STATE OF CONNECTICUT • COUNTY OF TOLLAND
INCORPORATED 1786

TOWN OF ELLINGTON

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WARNING

NOTICE OF SPECIAL TOWN MEETING
TOWN OF ELLINGTON
February 2, 2009

A Special Town Meeting of the electors and citizens qualified to vote in Town Meetings of the Town of Ellington, Connecticut, will be held at the Ellington Town Hall, 55 Main Street, Ellington, Connecticut, on Monday, February 2, 2009, at 7:15 p.m. prevailing time to discuss and vote upon the following:

1. An additional appropriation of $67,000 from FY 2008-2009 Undesignated General Fund Balance to Capital Non-Recurring Fund for the removal of milfoil from Crystal Lake.

2. The acceptance of a grant in an amount up to $50,000, if offered from the State Department of Environmental Protection, to cover some of the cost for the removal of milfoil from Crystal Lake.

3. The adoption of a new ordinance regarding the maintenance of detention basins.

Dated at Ellington, Connecticut this 15th day of January, 2009.

BY ORDER OF THE BOARD OF SELECTMEN

MICHAEL P. STUPINSKI
FIRST SELECTMAN

Copy of the proposed new ordinance is available for review in the Town Clerk's Office, First Selectman's Office and the website @ www.ellington-ct.gov

Journal Inquirer – 1/26/09

DRAFT

AN ORDINANCE REGARDING MAINTENANCE OF STORM WATER DRAINAGE DETENTION BASINS AND SIMILAR STRUCTURES

BE IT ORDAINED:

PURPOSE: Federal and State Laws and Regulations mandate that drainage designs comply with Federal Clean Water Act of 1977, Phase II, Final Rule, concerning storm water. The Town of Ellington encourages the use of any approved water quality control options specified in the Federal and State Laws. Such structures control the quantity of flow and contain sand, silt, dirt and other solids. For maximum performance, these structures require substantial periodic maintenance.

For some land subject to development and construction, producing zero increase in the rate of discharge of water from one property to another compels drainage designs that provide for the inclusion of Detention Basins, Separators or similar earthen or other solid embankments, dams or other "Storm Water Pollutant Removal Mechanisms as listed in Table 3-2 of the 2004 Ct. Storm Water Quality Manual". The purpose of this Ordinance is to set forth the Town's policy as to such structures and the costs associated with and created by their use and required maintenance.

POLICY: Should the design requirements of the Laws and Regulations require the construction of structures such as Detention Basins, Separators or similar earthen or other solid embankments, dams or other "Storm Water Pollutant Removal Mechanisms" designed in compliance with the *CT D.E.P. Storm Water Phase II (MS4) Program* based on the Federal Clean Water Act of 1977 as amended by the Water Quality Act of 1987 (P.L. 100-4), SECTION 402- National Pollution Discharge Elimination Systems (NPDES), Phase II, Final Rule, the Town of Ellington will not accept title to such structures as additions to its municipally owned drainage system as "improvements" except pursuant to the terms of this Ordinance.

Such Facilities require special, periodic maintenance to clean out sand, silt, dirt, debris or other foreign material in order to keep the structure operating as designed. Most of these Facilities are not located within roads or streets that are designed and planned to become public roads of the Town of Ellington and are not within the road drainage system regularly accepted by the Town. Such Facilities would impose excessive, unbudgeted costs upon the taxpayers of the Town, and if not maintained, may fail, imposing possible further liability on the Town.

However, it is in the best interest of its citizens and the Town to insure that the required maintenance is performed and it is not reasonable to expect or require individual homeowners or limited groups of homeowners to provide the periodic maintenance that these systems require or pay for the cost thereof. The Town's Department of Public Works does have the technical and physical ability to provide the maintenance required of these Facilities

Therefore, it is the position of the Town that the costs of this periodic maintenance ought to be placed upon those persons causing the need for this maintenance and who benefit from these Facilities rather than upon the taxpayers as a whole. Future costs of the maintenance of these Facilities shall be an expense of those landowner(s), developer(s), or sub-divider(s) benefiting from the development of the property upon which the Facilities are located. Provision for this future cost shall be accomplished by the establishment of a fund reasonably calculated to generate sufficient income to pay the cost of using the Department of Public Works to maintain these Facilities.

DEFINITIONS:

Clean Water Regulations-Phase II: Clean Water Regulations promulgated by the Connecticut Department of Environmental Protection that define the standards for design of drainage systems discharging into the waters of the State of Connecticut.

Detention Basin: A drainage structure designed to avoid downstream flash flooding, receiving and collecting storm and drainage water, whether surface or subsurface, within a defined area and releasing that water in a controlled manner essentially equivalent to the rate of flow from property in its natural state prior to development.

Facilities: A general term that includes without limitation Detention Basins, Separators, similar earthen or other solid embankments, dams, or other "Storm Water Pollutant Removal Mechanisms" and National Pollution Discharge Elimination Systems.

Land Owner, Developer or Subdivider: The person, individual or business who owns the land upon which any Facility is to be constructed or who has applied to a land use board or commission for a permit or other approval which includes construction of any Facility or has received approval or been granted a permit by one or more of the land use agencies or commissions of the Town of Ellington to develop property including the installation of one or more Facilities. The term or terms, singular or plural, Land Owner, Developer or Subdivider, are like terms with the same meaning herein.

Permit: A permit issued by any land use agency of the Town of Ellington including all conditions attached to that permit or facilities approved by the permit.

