

Proposed Stormwater Ordinance Questions & Answers

General Q&A

1. **Q: Why are we doing this?** *A: The EPA and the state require municipalities to meet new stormwater standards. The Town is responsible for at least \$3.5 M in known capital projects that need to be completed in Shelburne the next 10 years. There are more projects and costs that are unknown at this time.*
2. **Q. Why this rate structure for a fee?** *A: This draft ordinance is based on an established structure used by South Burlington, Williston, Colchester, and Burlington and the majority of stormwater utilities across the country. A fee structure must have a nexus to what it is being charged for, otherwise, the fee can be overturned in court. For example, if a municipality were to propose to charge for stormwater based on the amount of drinking water used on the property it would be susceptible to legal challenge; There isn't a strong enough relationship between the amount of drinking water used on a property and the stormwater it generates to justify a fee on this basis. What is proposed in Shelburne's draft ordinance is the creation of a stormwater fee based on the amount of impervious surface on the property. There is a direct relationship between the amount of impervious surface on a property and the amount of stormwater runoff that is generated and must be managed.*
3. **Q: How would we staff/administer the stormwater fees?** *A: We would continue to partner with the City of South Burlington and create a new module in our current utility software database. We expect there will be extra work setting up the system and responding to questions the first year – the cost of most of this is covered by the Ecosystem Restoration Grant the town received.*
4. **Q: Why is there a flat fee for residential?** *A: One of the main reasons for charging Single Family Residential (SFR) properties a flat rate is to reduce the administrative costs associated with the stormwater billing program. There are currently 2,042 SFR properties in Shelburne. Evaluating each individual SFR property based on its measured impervious surface, whether as a total amount or percent of coverage, would require a significant amount of work to set up (staff estimated it would take a minimum of seven months for one person working 40 hours a week to review all properties) and maintain. It would also require staff to track slight changes in impervious surface on these individual properties and adjust invoices for each property in Town on a constant basis. This has not been done in Vermont. The administrative cost of such an effort is unknown at this time and would require substantial research. Two Vermont towns, Williston and Colchester, created a two-tier system for SFR property billing. Williston quickly abandoned their second tier because the administrative burden of calculating the exact percentages of impervious surfaces became too burdensome. They also experienced issues related to shared driveways in easements. This caused the property containing the driveway in an easement to pay the large fee even though the impervious surface it was being billed for benefitted the adjacent property. Ultimately, they determined that the effort was not worth the small amount of additional revenue or feeling of equity that the system provided. After one billing cycle, Colchester's second tier, which charges a flat fee of 10 ERUs for properties with more than one acre of impervious surface area, is still in place. A second tier similar to Colchester's could be created in Shelburne, if desired.*
5. **Q: Are there credits for stormwater management practices already in place?** *A: Stormwater credits would be available to non-single family residential properties to incentivize stormwater*

best practices. A credit is an ongoing reduction in the stormwater fee for activities or practices that can reduce the impacts of stormwater runoff discharged into the public stormwater system. The rationale behind stormwater fee credits is to encourage property owners to reduce both their dependency on, and contribution to, the public stormwater system. Credits would be available for up to 70% of the total stormwater fee for non-single family residential properties that qualify. A draft credit manual was created as a companion document to the draft ordinance.

6. **Q: Is this another tax?** *A: It is a service fee, not a tax, and must have a rational relationship to water quality: Like a water or sewer bill, it is a fee for a municipal service. With town water, you turn on the tap and are charged for the costs of providing the water, including the costs of operation and maintenance of the water system. Impervious surface area on property is similar in that its existence creates runoff that costs the Town money to manage. A rate structure must have some nexus to water quality and to the costs of operation and maintenance of the public stormwater system to withstand legal challenges.*
7. **Q: What does the fee pay for?** *A: It's a proposed monthly fee for every property in Shelburne that would pay for stormwater management programs such as maintaining storm drains, culverts, ditches, and swales and infrastructure investments such as constructing or retrofitting retention ponds, bio retention areas, and other stormwater management best practices.*
8. **Q: Why are gravel driveways considered impervious surface?** *A: For all practical purposes, these are indeed virtually as impervious as pavement. The State of Vermont considers gravel and dirt driveways and roads as impervious surfaces.*
9. **Q: Who would set the rate?** *A: The Selectboard would set the rate after reviewing a proposed stormwater budget. A rate could reflect the total costs for the year, or be phased in to cover costs over a few years to ease the initial impact on rate payers.*
10. **Q: What would happen if the Selectboard voted against forming a stormwater utility?** *A: Shelburne has not been budgeting for the full amount needed to pay for stormwater obligations. If the full costs are built into the tax rate, Janda estimates this could potentially add two cents to the tax rate just for stormwater management.*

Answers to Jerry Storey's Specific Questions (9/7/18):

11. It is the administration of the proposed Ordinance which most interests me. My first question is two-part: what are the expected administrative impacts on existing staff?

