

Joseph Lawrence

The board has postponed discussing Mr. Lawrence's job performance due to illness and until the attorneys have had the opportunity to review the matter. Motion: Thomas Pires, seconded: Edward D. Reese, Sr., VOTED to approve representation by Attorney Christopher J. Petrini at a rate not exceeding \$250.00/hour for him and \$200/hour for use of his associate.

Vote: UNANIMOUS

Public Input

Edward D. Reese, Sr., requested that the town conduct CORI check on Melissa Rose.

Nancy Goulart announced that the MMA has submitted testimony to the EPA in opposition to the unfunded federal mandates in the proposed stormwater regulations.

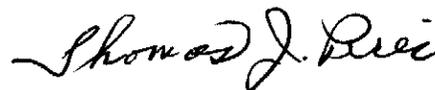
Thomas Pires extended his apologies to town residents and the board members for the altercation that took place during the meeting on March 24, 2010. Edward D. Reese, Sr., extended the same apology.

Motion: Edward D. Reese, Sr., seconded: Thomas Pires, VOTED to adjourn at 11:32 PM.

Vote: UNANIMOUS

Respectfully submitted,
Boards of Selectmen/Health
Kerrie J Easterday, Administrative Assistant

Approved by:





TOWN OF DIGHTON
BOARD OF SELECTMEN-BOARD OF HEALTH
979 SOMERSET AVENUE
DIGHTON, MA 02715
TEL: (508) 669-6431

April 7, 2010

Town of Dighton
Zoning Board of Appeals
Attn: E. Bud Whalon, Acting Chairman
Town Hall
979 Somerset Avenue
Dighton, MA 02715

TOWN CLERK
DIGHTON, MA
BY _____

2010 APR -8 PM 4: 18

RECEIVED

**Re: Comprehensive Permit Application of Stoney Ridge Estates, LLC
Recommendations Regarding Certain Waiver Requests
Property Address: West Side of Pine Street containing 41.7 acres**

Dear Acting Chairman Whalon and Members of the Zoning Board of Appeals:

With regards to the above-referenced matter, the Board of Health appreciates the opportunity to review and provide recommendations on certain requested waivers of local by-laws, regulations and ordinances that are being sought by Stoney Ridge Estates, LLC ("Developer") as part of its application for a comprehensive permit. Please be advised that on March 31, 2010, the Board of Health considered these waiver requests and unanimously voted to recommend to the Zoning Board of Appeals that it take the following action with regards to each of the below-listed waiver requests¹:

I. Subdivision Rules and Regulations

1. Section 4320

BOH Recommendation: We recommend that the waiver request be denied as unnecessary in light of conditional variance granted to the Developer to allow for construction of above-ground infiltration basins as part of the Stormwater Management System for the development.

2. Section 4322

BOH Recommendation: We recommend that the waiver be approved with the following conditions:

¹ Thomas Pires, Clerk, recused himself from this matter due to a conflict.

- A. The Developer, through "Final Build Out", defined as the time when each of the sixty (60) lots in the Development have been deeded to a person or entity other than the Applicant, or its transferee, if applicable, and then the Homeowner's Association, shall be required to pump any basin that does not drain within seventy-two (72) hours from the beginning of the storm event.
 - B. The Developer shall provide into a reserve account, prior to Final Build Out, sufficient funds to cover the cost of one (1) additional pumping.
- 3. Section 4324
BOH Recommendation: We recommend that the waiver be approved as requested.
 - 4. Section 4325
BOH Recommendation: We recommend that the waiver be approved as requested.
 - 5. Section 4326
BOH Recommendation: We recommend that the waiver be approved with the following condition:
 - A. Prior to the preparation of the final engineered plans, the Developer shall perform two (2) additional test pits in each of the infiltration basins and in the overflow basins to confirm the soil types and the seasonal high groundwater elevation. The tests shall be witnessed by a representative of the Dighton Board of Health.
 - 6. Section 4327
BOH Recommendation: We recommend that the waiver be approved as requested.

II. Stormwater-By-Law

- 1. Section 4
BOH Recommendation: We recommend that the waiver be approved with the following condition:
 - A. The waiver is granted only for those provisions of the Stormwater By-Law that relate to document submissions and reviews of those documents only, but not with regards to those provisions of the Stormwater By-Law that relate to inspections or enforcement of the By-Law. The Board of Health, or its designee, specifically retains jurisdiction over all inspections and enforcement provisions of the Stormwater By-Law.
- 2. Section 7

BOH Recommendation: We recommend that the waiver be approved as requested.

3. Section 7(I)

BOH Recommendation: We recommend that the waiver be approved as requested.

