

BOARD OF TRUSTEES MEETING MINUTES – July 7, 2008

The regular meeting of the Board of Trustees of the Inc. Village of Brightwaters was held on Monday, July 7, 2008 at 8:00 pm at Village Hall, 40 Seneca Dr., Brightwaters, NY, with the following officers present:

Joseph A. McNulty	Mayor
Charles Fischer	Trustee
Mary Susan Belford	Trustee
Robert W. Fischer	Trustee
John P. Finnerty, Esq.	<i>Village Attorney</i>
Christine O'Shea	<i>Village Clerk & Treasurer</i>
Absent: David Thomsen, Trustee	

At 8:05 pm, Mayor McNulty called the meeting to order followed by a salute to the flag.

Oath of Office

Christine O'Shea, Village Clerk, administered the oath of office to Mayor Joseph McNulty to discharge the duties of the office of Mayor for a term of two years.

Mayor Joseph McNulty administered the oath of office to Trustee Mary Susan Belford and Trustee Charles Fischer to discharge the duties of Trustees for a term of two years.

After the swearing in of officers, a motion to approve the minutes of June 2, 2008 as written was offered by Tr. Charles Fischer, seconded by Tr. Sue Belford and all approved 4/0.

Suffolk County Police Dept. Third Precinct

There was no police officer present at this meeting.

Trustee Reports

Highway Dept.

Tr. Bob Fischer read his report for the meeting....

Our summer help is in full swing. We are utilizing them to the fullest capacity.

We had a bid opening for street lighting maintenance that is being awarded this evening. Our bid opening for sanitation pick up will be on July 16th.

Stout is almost finished with the bulkhead at Gilbert Park.

Concourse East has been repaved, as well as the parking field at Walker Beach.

Security lights were installed at Wohseepee Park to try and cut down on vandalism.

A new water main was installed on Peters Blvd.

Drainage was installed on Potter Blvd, and the road should be restored in hopefully a month or so.

New playground equipment was installed at Wohseepee Park.

Everything is ready for the day camp which started today.

The 2008 Municipal Separate Storm Sewer System Annual Report has been filed with the State of New York and a copy has been posted on our website at villageofbrightwaters.com. Brochures and educational material continue to be available in Village Hall with regard to this NYS DEC program.

Tr. Bob Fischer also commented on the misinformation that came out last month that the village doesn't have a website. When in fact the village does have a website and we have had it for quite awhile. The website address is villageofbrightwaters.com and it does contain almost all the information that's available from the village office, including our monthly meeting minutes.

Mayor McNulty commented on a letter from Michael McDyer in reference to the election. He had received quite a few calls on it and was hoping Michael was here tonight but he's not. It stated that there was an administrative error

which tended to indicate that the village was at fault for Michael not getting on the ballot. Michael ran under a separate party and acquired more than the number of signatures required for the petition. Tina, the village clerk than sends letters to each candidate stating the last day to accept or decline the nomination and it also includes a statement that the candidate's name shall appear on the ballot as it appears on this letter, if any different, to let her know. (Election Law 6-144). All candidates had received their letters and had to return them by May 16, 2008 by 5:00p.m. the last day to file the acceptance or declination letter. Election Law 15-108(8)(b). Michael McDyer failed to file such letter and a failure to file is fatal and can't be overturned by any court, stated village attorney, Jack Finnerty. The Mayor said that is what happened and that's why Michael was a write in candidate.

Lakes and Parks

Tr. Belford thanked George, his crew, the college kids and all who helped to put in the new playground equipment. She also thanked Christian Sullivan, Laurie Elliott, Asher Provda and John Valadini got there a little late and the painting of old playground equipment was almost all done. It makes the playground look super. Thank you all so much.

She also reminded everyone that the Family clambake is Sunday, July 27 from 3pm to 8pm and tickets can be obtained at the village office. \$30 for adults, \$15 kids under 12 and 2 & under are free. The food will be catered by Sea Levels. There will be music, raffles and children's activities. Come one, come all.....

