

ATM May 18, 2009

Article 39

LOW IMPACT DEVELOPMENT (LID) BYLAW FOR THE TOWN OF WINCHENDON

INTRODUCTION

Land uses in Town affect our streams, lakes and water supplies. Careful planning of new development and redevelopment will protect the quality and health of these important water resources. Therefore, the Town of Winchendon enacts this Low Impact Development bylaw to provide guidance that will prevent harmful impacts from land development activities.

1.0 PURPOSES AND AUTHORITY

1.1 Purposes

The purpose of this Bylaw is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing requirements and procedures to manage stormwater runoff, promote groundwater recharge and to prevent water pollution from new development and redevelopment. This Bylaw seeks to meet that purpose through the following objectives:

1. Establish regulations for land development activities that preserve the health of water resources;
2. In new development, require that the amount of stormwater runoff is equal to or less than pre-development conditions and that the quality of stormwater runoff is equal to or better than pre-development conditions in order to reduce flooding, stream erosion, pollution, property damage and harm to terrestrial and aquatic life;
3. Establish LID management standards and design criteria to control the quantity and quality of stormwater runoff;
4. Implement "low impact development practices," such as reducing impervious cover and preserving greenspace and other natural areas to reduce stormwater runoff and maintain hydrologic function;
5. Establish maintenance provisions to ensure that stormwater treatment practices will continue to function as designed and pose no threat to public safety;
6. Establish procedures for the Town's review of low impact development plans and for the Town's inspection of approved stormwater treatment practices.

1.2 Nothing in this Bylaw is intended to replace the requirements of either, the Town of Winchendon Zoning Bylaw, Wetlands Protection Bylaw, Wetland Conservancy District, Flood Plain Conservancy Districts, Groundwater Protection Overlay District or any other Bylaw that has been or may be adopted by the Town of Winchendon. Any activity subject to the provisions of these Bylaws must comply with the specifications of each.

1.3 Authority

This Bylaw is adopted under authority granted by the Home Rule Amendment of the Massachusetts Constitution, and pursuant to the regulations of the federal Clean Water Act, and as authorized by the residents of the Town of Winchendon at Town Meeting, dated May 18, 2009.

2.0 DEFINITIONS

These definitions shall apply in the interpretation and implementation of the Bylaw. Terms not defined in this section shall be understood according to their customary and usual meaning. Additional definitions may be adopted by separate regulation.

ACCESSORY BUILDING: A subordinate or secondary building situated on the same lot or parcel with a principal building, the use of which is customarily incidental to that of the main building or land use.

ALTER: Any activity, which will measurably change the ability of a ground surface area to absorb water or will change existing surface drainage patterns. Alter may be similarly represented as "alteration of drainage characteristics," and "conducting land disturbance activities." A land altering activity includes the cutting of trees of greater than 6 inch caliper Diameter Breast Height (DBH).

APPLICANT: A property owner, agent of a property owner, person or persons, including a corporation, trust or other legal entity, who applies for issuance of a LID Permit in accordance with this bylaw.

BEST MANAGEMENT PRACTICE (BMP): Structural, non-structural and managerial techniques that are recognized to be the most effective and practical means to prevent and/or reduce increases in stormwater volumes and flows, reduce point source and nonpoint source pollution, and promote stormwater quality and protection of the environment. "Structural" BMPs are devices that are engineered and constructed to provide temporary storage and treatment of stormwater runoff. "Nonstructural" BMPs use natural measures to reduce pollution levels, do not require extensive construction efforts, and/or promote pollutant reduction by eliminating the pollutant source.

BETTER SITE DESIGN: Site design approaches and techniques that can reduce a site's impact on the watershed through the use of nonstructural LID Management practices. Better site design includes conserving and protecting natural areas and greenspace, reducing impervious cover, and using natural features for LID Management.

BUILDING ENCLOSURE: The building assemblies comprising the outer structure of a building that enclose living and storage spaces including walls, windows, doors, roof, floors and foundation; also, building envelope, building shell.