Initially, staff will work to set up the billing system in the Town's current billing software, NEMRC. We have estimated that this will not take more than 30 hours of Finance Department staff time over six months. In addition, parcel data will be reviewed for accuracy. This work will be handled by S. Burlington, and those costs are covered by the Ecosystem Restoration grant. Chris Robinson will work on developing the stormwater budget, projecting costs over multiple years, and formulating a rate proposal for the Selectboard to consider. Ann Janda will continue overseeing all the tasks in the project and grant administration, including additional information generation and outreach prior to the first bills. Additionally all staff mentioned will attend necessary meetings.

After the first bills go out, we expect dozens of calls. We have money in the grant to have a consultant available in-house to help respond to calls. S. Burlington will assist with onsite reviews of commercial properties.

It is expected that stormwater billing will be added to the current routine of water and sewer billing.

and, what experience is anticipated with enforcement?

Enforcement regarding violations of the stormwater ordinance will be similar to how enforcement is handled now with the current stormwater ordinance.

Enforcement regarding delinquent payments will be handled in a similar manner as delinquent water and sewer payments.

12. I would like to see a first-fee-year projection of wastewater and finance staffing and distribution of work compared to the current. I.e., what are the changes in job description(s)?

We expect that our partnership with S. Burlington will take care of our stormwater needs for additional staffing and there are no new job descriptions currently contemplated in the first-fee-year. Once the fee system is up and running, staff needs can be reassessed.

what are forecast to be claims on department head time?

We have estimated approximately 30 hours of Peter's time over six months of set up. Anticipating that the finance department will utilize consultant time, we expect minimal additional impact in the first-fee-year.

We have estimated 60 hours of Chris Robinson's time in the first-fee-year.

is any additional staffing contemplated?

We expect that our partnership with S. Burlington will take care of our stormwater needs for additional staffing and there are no new job descriptions currently contemplated in the first-fee-year.

13. I would like to know estimates of first-year billing and collection costs, including procurement of hard- and software, training and system set-up, and the percentage of these of projected fees in the first and fifth years.

First year billing and collection costs do not require procurement of hardware, software, or training. The existing billing software we use for water/sewer billings is capable of billing stormwater charges also. Users will get one bill that includes water, sewer and stormwater charges. They do include setting up a billing system in NEMRC, which we already use, and that cost is estimated to be no more than \$6,000, and is covered by the grant. Parcel data will be reviewed for accuracy by S. Burlington. This and other associated tasks is estimated to cost \$8,000 and are covered by the grant. There is no anticipated cost percentage for billing and collection costs in the first or fifth year. A postcard will be sent to all property owners prior to the first billing, and this cost is covered by the grant.

14. I would like, also, to see experiential data or anecdote regarding enforcement. What is projected to be the rate and number of appeals and how do these figure in projected overall first-year costs of administering the proposed Ordinance?

Here are the experiences of other Towns:

South Burlington: has only had one appeal, which came from the airport. South Burlington prevailed and there have been no further appeals.

Williston: A fairly small number of actual written appeals. Less than 10 over the years. We have had a much larger number of general complaints/challenges which have resulted in either a detailed conversation, multiple emails back and forth with impervious cover maps explained, and for a few, they required site visits where impervious was manually confirmed.

Colchester: We had to have a lot of conversations with people about why their gravel driveway etc was included in their impervious coverage. We had one landowner insist the data for his site was wrong, so we re-ran the analysis for his site only. There were no changes in impervious cover numbers when that exercise was completed and we actually ended up feeling more confident about the analysis as a whole as a result of that spot investigation.

The only other situation I'd mention are ones where people are simply refusing to pay based on principle or because they don't believe they have a legal responsibility to pay, which tend to be special situations. Those folks are addressed the same as other delinquent accounts, ie penalty applied monthly.