Tr. Belford announced that the Brightwaters Day Camp started today.

Tr. Belford stated two joint meetings were held for Wohseepee Park and Walker Park Beach. The wish list for the phase II project for Wohseepee Park would be a playground equipment for ages 5 – 12, paint cabin, gutters need to be repaired or replaced, need more consistent signage around park, no smoking sign, thorn bushes planted around cabin to deter vandalism, and a split rail fence installed on the south side and west side of park by the playground. Tr. Belford mentioned that when she was kid she remembered roses along the fence.

The wish list for Walker Park Beach is no smoking sign, sealed garbage cans, would like the beach open to dusk, bicycle rack needs repair, remove barbed wire from fencing, need someone to clean the goose poop on beach (lifeguards or college students maybe?). She stated she has information on a sand cleaning machine, Sandman. It could be leased for two weeks for \$1500 and if we decided to purchase it that lease price would be deducted. Hwy. Foreman George suggested if they could lend it to us so we can try it out and see if we liked it. Also, the fence along Captains Walk would look nice if some beach grass was planted there.

She also mentioned that the parking lot looks beautiful but did mention that a large puddle sits just south of the blacktop.

Administration

Tr. Charles Fischer moved to approve Abstract Report #3094 for accounts payable vouchers totaling \$65,394.81 - The primary drivers were \$33,000. for garbage collection, \$9600. for tree trimming, \$4200. for new light pole at canal, and expenses for Gilbert Park gazebo damaged by kids, other wise business is as usual and Tr. Belford seconded and abstract was approved for payment 4/0.

Security

Tr. Thomsen was absent from this meeting.

Treasurer Report @ June 30, 2008

Municipal checking:		
General Fund	\$	882,150
Payroll Fund		240
Trust & Agency Fund		1,500
Restoration Fund		18,439
<i>Investments:</i>		
CLA\$\$ General Fund		930,639
CLA\$\$ B.I.G. Fund		49,707

VILLAGE ORGANIZATIONAL MEETING & APPOINTMENTS

July 7, 2008

Board Meeting

RESOLVED that Charles Fischer be and hereby is appointed

Deputy Mayor for an official term of one year.

RESOLVED that Christine O'Shea be and hereby is appointed Village Clerk & Treasurer, Tax Receiver and Assessor for an official term of two years.

RESOLVED that Virginia Anitra be and hereby is appointed Deputy Village Clerk for an official term of two years.

RESOLVED that George Peterson be and hereby is appointed Highway Foreman for an official term of one year.

RESOLVED that Vincent P. Clancy be and hereby is appointed Chief Code Enforcement Officer for an official term of one year.

RESOLVED that John P. Finnerty, Esq. be and hereby is appointed Village Attorney for a term of one year at \$2700/mo. and \$150/hr. for additional legal fees.

RESOLVED that Daniel Falasco be and hereby is appointed Village engineer at a rate of \$80/hr. for a term of one year.

RESOLVED that Dennis Babinecz be and hereby is appointed Computer Consultant at a rate of \$80/hr. for a term of one year.

RESOLVED that Bartlett Ackerson be and hereby is appointed Harbormaster for a term of one year.

RESOLVED that John P. Finnerty, Esq. be and hereby is appointed Prosecuting Attorney at a rate of \$100/hr. for a term of one year.

RESOLVED that Christine O'Shea be and hereby is appointed Clerk of the Court for a term of one year.

RESOLVED that Nicholas Delvecchio be and hereby is appointed Board of Appeals Chairman for a term of one year.

RESOLVED that Dr. Richard Byrnes be and hereby is appointed Member of the Board of Appeals for a term of one year.

RESOLVED that Raymond Samson be and hereby is appointed Member to the Planning Board for a term of one year.

RESOLVED that Jane Arbeiter be and hereby is appointed Village Historian for a term of one year.

