



CITY OF WASHINGTON, ILLINOIS

Public Works Committee Agenda Communication

Meeting Date: September 7, 2021

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Agenda Item: Stormwater Easement Maintenance Discussion

Explanation: The common law rule for the maintenance within any stormwater easements (SWE's) is that it is the responsibility of the easement owner (i.e., the City) and not the property owner. However, this does not apply if the parties that created the SWE's provide for an "agreement to the contrary" that would alter the City's common law maintenance obligations. Some more recent subdivision plats have language that attempted to clarify such maintenance obligations. For example, the surface drainage easement language on the final plat for Devonshire Estates Nineteenth and Twentieth Additions is as follows:

"A permanent 'surface drainage easement' (SDE), as designated on the attached final subdivision plat is hereby exclusively reserved for and granted to the City...for the surface conveyance of storm water. The horizontal and vertical alignment of the land within said easement area shall not be altered in any way. No buildings, trees, shrubs, fences, gardens, landscaping, fill materials, debris or other obstructions shall be placed within said easement. Said City is also granted the right to enter upon the designated easement and re-establish the vertical and horizontal alignment, if altered, and/or remove any buildings, trees, shrubs, fences, gardens, landscaping, fill material, debris or other obstructions placed within said easement."

Similar attempts within other final plats to modify the common law maintenance obligations provide ambiguity and does not clearly define the City's responsibility. Chapter 53.003(C) of the City Code—Storm Water Runoff Control, General Considerations—helps to address the intent of the SWE's maintenance obligations, as follows:

"For multi-family residential, commercial, institutional and industrial developments, ownership and maintenance responsibilities of the entire storm water drainage system shall remain with the property owner or developer. For single-family residential development, the city will accept maintenance responsibility for the entire storm water conveyance system, including the pipes, culverts, channels and structures, provided that appropriate easements are provided, including adequate public ingress and egress to the storm water detention facilities from the public street. Maintenance of the vegetative cover in and around the storm water detention facilities shall remain the responsibility of the property owner."

In such section of the Code, the City accepts maintenance obligations for certain portions of the storm water drainage system within single-family developments. However, terms such as "storm water conveyance system" and "vegetative cover" are undefined in Chapter 53. Thus, the intent and extent of the maintenance obligations of the City and property owner are unclear. As such, the safest course of action for past SWE's is for the City to accept the common law rule of having maintenance responsibility for anything other than weeds and grass as addressed in Chapter 96 of the City Code—Nuisances. For future SWE's, it would be recommended to amend Chapter 152—Subdivision Code—to have precise SWE's language to include in final plats prior to their approval. Having such language will result in clarity regarding maintenance obligations. It would also be recommended to amend Chapter 53 (which is expressly incorporated into the Subdivision Code by reference in Chapter 152.024—Storm Water Control and Detention Basins) to clarify

ownership and maintenance responsibilities for all interested parties. Any such amendments to the Code will not be binding on existing SWE's but it may be viewed as additional persuasive authority on the City's intent when the City initially accepted past SWE's.

Fiscal Impact: TBD depending on whether any change to the future maintenance obligations may put more of a burden on the City.

Action Requested: Staff requests direction on how to handle maintenance within current SWE's prior to the consideration of a possible code amendment ordinance for future SWE's at an upcoming City Council meeting.