

NEW JERSEY SITE IMPROVEMENT ADVISORY BOARD

Meeting Minutes of April 19, 2012

LOCATION

Conference Room 129
Department of Community Affairs
101 South Broad Street
Trenton, New Jersey

ATTENDANCE

Board Members:

Joseph E. Doyle, Chair
Joseph A. Femia
J. Timothy Kernan
Phyllis L. Marchand
Richard M. Maser
Elizabeth C. McKenzie
Thomas J. Olenik
Edward M. Smith

DCA Staff:

Amy Fenwick Frank
John Lago
Michael Whalen

Guests:

Edward Frankel	New Jersey Department of Environmental
Sandra Blick	Protection
John Showler	Department of Agriculture, Soil Conservation
Elizabeth George-Chenigra	NJ Builders Association
Greg Perry	Morris County Planning Board

CALL TO ORDER

Joseph Doyle, Chair of the Site Improvement Advisory Board, called the meeting to order at 9:48 a.m. Chairman Doyle noted that he is sitting in place of, but not taking the place of, former Chairman Bob Kirkpatrick. He said that it is an honor to serve in this role and mentioned the progress made. The Board is now refining the process that was

begun. He expressed the hope that the Board would be able to hold up this standard of excellence.

ROLL CALL

In lieu of a roll call, the Chairman invited the members to introduce themselves. Attendance was duly noted for the record.

OPEN PUBLIC MEETINGS ACT

Chairman Doyle announced that, in accordance with the Open Public Meetings Act (P.L. 1975, chapter 231), notice of the time, date, and place of this meeting was given to the Secretary of State of New Jersey, The Star-Ledger of Newark, The Asbury Park Press, The Press of Atlantic City, and The Courier-Post of Camden.

APPOINTMENT OF CHAIRMAN

Chairman Doyle noted that, at the June, 2011 meeting, he had been appointed Interim Chair of the Board. Mr. Maser made a motion, which was seconded by Ms. McKenzie, that Mr. Doyle should be appointed Chairman. The motion carried unanimously.

APPROVAL OF MINUTES

Chairman Doyle asked whether there were any corrections to the minutes of the June 16, 2011 meeting. There were none. A motion to approve the minutes was made by Mr. Maser and seconded by Mr. Doyle. All were in favor with the exception of Mr. Kernan, Ms. McKenzie and Ms. Marchand who abstained.

OLD BUSINESS

A. Amendments to New Jersey Department of Environmental Protection (DEP) Flood Hazard Area Control Act Rules, Stormwater Management Rules and Stormwater Best Management Practices (BMP) Manual

Chairman Doyle noted that draft revisions to the DEP rules have been shared with the Board via e-mail. He asked John Lago to give a brief overview. John introduced Ed Frankel and Sandra Blick of the DEP and described the stakeholder process that DEP has established for revision of the flood hazard control and stormwater management rules. The stormwater rules are tied closely to Subchapter 7 of the RSIS. The Board will remain involved and will follow this revision process closely.

Ed Frankel stated that DEP staff are in the process of revising the stormwater rules. They are piggybacking the flood hazard rules on some of the changes that need to be completed quickly and eliminating some discrepancies between the two sets of rules. At this point, they are dealing with only a small portion of the stormwater rules—the portion that overlaps the flood hazard rules. He noted that the rulemaking process is very time consuming. The balance of the issues in the stormwater management rules will be addressed in a separate rulemaking. These issues will take more discussion.

They, too, will involve a stakeholder process to gain consensus on the changes. He then introduced Sandra Blick to discuss the details of the stormwater rules. In the first rulemaking, the largest issue is the shift on the 300 ft. buffer. There currently are two, separate buffers: the special water resources protection area and the riparian zone. They are very similar, but have different criteria. It has been agreed that this creates confusion. As a result, DEP is proposing to eliminate the special water resources protection area section of the rules and to have a single set of criteria to be included in the flood hazard rules. Additionally, the stormwater rules will be changing from impervious surfaces to vehicular surfaces to address pollutant loading. With regard to stormwater quantity, the amendments will include clarifying the requirements for reducing peak flows off the site and streamlining the manufactured treatment device review and approval process.

