

Maintenance Subcommittee Meeting Notes

April 8th, 2009

1:30pm-3:30pm

DelDOT Smyrna –Clayton Room

In attendance: Jennifer Volk (DNREC), Jessica Watson (SCD), Cheryl Gmuer (DNREC), Beth Krumrine (DNREC), Brooks Cahall (DNREC), Robert Enright (DNREC), Bob Linnett (Millville Planning and Zoning), Mike Harris (NCC Special Services), Rosalyn Sutherland (Weatherhill Farms HOA), Jamie Rutherford (DNREC), Elaine Webb (DNREC), Doug Seavey (JCM), Don Pogwist (McCrone), Tim DeScheppen (Town of Middletown), George Haggerty (NCC Land Use)

Meeting summary:

The Maintenance Subcommittee met on April 8th from 1:30 – 3:30 at the DelDOT Smyrna-Clayton Room.

After introductions, Beth Krumrine (DNREC) explained the difference between what we will incorporate into the regulations, versus what will be in the guidance document (what vs. how). Elaine Webb (DNREC) explained that the guidance document is now being referred to as the “technical document”, per legal’s recommendations.

Six maintenance-related topics were identified from comments for the group to discuss:

1. How will new property owners be informed of their maintenance responsibilities?
2. Possibility of a recorded instrument to document maintenance requirements that will come up during title searches
3. Potential burdens to owners to maintain maintenance records for five years
4. Frequency (annually or biannually) of maintenance inspections
5. Possibility of requiring a maintenance bond for original owners of BMP
6. Possibility of incorporating private inspectors to take the role of routine maintenance inspections

Topics 1, 2, and 5.

It was discussed that in the current draft regulations there are no turn over requirements and there is no bond for ensuring proper maintenance as in the original outline. This is just as much of a concern as how to inform property owners of their maintenance responsibilities. Bob Linnett (Millville Planning & Zoning; Sussex HOA) strongly supported the idea of a bond, and offered a technical resource for use (Community Association Guidance or CAI book out of Alexandria Virginia). He also stressed the importance of educational programs and technical resources available for homeowners associations on maintenance.

Mike Harris (NCC) described the turn over rules in New Castle County, where there is a title transfer at 75% and turn-over of maintenance responsibility at 90%. New Castle County also requires a bond for the stormwater facility. Mike Harris further described New Castle’s bond structure. There are bonds for homeowner’s associations, and bonds for businesses. These bonds set up to theoretically pay for capital investments over a 20-year period. The total cost calculation is done by the designer of the project. Special Services has a system to calculate fees for inspections over the 20 years. George Haggerty (NCC) described that, in general, bonds were about \$750-\$1000/lot, and about \$300/lot for the first two years of maintenance.

Action Item: Can the state require the county or delegated agency to collect bonds for maintenance? It was determined that there was no representatives present from legal or from the counties of Kent and Sussex. This issue would need to be brought up with those parties.

For those developments that were finalized prior to passing of the new regulations, are we going to be grandfathering those facilities? Jamie Rutherford (DNREC) said that we will need to address this issue. **Action Item:** Address this issue in the regulations.

Joe Farrel (University of DE) also suggested looking into the new legislation pertaining to homeowners associations and property management associations. He believes there may be relevance to this discussion. **Action Item:** Read further into this legislation.

It was repeatedly suggested to put maintenance responsibility language in deeds at initial recording of lots so new homeowners will be informed of responsibility at property transfer.

Bob Enright (DNREC) suggested that perhaps the tax ditch law could be reinvented to address stormwater (recorded in recorder of deeds followed by superior court order). This would enable homeowner associations to collect their own maintenance fees as a tax. Conceptually, this would be a “stormwater utility.” The committee agreed that this would resolve the problem, but that the idea is not politically backed fully at this point. New Castle County is currently the closest jurisdiction to achieving this goal; however, they are still not there. **Action Item:** It was determined that there was no representatives present from legal or from the counties of Kent and Sussex. This issue would need to be brought up with those parties.

Topic 3.

In regards to the requirement that maintenance records be kept for five years by the homeowner’s association, there was majority support to take this out of the draft regulations. Rosalyn Southerland (Weatherhill Farms, NC HOA) explained that this would be easy for her, but others in the committee felt that she was an out-of-the-ordinary example, as turnover in these organizations is high and most organizations do not have a representative like her who is willing to go to that effort. Additionally, Delegated Agencies already get copies of maintenance records so it was felt that this was duplication of efforts. **Action Item:** Proposed to remove this clause from draft regulations.

Topic 4.

The issue about delegated agencies performing maintenance inspections annually or biannually was brought up. NCC Special Services suggested that every other year was too much time between inspections. Others from the committee suggested having the homeowner’s association perform the every other year inspection. Kelly Wilson (KCD) said that this would take an extraordinary amount of tracking. Jamie Rutherford brought up the fact that New Castle County had a great program, called the Amnesty Program, where homeowner associations will do their owner inspections and NCC tracks it. In order to get financial assistance for the “non-routine” funding, the association must submit their inspections log. Kent or Sussex counties had no such program available.

Topic 6.

At one time, the committee discussed the possibility of incorporating private inspectors to take the role in routine maintenance inspections. Jared Adkins (KCD) believes that it is not currently addressed in the current regulations and nothing says that it can’t be done; therefore this is currently permitted as such. Beth Krumrine (DNREC) agreed and said that there are agencies that currently use other firms to do their inspections for them. The committee agreed that a training program to certify someone in stormwater maintenance, similar to the Certified Construction Reviewer program, would be good; however, adequate resources may not be available to run the training program at this time. As it stands, the owner is to perform “regular” inspections (see 7.2.2). What does “regular” mean? How often? It was suggested that the owner’s maintenance inspection frequency be set by BMP type in accordance with the O&M Plan. **Action Item:** Address how often these inspections should be made.

In closing, technical drafts will be available at the end of the summer. Committee will be contacted at a later date to determine when the next meeting will be held.