

COUNCIL WORKSHOP ITEM

ITEM: Stormwater & Flood Plain Oversight Committee
File #00-02 Code Amendment: Section 26-78
“Duration & Revision to Permits”

DATE: February 21, 2001

PREPARED BY: Robert Jungwirth, Village Engineer

PURPOSE: Adopt staff requested revision to stormwater and floodplain ordinance.

DISCUSSION:

When the DuPage County countywide stormwater and flood plain ordinance was originally drafted, it was designed for permitting major developments such as subdivisions or stormwater management projects. In reality, ninety percent of the permits issued by the village have been minor additions to existing structures, garages or new single family homes.

Consequently, the initial permit duration of three years is excessive for most “developments”. To encourage the timely completion of these projects, staff has asked that the three years be reduced to one year. This time frame more closely coincides with building permits. Extensions of stormwater permits will be granted in one year increments.

Language was also added to clarify that the one year limit does not override the two year period allowed for the completion of public improvements in subdivisions or planned developments.

Further discussion on this recommendation can be found on the attached Minutes of the September 28, 2000 and November 16, 2000 meeting of the Stormwater and Flood Plain Oversight Committee.

RECOMMENDATION:

Adopt amendment.

**VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY**

INITIATED BY: Robert T. Jungwirth, Village Engineer **DATE:** December 18, 2000

RECOMMENDATION FROM: Stormwater and Flood Plain Oversight Committee
(Board or Department)

FILE REF: File #00-02 Code Amendment: Section 26-78, "Duration and Revision to Permits"

STEPS NEEDED TO IMPLEMENT ACTION

Adopt Revision to Municipal Code

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

SUMMARY OF ITEM:

At the November 16, 2000 Stormwater and Flood Plain Oversight Meeting, it was recommended to the Village Council that the above described revision be adopted.

Further discussion regarding this file can be found in the attached September 28, 2000 and November 16, 2000 Stormwater and Flood Plain Oversight Committee Meeting Minutes.

RECORD OF ACTION TAKEN:

December 18, 2000

MAYOR BRIAN KRAJEWSKI AND VILLAGE COMMISSIONERS

RE: SWM File #00-02 "Duration and Revision to Permits",
Section 26-78

Dear Mayor Krajewski and Village Commissioners:

On Thursday, November 16, 2000, the Stormwater and Flood Plain Oversight Committee adopted the following motion:

MR. BOLLENBERG MOVED TO RECOMMEND TO THE VILLAGE COUNCIL THE ADOPTION OF THE REVISION TO THE STORMWATER AND FLOODPLAIN ORDINANCE REGARDING Section No. 26-78, "Duration and Revision to Permits" as outlined in File #00-02.

Mr. Ponstein seconded the motion.

**ROLL CALL: AYE: Mr. Bollenberg, Mr. Erhart, Mr. Ponstein,
Chairman Eckmann**

NAY: None

Motion Passed: 4:0

The staff requested revision shortens the initial duration of permits from three years to one year.

Further discussion regarding this file can be found on the attached September 28, 2000 and November 16, 2000 Stormwater and Flood Plain Oversight Committee Minutes.

Sincerely,

VILLAGE OF DOWNERS GROVE

Donald Eckmann, Chairman
Stormwater and Flood Plain Oversight Committee

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Mr. Bollenberg stated that appearance of the property couldn't be taken into consideration. He added that the neighbors do not want the garage to be three feet higher than everything else. Unfortunately, the ordinance cannot consider that and it is not a proper reason for a variance.

Mr. Sitkiewicz questioned whether water displacement would be considered.

Mr. Jungwirth stated that compensation had been included in the design.

Chairman Eckmann asked if there were any additional comments regarding the variance. He requested a call to vote.

MS. BECKMAN MOVED TO RECOMMEND TO THE VILLAGE COUNCIL THAT A VARIANCE OF TWO FEET BE GRANTED SUCH THAT THE LOWEST FLOOR OF THE GARAGE IS ONE FOOT RATHER THAN THREE FEET ABOVE THE HIGH WATER LEVEL AT 4621 STANLEY AVENUE.

Mr. Ponstein seconded the motion.