4. Section 10

BOH Recommendation: We recommend that the waiver be approved as requested.

5. Section 15

BOH Recommendation: We recommend that the waiver be approved as requested.

6. Section 16

BOH Recommendation: We recommend that the waiver be approved as requested.

III. Percolation Test Regulations

1. Percolation Rate (Section 3(a)(1)) (only for lots 23-33, 36, and 55-60 as shown on the site layout sheet of the preliminary plan entitled "Lot Layout Sheet Comprehensive Permit Plan 'Stoney Ridge Estates' in Dighton, Massachusetts by Outback Engineering, Incorporated, 165 East Grove Street, Middleborough, MA 02346 dated 7/2/07 revised through 3/1/10, sheet 3 of 6").

BOH Recommendation: We recommend that a waiver be granted with the following conditions:

- A. The percolation rate is to be changed from one (1) inch in twenty (20) minutes to one (1) inch in thirty (30) minutes for the specific lots identified in the waiver request, only. All other lots shall be required to comply with the one (1) inch in twenty (20) minute rate required by the Regulation, and no waiver is granted. For all lots in which this waiver is granted, the Developer shall undertake all reasonable efforts to meet the one (1) inch in twenty (20) minute rate.
- B. Should any of the specific lots identified above not achieve a percolation rate of one (1) inch in thirty (30) minutes, data on the actual percolation rate for that lot shall continue to be collected until the actual percolation rate for the lot is determined, although the lot will be considered to have "failed" to meet the percolation test requirements. Notwithstanding, the Developer shall be entitled to return to the Board of Health and ask for a specific waiver on a per lot basis with regards to those "failed" lots, and present the actual percolation rate for the lot along with a plan showing a septic system design to accommodate the actual percolation rate. It is understood

that the Board of Health's approval of such a waiver is not guaranteed, but will not be unreasonably withheld.

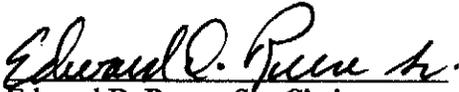
- C. The Developer shall be required to pay the following fees with regards to all percolation tests conducted on the property:
1. A fee payment of \$200.00 per lot which will cover the cost of inspection of two (2) holes and two (2) test pits for purposes of establishing a percolation rate of no greater than one (1) inch in twenty (20) minutes.
 2. A fee payment of \$75.00 for each additional hole and/or test pit which must be dug on the property.
 3. A payment of \$75.00 per hour, or any fractional portion thereto, for any lot in which a percolation rate of greater than one (1) inch in twenty (20) minutes is established. The actual payment is to be determined based on the final percolation rate established for the lot.

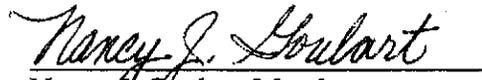
2. Percolation Rate Tester (Section 3(b))

BOH Recommendation: We recommend that the waiver be approved as requested and that a registered soil evaluator be allowed to conduct percolation tests for all lots in the development.

Again, thank you for the opportunity to issue the above recommendations on the waiver requests. We appreciate the work that you are doing in reviewing this comprehensive permit application.

So voted,


Edward D. Reese, Sr., Chairman


Nancy J. Goulart, Member

**TOWN OF DIGHTON BOARD OF HEALTH
DIGHTON, MA 02715**

Findings and Decision

Application for a Variance

Regulation governing Storm Water Detention/Retention Structures

Proceeding in accordance with Section 4320 of the Town of Dighton Subdivision Rules and
Regulations (Adopted January 17, 2007)

Petition of Stoney Ridge Estates

PROCEDURAL HISTORY:

On or about March 8, 2010, the Petitioner, Stoney Ridge Estates, LLC, filed an application for variance from the provisions of the Town of Dighton Board of Health Regulation governing Storm Water Detention/Retention Structures, as required by said Regulation and by Section 4320 of the Town of Dighton Subdivision Rules and Regulations. Specifically, the Petitioner sought the ability to construct an above-ground stormwater infiltration system in the proposed development, known as Stoney Ridge Estates. The Petitioner noted that the development is currently pending before the Zoning Board of Appeals for receipt of a comprehensive permit pursuant to M.G.L. c. 40B §§ 20-23. The Board of Health scheduled this matter for a public hearing on March 24, 2010 at 8:00 p.m. at the Town Hall in Dighton, MA.

The Board of Health caused notice of the requested variance to be published in the Taunton Daily Gazette and sent notice of the same via certified mail, return receipt requested to all abutters to the property. The public hearing was opened as scheduled on March 24, 2010. The voting members on the variance are Edward D. Reese, Sr., Chairman and Nancy J. Goulart, Member. Thomas J. Pires, Clerk recused himself from the proceedings due to a conflict.