DEVELOPMENT: The modification of land to accommodate a new use or expansion of use, usually involving construction.

DISTURBANCE OF LAND: Any action that causes a change in the position, location, or arrangement of soil, sand, rock, gravel or similar earth material. A land altering activity includes the cutting of trees of greater than 6 inch caliper Diameter Breast Height (DBH).

FOREST CUTTING PLAN: A plan for the cutting of trees on forest land, which is prepared and submitted in accordance with M.G.L. Chapter 132 Sections 40 - 46A. The forest cutting plan requires approval by a Service Forester of the Massachusetts Department of Conservation and Recreation, as provided under 304 CMR 11.04.

IMPERVIOUS SURFACE: Any material or structure on or above the ground that prevents water from infiltrating through the underlying soil. Impervious surface is defined to include, without limitation: paved parking lots, sidewalks, roof tops, driveways, patios, paved recreation areas and paved, gravel and compacted dirt surfaced roads.

LANDSCAPING: Landscaping includes a range of maintenance and construction activities aimed at shaping, defining, and enhancing out-door spaces and environments inhabited by people. It is practiced as both a science and an art. Landscaping involves working with functional site conditions of water, soil, seasonality, wind, and light conditions, requires a thorough knowledge of plant materials, and strives to shape our living environments to achieve aesthetic effects.

LOW IMPACT DEVELOPMENT: Low Impact Development (LID) is an approach to land development that uses land planning and design practices and technologies to simultaneously conserve and protect natural resource systems and reduce infrastructure costs. LID seeks to design the built environment to remain a functioning part of an ecosystem rather than exist apart from it. LID tools are used to plan and engineer urban and rural sites to maintain or restore the hydrologic and ecological functions of their watersheds.

LID AUTHORITY: The Town of Winchendon Planning Board is duly authorized to administer, implement, and enforce these LID Bylaws. The LID Authority is responsible for coordinating the review, approval and permit process as defined in this Bylaw. Other Boards and/or departments participate in the review process as defined in Section 4 of these LID Bylaws.

LID DESIGN CRITERIA: Best management practices and specifications for the use of LID. Projects that comply with prescribed requirements may be allowed reductions in stormwater management requirements when techniques are used to reduce stormwater runoff at the site.

LOW IMPACT DEVELOPMENT PERMIT (LIDP): A permit issued by the LID Authority for projects in the categories and meeting the standards defined in this Bylaw, after review of an application, plans, calculations, and other supporting documents. Projects in these categories that meet these generic standards and are properly implemented are assumed to meet the requirements and intent of this Bylaw which is designed to protect the environment of the Town of Winchendon from the deleterious affects of uncontrolled and untreated stormwater runoff.

MASSACHUSETTS STORMWATER MANAGEMENT STANDARDS AND HANDBOOK: The policy issued by the Department of Environmental Protection, and as amended, that coordinates the requirements prescribed by state regulations promulgated under the authority of the Massachusetts Wetlands Protection Act G.L. c. 131 § 40 and Massachusetts Clean Waters Act G.L. c. 21, §. 23-56. The policy addresses stormwater impacts through implementation of performance standards to reduce or prevent pollutants from reaching water bodies and control the quantity of runoff from a site.

NONPOINT SOURCE POLLUTION: Pollution from many diffuse sources caused by rainfall or snowmelt moving over and through the ground. As the runoff moves, it picks up and carries away natural and human-made pollutants, finally depositing them into water resource areas.

PERSON: Any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the Commonwealth or political subdivision thereof to the extent subject to Town Bylaws, administrative agency, public or quasi-public corporation or body, the Town of Winchendon, and any other legal entity, its legal representatives, agents, or assigns.

POST-DEVELOPMENT: The conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land. Post-development refers to the phase of a new development or redevelopment project after completion, and does not refer to the construction phase of a project.

PRE-DEVELOPMENT: The conditions that exist at the time that plans for the land development of a tract of land are submitted to the LID Authority. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first plan submission shall establish pre-development conditions. For the purpose of meeting the sizing criteria of structural stormwater management devices as required in the LID Regulations [Section 7.2.9.2], the standard for characterizing pre-development land use for on-site areas shall be woods.