15. What is the anticipated impact of appeals on the SB? Town Attorney? as well as on Town staff?

The impact is unknown, but based on other towns' experiences, the impact is expected to be minimal on the SB and Town Attorney. Consultant time would be utilized for appeals.

16. Are there economies anticipated for years 2-5 in administering the Ordinance?

None other than the completion of set-up.

Answers to Josh Dien's Specific Questions (9/6/18):

Attorney-Reviewed Staff Responses. Highlights indicate flags for minor edits in the ordinance. (Attorney fees are capped and funded by the grant.)

I. Article I – GENERAL A. 1.3 – Definitions 1. Impervious surfaces a) The phrase “but not limited to” could be interpreted and extended indefinitely, with unintended consequences. As the definition is already very inclusive, and could be added to later, this phrase could be deleted. *The additional language included in this definition and surrounding the phrase “but not limited to” provides sufficient context which will prevent it from being extended indefinitely. This language limits impervious surfaces to those “manmade surfaces... from which precipitation runs off rather than infiltrates”. It was written this way because every possible impervious surface can't be listed in the ordinance. Some common examples were provided to clarify. Further determinations will be made by the stormwater superintendent as needed, and based on past determinations made by the State of Vermont. Anyone that disagrees with some future determination can appeal the decision to the stormwater appeals board.*

2. Stormwater Appeals Board (SAB) a) There is minimal explanation about the authority and procedures for this Board, although some detail is provided in later Articles:

(1) Is there a similarity in authority and procedures for any existing Town CBC? *The current stormwater ordinance assigns employees of the Dept. of Public Works to enforce it. The new proposed ordinance was designed to be similar to South Burlington's to create a small stormwater appeals board. Other boards that hear appeals in a similar manner are the Water Commission for the Water Department and the Selectboard for the Wastewater Department.*

(2) Are there any suggested qualifications for appointees? *Appointments are left to the discretion of the selectboard.*

(3) Would this be a quasi-judicial board? *Yes, and appellants would be able to present evidence and argument as to why they are entitled to award of a credit. Although Section 3.2(B) states that the decision of the SAB is final, aggrieved parties that want to appeal a decision can likely do so in accordance with Rule 75 of the Vermont Rules of Civil Procedure.*

(4) Additional comments relating to the SAB will be provided within other Articles below. *Acknowledged*

3. Watercourses a) Will there be maps available that clearly demarcate the stated "perennial, intermittent or ephemeral river, brook or stream, or any natural or manmade channel?" (1) One suspects that many parcel owners might find it difficult to specifically identify these features. *Maps are available from the Town and State of Vermont (see note from Dean Pierce below), but they do not claim to show every possible watercourse and some watercourses are not mapped. In many instances, a site visit would be necessary to make a final determination. This is common practice.*

From Dean Pierce: The Vermont Open Geodata Portal hosts a number of stream-related datasets. Such datasets, which originate from sources such as the Vermont Agency of Natural Resources (ANR) and the Vermont Center for Geographic Information (VCGI), can be used to create maps showing watercourses in Shelburne. Data include the VT Hydrography Dataset "cartographic extract." VHDCARTO is a simplified version of the local resolution Vermont Hydrography Dataset (VHD) that has been enriched with stream perennially, e.g., "intermittent" vs. "perennial", as well as, Strahler stream order attribution for the single linear feature class only. Another example of the data is the "Small Streams" dataset. This dataset contains streams that have a drainage area between .25 and 2 square miles.

II. Article II – STORMWATER SYSTEM A. 2.3

(A) 1. Will there be fees charged for obtaining permits under this Article? a) If so, what would be the fee structure? *This section does not propose a new permit. It states that individuals who do not obtain other required permits could also be found in violation of this ordinance. As such, no fee structure is proposed.*

B. 2.3 (B) – Similar to I.A.3 above, will there be mapping and/or clear identification of "public Storm Drain or appurtenance(s)". *This proposes to use the Town's existing Right Of Way Permit process. The Town maintains maps of stormwater infrastructure, but they do not claim to show every possible storm drain or appurtenance. If a property owner wants to connect to any infrastructure off their property they are to check with that property owner. If it's the town, the existing ROW Permit process would apply.*

C. 2.5 (A) (2) - It appears from the language here that the common act of watering one's lawn would require a permit. Is this correct? Also, if one wanted to create a small rain garden, would this require a permit? *This is incorrect. The list in this section indicates those non-stormwater discharges that are allowed to enter the Town's MS4 system. This list is taken from the MS4 permit that DEC issues to the Town. A rain garden would not require a permit under this ordinance, but it might require one from the department of Planning and Zoning if there are structural elements involved or if substantial earthwork is involved. However, according to Dean Pierce, Shelburne Director of Planning and Zoning, it is possible*

the zoning regulations could be amended to omit this requirement if it ends up being duplicative with other town ordinances.