Adoption of the first rule proposal is anticipated next spring/summer. The stormwater rules are set to expire in August, 2014. The larger rulemaking will need to be completed prior to that date. Ms. Blick also spoke to staff changes at DEP. It was announced that Mr. Frankel will be retiring in June. There is a new Assistant Director and new Assistant Commissioner, Michele Siekerka.

Chairman Doyle asked for clarification on the timetable and said that the Board would want to scrutinize the changes and participate in the process going forward. Val Hrabal will continue to serve as Chair of the Stormwater Committee; Chairman Doyle also will attend stakeholder meetings at DEP and said other Board members may be asked to attend these meetings if he is unable to do so. He thanked DEP staff for coming and wished Mr. Frankel well on his retirement.

Mr. Frankel noted that there is a laundry list of issues that DEP is looking at for the larger rulemaking. He asked that everyone keep in mind or list items that absolutely must be addressed. Priorities have not yet been set.

Dr. Olenik asked for clarification on what Ms. Blick said about the review of the effectiveness of water quality measures that would be undertaken. Ms. Blick said that they would be reviewing the programs and how they work. DEP will be looking at the programs as a whole and the rules as a part of that. Mr. Frankel pointed out that some rules, such as the NJPDES rules, are on the enforcement side. A separate group within the Department will be examining the stormwater regulatory and programmatic responsibilities. Dr. Olenik said that his question is more basic. He is asking whether anyone really knows whether the required stormwater quality measures work. Will there be sampling conducting to determine whether these systems work with regard to water quality? Ms. Blick noted that, for the gravel wetlands serving Barnegat Bay, DEP will be conducting sampling on these systems and looking at the different designs and how they impact removal rates. This effort will be starting this fall or next summer, depending on completion of construction of the gravel wetlands. The bioretention systems have not yet been sampled. Dr. Olenik stated that there are lots of private systems out there and there is no proof that they're working. Separate from the question of maintenance is the question of whether they are working. Mr. Frankel

replied that he does not know; for the manufactured treatment devices, they will be ironing out the problems with the process and retesting. With regard to other water quality measures, theoretically, they all function; they are tested using a uniform distribution of particle size in a strictly controlled laboratory situation. Clearly, these systems won't work as well in the real world. Dr. Olenik asked why, with so many systems out there, DEP wouldn't want to know whether they work. Ms. Blick made reference to the 319 program and monitoring of BMP effectiveness undertaken through this program. Some of the BMP's work and they are evaluating some that are not functioning. It appears that those not functioning were not designed in accordance with the Manual. She offered to request this information and pass it along to the Board. Mr. Frankel added that maintenance is critical. Infiltration basins should work if installed properly and maintained. Dr. Olenik reiterated that DEP is establishing engineering criteria without supporting data indicating that these measures work. It is essential to have data. Mr. Frankel pointed to the lack of resources for testing. Dr. Olenik pointed out that is it also a resource issue if these systems are designed and installed and don't work. Chairman Doyle indicated that these questions will continue to be raised as the process goes forward. Mr. Kernan added that the Pinelands Commission does some testing and has had some studies done and may be able to supply some information.

Mr. Kernan asked for clarification of the timetable for the flood hazard rules. Ms. Blick responded that the draft has not yet been distributed to the stakeholder committee. When she estimated an adoption date sometime next spring or summer, she was referring only to the smaller package of amendments to the stormwater management rules.

Ms. McKenzie asked about monitoring and testing of stormwater management measures. She suggested that DEP conduct spot field tests to determine whether the goals of the rules are being accomplished. If requirements are being imposed, these requirements carry with them development costs and land use impacts. This would indicate that it would be important to know that they are working. Ms. Blick offered to pass these concerns and recommendations forward.

Chairman Doyle offered to resend concerns previously raised by the Board with regard to the efficacy of some of the stormwater measures.

