

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
OCTOBER 11, 2011 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Countywide Stormwater & Flood Plain Ordinance Update	Resolution Ordinance Motion ✓ Discussion Only	Tom Dabareiner, AICP, Director of Community Development

SYNOPSIS

Discussion on the proposed amendments to the DuPage County Countywide Stormwater and Floodplain Ordinance is requested.

STRATEGIC PLAN ALIGNMENT

The Village's Five Year Plan and Goals identifies *Top Quality Village Infrastructure and Facilities*. An objective is *Improved Stormwater and Drainage System*.

FISCAL IMPACT

N/A

RECOMMENDATION

Concur with the Stormwater and Flood Plain Oversight Committee and direct staff to prepare a formal response to DuPage County requesting a change related to the Municipal Technical Advisory Panel portion of the Ordinance as described below.

BACKGROUND

DuPage County is currently considering a comprehensive amendment to the Countywide Stormwater & Flood Plain Ordinance. This ordinance applies to all properties within the Village and is administered by the Village. The original ordinance was adopted in 1992 and has been amended 11 times. The proposed amendments would result in a complete re-write of the ordinance.

According to the County, the proposed amendment is intended to:

- Convert the ordinance from a primarily new development focus to a structure that better meets the needs for new developments, redevelopments and existing developments
- Review and optimize the stormwater management requirements to remain competitive in maintaining and attracting businesses while preserving the high standard of flood control and environmental protection for County residents
- Reduce the time it takes to prepare an application submittal
- Reduce the time it takes to review an application submittal
- Bring clarity but allow for the application of "common sense" and professional judgement

DuPage County began a series of listening sessions almost two years ago to receive input from citizens and other stakeholders to be used in rewriting the Countywide Stormwater & Flood Plain Ordinance. The County's purpose in undertaking this process was to modernize the Ordinance to adapt to changes in the development and regulatory landscapes, such as Best Management Practices, water quality improvements, etc. The County is experiencing more redevelopment than development and Federal and State mandates now regulate existing developments—primarily relating to water quality as outlined in the National Pollutant Discharge Elimination System.

A steering committee, comprised of representatives of the County, municipalities, and local industry was established with the task of overseeing the process. This committee has met twenty-nine times thus far and their discussions and decisions are recorded on the project's website:

<http://ec.dupageco.org/StormWaterUpdate/>

The website also contains the various presentations made by the County's consultant, the first draft of the rewrite and the 900-plus comments received for it along with a response document for those comments. A blog is also part of the site, as well as links to a variety of reference materials.

Staff has reviewed the current and previous drafts as well as the comment response document and has summarized the following substantive changes to the ordinance:

Allows General Certifications

One of the main benefits included in the proposed re-write is that it will allow General Certifications. These are used and awarded for low impact routine activities, such as building sheds. General Certifications mirror a process used by both the Federal and State governments, whereby the activities are considered to be permitted so as long as a set of criteria are met. The benefit to the applicant is that, instead of making a submittal where they *think* an activity may be allowed, General Certifications will clearly state what *is* allowed when the stated criteria are met.

Clarifications and Modifications to Activities within Wetland Buffers

Also beneficial are the proposed clarifications/modifications in regulating wetland buffers. Homeowners living in a buffer which is already turf grass, patio or driveway will welcome this change as it saves them money and confusion. These areas have been traditionally difficult to administer and applicants were often surprised to learn that they had to pay a consultant to perform a buffer delineation in order to continue maintaining their yard as it already had been.

Net Impervious Areas for Commercial Properties

The proposed interpretation shift to *net new impervious area* for commercial projects will still protect downstream properties while eliminating a disincentive to improve properties which already have large impervious areas, i.e. parking lots. Under the current ordinance even adding landscaping islands to an existing parking lot could trigger the need to install a detention facility, so new landscape islands were discouraged. Under the proposal, the trigger is not hit if the impervious area is reduced by 5% or more.