D. 2.5 (C) - Also relating to the need for mapping or identification mentioned above, it is known that many landowners routinely have deposited leaf and yard waste into existing topographic features which may now be considered part of a Watercourse. Will they be required to remove this material? *This language makes it a violation of the ordinance to place materials as indicated. As such, the Town would have the authority to ask that it be removed and initiate enforcement procedure as specified later in the ordinance.*

E. 2.7 – All components of the Public Stormwater System will need to be clearly identified so residents do not unintentionally disturb any part as described. *This language makes it a violation to damage public infrastructure, and the damage needs to be done in a malicious, willful or negligent manner for there to be a violation. Accidental damage of public infrastructure does not rise to the level of a violation, so it's not critical that all public infrastructure be identified in advance, as it's pretty self-explanatory. If an individual acts with the requisite malice and intent and damages the Public Stormwater System, then enforcement actions can be taken as described later in the ordinance.*

F. 2.8 - Similar comments as for 2.5 (C). *Same response as above.*

III. ARTICLE III - STORMWATER SYSTEM USER FEES

A. 3.1 (A) - Conceptually, it makes sense to charge by impervious surface area as a metric for how much stormwater run-off may be produced. Currently this is based on a derived Equivalent Residential Unit (ERU) calculation assessment, which is applied differently for a Single Family Residences (SFR) vs Non Single Family Residences. *Clarification: the ERU square footage is derived using data regarding the amount of impervious surface on a SFR property. Once that square footage is established it is utilized in the calculation of NSFR property billing.*

2. The Selectboard must be very sensitive to the affordability of living in Shelburne, and the burden of taxes and fees on differing abilities to pay for them. *Agreed and acknowledged.*

3. The argument for a stormwater utility and associated fees is to shift the remediation costs from the property tax, as well as apply the fees to all parcels. However, this means also shifting from a progressive tax to a regressive fixed fee for SFR, estimated at \$51.60 / year a) If we compare proposed fees for a SFR assessed at \$10,000 to a SFR assessed at \$1,000,000, on a percentage basis, the \$10,000 parcel is at 0.516% of value and the \$1,000,000 is at 0.00516%; the former is paying 100 times the rate. A reasonable assumption is that the \$10,000 parcel does not have 100 times the impervious surface, or produces 100x the stormwater run-off. a) Can this figure be adjusted by the Selectboard/S-S Commission as needed? *The selectboard can adjust the cost per ERU as desired. Staff recommends that this rate be adjusted annually in the same manner, and on the same schedule, that water and wastewater rates are adjusted.*

1. However, the important aspect to evaluate here is, "What is the equivalency when it comes to owner's wallets?"

b) The Selectboard should clearly consider these kinds of equity issues when evaluating any ordinance which changes the existing economic burden for taxpayers. *Acknowledged.*

4. As we have the data on impervious surface area per parcel, it would be interesting to see a graph and scatter-plot that illustrates impervious surface vs. assessed value for SFR. *We may be able to generate this graph, but we'd need to evaluate the availability and format of the data needed to make this graph.*

It may be very time-consuming to produce and we'd therefore want to be sure that this information was necessary to the selectboard's decision making on approval of the ordinance.

a) There may be alternative methods to establish a more equitable calculation of the ERU. *The SWAC reviewed a variety of methods for ERU calculation and has proposed what it believes to be the most equitable solution. Staff is in agreement.*

See SWAC Minutes here: <http://shelburnevt.org/AgendaCenter/Stormwater-Advisory-Committee-25>