B. Street Width and Fire Department Vehicle Access

Ms. Frank reported on a meeting of the Fire Codes Advisory Council held in December and attended by Chairman Doyle. At that meeting, the members of the Council were asked to submit any documentation they may have with regard to difficulties in navigating streets designed to meet the RSIS. To date, nothing was sent. Ms. McKenzie said that this is a problem in many municipalities. She suggested that the Board members could sit down with representatives of the Fire Codes Advisory Council on this issue and be proactive. Chairman Doyle reiterated that, both when the Acting Director of the Division of Fire Safety attended the June meeting of the Board and when he attended the December meeting of the Council, the representatives of the fire service were welcomed and encouraged to bring their concerns and supporting

documentation to the Board. Ms. McKenzie supports holding a special meeting with representatives of the fire service to resolve this issue. She suggested that the Board consider a policy statement or a clarification on street widths so towns have some defense in dealing with the fire service's requests. Both the RSIS and the Uniform Fire Code must be reviewed.

C. Incorporation of Low-Impact Development Standards into the RSIS

Mr. Lago suggested that this topic be addressed by asking the committees to make suggestions of low-impact design standards to be incorporated into the RSIS. Chairman Doyle noted that water supply and sanitary sewers are discussed in Rutgers Professor David Listokin's study. 1985 standards are applied today without challenges or problems. Mr. Lago pointed out that the sizing standards in use are based on demographic trends from the 1980's. Household sizes are now smaller. However, we have not gotten any serious questions about water supply. Dr. Olenik responded that this is worth revisiting. He noted that, while there is no harm in examining the questions, the eight inch standard is here to stay. He added that the Board would need to look at the requirements imposed by DEP, too. Mr. Lago observed that the RSIS has proven to be sufficiently flexible and does not seem to restrict certain kinds of designs.

NEW BUSINESS

A. Proposed Changes to the RSIS for 2012 – Updating the Referenced Standards

Ms. Frank introduced the topic and made reference to Mr. Lago's memo to the Board included in the meeting packets. Mr. Lago noted that the memo is intended as a start. Chairman Doyle emphasized the importance of knowing whether the content has changed. The Board must be clear on what is referenced. Mr. Lago reported that we have not been getting questions on the referenced, technical standards. The reason for having a referenced standard is to ensure that there is consistency in the use of products or methods that meet a standard. Chairman Doyle added that the Board needs to know about changes and adopt updated standards. Ms. McKenzie asked whether staff could identify substantive changes. Mr. Lago responded that some of these standards have changed multiple times since the last version adopted by reference. Perhaps the Board should assume that the latest version is consistent with the intent and purposes of the Act until or unless information to the contrary is presented. Chairman Doyle suggested referencing the latest publications. Mr. Kernan added that, in practice, engineers have used the updated standards.

It was agreed that the referenced standards should be updated. Staff is to draft a rule proposal for the Board's consideration.

INFORMATION

A. Soil Compaction Rule Proposal – Department of Agriculture

Chairman Doyle invited John Lago to address this topic. Mr. Lago noted that the Department of Agriculture, too, has undertaken a stakeholder process to review and revise the rules and to write the new soil compaction standards. Val Hrabal has participated. He introduced John Showler of the Department of Agriculture who then reviewed the proposed amendments. The erosion control standards (N.J.A.C. 2:90) must go through the rulemaking process. The Department had undertaken a routine review, including correcting errata, rewriting sections to make the requirements clearer and easier to implement and expanding choices for designers in terms of run-off management.

Legislation passed revising the statute to require standards to address soil compaction on construction sites. As originally proposed, the changes to the statute were extremely prescriptive. The Department of Agriculture worked with the Legislature to incorporate more flexible language. The Department also worked with Stephanie Murphy, a soil scientist from Rutgers and NRCS. There was an attempt to incorporate soil compaction into the existing standards by adding a requirement for computing, based on organic matter content in soil, what would need to be added to achieve a specified level. There was also discussion of what areas should be exempt, for example the area within 10 ft of a foundation or underneath paved surfaces.

