

MEMORANDUM

TO: Cape Elizabeth Town Council
FROM: Maureen O'Meara, Town Planner
DATE: July 31, 2007
SUBJECT: Creation of Stormwater Improvement Fee

Introduction

The Town of Cape Elizabeth has been successful in directing its modest growth primarily in the areas where growth can best be accommodated (based on the analysis in the draft comprehensive plan). This has been accomplished by coordinating local policies and regulations that generally direct growth away from sensitive natural areas and toward areas with existing or available infrastructure. The result is that the bulk of new development occurs in the RC District and RB District. Local land use policies are now undermined, however, by the designation of Trout Brook as an Urban Impaired Watershed. Adoption of a local stormwater improvement fee could neutralize this policy conflict. See attached map for location of RB (gold color), RC (orange color) and approximate location of Trout Brook watershed (blue stipple).

Background

Trout Brook has been designated by the Maine Department of Environmental Protection (DEP) as an Urban Impaired Watershed. Most new development in the watershed will be required to either pay a compensation fee or complete a project for off-site mitigation. The Trout Brook watershed includes a significant portion of the town's designated growth areas. The urban impaired watershed requirements create a disincentive for new development to locate in the growth areas located within the watershed. (Under a separate action, the Town Council is considering the adoption of a fee system for development located in the Trout Brook Watershed.)

Creation of Local Stormwater Fee

The Town does not have the option to eliminate the Urban Impaired Stream requirements in the Trout Brook Watershed. It can, however, impose the same requirements to all areas outside the watershed. In this way, the urban impaired watershed designation is not a disincentive because the requirements apply town wide. The end result is that local control over land use policy is restored while complying with state requirements.

Who pays the Fee?

The fee would be applicable to the same size projects that trigger review within the Trout Brook Watershed. Any project creating 20,000 sq. ft. or more of impervious area will trigger review in an urban impaired watershed. Projects within the watershed are proposed to be exempt from the local stormwater fee because they will be paying a fee or performing mitigation under the Urban Impaired Watershed requirements. Project applicability in the Urban Impaired Watershed follows:

Applicability. This chapter applies to (A) a project that requires a stormwater permit pursuant to 38 M.R.S.A. § 420-D, (B) a development that may substantially affect the environment and requires a site location of development (Site Law) permit pursuant to 38 M.R.S.A. §§ 481 - 490 and (C) certain projects that may be eligible for license by rule for the infiltration of stormwater pursuant to 38 M.R.S.A. § 413.

How will the fee be used?

The Stormwater Fee would be used to fund stormwater improvement projects. Projects could range from stormwater drainage improvements to funding of the street sweeping program. Actual expenditure of funds would be decided as part of the normal local budget process.

Fee Administration

In order to preserve the town's land use policies guiding growth, the fee must at least equal the fee charged in the Trout Brook Watershed. This fee amount is established by the DEP and is calculated as follows:

Type of surface with or without required treatment	Required compensation fee or off-site mitigation credit	
	Compensation fee	Off-Site Mitigation Credit
Non-roof impervious area	\$5,000.00 per acre	0.5 credits per acre
Roof	\$2,000.00 per acre	0.2 credits per acre
Non-impervious developed area	\$1,000.00 per acre	0.1 credits per acre

Compensation Fees may only be used in watersheds where a compensation fee utilization plan has been approved by the department.

Amount of Credit. The following table indicates the amount of credit earned for a variety of allowed off-site mitigation activities:

<i>Mitigation Activity</i>	<i>Source Type</i>	<i>Credit Earned</i>
Retrofit with general standards BMPs at 1/3 required sizing or with approved flow through sedimentation device	road or high use parking	0.5 credit per acre treated
	low use parking	0.3 credit per acre treated
	roof or other impervious area	0.2 credit per acre treated
	lawn	0.1 credit per acre treated
Retrofit w/ general standards BMPs at 2/3 required sizing BMPs	road or high use parking	1.0 credit per acre treated
	low use parking	0.6 credit per acre treated
	roof or other impervious area	0.4 credit per acre treated
	lawn	0.2 credit per acre treated
Retrofit w/ general standards BMPs at required sizing	road or high use parking	1.5 credits per acre treated
	low use parking	0.9 credit per acre treated
	roof or other impervious area	0.6 credit per acre treated
	lawn	0.3 credit per acre treated
Eliminate impervious source area, replace with lawn	road or high use parking	1.0 credit per acre treated
	low use parking	0.5 credit per acre treated
Eliminate impervious source area, replace with forest	road or high use parking	2.0 credits per acre treated
	low use parking	1.0 credit per acre treated
Retrofit detention with vegetated gravel under-drains	impervious areas only	0.5 credit per acre treated

In addition to the use of off-site mitigation or compensation fees as described above, the department may approve other off-site or on-site mitigation measures on a case by case basis. Other measures proposed by an applicant shall provide at least equivalent protection as measures described in the table above.

Given the technical nature of calculating the fee, it is recommended that the Town Engineer be retained to determine the amount of the fee in conjunction with development review. Town Engineer review of Planning Board projects is funded by the applicant through an escrow account system. Calculation of the fee could be added to the Town Engineer's development review responsibilities. (See attached sample of fee calculation).

Conclusion

The RB and RC Districts represent 16% of the town and absorbed 60% of the town's growth from 1998-2006. The draft comprehensive plan recommends that these areas continue to absorb the majority of new growth in order to preserve the overall community character. A significant amount of RB and RC zoned land is located in the Trout Brook Watershed, where new urban impaired watershed standards will create an incentive to locate development in other parts of town. The local stormwater fee could neutralize this unintended consequence of state policy and restore equilibrium to the local land use policies carefully constructed by the Town.