Creation of Municipal Technical Advisory Panel

The re-write proposes the creation of a Municipal Technical Advisory Panel (MTAP). MTAP is intended to advise the County Stormwater Administrator on topics which require clarification or interpretation. The MTAP can be called upon by an applicant, a local administrator or the County Stormwater Committee as well. Staff and the Village's Stormwater & Floodplain Oversight Committee are concerned that the MTAP could be used as a way to usurp the decisions of local Stormwater Administrators and Committees. Other municipalities have expressed the same concern.

Staff and the Stormwater Floodplain Oversight Committee recommend that this section of **the proposed ordinance should be changed to indicate that an interpretation or action by MTAP can only be**

requested by a permit applicant after they have completed the review and appeal process with the Village. Further, the ordinance should state that the Village's Stormwater & Floodplain Oversight Committee can accept or reject any interpretation made by MTAP.

At their September 22nd meeting the Stormwater and Flood Plain Oversight Committee reviewed the proposed changes. Their primary concern was with the proposed MTAP as noted above. By consensus they recommended that the Council direct staff to prepare a comment letter requesting the text changes noted above.

Staff believes that the ordinance update is an improvement from the existing ordinance because it will be more straight-forward to administer, it will be more customer friendly as it removes activities that do not contribute to stormwater problems from the regulatory process, and it will better apply to the type of redevelopment activities the Village is experiencing.

ATTACHMENTS

Draft Minutes, 9/22/11 SW&FPOC Meeting

****DRAFT****

**VILLAGE OF DOWNERS GROVE -
Stormwater and Flood Plain Oversight Committee Meeting
September 22, 2011, 7:00 p.m.**

**Downers Grove Public Works Facility
5101 Walnut Avenue, Downers Grove, Illinois**

CALL to ORDER

Member Gorman called the meeting to order at 7:00 p.m. A roll call followed and a quorum was established.

Members Present: Mr. Crilly, Mr. Gorman, Mr. Ruyle, Mr. Scacco

Absent: Chairman Eckmann, Mr. Austin, Mr. Schoenberg

Staff Present: Village Engineer, Mike Millette; Staff Engineer, Jeff Loster

Others Present: Mr. Eric Otto, 2531 N Talman, Chicago

APPOINTMENT of CHAIR PRO-TEM

Mr. Scacco moved to appoint Mr. Gorman as Chair Pro-Tem in the absence of Chairman Eckmann, seconded by Mr. Ruyle. Motion carried by voice vote of 4-0.

APPROVAL of APRIL 15, 2010 MINUTES

Mr. Ruyle moved to approve the minutes, seconded by Mr. Crilly. Motion carried by voice vote of 4-0.

PUBLIC COMMENTS - No comments.

OLD BUSINESS

Mr. Ruyle inquired as to the status of the stormwater maintenance metrics.

NEW BUSINESS

Proposed Re-Write of the Countywide Stormwater and Flood Plain Control Ordinance

Mr. Millette gave a power-point presentation (see attached hard-copy) highlighting the proposed changes to the County's ordinance including three examples of how the proposed ordinance compares to the current ordinance. Mr. Schoenberg submitted written comments (attached) in anticipation of his absence. Mr. Ruyle commented on the proposed Municipal Technical Advisory Panel (MTAP), indicating that he appreciated that it would be composed of technical practitioners, but concerned that it could be utilized as a political by-pass. Mr. Gorman noted that the intent of MTAP is to advise the County Stormwater Administrator, but he also thinks clarification will be added to the final draft indicating that the Panel's recommendations will not usurp the Village's Stormwater Administrator or this Committee. Mr. Scacco asked for clarification as to whether the new "certification" vs. "permit" concept would increase the workload on Staff. Mr. Millette replied that it would not; as the Village already has a lower permit threshold than the County ordinance and he felt that the same amount of project submittals would occur.

A general discussion ensued regarding the economic impact of the proposed re-write. Mr. Loster commented the first draft would have had a greater impact on single-family projects as it would have required water volume control starting at 2,500 square feet of disturbance, but that the 2nd draft went back to the current threshold. Mr. Millette agreed and reiterated that the impact to commercial redevelopment should be stimulative. Mr. Gorman agreed and added that the current proposal will be cost neutral or provide savings to single family owners.