RESOLVED that Mayor McNulty, or his designated successor, be authorized to approve the attendance by the Board of Trustees, Board of Appeals, or Planning Board to specific training schools and/or meetings with expenses reimbursed.

RESOLVED that Trustee Charles Fischer, or his designated successor, be authorized to approve the attendance by the village administrative staff at specific training schools conducted by NYCOM or other appropriate agencies with expenses reimbursed.

RESOLVED that Trustee Robert Fischer, or his designated successor, be authorized to approve the attendance by the highway administrative foremen at specific training schools conducted by NYCOM or other appropriate agencies with expenses reimbursed.

RESOLVED that Trustee Thomsen or his designated successor be authorized to approve the attendance by the Code Enforcement Officers at specific training schools with expenses reimbursed.

RESOLVED that Sheehan & Co. be and hereby is appointed auditors for the official fiscal year ending May 31, 2008.

RESOLVED that the Islip Bulletin be and hereby is designated the official newspaper for the village.

RESOLVED that the JPMorgan Chase Bank, N. A. be and hereby is designated as the depository for the village funds in the General, Payroll, Trust, Restoration and all other funds, said bank to pledge suitable and sufficient collateral at all times for the protection of said funds and that the funds in these various accounts be made available upon the signature of any two officers.

BE IT FURTHER RESOLVED that any two of the following officers of the municipality, to wit: Joseph A. McNulty, Mayor, Charles Fischer, Trustee, or Christine O'Shea, Village Clerk & Treasurer alone, with the approval of the foregoing, are hereby authorized to make arrangements to borrow money to obtain credit for this municipality from the JPMorgan Chase Bank, N.A. or such bank as may seem advisable to make and deliver notes, drafts, acceptances, advances, agreements and any other obligations of this municipality therefore in form satisfactory to said bank and to manage and transact bank matters or other business of any kind whatsoever with the bank or its officers. Also, the treasurer is empowered to invest idle fund monies of the village at her discretion and in the best interest of the village, with the approval of the Mayor.

RESOLVED that idle fund monies be invested in CLA\$\$ from the General Fund and Restoration B.I.G. Fund and sufficient collateral be pledged for the protection of said funds.

RESOLVED that the village board meetings be held on the first Monday of each month excepting those falling on a holiday and then the meeting will be held on the day following the holiday. The village is authorized to notify by postings, newsletters or the news media of such meeting schedule.

RESOLVED that certain recurring charges such as postage, public utility bills, health insurance payments, payroll salaries, petty cash and other usual expenses be paid in advance of audit of claims.

RESOLVED that the Board of Trustees shall approve reimbursement to officers and employees of the village who use their personal automobiles while performing their official duties on behalf of the village at a rate of 58.5 cents per mile.

The Mayor concluded with saying that it is "my pleasure to make these appointments for the terms set thereto".

Tr. Charles Fischer moves to approve the above appointments and resolutions as read aloud by Mayor McNulty and Tr. Bob Fischer seconded and all approved 4/0.

June 17, 2008 Annual Brightwaters Village Election Results

THE NUMBER OF GENERAL BALLOTS ACTUALLY VOTED 407

FOR THE OFFICE OF MAYOR

JOSEPH A. MCNULTY RECEIVED 337 VOTES

FOR THE OFFICES OF TRUSTEE

MARY SUSAN BELFORD RECEIVED 297 VOTES

CHARLES FISCHER RECEIVED 276 VOTES

MICHAEL MCDYER HAD 133 WRITE IN VOTES

Street Lighting Bid Opening June 25, 2008

“2008 Village Lighting Maintenance” – Two bids were received.

In attendance: Tr. Bob Fischer, Debra Reilly, Hwy. Clerk and Matthew Zimmermann from Welsbach Electric.

Results: Always Electric total bid price \$16,591.72
Welsbach Electric total bid price \$14,792.00

Tr. Bob Fischer moves to award the bid to Welsbach Electric and Tr. Charles Fischer seconded and all approved 4/0.

