



CITY OF WASHINGTON, ILLINOIS

Committee of the Whole Agenda Communication

Meeting Date: October 11, 2021

Prepared By: Jon Oliphant, AICP, Planning & Development Director

Agenda Item: Stormwater Easement Maintenance Draft Code Amendment

Explanation: As discussed at the September and October Public Works Committee meetings, the City Code is ambiguous in providing clear direction on the maintenance within any stormwater easements (SWE's). The common law rule 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.

In Chapter 53.003(C), the City accepts maintenance obligations for certain portions of the storm water drainage system within single-family developments. However, terms such as "storm water drainage system" and "vegetative cover" are currently undefined in Chapter 53. Thus, the intent and extent of the maintenance obligations of the City and property owner are unclear.

Attached is a draft code amendment ordinance that would provide for revised definitions of "storm water drainage system" and "vegetative cover." The "storm water drainage system" would be intended to include everything associated with the collection, control, transportation, treatment, or discharge of storm water. The City would be responsible for the maintenance of the entire drainage system within single-family residential developments while the property owner would retain the responsibility for any obstructions that occur within and around the drainage system and/or detention facilities due to action or inaction. The City's Nuisance Code would address any necessary enforcement and abatement. The ownership and maintenance of the drainage system within non-single-family developments would remain with the property owner or developer, as is currently the case.

The definition for "vegetative cover" would include, but not be limited to, any flowers, grasses, shrubs, and trees regardless of whether they were planted or not by the property owner. The property owner would be responsible for the maintenance of the vegetative cover and the City would have the ability to abate any nuisance violations at the property owner's cost. The proposed amendment would also insert standard language to be included on any final plats for single-family residential developments to codify the maintenance responsibilities for storm water drainage systems.

Finally, the last component of the proposed amendment would insert language to require that digital copies of documentation within the subdivision code be submitted in addition to the required physical copies. While this has become a common submittal in many municipalities, this is not currently a codified requirement per the City Code.

Fiscal Impact: There should not be a substantial financial burden on the City based on the proposed code amendment.

Action Requested: Staff requests direction on proceeding with the draft code amendment ordinance. The Public Works Committee discussed this at their meeting on October 4 and while supportive of the draft amendment, asked that it be scheduled on the Committee of the Whole agenda for further discussion. Because this includes an amendment to the subdivision code, it would first require a public hearing and recommendation from the Planning and Zoning Commission prior to City Council consideration.

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTERS 53 AND 152 OF THE CODE OF ORDINANCES OF THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS REGARDING THE MAINTENANCE OBLIGATIONS FOR STORM WATER DRAINAGE SYSTEMS, THE REQUIREMENTS TO GRANT A STORM WATER EASEMENT TO THE CITY OF WASHINGTON, AND THE ADDITION OF ELECTRONIC COPIES FOR SUBMISSION REQUIREMENTS WITHIN THE SUBDIVISION REVIEW PROCESS

WHEREAS, the City of Washington, Illinois (the “City”) is a home rule municipality in accordance with the Constitution of the State of Illinois and as such, has the authority to create this Ordinance; and

WHEREAS, Section 53.003(C) of the Code of Ordinances of the City (the “Code”) allocates maintenance responsibilities of storm water systems and the City Council desires to define key terms and clarify the allocation of maintenance responsibilities between property owners and the City; and

WHEREAS, Section 152.011(F)(5) provides for certain certificates that must be contained within a final subdivision plat; however, said Section does not provide for specific requirements to grant a storm water easement to the City; and

WHEREAS, Chapter 152 does not require an electronic copy of certain documentation to be submitted to the City, and City officials and staff believe that an electronic copy requirement would be beneficial in the subdivision review process; and

WHEREAS, the City Council has determined that it is in the best interests of the City to amend the Code to clarify maintenance obligations for storm water drainage systems, require a final subdivision plat certificate to include a specific stormwater easement grant, and require the addition of electronic copies of documentation submitted in accordance with the provisions of Chapter 152.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Washington, Illinois as follows:

Section 1: The recitals; as set forth above, are incorporated herein as though fully set forth and shall be considered the express findings of the City Council.

AMENDMENTS TO CHAPTER 53

Section 2: That Section 53.001 of the Code be, and the same hereby is, amended as follows by revising the definition of “STORM WATER DRAINAGE SYSTEM”:

STORM WATER DRAINAGE SYSTEM. ~~The complete system of pipes, culverts, channels, swales and structures employed to convey and control storm water runoff.~~

The complete system or system of conveyances, which shall include sewers, storm drains, curbs, gutters, ditches, retention ponds or basins, dams, stream impoundments, man-made channels or storm drains, and flood control facilities and appurtenances thereof which are designed or used for the collection, control, transportation, treatment, or discharge of storm water.

Section 3: That Section 53.001 of the Code be, and the same hereby is, amended as follows by adding the term “VEGETATIVE COVER” before the term “WET BOTTOM DETENTION BASIN” and after the term “UNIMPROVED LOT OR PARCEL”:

VEGETATIVE COVER. Vegetative cover shall include, but not be limited to, any annual or perennial flowers, ground cover, legumes, forbs, grasses, weeds, shrubs, and trees, regardless of whether any of which are natural growing or were intentionally planted by the property owner.