The remaining discussion related to possible local amendments to the proposed ordinance including a concern expressed by Mr. Ruyle and Mr. Scacco that other techniques be considered to further minimize neighborhood impacts of redevelopment. Mr. Gorman indicated that he had developed some details which may be useful and would distribute them. Mr. Loster added that the Village's cost-share program may also be a venue to assist in some cases. Mr. Gorman asked that this be placed under new business at the next meeting.

The Committee expressed its consensus that the Council review the proposed 2nd draft and consider directing staff to send a comment letter suggesting clarification to as to the role of MTAP, specifically that it be clarified that it is not to supersede the authority of the Village.


Mr. Crilly suggested that some training sessions be held after the adoption of the revised ordinance, perhaps a Saturday in the spring.

ADJOURN

Mr. Scacco made a motion to adjourn the meeting at 8:18 p.m., seconded by Mr. Crilly. Motion carried by voice vote of 4-0


**Countywide Stormwater and
Flood Plain Ordinance Update**

Stormwater & Flood Plain Oversight
Committee Meeting
September 22, 2011




Discussion Outline

- Background
- Purpose of update
- Major proposed changes
- Comparison to current Village Ord.
- Cost comparison examples
- Current process status
- Possible future actions




Background

- **Original adoption: Sept 1991**
First Countywide ordinance in IL
- **Superseded Village's Ord.**
Originally adopted in 1975
- **Revised eleven times**
Latest revision: Feb 2006
- **Primarily focused on new
developments**




Purpose of Update

- Clarify requirements for applicants
- Retain current flood protection levels
- Better align w/ National trends and requirements
- Remain economically competitive w/ other NE Illinois counties




Major Proposed Changes

- No longer based upon zoning
- Based upon new impervious area
- "Certifications" not "Permits"
- Remove penalty for reducing impervious areas or improving streams, etc.
- Option to combine detention and BMP requirements into one area




Comparison to Current Village Ordinance

- Residential, slight change
 - Proposed revisions are coming closer to Village's current amendments
 - More discretion will be allowed to reduce the complexity of submittals
 - Streamlining of small projects such as sheds and patios through "general certs."
 - BMP requirements are clarified; specific easements may not be required




Comparison to Village Ordinance

- Commercial significant change
 - Removal of disincentive to reduce impervious area
 - Submittal requirements clearly indicated within the Ordinance
 - Clarification of wetland and riparian buffers
 - Confirmation of Municipal Engineer's group as advisory to County SW Comm
 - Creation of a Municipal Technical Advisory Panel to provide a venue to advise County Stormwater Administrator



COB Comparison


- Taken from July 19, 2017 presentation to County SW Comm.
- Focus on three




COB Comparison


Example 4 - Residential - Single Family Residence (Large Lot Teardown)

- Details of project:
 - Existing home on 4.13 acres
 - Zone AE floodplain and wetland exist on north side of site
 - Demolish existing home
 - Construct new single family residence





- Village Council may prepare formal comment during 45-day response period
- Write local amendments (cannot be less restrictive)
- Council adoption of revised Village Code, Chapter 26 – late fall, early winter



- Background
- Purpose of update
- Major proposed changes
- Comparison to current Village Ord.
- Cost comparison examples
- Current process status
- Possible future actions

Date: September 15, 2011
To: Mr. Mike Millette
Village of Downers Grove
From: Daniel H. Schoenberg
Re: Ordinance Rewrite Discussion

I will not be able to attend the Stormwater and Flood Plain Oversight Committee meeting of September 22, but this memorandum details my observations about the totally revised DuPage Stormwater Ordinance now open for public comment. The claimed objectives of the rewrite are as follows:

1. To comply with current and future NPDES requirements
2. To make the Ordinance more "user-friendly" and to simplify and streamline the review process
3. To address some long-standing issues

I will discuss each objective in order.