B. 3.2 – User Fee Credits (Comments also include reference to language in the Credit Manual)

1. Why are SFR not eligible for credits? Assessment of fees creates the opportunity to create incentives and disincentives which, in turn, motivates people to become educated about their options. Many people may be interested in enhancing stormwater management around their home, and could be encouraged to pursue these options. *The main reason that the ordinance does not propose to allow SFR credits is that this would place a significant administrative burden on staff. Providing a credit program for SFR properties would take significant time to administer. Each application would likely take 1-2 hours (or more) to process and SFR properties contain a small amount of impervious surface and are broadly estimated to be charged less than \$70 per year. Also, it isn't practical for staff to evaluate the continued use and maintenance of stormwater best management practices on SFR properties. For example, if credits were given for rain barrels how would staff know that rain barrels are appropriately emptied after/before each storm. a) The BLUE program may provide a convenient mechanism to do this. Agreed. Finding a 3rd party to oversee a SFR credit program would be a good solution. The City of Burlington was attempting to put this together. Staff previously inquired regarding the success of this program, but it was too early to tell. We will follow up again.*

(1) Successfully implemented in Burlington as BLUE BTV . *See above comment.*

(a) <https://www.burlingtonvt.gov/DPW/BlueBTV> . *See above comment.*

(2) Probably minimal cost to Town to participate. *See above comment*

(3) Parcels certified by BLUE might receive credit on utility fee. *See above comment.*

2. (B) - Property owner may appeal Stormwater Superintendent decision on credits to the Stormwater Appeal Board. a) No information about the process for reviewing such an appeal. *From the ordinance, "Any property owner may appeal the Stormwater Superintendent's determination regarding an award of a Credit by filing a written notice of appeal with the Stormwater Appeal Board within ten (10) business days of the Superintendent's decision. The Stormwater Appeal Board shall review such appeal at a meeting preceded by fifteen (15) calendar days written notice of the meeting date to the property owner. Following the meeting, the Stormwater Appeal Board shall issue its decision on the appeal in writing, which decision shall be final".*

b) Repeat question above whether the SAB is a quasi-judicial body? *See above answer.*

c) States that the SAB decision is final. Why? *See above answer. As it stands, the stormwater superintendent will have already reviewed the issue and made an informed decision. The property owner will have appealed this decision to the SAB, who will have independently reviewed the facts and determined whether to uphold or overturn the stormwater superintendent's decision. If the appellant is still aggrieved and wants to contest the SAB's decision, they can file an appeal pursuant to Rule 75 of the Vermont Rules of Civil Procedure, which allows for appeals of all government actions. The Town could*

add a right to appeal the SAB's decision to the Selectboard, but we feel appealing the Superintendent's decision to the SAB is sufficient due process.

(1) *Is there any other CBC that has this authority? The Water Commission and the Selectboard have this authority for water and sewer.*

(a) *Decisions of the quasi-judicial DRB can be appealed to the Environmental Court. The Environmental Division of the Vermont Superior Court is a court of limited jurisdiction, and appeals to that court are prescribed by the legislature. See 10 V.S.A. Chapter 220, and specifically 10 V.S.A. § 8503. In this instance, the likely route for an appeal from a decision of the SAB would be to the Chittenden Unit of the Civil Division of Vermont Superior Court pursuant to Rule 75 of the Vermont Rules of Civil Procedure.*

(b) *Similarly, the Board of Abatement handles property tax appeals. Clarification: The proposed stormwater fee is not a tax. It is a fee similar to existing water and wastewater fees.*

(i) *Is there an expectation that the SAB would perform the same function? The SAB will rule on any appeal to a decision made by the stormwater superintendent.*

(2) *There is a Sewage and Stormwater Commission (a.k.a the Selectboard)*

(a) *Would this not be a more appropriate body for a secondary/final appeal? Appeals of the stormwater superintendent's decisions can go to whatever body the selectboard prefers.*

(3) *There is inconsistency with the process described in Section 6.2 (G) below. Section 6.2(G) deals with violations of the ordinance and appeals related to the ordinance. The Stormwater Appeals Board deals with appeals of billing and programmatic related decisions made by the stormwater superintendent.*

3. 3.3 (B) – Establishment of ERU's

a) *Calculation of ERU is imperviousness surface divided by parcel gross area for a NSFR. Clarification: This cites only a portion of the process related to determining the tier factor.*

(1) *It would be helpful to understand the rationale for this process. The tier factor is utilized for a variety of reasons. Most importantly, the tier factor takes into account that the impervious surface data is very good, but not perfect. Utilizing a range means that small inconsistencies in impervious mapping and/or small changes in the amount of impervious surface on an NSFR property will not require changes to billing. If the exact amount of impervious surface (down to the square foot) was used to calculate a fee it would mean near constant calculation and re-measurement of fees on NSFR properties. If that were the case, everything would need to be directly measured and calculation of fees would become very time consuming. The program would become unsustainable.*