Mr. Showler explained that a 16 gauge survey wire is to be inserted into subsoil in several locations on the property. If the wire does not bend, then there probably are not conditions that would cause infiltration problems. A table of bulk densities for different types of soil also is presented. If it is determined that compaction must be addressed, then the developer must have a six inch lift of topsoil. Assuming that the organic content has been brought up to spec, equipment is used to rake the soil. This involves going six inches down plus the six inches of top soil added for a total of 12 inches to be mixed in one pass. This will be difficult to do on construction sites. One district did a cost calculation. The New Jersey Builders Association (NJBA) also did a calculation. The Department of Agriculture did its own calculation. It is estimated that the cost will be \$15,000 to \$16,000 per acre. According to researchers at the University of Nebraska, if the property is not maintained, in three to five years, it will be back to the pre-intervention density level.

Ms. McKenzie asked whether these standards apply to all land or only to land previously developed. Mr. Showler responded that the program only deals with new construction, but it does not matter whether it was a previously developed site. Ms. McKenzie expressed concern with applying this standard uniformly. She noted that there is a need to test for compaction to support buildings and parking areas. Mr. Showler explained that the proposed rules look at how the site is proposed to be developed. Open space, in the eyes of the revised statute, is a potential area for additional infiltration. The statute calls for the soil to allow for infiltration. The requirements would apply only to land that is being disturbed for development/redevelopment.

Ms. McKenzie asked whether the interrelationship between these requirements and the requirement to remediate contaminated sites had been taken into consideration. Mr. Showler replied that such sites would be exempt. For example, sites with landfill capping would not be subject to these rules.

Dr. Olenik expressed concern that the cost imposed for something that will work for three to five years makes no sense. He asked why the Department is proposing these rules. Mr. Showler replied that the statute (Soil Erosion and Sediment Control Act NJSA 4:24-39) requires it. He went on to say that the Department obtained input from academia, environmentalists, etc. They don't know how well this will work once it is implemented. Questions have been raised as to the extent to which this is actually a problem and the extent to which the proposed requirements will fix the problem. It will be difficult for staff to do a cost/benefit analysis for this rule. And it is only effective for small storm events.

Mr. Lago asked about the timetable for publication of the proposed rule. He also noted that the Ocean County soil district manager who served on the stakeholder committee described the problem as one where owners were left with ground as hard as concrete; no infiltration would take place, fertilizer would run off, etc. Mr. Showler responded that quite a few credibility issues and questions had been raised with regard to the study conducted. A Lincoln, Nebraska laboratory reviewed the study results and noted that the lack of porosity could not be accounted for by compaction alone. There is some other factor at play. Mr. Showler added that the Department was asked to come up with different standards for the Pinelands, possibly not requiring seeding at all and letting nature take its course. The concerns leading to this rule were mostly generated by the Barnegat Bay, but the requirements will apply statewide. In response to Mr. Lago's question about the timetable, Mr. Showler said that legal staff in the Department is undertaking a review of the draft rules now. When this review is completed, the rule proposal will go to the Office of Administrative Law for publication in the *New Jersey Register*.

Ms. McKenzie observed that the specific problem described does not sound like something that requires a whole new set of regulations. Mr. Showler responded that experience in the field around the State indicates that the existing standards seem to be adequate if followed.

Chairman Doyle asked that a copy be sent to the Board before it goes to the *New Jersey Register*. Mr. Showler agreed to share the final version of the proposed rules. He will send a package of documents for the Board's consideration. There will be an opportunity for everyone to express their concerns through the public comment process. Ms. McKenzie suggested that the Board send a letter or start to react as soon as the proposal is received. She asked that the Board be kept in the loop.

B. Committee Membership

Chairman Doyle noted that the committee membership list is in the meeting packets and has been shared with the Board via e-mail. He invited Board members to bring any concerns or requests for reassignment to his attention.

C. P.L. 2011, c. 215 – Prohibits use of regulatory guidance documents except under certain circumstances

Copies of this newly-enacted law were distributed to the Board. It was noted that this impacts the DEP; under this law, guidance documents are not enforceable unless adopted as rules or technical manuals.

D. Travel Reimbursement

The forms for requesting reimbursement of travel costs were provided in the meeting packets.

PUBLIC COMMENTS

There were no members of the public wishing to address the Board.

BOARD MEMBER COMMENTS

There were no Board member comments.

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 11:55 a.m.

Respectfully submitted,

Amy Fenwick Frank
Secretary to the Board