Motion Carried 4:0

Mr. Eckmann explained to the audience that the committee's recommendation was not the final action. It was up to the Village Council to approve or deny the variance.

SWM File #00-02 Revision to: Duration and Revision of Permits, Section 26-78

Chairman Eckmann stated the next item on the agenda is SWM File #00-02, the code amendment relative to the "Duration and Revision of Permits, Section 26-78." It is staff's recommendation to change from a three year permit to a one year permit.

Ms. Rymas stated that three years is too long a period of time for most permits, particularly those for room additions or garages. Three years was chosen for the Countywide stormwater permit with large projects in mind. Our intent is to match the one year duration of building permits. Hopefully that will eliminate the problem of houses being completed and occupied but grading issues are still being dealt with.

Ms. Beckman stated that applicants tend to stretch out their projects to the maximum time available. Ms. Rymas agreed.

Mr. Ponstein was concerned about this change conflicting with the two years that are allowed for subdivision developments.

Mr. Jungwirth explained that the two years permitted by the subdivision control ordinance is for the completion of all public improvements (grading, street construction, watermains, sewers, sidewalks, streetlights, etc.) He suggested that the draft ordinance for this amendment include language that would exclude those permits from the one year limit.

Mr. Ponstein was also concerned about the clause regarding extension of permits for activities in special management areas. He feared that some change in wetland requirements between the time the permit was originally issued and the date of extension could result in an approved activity now being denied. This could present a hardship to a developer who was building homes one by one on good faith that restrictions would not be adopted that prohibited or severely modified construction on the final lots. Changing to a one year permit would increase the chance that this could happen.

Mr. Jungwirth stated that this situation may persuade us to retain three year permits for developments involving special management areas.

After extended discussion on these unanticipated ramifications to subdivision and special management area developments, it was suggested that this issue be tabled for now and placed on the next meeting's agenda for further discussion. By a show of hands this "motion" was approved.

SWM File #00-03, Revision to Wetland Banking, Section 26-65

Chairman Eckmann said the last item the Committee would be reviewing is File #00-03; Revision to: Wetland Banking, Section 26-65.

Mr. Jungwirth stated that he had included in the committee member's packet a copy of the recent revision to the countywide ordinance that had been adopted by the county board. Also, enclosed was a copy of the letter from the county's development and environmental concerns department directing us to adopt the revision to our local ordinance. He added that this action was not optional. All communities were required to adopt this change into their version of the code. The county had rewritten quite a bit of the technical requirements and he would try to answer any questions the committee may have.

Chairman Eckmann asked why the word "project" replaces the word "program" in its language.

Mr. Jungwirth explained that it was more accurate to identify the need for specific "projects" in the wetland banking program.

Mr. Bollenberg commented that if there were no projects in process with monies deposited, then the monies would have to be returned.

Mr. Jungwirth thought the most prominent item in the amendment was a dollar amount had been established for wetland banking fee in lieu of construction. The county ordinance now states that \$175,000 per acre shall be paid if no banking project is available. He added that he is not aware of any bank that has been that expensive. For example, the village developers paid \$95,000 per acre for the wetland bank project in the Salt Creek watershed.

Mr. Ponstein asked Mr. Jungwirth if mitigation payments are calculated at one acre per acre or is it one and one half?

Mr. Jungwirth thought the rate is one and one half acre for each acre filled.

Village of Downers Grove
Stormwater and Flood Plain Oversight Committee Meeting
Minutes

Downers Grove Public Works Facility
5101 Walnut Avenue

November 16, 2000

Mr. Donald Eckmann, Chairman, called the November 16, 2000 meeting of the Downers Grove Stormwater and Flood Plain Oversight Committee to order at 7:10 p.m.

Present: Mr. William Bollenberg, Mr. William Ponstein, Mr. Donald Eckmann

Mr. Perry Erhart arrived at 7:30 p.m.

Absent: Ms. Julia Beckman

Staff: Mr. Robert Jungwirth, Village Engineer, Ms. Chrys Rymas, Stormwater Management Engineer, Ms. Hope Hathaway, Recording Secretary

Chairman Eckmann stated the first order of business was the roll call. After this was the acceptance of the Minutes from the September 28, 2000 meeting. He asked the Committee if there were any changes or corrections to the minutes.