(a) *A large building on a small parcel would be in a higher tier (i.e pay more) than a similar size building on a larger parcel. It is correct that the property described would have a higher tier factor, but that does not mean that it would pay more. The tier factor is multiplied by the property gross area and then divided by the established ERU square footage. In the case of the example provided, the large building on a small lot would have a higher tier factor, but it would be multiplied with the smaller gross area of the lot. The same building on a larger lot would have a lower tier factor, but be multiplied by a larger gross area value. Both are divided by the established ERU square footage.*

(b) *They may produce the same amount of stormwater, but pay a different fee. See above response.*

(c) *This poses a similar question of equitable treatment. It may be best to go through some examples to*

ensure that this process for determining fees for NSFR property is clear. Staff can prepare this if requested.

4. 3.4 – Billing and Collection

a) Property owner appeal should probably reference 3.2 (B) rather than 3.3 (B) as written. *Noted. This reference will be corrected in the final version.*

b) Similar concerns about SAB procedures as noted above. *See above responses.*

5. Education Credits (From Section 7 of Credit Manual)

a) The teaching of the importance of surface and groundwater resources in educational institutions is a laudable goal. However, this educational objective might equally apply to the entire population of Shelburne. *Acknowledged.*

(1) The Education Credit might also be offered to institutions that could develop similar self-sustaining continuing education programs, which would adhere to the policies of this section. *Acknowledged.*

(a) For example, a land-owning organization with an educational mission might easily offer courses and/or lectures on stormwater issues and projects for the general public. *Acknowledged.*

IV. ARTICLE IV – ACCEPTANCE OR INSPECTION OF REGULATED PRIVATE SYSTEMS

A. 4.1 (C) - There is the statement that Stormwater Superintendent's judgement on the applicability of a Regulated Private System is final.

1. Why would there not be the option of an appeal to the Stormwater Appeal Board? *Since ultimately the decision of whether to accept a Regulated Private System is the Selectboard's, there's no need for an appeal to the SAB. Any Stormwater System Maintenance Agreement, Irrevocable Offer of Dedication and Easement Deed would be submitted to the Selectboard for acceptance and/or approval prior to "take over" of that system. The Superintendent determines initially whether the stormwater system is sufficiently good condition to ensure the Town's compliance with its obligations under its MS4 Permit. If the Superintendent determines that a system needs to be upgraded before acceptance, there's no reason there should be an appeal. Instead, the aggrieved landowner could request that the Selectboard reconsider the Superintendent's decision, but the Selectboard should not do so because accepting a substandard system would put the Town in jeopardy of violating the conditions of its MS4 Permit.*

V. ARTICLE VI - INSPECTION AND ENFORCEMENT

A. In this Article, there are a number of sections where the language is uncomfortably vague, and may not provide administrators or property owners sufficient guidance in making and understanding actions and rulings. An inconsistency in process and terminology is also a problem.

1. Please advise if there are accepted legal or common practice definitions for the terms in question:

a) 6.1 (D) - "promptly removed" *This is not a term of art, and some flexibility is necessary because the speed with which an obstruction can be removed after advanced notice depends on the particular circumstances.*

b) 6.1 (E) – "an unreasonable delay" *Using "reasonableness" as a standard in an ordinance is acceptable because it's a frequently used legal term of art and a standard that judges are used to interpreting. Although we may need to go to court to determine whether a delay is unreasonable, courts regularly determine what's reasonable, or not, and are well versed in making determinations of "reasonableness."*

c) 6.2 (B) – "a reasonable time limit" *See answers to 6.1(D) and 6.1(E). Reasonableness is an appropriate standard, but what is a reasonable amount of time to effect a cure depends on the circumstances.*

d) 6.2 (E) – “a timely manner as determined by the Town Manager” *The notice from the Town Manager will contain the deadline by which to pay, if it is longer than the 15-day appeal period.*

2. 6.2 (E), (F) and (G) - It would be helpful to understand the administrative differences and rationale for decisions assigned to either the Stormwater Superintendent or the Town Manager.