RECHARGE: The replenishment of underground water reserves.

REDEVELOPMENT: Any construction, alteration, transportation, improvement exceeding land disturbance of 20,000 square feet, where the existing land use is commercial, industrial, institutional, or multi-family residential.

3.0 SCOPE AND APPLICABILITY

3.1.1 This Bylaw shall be applicable to all new development and redevelopment including, but not limited to, site plan applications, subdivision applications and applications for earth removal permits. The bylaw shall apply to any activities that will result in an increased amount of stormwater runoff or pollutants from a parcel of land, or that will alter the drainage characteristics of a parcel of land, unless exempt under Section 3.2 of this Bylaw. A LID Permit shall be required for all new development and redevelopment under the jurisdiction of this bylaw. The LID permit process shall be coordinated with existing permitting, where applicable.

3.1.2 An alteration, redevelopment, or conversion of land use or activities to those with higher potential pollutant loadings such as: auto salvage yards, auto fueling facilities, fleet storage yards, commercial parking lots, road salt storage areas, commercial nurseries and landscaping, outdoor storage and loading areas of hazardous substances, or marinas, shall require a LID Permit.

3.1.3 Redevelopment projects are presumed to meet the specified LID requirements described in this Bylaw if the total impervious cover is reduced by at least 40% from existing conditions. Where site conditions prevent the reduction in impervious cover, LID practices shall be implemented to provide stormwater controls for at least 40% of the site's original impervious area. When a combination of impervious area reduction and LID practice implementation is used for redevelopment projects, the combination of impervious area reduction and the area controlled by a LID practice shall equal or exceed 40%.

3.2 Exemptions

No person shall alter land within the Town of Winchendon without having obtained a LID Permit for the property with the following exceptions:

3.2.1 Any activity that will disturb or alter an area less than 20,000 square feet unless site plan, subdivision or review for an earth removal permit are required. An applicant claiming exemption under this 20,000 square foot rule shall be required to document that the extent of land disturbance or alteration is less than 20,000 square feet. The area required for construction of a one- or two-family residential dwelling septic system shall be exempt.

3.2.2 Normal maintenance and improvement of land in agricultural use as defined by the Wetlands Protection Act Bylaw 310 CMR 10.04 and MGL Chapter 40A Section 3.

3.2.3 Conversion of land to agricultural use for crops and/or pasture, provided that such conversion is supported by the Winchendon Agricultural Commission and the project employs best management practices for LID;

3.2.4 Timber harvesting conducted under the terms of an approved Forest Cutting Plan as defined by the Forest Cutting Practices Act regulation 304 CMR 11.00 and MGL Chapter 132 Sections 40 through 46;

3.2.5 Maintenance of existing landscaping, gardens or lawn areas associated with a residential dwelling;

3.2.6 Construction, repair or replacement of a one- or two-family residential dwelling septic system.

3.2.7 Repair or replacement of an existing roof of a residential dwelling;

3.2.8 The construction of any fence that will not alter existing terrain or drainage patterns;

3.2.9 Construction of utilities serving a one- or two-family residential dwelling (gas, water, electric, telephone, etc.), other than drainage, which will not alter terrain, ground cover, or drainage patterns;

3.2.10 Emergency repairs to any Stormwater Management device or practice that poses a threat to public health or safety, or as deemed necessary by the LID Authority;

3.2.11 Stormwater discharges resulting from the activities subject to this Bylaw that are wholly subject to jurisdiction under the Wetlands Protection Act and/or the Town of Winchendon Wetlands Protection Bylaw, and that demonstrate compliance with the Massachusetts Stormwater Management Standards as reflected in an Order of Conditions issued by the Conservation Commission;

3.2.12 Any work or projects for which all necessary approvals and permits have been issued before the effective date of this Bylaw.

3.3 Due to the many benefits of low impact development, persons exempt from this bylaw are encouraged to use stormwater control and site planning methods described in the Town of Winchendon Best Development Practices Guidebook.