Resolution to Introduce Local Law To Amend Section 58-14 To Permit Limited Above-Ground Storage Of Flammable Liquids

An act to amend section 58-14 of the Code of the Village of Brightwaters to permit limited above-ground storage of flammable liquids.

Be it enacted by the Board of Trustees of the Village of Brightwaters that the above section of the Code of the Village of Brightwaters shall be, and hereby is, amended as follows:

58-14. Prohibited acts.

A. Storage of flammable liquids in above-ground tanks is hereby prohibited[.] , except as permitted by section 128-6H of the Code.

This local law will/has been adopted pursuant to section 10 of the Municipal Home Rule Law and supercedes section 7-706 of the Village Law.

EXPLANATION: Matter underscored is new; matter in the brackets is old law to be omitted.

Resolution to Introduce Local Law To Amend Section 128-6h To Increase The Amount Of Permitted Above Ground Fuel Storage

An act to amend section 128-6H of the Code of the Village of Brightwaters to increase the amount of permitted above-ground fuel storage.

Be it enacted by the Board of Trustees of the Village of Brightwaters that the above section of the Code of the Village of Brightwaters shall be, and hereby is, amended as follows:

128-6. Permitted uses.

Within any Residence A and Residence B Districts as indicated on the Building Zone Map, no building or premises shall be used for other than one or more of the following specified classes of purposes:

H. Storage of fuel. No bulk storage of coal or liquid fuels or other flammable fuels in excess of [54] 275 gallons is permitted above ground.

This local law will/has been adopted pursuant to section 10 of the Municipal Home Rule Law and supercedes section 7-706 of the Village Law.

EXPLANATION: Matter underscored is new; matter in the brackets is old law to be omitted.

Tr. Charles Fischer moves to set the above two resolutions for a public hearing to be held next month and Tr. Belford seconded and all approved 4/0.

Resolution To Stop Spraying Village Trees

WHEREAS, the Board of Trustees of the Village of Brightwaters has become concerned with the nature of chemicals and pesticides sprayed upon the trees and other vegetation owned by the Village, and

WHEREAS, the Board of Trustees desires to further study and analyze the contents of, and results of, such spraying, and

WHEREAS, the Board of Trustees wishes to suspend such spraying until such time that it is confident that same is in the best interest of the environment and the Village's trees and other vegetation,

NOW, be it therefore

RESOLVED, that the spraying of any pesticides or other chemicals upon any trees or other vegetation owned by the Village of Brightwaters shall be, and hereby is, suspended indefinitely, pending further future resolution of the Board of Trustees.

Tr. Charles Fischer moves to approve the above resolution and Tr. Belford seconded and all approved 4/0.

Public Hearing – Local Law #3 Of The Year 2008 To Prohibit Illicit Discharges, Activities & Connections To The Villages Separate Storm Sewer System

RESOLUTION

An act to create section 128-108.1 of the Code of the Village of Brightwaters to prohibit illicit discharges, activities and connections to separate storm sewer system

Be it enacted by the Board of Trustees of the Village of Brightwaters that the above section of the Code of the Village of Brightwaters shall be, and hereby is, created as follows:

128-108.1 Illicit discharges, activities and connections to separate storm sewer system prohibited.

A. PURPOSE/INTENT

The purpose of this law is to provide for the health, safety, and general welfare of the citizens of the Village of Brightwaters through the regulation of non-stormwater discharges to the municipal separate storm sewer system (MS4) to the maximum extent practicable as required by federal and state law. This law establishes methods for controlling the introduction of pollutants into the MS4 in order to comply with requirements of the SPDES General Permit for Municipal Separate Storm sewer System. The objectives of this law are:

(1) To meet the requirements of the SPDES General Permit for Stormwater Discharges from MS4s, Permit No. GP-02-02 or as amended or revised;

(2) To regulate the contribution of pollutants to the MS4 since such systems are not designed to accept, process, or discharge non-stormwater wastes;

(3) To prohibit illicit connections, activities and discharges to the MS4;

(4) To establish legal authority to carry out all inspections, surveillance and monitoring procedures necessary to ensure compliance with this law; and

(5) To promote public awareness of the hazards involved in the improper discharge of trash, yard waste, lawn chemicals, pet waste, wastewater, grease, oil, petroleum products, cleaning products, paint products, hazardous waste, sediment and other pollutants into the MS4.

