Memorandum

To: Jeff A. Chelgren, Nahant Town Administrator

From: Daniel G. Skrip, Nahant Town Counsel

Re: Storm Water By-law revisions

Date: March 6, 2017

In August 2015, the AG struck down three sections of our Storm Water By-laws: Section 9(B)(3); Section 9(C); and Section 9(D). Below are the original versions (with the disapproved areas in **bold**), and then the versions with my suggested revisions (with the disapproved areas still in **bold**, but my revisions in **bold underline**).

Section 9(B)(3), Special Assessment - original version

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the [city or town], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Planning Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Planning Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a special assessment against the property owner and shall constitute a lien on the owner's property for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty-first day following the day on which the costs were due.

Section 9(B)(3), Special Assessment – suggested revisions (omissions not noted)

Within thirty (30) days after completing all measures necessary to abate the violation or to perform remediation, the violator and the property owner shall be notified of the costs incurred by the [city or town], including administrative costs. The violator or property owner may file a written protest objecting to the amount or basis of costs with the Planning Board within thirty (30) days of receipt of the notification of the costs incurred. If the amount due is not received by the expiration of the time in which to file a protest or within thirty (30) days following a decision of the Planning Board affirming or reducing the costs, or from a final decision of a court of competent jurisdiction, the costs shall become a municipal charges lien against the property owner pursuant to G.L. Ch. 40, § 58 for the amount of said costs. Interest shall begin to accrue on any unpaid costs at the statutory rate, as provided in G.L. Ch. 59, § 57, after the thirty-first day following the day on which the costs were due.

Section 9(C), Criminal Penalty - original version

Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than **\$***Reviewer insert fine*****. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Section 9(C), Criminal Penalty – suggested revisions (omissions not noted)

Any person who violates any provision of this by-law, regulation, order or permit issued there under, shall be punished by a fine of not more than \$100.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Section 9(D), Non-Criminal Disposition - original version

As an alternative to criminal prosecution or civil action, the Town of Nahant may elect to utilize the non-criminal disposition procedure set folth in G.L. Ch.. 40, 21 D and [(the insert citation town enabling vote/bylaw (if applicable)] of the Town of Nahant, in which case the Planning Board of the Town of Nahant shall be the enforcing person. The penalty for the 1st violation shall be \$***Reviewer insert Fee***. The penalty for the 2nd violation shall be \$***Reviewer insert Fee***. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

Section 9(D), Non-Criminal Disposition – suggested revisions (omissions not noted)

As an alternative to criminal prosecution or civil action, the Town of Nahant may elect to utilize the non-criminal disposition procedure set folth in G.L. Ch.. 40, § 21 D and Article XIII (Non-Criminal Disposition of Violations) within the Police By-Laws of the Town of Nahant, in which case the Planning Board of the Town of Nahant shall be the enforcing person. The penalty for the 1st violation shall be §25.00. The penalty for the 2nd violation shall be §50.00. The penalty for the 3rd and subsequent violations shall be §100.00. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

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