4.0 ADMINISTRATION

4.1 The Planning Board is hereby designated as the LID Authority. The LID Authority shall administer, implement and shall enforce this Bylaw. Any powers granted or duties imposed upon the LID Authority may be delegated in writing by the LID Authority to its employees or agents.

4.2 LID Regulations The LID Authority shall adopt, implement and may periodically amend, rules and regulations relating to the terms, conditions, definitions, enforcement, fees (including application, inspection, and/or consultant fees), procedures and administration of this LID Bylaw by majority vote of the LID Authority, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least fourteen (14) days prior to the hearing date. After public notice and public hearing, the LID Authority may issue rules and regulations to fulfill the purposes of this Bylaw. Failure by the LID Authority to issue such rules and regulations or a legal declaration of their invalidity by a court shall not suspend or invalidate the effect of this Bylaw.

4.3 The LID Authority may, with the concurrence of the Applicant, designate another Town Board, including, but not limited to, the Conservation Commission, Zoning Board of Appeals and Board of Health, as its authorized agent for the purposes of reviewing LID submittals and approving LID Permits for any project within that particular Board's jurisdiction.

4.4 Stormwater Management Standards and Handbook The LID Authority will use the policy, criteria and information, including specifications and standards, of the latest edition of the Massachusetts Stormwater Management Standards and Handbook to execute the provisions of this Bylaw. The Handbook includes a list of acceptable stormwater treatment practices, including specific design criteria

for each. The Standards and Handbook may be updated and expanded periodically, based on improvements in engineering, science, monitoring, and local maintenance experience. Unless specifically revised in the LID Regulations, stormwater management practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to be protective of Massachusetts water quality standards.

4.5 Actions by the LID Authority The LID Authority may take any of the following actions as a result of an application for a LID Permit: Approval, Approval with Conditions or Disapproval.

4.6 Appeals of Action by the LID Authority The decisions or orders of the LID Authority shall be final. Further relief shall be to a court of competent jurisdiction.

4.7 LID Design Criteria The LID Authority shall adopt LID Design Criteria through the Regulations authorized by this LID Bylaw. Applicants are required to use these Design Criteria to assess the effectiveness of the use of LID better site design practices to decrease stormwater runoff at the site. Projects that comply with LID Design Criteria may be allowed reductions in stormwater management requirements specified in the Performance Standards section of the Regulations. Failure by the LID Authority to issue LID Design Criteria through its Regulations or a legal declaration of their invalidity by a court shall not act to suspend or invalidate the effect of this Bylaw.

5.0 PROCEDURES

Permit Procedures and Requirements shall be defined and included as part of any rules and regulations issued as permitted under Section 4 of this Bylaw.

6.0 ENFORCEMENT

6.1 The LID Authority or an authorized agent of the LID Authority shall enforce this Bylaw, regulations, orders, violation notices, and enforcement orders, and may pursue all civil and criminal remedies for such violations. The LID Authority or an authorized agent of the LID Authority may issue a written order to enforce the provisions of this Bylaw or the Regulations thereunder.

6.2 Criminal Penalty Any person, who violates any provision of this Bylaw or regulation, order or permit issued thereunder, shall be punished by a fine of not more than \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

6.3 Non-Criminal Disposition As an alternative to criminal prosecution or civil action, the Town of Winchendon may elect to utilize the non-criminal disposition procedures set forth in G.L. Chapter 40, Section 21D, in which case the LID Authority or its agent shall be the enforcing party. The penalty for the 1st violation shall be \$100. The penalty for the 2nd violation shall be \$200. The penalty for the 3rd and subsequent violations shall be \$300. Each day or part thereof that such violation occurs or continues shall constitute a separate offense.

7.0 SEVERABILITY

The invalidity of any section, provision, paragraph, sentence, or clause of this Bylaw shall not invalidate any section, provision, paragraph, sentence, or clause thereof, nor shall it invalidate any permit or determination that previously has been issued.