On March 24, 2010, the Petitioner's case was presented by Paul Cusson, of Delphic Associates. Additionally, testimony on behalf of the petitioner was provided by Jason Youngquist, P.E. of Outback Engineering, Inc. The Petitioner relied on the same set of preliminary plans that were submitted to the Zoning Board of Appeals in connection with the application for the comprehensive permit. The plans are entitled "'Comprehensive Permit Plan 'Stoney Ridge Estates' in Dighton Massachusetts prepared by Outback Engineering, dated 7-02-07, revised 11-10-09, revised 12-08-09 and revised 03-01-10", consisting of 6 sheets. At the conclusion of the Petitioner's presentation, the Board received comments from several abutters who attended the hearing. A motion was made at the conclusion of the abutters' comments, seconded and voted unanimously, to close the public input portion of the public hearing, and to table the matter for a decision and to continue the matter to March 31, 2010. The matter was scheduled for 8:00 p.m. on March 31, 2010.

Prior to commencement of the public hearing, members of the Board of Health visited the proposed development with Mr. Youngquist and took pictures of the areas on the property where the infiltration basins are designed to be constructed, which were made a part of the record of the public hearing. The members of the Board of Health also reviewed and considered previous above-ground stormwater systems they had visited in the past in surrounding towns and the pictures from those systems were also made a part of the record of this public hearing. No testimony was taken during any site visits. All deliberations concerning the information obtained on a site visit were conducted during the course of the public hearing.

In addition to the written information and testimony presented by the Petitioner, the Board of Health received written information and testimony from Peter J. Williams, P.E. of Vine Associates, Inc., a consultant to the Town of Dighton who had reviewed the proposed stormwater infiltration system for the development. Also, on March 29, 2010, the Board of Health received a petition from several abutters against issuance of the variance. The Board of Health reviewed the petition and discussed it during the continued hearing on March 31, 2010. The Board took all of the written information and testimony it received into the record and during the public hearing into consideration in issuing this decision.

On March 31, 2010, the continued hearing was held as scheduled. The Board reviewed the additional information it had received into the record since the March 24, 2010 public hearing, heard further testimony from Mr. Cusson and Mr. Youngquist on behalf of the Petitioner and proceeded to deliberate on all of the information it had received in the record and during the public hearing and on potential conditions it was considering attaching to any grant of the variance. At the conclusion of deliberations of each potential condition, a Motion was made by Ms. Goulart, seconded by Mr. Reese, who stepped down as Chairman to second the Motion, and voted on unanimously in favor of granting the condition. At the conclusion of deliberations on all of the conditions, a Motion was made by Ms. Goulart, seconded by Mr. Reese, who stepped down as Chairman to second the Motion, and voted on unanimously in favor of granting the requested variance with the conditions listed herein.

PUBLIC HEARING PRESENTATION AND DECISION:

The Petitioner, through its engineer, advised the Board that it is proposing to construct two (2) above-ground stormwater infiltration basins for the Project which are designed to collect the stormwater from the development through a series of catch basins which will direct the stormwater into the basins whereupon it will be recharged into the ground as well as slowly released into the Town drainage system located in Pine Street (hereinafter "Stormwater Management System"). The Petitioner also advised that as part of the construction of the Stormwater Management System it has agreed to make repairs to an existing catch basin and to resize existing pipes within the Pine Street drainage system the development will be discharging to. The basins are designed for the 100-year storm event (7" of rain in 24 hours) and will be empty no more than 72 hours after the start of a storm event. The Petitioner committed to the basins draining within 72 hours after the start of a storm event, and agreed to pump the basins and haul the water offsite should this not occur.

The Petitioner advised the Board that the proposal provides for a five foot (5') high chain link fencing to be located entirely around the basins.

The Petitioner's engineer advised the Board that the basins, even if full for 72 hours will not be a breeding site for mosquitoes as mosquito eggs need to be in stagnant, standing water for at least 7 days to hatch, and the basins will be dry in no more than 72 hours after the conclusion of a rain storm. Moreover, the Petitioner's engineer advised the Board, and Mr. Williams, the Town's consulting engineer, concurred that below ground systems provide a better breeding site for mosquitoes than above-ground systems as they are more protected from the sun, wind and predators than above-ground systems, and, if they are not draining properly, it is harder to determine and correct than it would be for an above-ground system not draining properly.