B. DEFINITIONS

Whenever used in this law, unless a different meaning is stated in a definition applicable to only a portion of this law, the following terms will have meanings set forth below:

(1) Best Management Practices (BMPs). Schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

(2) Clean Water Act. The federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), and any subsequent amendments thereto.

(3) Construction Activity. Activities requiring authorization under the SPDES permit for stormwater discharges from construction activity, GP-02-01, as amended, or revised. These activities include construction projects resulting in land disturbance of one or more acres. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

(4) Department. The New York State Department of Environmental Conservation.

(5) Design Professional. New York State licensed professional engineer or licensed architect.

(6) Hazardous Materials. Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(7) Illicit Connections. Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the MS4, including but not limited to

a. Any conveyances which allow any non-stormwater discharge including treated or untreated sewage, process wastewater, and wash water to enter the MS4 and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency; or

b. Any drain or conveyance connected from a commercial or industrial land use to the MS4 which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

(8) Illicit Discharge. Any direct or indirect non-stormwater discharge to the MS4, except as exempted in Section F of this law.

(9) Industrial Sewage Treatment System. A facility serving one or more parcels of land or residential household, or a private, commercial or institutional facility, that treats sewage or other liquid wastes for discharge into the groundwaters of New York State, except where a permit for such a facility is required under the applicable provisions of Article 17 of the Environmental Conservation Law.

(10) Industrial Activity. Activities requiring the SPDES permit for discharges from industrial activities except construction, GP-98-03, as amended or revised.

(11) MS4. Municipal Separate Storm Sewer System.

(12) Municipal Separate Storm Sewer System. A conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):
a. Owned or operated by the Village of Brightwaters;
b. Designed or used for collecting or conveying stormwater;
c. Which is not a combined sewer; and
d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2.

(13) Municipality. The Village of Brightwaters.

(14) Non-Stormwater Discharge. Any discharge to the MS4 that is not composed entirely of stormwater.

(15) Person. Any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

(16) Pollutant. Dredged spoil, filter backwash, solid waste, incinerator residue, treated or untreated sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand and industrial, municipal, agricultural waste and ballast discharged into water, which may cause or might reasonably be expected to cause pollution of the waters, of the state in contravention of the standards.

(17) Premises. Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

(18) Special Conditions.

a. Discharge Compliance with Water Quality Standards. The condition that applies where a municipality has been notified that the discharge of stormwater authorized under their MS4 permit may have caused or has the reasonable potential to cause or contribute to the violation of an applicable water quality standard. Under this condition the municipality must take all necessary actions to ensure future discharges do not cause or contribute to a violation of water quality standards.

b. 303(d) Listed Waters. The condition in the municipality's MS4 permit that applies where the MS4 discharges to a 303(d) listed water. Under this condition the stormwater management program must ensure no increase of the listed pollutant of concern to the 303(d) listed water.

c. Total maximum Daily Load (TMDL) Strategy. The condition in the municipality's MS4 permit where a TMDL including requirements for control of stormwater discharges has been approved by EPA for a waterbody or watershed into which the MS4 discharges. If the discharge from the MS4 did not meet the TMDL stormwater allocations prior to September 10, 2003, the municipality was required to modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL, is achieved.

d. The condition in the municipality's MS4 permit that applies if a TMDL is approved in the future by EPA for any waterbody or watershed into which an MS4 discharges. Under this condition the municipality must review the applicable TMDL to see if it includes requirements for control of stormwater discharges. If an MS4 is not meeting the YTMDL stormwater allocations, the municipality must, within six (6) months of the TMDL's approval, modify its stormwater management program to ensure that reduction of the pollutant of concern specified in the TMDL is achieved.