Separator: A drainage structure designed to collect water in a confined are and cause solid particles of sand, silt, dirt and foreign material to be separated from the water before the water is released downstream from the confined area.

Regulations: Zoning, subdivision and inland-wetland regulations of the Town of Ellington.

IDENTIFICATION OF STRUCTURES: Prior to approval of any development project by any Town land use board or commission ("agencies"), a Developer shall, with the assistance of the Town Engineer, identify any Facilities as specified in this Ordinance that will require special periodic maintenance in the future.

(A) The Developer shall with the advice of the Town staff determine whether the Facilities may be maintained by the commercial or industrial owner of the premises because that owner will have the resources and ability to maintain the facilities and include that proposal in its application for final approval by the land use agency having jurisdiction for granting the permit (usually the PZC).

(B) The Developer shall, with the advice of the Town staff, determine whether the area occupied by the Facilities should be dedicated to the Town in fee or by easement granting the Town access rights to maintain the facility as well as the right to have the facility in that location for its designed purpose.

(C) The land use agency that last approves a development project (usually the Planning and Zoning Commission) shall have no authority to exempt a single family subdivision from the operation of this Ordinance.

Added → (D) The land use agency that last approves a development project (usually the Planning and Zoning Commission) shall have authority to exempt a commercial, industrial or condominium project where a condominium association will exist from the requirement of dedicating the maintenance of any detention basin upon its property to the Town and capitalizing the cost of such maintenance upon request of the developer and an affirmative finding by the agency that the Owner or condominium association will have the financial and technical ability to perform the required maintenance.

(was not included in first DRAFT)

POST APPROVAL: Upon final approval of a project by the land use agency the Developer shall perform all of the following tasks or provide the documents:

(A) An executed deed of the fee and/or easement to the Town for the facility in accordance with the permit, subject to approval of the Town Attorney as to form and content, which deed or deeds shall be delivered to the land use office prior to the filing of any map or plan. The deed shall be held in the land use office and recorded only after acceptance of the facility by the Board of Selectmen.

(1) As to commercial or industrial property having received a waiver as to the maintenance capitalized cost, an easement is required to

authorize the Town to inspect and maintain the facility, if the Owner fails to do so, and charge the Owner and the land for the cost thereof.

(B) The Developer will cause the facility to be constructed in accordance with the approved plan or permit and subject to inspections by the Town Engineer and/or Director of Public Works and provide such certifications as may be required by either as to construction in accordance with the design plan.

(C) The Town Engineer and the Director of Public Works shall establish an annual cost ("Cost") to perform the required periodic maintenance on the Facilities. The Finance Officer, with input from the Town Engineer, shall then calculate a sum necessary to capitalize that annual cost based upon the following formula. The Cost shall become the numerator of a fraction the denominator of which shall be a sum arrived at by the subtraction of the yearly average of the Consumer Price Index ("CPI")* from the yearly average yield of 10 year U.S. Treasury Notes ("Notes")**. The resulting quotient, after dividing the numerator by the denominator, shall be the sum required to be deposited with the Town as the Maintenance Fund.

- The yearly average of the CPI shall be determined by taking each published yearly average beginning with 1953 up to and including the most recent published yearly average, adding the averages together and dividing the total by the number of years included.

** The yearly average yield of the Notes shall be determined by taking each published yearly average yield beginning with 1953 up to and including the most recent published yearly average yield, adding the average yields together and dividing the total by the number of years included.

The Developer shall pay the Town such sum before acceptance by the Town of the drainage system and before any performance bond is reduced to a maintenance level.

The Town shall forthwith deliver the full sum to the Treasurer who shall deposit that sum in a separately identified account referred to as the "Maintenance Fund for (name of project or subdivision – phase as appropriate), shown on a map or plan entitled "_____", dated _____, 20__ and recorded in the office of the Town Clerk at map volume -____, page ____. Such a fund shall be maintained indefinitely for the purpose of providing revenue to pay for the periodic maintenance required. Funds shall not be commingled with the general funds of the Town but may be commingled with maintenance funds from similar projects. The capital shall not be used for any operating expense.

MAINTENANCE RESPONSIBILITY: Upon establishment of the Maintenance Fund by the land developer; completion of any required performance and maintenance bond period; and, acceptance by the Town of the drainage system within which are located

such Facilities, the Town shall thereafter assume full maintenance and repair responsibility for the identified Facilities. There shall be no further accounting as to the cost of maintenance of any particular Facility nor rebate if the expense is less than the income or additional charge if the expense is greater.

NOTE: This policy does not apply to roads, pipe drainage systems within roads including off-road discharges not pertaining to any Facilities.

ADMINISTRATION:

(A) The Board of Selectmen shall control the Maintenance Fund and shall direct the income as appropriate to the Department of Public Works for the purpose of providing maintenance to the identified structures.

(B) There shall be no accounting among structures or properties that have contributed to this Fund and no requirement that the maintenance be provided to particular structures except as determined by the Department of Public Works.

SEVERABILITY: If any provision of this Ordinance or the application thereof shall be held invalid or unenforceable, the remainder of this ordinance shall not be affected thereby; and each remaining term and provisions hereof shall be deemed valid and shall be enforced to the fullest extent permitted by law.

This Ordinance shall be effective on _____, 2008.

Board of Selectmen Approved for Public Hearing: _____

Public Hearing Notice Published On: _____

Public Hearing Held On: _____

Board of Selectman Recommend Adoption: _____

Town Meeting Notice Published On: _____

Approved by Town Meeting On: _____