The Petitioner also advised the Board that it will create and abide by an operation and maintenance plan for the cleaning, sediment control, and maintenance of the Stormwater Management System during construction, during build-out and after the project is built. The operation and maintenance plan is part of the comprehensive permit conditions proposed to the Zoning Board of Appeals, although a draft plan was submitted to the Board during the March 31, 2010 public hearing.

The Petitioner provide the Board with documentation showing that requiring it to install an underground system would cost at least \$2,600,000.00 - \$2,900,000.00 and would make the project "uneconomic" as that term is defined by the affordable housing law and the regulations promulgated thereto. In fact, it would result in a negative profit margin of approximately negative 6.79%. Moreover, an underground system would have the same drainage time, infiltration rate and storage capacity as an above ground system, however, due to it being underground, it would require a larger footprint, which would decrease the buffer zones adjacent to abutting property, that are currently designed for the proposed above-ground basins. It would also be harder to inspect an underground system regularly and it is more costly to fix an underground system.

The Petitioner advised the Board that it intends to construct the proposed infiltration basin and associated components on proposed Drain Lot 2 prior to undertaking any construction of houses in Phase I, and will construct the proposed infiltration basin and associated components on proposed Drain Lot 1 completely prior to the construction of any houses in Phase IV. The Petitioner explained that the Drain Lot 2 basin is designed to address the stormwater fully associated with the houses to be constructed in Phases I, II and III, while the Drain Lot 1 basin is designed to address the stormwater fully associated with the houses to be constructed in Phases IV and V. The Petitioner explained that should any issues with the Stormwater Management System occur, they should be known prior to completing construction of the development, and the Town will be able to hold up further construction until the issues are fully and completely addressed. Moreover, the Petitioner and then the Homeowner's Association will contribute to and maintain a capital reserve account and financial security account to address all financial expenses associated with repairing, replacing and maintaining the Stormwater Management System. Additionally, the Petitioner agreed to be responsible for the maintenance, care, upkeep, and all costs associated with the Stormwater Management System until the development is completed.

The Petitioner indicated that, as designed, the Stormwater Management System will likely decrease the issues caused by the stormwater currently leaving the site, but at the least will not increase this amount or result in any increased flow off the site. Not only is this required by DEP Stormwater Guidelines, but the Petitioner noted that the Town's peer reviewing engineer, Vine Associates, confirms that this will be the case. The Petitioner also advised the Board that the Stormwater Management System was overdesigned in that it was not decreased from the original proposal submitted for the development to construct seventy houses in the development, although the current proposal is only to construct sixty (60) houses.

The Board took into consideration the research it conducted with regards to visiting other above-ground stormwater infiltration systems similar to the proposed system, and the purpose and designs of infiltration systems, which are intended to recharge groundwater in accordance with

DEP preferences for the treatment of stormwater. The Board has set forth the definitions of Infiltration Basins, Detention Basins and Retention Basins in this decision, and specifically notes that this variance is only being conditionally granted for the construction of above-ground Infiltration Basins.

Finally, the Board reviewed the comprehensive permit conditions proposed to the Zoning Board of Appeals which are relevant to the Stormwater Management System and took them into account in issuing this decision.

Definitions

1. **Infiltration Basin:** An infiltration basin is a stormwater management facility designed to direct all or part of the stormwater into the soil. Infiltration is the process by which runoff percolates through the unsaturated over-burdened and fractured bedrock to the water table. Infiltration does not include incidental wetting of soil in ditches, detention basins or the equivalent; wetting of under drained basins, dry swales, or similar filtration systems; or wetting of buffers meeting the town's requirements for use as stormwater control.

Discharge of runoff to areas of the site where the water will collect and percolate into the ground is considered infiltration if the volume, rate, or quality of the discharge exceeds the runoff capacity of the area. Under drained swales, under drained ponds, and similar practices that discharge to surface waters or to buffer strips meeting the town's requirements for stormwater buffers are not considered infiltration systems, although these may be used to treat runoff prior to discharge to an infiltration area.

2. **Detention Basin:** A detention basin is a stormwater management facility installed on, or adjacent to, tributaries of rivers, streams, lakes or bays that is designed to protect against flooding and, in some cases, downstream erosion by storing water for a limited period of a time. These basins are also called "dry ponds", "holding ponds" or "dry detention basins" if no permanent pool of water exists. Some detention ponds are also "wet ponds" in that they are designed to permanently retain some volume of water at all times. In its basic form a detention basin is used to manage water quantity while having a limited effectiveness in protecting water quality, unless it includes a permanent pool feature
3. **Retention Basin:** A retention basin is a type of best management practice (BMP) that is used to manage stormwater runoff to prevent flooding and downstream erosion, and improve water quality in an adjacent river, stream, lake or bay. Sometimes called a wet pond or wet detention basin, it is essentially an artificial lake with vegetation around the perimeter, and includes a permanent pool of water in its design.