The Committee briefly discussed the acceptance of the minutes.

Mr. Bollenberg requested that his name be changed to Bollenberg instead of Bollenberger as noted on page two.

Committee Member Bollenberg moved to accept the September 28, 2000 minutes.

Committee Member Ponstein seconded the motion.

Motion carried 3:0.

Chairman Eckmann stated that the Committee would continue the review of File #00-02; Code Amendment, Section 26-78 "Duration and Revision to Permits".

SWM File #00-02 Code Amendment, Section 26-78 "Duration and Revision to Permits".

Chairman Eckmann stated that the Committee members would continue with the reconsideration of this item from the last meeting and asked Mr. Jungwirth for his comments.

Mr. Jungwirth answered that there was a concern in regard to the life span of a subdivision approval, which is two years following the plat being recorded. To avoid conflicts between a subdivision permit and all other permits, an additional paragraph is provided. The recommended revision, Item 1, states *except as provided herein*, permits would be valid one year following the date of permit issuance. Item 2, states *permits issued in conjunction with the approval of a final plat of subdivision will be valid for a term of two years following date of plat recordation*. It is hoped that this will avoid any problems or questions. This should handle one of the issues that were observed with the one-year term for all permits. Of key importance is that permits can be extended and for subdivisions an extension is given on a one-year basis, so extensions would not be granted in two-year increments (2, 4, 6, 8 years). The permit would be extended one additional year if the public improvements were not completed at the end of the two years time limit. Sometimes, three or six month's extension is given, but we do not anticipate any big issues although, without this change, there was an issue.

The second part dealt with special management areas. The issues regarding the change in the current requirements will arise occasionally. The subdivision permit will be effective for two years, which will protect the developer from changes in the wetland rules that may cause a hardship.

Mr. Jungwirth asked the Committee Members if there were any questions or comments.

Chairman Eckmann asked if whether or not 99% of the subdivision work done in the village could be done reasonably within two years. He has no problem with this change, but there is a possibility that if they have to go for a renewal that a developer may be confronted with another ordinance and would have to make the changes. He had a problem with this ordinance change.

Mr. Ponstein stated that no matter what is done, it remains that the detention or special management areas are all set with the entire subdivision, but he believed that most of the items left to do would be sidewalks and felt that two years would not be a hardship.

Mr. Jungwirth stated that if the change were made it would encourage the developer to complete that part of the project. By ordinance, all those improvements must be done at the beginning of the two-year period but sometime this would not be practical. In that case, a developer would be advised that a renewal would be necessary.

Chairman Eckmann questioned how would the developer be aware of a change at the end of two years.

Mr. Jungwirth stated that the change would come from a higher authority, such as county, state, or FEMA. Stormwater Management would be notified first of any changes, and there is a 90 day review period for comments. If a change were noted that could potentially alter a development under construction, the developer would be encouraged to complete that portion so he would not be subjected to any changes.

Chairman Eckmann suggested that verbiage be changed after the word "ordinance" to 'provided notification by the Village of Downers Grove of any changes 90 days prior.'

Mr. Ponstein commented that if the developer had the stormwater management completed and the last things to do were upstream and the storage requirements changed, there might be no more space available.

Mr. Jungwirth answered that there were some changes, however, generally it seems that the County was in receipt of those changes and asked us to do the same, they have given allowance for the projects under construction or those that had permits issued.

Mr. Ponstein stated that this does not do that.

Chairman Eckmann agreed.

Mr. Jungwirth stated that his concern was that this was the County's language for this particular item. If some language is added that may weaken or modify it or makes it less restrictive than the county, they may not allow the adoption of the language. In general, we may be more restrictive but not less restrictive.

Chairman Eckmann suggested to the Board that this be viewed as right and the county may view it in another manner.

Mr. Bollenberg stated that looking at this academically, legally and esoterically it is offensive that a developer could be 23 months and 29 days into a project and the rules would change and make you change your project.

Ms. Rymas stated that the language is confusing. A three-year project cannot be changed two years hence and expect the project to begin again.

Mr. Bollenberg agreed there would be too many insurmountable changes allowed. This does not allow for a request of variance. The practical matter is that there is no place in Downers Grove that would take longer than two years to develop. There is no unincorporated outward property available, only unincorporated inward property available within our township.