(19) State Pollutant Discharge Elimination System (SPDES) Stormwater Discharge Permit. A permit issued by the department that authorizes the discharge of pollutants to waters of the state.

(20) Stormwater. Rainwater, surface runoff, snowmelt and drainage.

(21) Stormwater management Officer (SMO). An employee, the municipal engineer or other public official(s) designated by the Village of Brightwaters to enforce this local law. The SMO may also be designated by the municipality to accept and review stormwater pollution prevention plans,

forward the plans to the applicable municipal board and inspect stormwater management practices.

(22) 303(d) List. A list of all surface waters in the state for which beneficial uses of the water (drinking, recreation, aquatic habitat, and industrial use) are impaired by pollutants, prepared periodically by the Department as required by section 303(d) of the Clean Water Act. 303(d) listed waters are estuaries, lakes and streams that fall short of state surface water quality standards and are not expected to improve within the next two years.

(23) TMDL. Total Maximum Daily Load.

(24) Total Maximum Daily Load. The maximum amount of a pollutant to be allowed to be released into a waterbody so as not to impair uses of the water, allocated among the sources of that pollutant.

(25) Wastewater. Water that is not stormwater, is contaminated with pollutants and is or will be discarded.

C. Applicability.

This law shall apply to all water entering the MS4 generated on any developed and undeveloped lands unless explicitly exempted by an authorized enforcement agency.

D. Responsibility for Administration.

The Stormwater Management Officer(s) (SMO(s)) shall administer, implement, and enforce the provisions of this law. Such powers granted or duties imposed upon the authorized enforcement official may be delegated in writing by the SMO as may be authorized by the municipality.

E. Severability.

The provisions of this law are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this law or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this law.

F. Discharge Prohibitions.

(1) Prohibition of Illegal Discharges.

No person shall discharge or cause to be discharged into the MS4 any materials other than stormwater except as provided in subsection a. below. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

a. The following discharges are exempt from discharge prohibitions established by this local law, unless the Department or the municipality has determined them to be substantial contributors of pollutants: water line flushing or other potable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising ground water, uncontaminated ground water infiltration to storm drains, uncontaminated pumped ground water, foundation or footing drains, crawl space or basement sump pumps, air conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street wash water, water from fire fighting activities, and any other water source not containing pollutants. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants.

b. Discharges approved in writing by the SMO to protect life or property from imminent harm, provided that, such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this local law.

c. Dye testing in compliance with applicable state and local laws is an allowable discharge, but requires a verbal notification to the SMO prior to the time of the test.

d. The prohibition shall not apply to any discharge permitted under a SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.

(2) Prohibition of Illicit Connections.

a. The construction, use, maintenance, or continued existence of illicit connections to the MS4 is prohibited.

b. This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.

c. A person is considered to be in violation of this local law if the person connects a line conveying sewage to the municipality's MS4, or allows such a connection to continue.

G. Prohibition against Failing Individual Sewage Treatment Systems.

No persons shall operate a failing individual sewage treatment system in areas tributary to the municipality's MS4. A failing individual sewage treatment system is one which has any one or more of the following conditions:

a. The backup of sewage into a structure.

b. Discharges of treated or untreated sewage onto the ground surface.

c. A connection or connections to a separate stormwater sewer system.

d. Liquid level in the septic tank above the outlet invert.

e. Structural failure of any component of the individual sewage treatment system that could lead to any of the other failure conditions as noted in this section.

f. Contamination of off-site groundwater.

H. Prohibition against Activities Contaminating Stormwater.

(1) Activities that are subject to the requirement of this section are those types of activities that:

a. Cause or contribute to a violation of the municipality's MS4 SPDES permit.

b. Cause or contribute to the municipality being subject to the Special Conditions as defined in Section B of this local law.