It is distinguished from a detention basin, sometimes called a dry pond, which temporarily stores water after a storm, but eventually empties out at a controlled rate to a downstream water body. It also differs from an infiltration basin which is designed to direct stormwater to groundwater through permeable soils.

Wet ponds are frequently used for water quality improvement, groundwater recharge, flood protection, aesthetic improvement or any combination of these. Sometimes they act

as a replacement for the natural absorption of a forest or other natural process that was lost when an area is developed. As such, these structures are designed to blend into neighborhoods and viewed as an amenity.

Standard of Review:

Under the provisions of the Town Regulation relevant to Storm Water Detention/Retention Structures, a variance may be granted by the Board of Health, after a hearing, upon the applicant proving that:

“...construction of an open or aboveground [infiltration] structure will be appropriately fenced and/or restricted, and maintained, and will for all anticipated storm events drain in such a way as to not have a significant adverse effect on the health, safety, and fiscal needs of the Town of Dighton.”

Moreover, the Regulation requires the Board of Health to consider the following in granting a variance from its provisions:

“... if strict interpretation of this regulation would do manifest injustice to the applicant; however the applicant must demonstrate the same degree of health, safety and environmental protection required by this regulation can be achieved by other means associated with the proposed aboveground storm water [infiltration] structure.”

Findings:

The Board finds that:

1. The Petitioner addressed all of the requirements of the regulation necessary for a variance, as the Petitioner is willing to fence the basins, and to pump them if they fail to drain within their anticipated 72 hour timeframe, so as to avoid any issues with mosquitoes or standing water. Additionally, the Petitioner is committed to being responsible for the maintenance, care, upkeep and all costs of the stormwater management system until the project is completed, and thereafter the Homeowner's Association will be responsible. To that end, the Petitioner has agreed that a capital reserve account and financial security account will be created and maintained by the Petitioner and then the Homeowner's Association for the repair, replacement and maintenance of the system. Thus, the aboveground system will not to have a significant adverse effect on the health, safety or fiscal needs of the Town of Dighton.
2. With the conditions set forth in this decision, a variance is appropriate, as strict interpretation of the Stormwater Detention/Retention Structures regulation would result in manifest injustice to the applicant, in light of the resulting negative profit margin to the project if the stormwater system is required to be constructed below ground, and the Petitioner has demonstrated the same degree of health, safety and environmental protection required by the regulation can be achieved with an aboveground system.

Decision and Conditions:

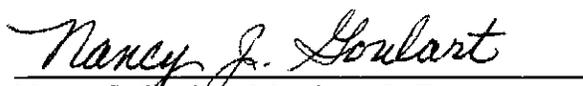
The petition is granted subject to the following conditions:

1. Both the initial and secondary basins shall be entirely fenced in with a five foot (5') high chain link fence.
2. The Petitioner, through "Final Build Out", defined as the time when each of the sixty (60) lots in the Development have been deeded to a person or entity other than the Applicant, or its transferee, if applicable, and then the Homeowner's Association, shall be required to pump any basin that does not drain within seventy-two (72) hours from the beginning of the storm event. The Petitioner shall also provide into a reserve account, prior to Final Build Out, sufficient funds to cover the cost of one (1) additional pumping.
3. The Petitioner shall retain ownership and be responsible for the care, upkeep, maintenance and all costs associated with the entire Stormwater Management System until Final Build Out.
4. The Town of Dighton shall be held harmless, and the Developer, until Final Build Out, and then the Homeowner's Association, shall be held liable if any part of the Stormwater Management System should ever fail.
5. This variance is subject to the Petitioner receiving a comprehensive permit from the Zoning Board of Appeals for the construction of no more than sixty (60) houses, and the Petitioner shall be required to abide by all conditions of any comprehensive permit so issued to the Petitioner by the Zoning Board of Appeals, particularly those relating to the Stormwater Management System. The Board of Health, or its designee, as well as the Zoning Board of Appeals shall have the authority to inspect and enforce those conditions of the comprehensive permit relating to the Stormwater Management System.

Wherefore, the Board of Health has voted unanimously to grant the variance as requested with the conditions set forth above and based on the findings of the Board of Health as recorded in this decision.

Dated this 7th day of April, 2010 by the Town of Dighton Board of Health.


Edward D. Reese, Sr., Chairman - In Favor


Nancy J. Goulart, Member - In Favor

2010 APR -8 PM 4: 18
RECEIVED
TOWN CLERK
DIGHTON, MA
BY