Complying with NPDES regulations

The 2009 federal permit that covers all discharges into Illinois lakes, rivers and streams requires new strategies to reduce the discharge of pollutants. Studies have said most water-borne pollution is carried by the small-intensity frequent storms. In order to control water runoff quality, the first flush of water which carries most pollutants must be intercepted and stored long enough for the pollutants to settle out. Other federal studies say impervious cover is a good proxy for development control for water quality. Therefore, new regulations emphasize the smaller storms and the impervious lot coverage. This emphasis is non-negotiable and inevitable. Fortunately the threshold at which on-site water quality storage is required (2500 square feet additional impervious cover) is high enough to avoid adverse impacts to small single-family residential projects.

Making the Ordinance "user-friendly"

Today all developments requiring a permit must provide the same one-size-fits-all submittal. Some applicants have complained to the County that these requirements are onerous for small projects. In the new draft, a hierarchy of submittals is established. Small projects outside floodplains and wetlands can use a simplified process using a Letter of Permission. Simple projects within floodplains or near wetlands can use a streamlined General Certification process. Fewer projects will require a full application, an improvement. Communities can be more restrictive as they wish.

The new draft simplifies floodplain applications with less modeling, exempting tiny projects in the flood plain and providing easier rules for routine work within the floodplain. It simplifies floodplain applications by eliminating floodways in small floodplains. It simplifies wetland applications by fast-tracking restoration and enhancement work. These are improvements over the current ordinance.

However, the new draft goes too far to accommodate developers in Sections 15-16 and 15-25E. Today the local Ordinance Administrator has the last word in determining procedural and technical requirements for a submittal. If an applicant and an Administrator disagree, the applicant's only recourse is an appeal per Section 15-226 which goes before a local Stormwater Committee such as our group. Current Section 15-95 also establishes Watershed Basin Committees as a mediator of technical issues between the County and any community which have never been used. County Staff wants more technical

guidance based upon discussions by technical people and with the blessing of the appointed Committee officials. County Staff claim applicants also desire a forum to challenge technical findings without the appeal process, which takes time and money. The draft ordinance proposes a new formal advisory group to vet technical issues. Decisions will be disseminated throughout the County so a standard practice can be established, but the results remain advisory only. Some local Administrators welcome the opportunity for community discussion and the addition of a due-process procedure to deter possible lawsuits. I see this as a loss of autonomy. Under the current draft, applicants can initiate MTAP review on their own, bypassing the local hearing process. Applicants should be required to get a community sponsor before using this forum.

Address Long-standing issues

A total rewrite presents an opportunity to address contentious and poorly working procedures. Some issues have been addressed. One of these issues has been the treatment of accessory structures in the flood plain. Today they must be a foot above the base flood elevation (BFE). The draft follows federal guidelines which allow vents below the BFE, an improvement.

The existing ordinance requires easements for all drainage facilities on private property. Easements do not work well on small parcels of land. Fencing or landscaping may affect easements. A blanket recorded document requiring maintenance and allowing municipal access is now allowed.

Overall comments

The proposed draft does meet the goals set out for the rewrite but it has shortcomings.

- This is still not easy to use.
- It is not clear when a wetland determination will be needed. (15-85A) The County will not provide an overall map of areas possibly near a wetland.
- Site storage facilities cannot be under single ownership, only public or association ownership is allowed. (15-55A) Small Homeowner Associations are often ill-equipped to maintain these facilities. Chasing after a single owner for compliance is easier.
- Enforcement still requires cumbersome notice provisions, extending response time unacceptably. Many communities enforce violations through their municipal code, not this ordinance. (15-19)

Ultimate user-friendliness will take more than an ordinance change. There is no indication that getting a permit through the County will become any faster. The corporate culture of County review has been rather rigid. The changing requirements of the FEQ model have been questioned, too.

I can fault neither the effort behind the draft nor the new emphasis on water quality which is a given. The current draft is better than the last draft which was more complex, had a 500 square foot thresholds for water quality action, and envisioned MTAP as an arbitration body. This draft is not perfect, but the good should not be held hostage by the ideal.