(2) Such activities include failing individual sewage treatment systems as defined in Section G, improper management of pet waste or any other activity that causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

(3) Upon notification to a person that he or she is engaged in activities that cause or contribute to violations of the municipality's MS4 SPDES permit authorization, that person shall take all reasonable actions to correct such activities such that he or she no longer causes or contributes to violations of the municipality's MS4 SPDES permit authorization.

I. Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the use of Best Management Practices.

(1) Best Management Practices.

Where the SMO has identified illicit discharges as defined in Section B or activities contaminating stormwater as defined in Section H the municipality may require implementation of Best Management Practices (BMPs) to control those illicit discharges and activities.

a. The owner or operator of a commercial or industrial establishment shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other waste into the MS4 through the use of structural or non-structural BMPs.

b. Any person responsible for a property or premise, which is, or may be, the source of an illicit discharge as defined in Section B, may be required to implement, at said person's expense, additional structural and non-structural BMPs to reduce or eliminate the source of pollutant(s) to the MS4.

c. Compliance with all terms and conditions of a valid SPDES permit authorizing the discharge of stormwater associated with industrial activity, to the extent practicable, shall be deemed compliance with the provisions of this section.

J. Suspension of Access to MS4 (Illicit Discharges in Emergency Situations).

(1) The SMO may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, to the health or welfare of persons, or to the MS4. The SMO shall notify the person of such suspension within a reasonable time thereafter in writing of the reasons for the suspension. If the violator fails to comply with a suspension order issued in an emergency, the SMO may take such steps as deemed necessary to prevent or minimize damage to the MS4 or to minimize danger to persons.

(2) Suspension due to the detection of illicit discharge. Any person discharging to the municipality's MS4 in violation of this law may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The SMO will notify a violator in writing of the proposed termination of its MS4 access and the reasons therefor. The violator may petition the SMO for a reconsideration and hearing. Access may be granted by the SMO if he/she finds that the illicit discharge has ceased and the discharger has taken steps to prevent its recurrence. Access may be denied if the SMO determines in writing that the illicit discharge has not ceased or is likely to recur. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the SMO.

K. Industrial or Construction Activity Discharges.

Any person subject to an industrial or construction activity SPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the municipality prior to allowing of discharges to the MS4.

L. Access and Monitoring of Discharges.

(1) Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this law, or whenever the authorized enforcement agency has cause to believe that there exist, or potentially exists, in or upon any premises any condition which constitutes a violation of this law.

(2) Access to Facilities.

a. The SMO shall be permitted to enter and inspect facilities subject to this regulation under this law as often as may be necessary to determine compliance with this law. If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to the SMO.

b. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.

c. The municipality shall have the right to set up on any facility subject to this law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.

d. The municipality has the right to require the facilities subject to this law to install monitoring equipment as is reasonably necessary to determine compliance with this law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.

e. Unreasonable delay in allowing the municipality access to a facility subject to this law is a violation of this law. A person who is the operator of a facility subject to this law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this law.

f. If the SMO has been refused access to any part of the premises from which stormwater is discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this law, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program

designed to verify compliance with this law or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction.

M. Notification of Spills.

Notwithstanding other requirements of law, as soon as any person responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into the MS4, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the municipality in person or by telephone or by facsimile no later than the next business day. Notifications in person or by telephone shall be confirmed by written notice addressed and mailed to the municipality within three business days of the telephone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least three years.

N. Enforcement.

(1) Notice of Violation.

When the municipality's SMO finds that a person has violated a prohibition or failed to meet a requirement of this law, he/she may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

- a. The elimination of illicit connections or discharges;
- b. That violating discharges, practices, or operations shall cease and desist;
- c. The abatement or remediation of stormwater pollution or contamination hazards and the restoration of any affected property;
- d. The performance of monitoring, analyses, and reporting;
- e. Payment of a fine;
- f. The implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

(2) Penalties.