Mr. Jungwirth stated that he could confer with our village attorney whether he would consider speaking with the States Attorney at the County to discuss the ramifications of this particular passing of the code.

Mr. Bollenberg stated that this passage could be an effective tool for projects being completed in a timely manner as written.

Mr. Jungwirth stated that the Council recommendation would question whether or not there is a problem in this regard. A statement should be made stating that not everything that is done in public is not necessarily agreed upon. No problems have been noted where the rules have changed and it has been expensive to the developer or he has had to construct a larger basin.

Mr. Ponstein asked what the benefits were if the fees changed.

Mr. Jungwirth stated that the fees were to be paid at the time of permit issuance.

Mr. Ponstein asked if an extension were given, would the developer be subject to making up the difference in a fee change. In other words, if the project was not complete, if adhering to the ordinance in place at the time, and there were higher fees, would they apply?

Mr. Jungwirth answered that he did not know. The ordinance as it appears today and what we were discussing regarding the fee amounts, we require renewal permits, but do not require payment of any additional fees. Stormwater is introducing the payment of re-inspection fees, which coincides with building permits, i.e., if the project is not complete at the time of the inspection, then a fee will be assessed for a follow-up inspection, but not on permit renewal fees. It was unclear how changing the fees would put all the active permits into a state of limbo where increases would be due upon renewal.

Mr. Ponstein commented that there were two points of contradiction in the ordinance. It states that it is two years from the plat recordation, yet in 'Justification', it states 'at the time of final plat approval be valid for a coincident term of two years.' Which does the ordinance really say? It is stated two different times.

Mr. Jungwirth stated that the two expressions were used synonymously and should not have been as there would be some lapse of time between the final plat approval, which is a Council action and the developer taking the plat to Wheaton for recordation. Therefore, the ordinance states the date the plat is recorded not the date of Council approval. To say two years after the time of final plat approval was his mistake.

Mr. Bollenberg stated that the record would show that it is the revision not the justification being discussed.

Mr. Jungwirth clarified it is as stated in italics under 'Recommended Revision', which is the language to be inserted in the newly revised ordinance.

Mr. Ponstein stated that this should agree with the ordinance as far as the time limit.

Mr. Jungwirth confirmed the expiration date permitted as stated in Chapter 20 allows two years from the date the plat is recorded.

Chairman Eckmann questioned the language of the ordinance with regard to the date of permit issuance and the date of plat recordation.

Mr. Jungwirth commented that unless it is a subdivision plat, the permit is issued by the Village of Downers Grove cashier. The fees are paid by the applicant, receives their copy of permit, then the one-year time frame begins. When a subdivision stormwater permit is issued the time begins when the plat is recorded. The act of issuing a permit is different, one is when the monies are paid and one is when the plat is recorded in Wheaton.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE PERMIT PROVISIONS OF THE
STORMWATER AND FLOOD PLAIN ORDINANCE**

BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois,
as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 1. That Section 26-78 of the Downers Grove Municipal Code is hereby amended as follows:

26-78. Duration and revision to permits.

1. ~~Except as provided herein, p~~Permits will be valid for a term of ~~three years~~^{one year} following the date of permit issuance.

2. ~~Permits issued in conjunction with the approval of a final plat of subdivision will be valid for a term of two years following date of plat recordation.~~

3. If the permitted activity has been started but is not completed by the expiration date of the permit, and the permittee intends to pursue the permitted activity, then the permittee may submit a written request that the expiration date be extended. Upon receipt of such request, the Administrator may extend the expiration date in maximum increments of ~~three years~~^{one year} for permitted activities outside special management areas. Expiration dates for permitted activities in special management areas may be extended in maximum ~~three~~^{one} year increments provided the activity is in compliance with the then current requirements of this Ordinance.

4. If, after permit issuance, the permittee decides to revise the approved plans, the permittee shall submit revised plans to the Administrator, along with a written request for approval. If the Administrator determines that the revised plans are in compliance with the requirements of this Ordinance, an approval of the revised plans will be issued.

SECTION 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:
Published:
Attest: _____
Village Clerk