Section 4: That Section 53.003(C) of the Code be, and the same hereby is, amended as follows:

(C) For **development of multi-family dwellings, as that term is utilized in the Zoning Code,** commercial, institutional and industrial **properties** developments, **the** 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.~~

Section 5: That Section 53.003 of the Code be, and the same hereby is, amended as follows by adding Section 53.003(D):

(D) For development of single-family dwellings, as such term is utilized in the Zoning Code, and except as provided herein, the City will accept maintenance responsibility for the entire storm water drainage system, including the pipes, culverts, channels and structures, pursuant to an accepted storm water easement granted to the City. The property owner retains responsibility for any obstructions, natural or otherwise, that occur within and around the storm water drainage system and/or storm water detention facilities due to action or inaction. Such obstructions shall be deemed a nuisance pursuant to Section 96.01(14) of the Code and the City may abate such nuisance at the property owner’s cost. Maintenance of the vegetative cover in and around the storm water drainage system and/or storm water detention facilities shall

remain the sole responsibility of the property owner. The City shall have no maintenance obligations as related to vegetative cover. Failure on the part of the property owner to maintain the vegetative cover in and around the storm water drainage system and/or storm water detention facilities shall be deemed a nuisance pursuant to Section 96.01(14) of the Code and the City may abate such nuisance at the property owner's cost.

AMENDMENTS TO CHAPTER 152

Section 6: That Section 152.011(F)(5) of the Code be, and the same hereby is, amended by adding the following subparagraph (a) to Section 152.011(F)(5):

- (a) The certificate dedicating a permanent surface drainage easement (storm water easement) ("SDE") within a single-family residential development must contain the following exact language, which codifies the maintenance responsibilities for storm water drainage systems provided for within Section 53.003(D) of the Code:

A PERMANENT "SURFACE DRAINAGE EASEMENT" ("SDE"), AS DESIGNATED ON THE ATTACHED FINAL SUBDIVISION PLAT IS HEREBY EXCLUSIVELY RESERVED FOR AND GRANTED TO THE CITY OF WASHINGTON, TAZEWELL COUNTY, ILLINOIS, AND TO ITS SUCCESSORS AND ASSIGNS, FOR THE SURFACE CONVEYANCE OF STORM WATER. THE HORIZONTAL AND/OR VERTICAL ALIGNMENT OF THE LAND WITHIN SAID EASEMENT AREA SHALL NOT BE ALTERED IN ANY WAY THAT WOULD HINDER THE FLOW OR STORAGE OF STORM WATER, AS DESIGNED. EXCEPT AS OTHERWISE PROVIDED FOR IN THIS SDE, IT IS THE RESPONSIBILITY OF THE CITY OF WASHINGTON TO MAINTAIN THE STORM WATER DRAINAGE SYSTEM. THE PROPERTY OWNER IS RESPONSIBLE FOR THE MAINTENANCE OF THE VEGETATIVE COVER, INCLUDING WEEDS, GRASSES, PLANTS, TREES, OR SHRUBS AND THE LIKE, GROWING IN AND AROUND THE EASEMENT AREA. THE CITY OF WASHINGTON IS HEREBY GRANTED THE RIGHT TO ENTER UPON THE EASEMENT AREA TO MAINTAIN SUCH VEGETATIVE COVER, IN THE EVENT OF THE PROPERTY OWNER'S FAILURE, AT THE PROPERTY OWNER'S COST. NO BUILDINGS, TREES, SHRUBS, FENCES, GARDENS, LANDSCAPING, FILL MATERIALS, DEBRIS OR OTHER OBSTRUCTIONS SHALL BE PLACED WITHIN SAID EASEMENT. THE CITY OF WASHINGTON IS ALSO HEREBY GRANTED THE RIGHT TO ENTER UPON THE DESIGNATED EASEMENT AREA AND RE-ESTABLISH THE VERTICAL AND/OR HORIZONTAL ALIGNMENT, IF ALTERED, AND/OR REMOVE ANY BUILDINGS, TREES, SHRUBS, FENCES, GARDENS, LANDSCAPING, FILL MATERIAL, DEBRIS OR OTHER OBSTRUCTIONS PLACED WITHIN SAID EASEMENT THAT HINDERS

THE FLOW OR STORAGE OF STORM WATER. THE CITY OF WASHINGTON SHALL HAVE SOLE DISCRETION AS TO WHETHER OR NOT SUCH ITEMS, INCLUDING VEGETATIVE COVER, ALTER THE ALIGNMENT OR HINDER THE FLOW OR STORAGE OF STORM WATER.

Section 7: That Chapter 152 of the Code be, and the same hereby is, amended by adding Section 152.034 as follows:

§ 152.034 ELECTRONIC COPIES OF SUBDIVISION DOCUMENTS

For all documentation required to be provided under this Chapter 152, a digital media copy of such documentation must be submitted, in addition to the required physical copies, in a computer readable format compatible with the City's mapping software and system.

Section 8: If any provision of this Ordinance or application thereof to any person or circumstances is ruled unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Ordinance that can be given effect without the invalid application or provision, and each invalid provision or invalid application of this Ordinance is severable.

Section 9: That all ordinances or parts thereof in conflict herewith are hereby expressly repealed.

Section 10: This Ordinance shall be in full force and effect from and after its passage, approval, and notification as provided by law and shall take effect upon its passage as required by law.

PASSED AND APPROVED this _____ day of _____, 2021.

AYES: _____

NAYS: _____

ATTEST:

Gary W. Manier, Mayor

Valeri L. Brod, City Clerk