In addition to or as an alternative to any penalty provided herein or by law, any person who violates the provisions of this local law shall be guilty of a violation punishable by the fines and imprisonments contained in Section 128-86 of this Chapter. However, for the purposes of conferring jurisdiction upon courts and judicial officers generally, violations of this local law shall be deemed misdemeanors and for such purpose only all provisions of law relating to misdemeanors shall apply to such violations. Each week's continued violation shall constitute a separate additional violation.

O. Appeal of Notice of Violation.

Any person receiving a Notice of Violation may appeal the determination of the SMO to the Village of Brightwaters Board of Trustees within fifteen (15) days of its issuance, which shall hear the appeal within thirty (30) days after the filing of the appeal, and within five (5) days of making its decision, file its decision in the office of the Village Clerk and mail a copy of its decision by certified mail to the discharger.

P. Corrective Measures after Appeal.

(1) If the violation has not been corrected pursuant to the requirement set forth in the Notice of Violation, or, in the event of an appeal, within five (5) business days of the decision of the municipal authority upholding the decision of the SMO, then the SMO shall request the owner's permission for access to the subject private property to take any and all measures reasonably necessary to abate the violation and/or restore the property.

(2) If refused access to the subject private property, the SMO may seek a warrant in a court of competent jurisdiction to be authorized to enter upon the property to determine whether a violation has occurred. Upon determination that a violation has occurred, the SMO may seek a court order to take any and all measures reasonably necessary to abate the violation and/or restore the property. The cost of implementing and maintaining such measures shall be the sole responsibility of the discharger.

Q. Injunctive Relief.

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this law. If a person has violated or continues to violate the provisions of this law, the SMO may petition for a preliminary or permanent injunction restraining the person from activities which would

create further violations or compelling the person to perform abatement or remediation of the violation.

R. Alternative Remedies.

(1) Where a person has violated a provision of this law, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the Village Attorney and concurrence of the Village's Code Enforcement Officer, where:

- a. The violation was unintentional.
- b. The violator has no history of previous violations of this law.
- c. Environmental damage was minimal.
- d. Violator acted quickly to remedy violation.
- e. Violator cooperated in investigation and resolution.

(2) Alternative remedies may consist of one or more of the following:

- a. Attendance at compliance workshops.
- b. Storm drain stenciling or storm drain marking.
- c. River, stream or creek cleanup activities.

S. Violations deemed a Public Nuisance.

In addition to the enforcement processes and penalties provided, if any condition caused or permitted to exist in violation of any of the provisions of this law is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, it may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

T. Remedies not Exclusive.

The remedies listed in this law are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the authorized enforcement agency to seek cumulative remedies.

This local law has been adopted pursuant to section 10 of the Municipal Home Rule Law and supercedes section 7-706 of the Village Law.

EXPLANATION: Matter underscored is new; matter in the brackets is old law to be omitted.

Certificate of Necessity for Local Law #3 of the year 2008 creating section 128-108.1 of the Code of the Village of Brightwaters was signed by the Mayor on July 7, 2008 to certify that it is necessary for the immediate passage of the above local law.

Public hearing was opened to the public for any comments and/or questions and all had a chance to be heard.

Tr. Charles Fischer moves to approve the above local law and Tr. Belford seconded and all approved 4/0.

Public

Mayor McNulty opened the floor to the audience for any questions and/or comments, and discussions of matters were raised, and all had a chance to be heard.

Adjourn

At 9:33 p.m., there being no further business before the Board, the Mayor called for a motion to adjourn the meeting. Trustee Charles Fischer made the motion; Tr. Belford seconded and unanimously carried 4/0.

Respectfully submitted,

Christine O'Shea

Village Clerk & Treasurer

Public attendance: 21

July 7, 2008 - Board of Trustees Meeting