3. 6.2 (G) – There is inconsistency with the appeal process, as compared with that described in Section 3.2 (B). *This responds to the comments about 6.2(E), (F) and (G). The distinction between enforcement by the Superintendent and Town Manager relates to the types of violations that are being enforced. The Stormwater Superintendent and Appeals Board are well-suited to handle relatively minor, or solely cost-based, matters with respect to appeal of user fee calculations and credits. They are not, however, suited to handle potentially serious violations of this ordinance that threaten the public health, safety and welfare. For these types of violations (those described in Section 6.2), it’s best for the Town Manager to be the primary enforcement authority, though he or she may delegate some items to the Superintendent. Violations of the types described in Section 6.2 may be very serious and of an emergency nature such that the Town Manager is the more appropriate individual in Town government to be handling them.*

a) Is there a specific rationale underlying an appeal here which would go directly to the Selectboard, rather than the Stormwater Appeal Board? *Yes. Similar to above comment on this topic, this process is describing a violation of the ordinance and not a decision of the stormwater superintendent. Therefore, the appeal would go to the selectboard not the SAB.*

4. 6.3 (A) and (B) - There are specific mentions in this Section of a “Judicial Bureau.” This term does not appear in any of the list of definitions, and does not seem to be one that is in common use in Shelburne Town Government. Can this usage and intent please be explained? *The Judicial Bureau is where most municipal ordinance violation cases are appealed to and heard; it is also where appeals of traffic tickets are adjudicated. The only time a municipal ordinance violation would be adjudicated in the Civil Division of Vermont Superior Court is if the municipality were seeking an injunction or cost recovery, which are remedies the Judicial Bureau is not authorized to provide. The Judicial Bureau is a relatively informal court where the “judges” sitting are lawyers but not “judges” per se. The Judicial Bureau tasked with determining if there was an ordinance violation and what the amount of the fine is based off the fee schedule in the ordinance. Any remedies sought beyond that can be litigated in the Civil Division.*

VI. TECHNICAL STANDARDS FOR STORMWATER UPGRADES

A. 2, Table 1, 4. and 6. - It is not clear what guidelines or standards are used for the review and approval of these items. *The Vermont Stormwater Management Manual (VSMM) is referenced throughout the document. Complete details for these standards are contained within that document.*

1. Would an appeal process be available if an approval is not granted? *Yes. That is covered in the ordinance.*

B. 2. - Payment of Stormwater Mitigation Fee

1. What is the basis for the \$70,000 figure used for the calculation of the fee? *This value is intended to represent the average cost of installing stormwater treatment practices for 1 acre of impervious surface. When South Burlington established this value, staff analyzed the cost of constructed and proposed projects within it’s Flow Restoration Plans. The Shelburne ordinance is proposing to utilize the same value.*

2. Is this a one-time fee or an annual fee? *One time.*

C. 5. – Penalties and Enforcement

1. Sections (A) and (B) also contain the term “Judicial Bureau” which raises the same concerns expressed in the comments in IV. A. 4 above. *See above response to question regarding 6.3(A) and (B)*

VII. ADDITIONAL COMMENTS

A. The Selectboard would benefit from seeing a business plan about how the ordinance will be implemented and what the staffing, administrative, and capital costs would be in the initial years. *See responses to Jerry Storey’s similar questions.*

1. Is there an estimate of an implementation schedule? *The implementation schedule proposes to pass the ordinance in 2018 and begin assessing fees on July 1, 2019.*

Note from S. Burlington Deputy Public Works Director Tom DiPietro: I think we need to add a section 3.1E that says “The Town will begin assessing stormwater fees on July 1, 2019”. Otherwise, it isn’t clear when the program starts and arguably it would be the day that the ordinance is passed! We may also want to consider language related to when credits will be applied retroactively. Something along the lines of “credit applications filed by 12/31/18 will be applied retroactively to the start of the stormwater billing and assessment. Those credit applications filed after this time will be applied beginning at the next billing cycle.” Finally, we may want to add language about billing adjustments. Something like “If a stormwater fee calculation needs to be corrected for any reason the correction will be retroactively applied to the beginning of stormwater fee billing if the correction is made prior to 12/31/19. Corrections made after this time will be applied to the next billing cycle”.

B. The ordinance is very complex, and it would be helpful to know what kinds of outreach plans are being considered to educate the citizens and businesses about the details, requirements and implementation? *See responses to Jerry Storey’s similar questions.*

C. It will be important to address many of these comments in subsequent drafts. The Selectboard should be confident of the clarity and consistency of the document before accepting it for the Public Hearing. *Acknowledged.*