



CITY OF WASHINGTON, ILLINOIS

City Council Agenda Communication

Meeting Date: December 6, 2021

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

Agenda Item: First Reading Ordinance – Stormwater Easement Maintenance Draft Code Amendment

Explanation: As discussed at the September and October Public Works Committee meetings and the October Committee of the Whole meeting, 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 recommends approval of the code amendment ordinance. The Public Works Committee discussed this at their meeting on October 4 and was supportive of the ordinance as was the Committee of the Whole on October 11. The Planning and Zoning Commission held a public hearing on this proposed amendment at its meeting on December 1 and unanimously recommended approval. A first reading ordinance is scheduled for the December 6 Council meeting and a second reading will be scheduled for the December 20 meeting.

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: _____

Gary W. Manier, Mayor

ATTEST:

Valeri L. Brod, City Clerk

CITY OF WASHINGTON, ILLINOIS

Planning and Zoning Commission Meeting

Wednesday, December 1, 2021

Washington District Library Meeting Room in Five Points - 380 N. Wilmor Road
6:30 P.M.

Call to Order Chairman Mike Burdette called the regular meeting of the City of Washington Planning and Zoning Commission to order at 6:30 p.m. in the library meeting room in Five Points, Washington, with a quorum present.

Roll Call Present and answering roll call were Commissioners, Burdette, Milot, Reeder, Ritter, and Williams

Absent were Commissioners Rodriguez and Scott

Also present was P & D Director Jon Oliphant, Planner Aaron Paque and City Clerk Valeri Brod

Approval of the minutes for 9/1/21 Commissioner Ritter moved and Commissioner Milot seconded to approve the minutes of the September 1, 2021 Planning and Zoning Commission meeting.
Motion carried unanimously by voice vote.

Item A
Public Hearing: Request to Rezone 501 School Street from AG-1 to R-1

A public hearing was opened for comment at 6:31 p.m. on Request by Mike Cochran on behalf of Harry and Georgette Williams to Rezone 501 School Street from AG-1 to R-1. Publication was made of the public hearing notice, and there were no "interested parties" registered.

Planning and Zoning Director Jon Oliphant gave a brief overview of the request noting the following: The committee previously approved a private street in this location at the September meeting. The house on this property was constructed in 1996. The current AG-1 designation would allow for a subdivision however the size of the required lots are not feasible in this area. It was noted that other areas near this proposed property are commercial.

Petitioner comments: Mike Cochran was present to answer questions. None were given.

Public comments: None provided at this time.

At 6:34 p.m. the public hearing was closed.

Commissioner Reeder moved and Commissioner Ritter seconded to approve.

Commissioner comments: Commissioner Milot asked for clarification regarding the accessibility of the new private street. Mr. Oliphant shared that all but two of the proposed lots would gain access from the new street. Commissioner Milot asked if this portion of School Street is the City's or State's responsibility. Mr. Oliphant stated that it is a City road then transitions to a township road. Commissioner Milot asked for clarification regarding the proposed retention basin, Mr. Cochran said there is the desire to include one in the plan and an engineer will help develop the basin once it is reviewed. Commissioner Reeder asked if this area utilizes City sewer and water. Mr. Oliphant verified that it does.

On roll call the vote was:
Ayes: 5 Burdette, Milot, Reeder, Ritter, and Williams

Nays: 0
Motion carried.

Item B
Chapters 53 and 152
Code Text Amendment

A public hearing was opened for comment at 6:37 p.m. on request to amend the text for Chapters 53 and 152 of the City Code. Publication was made of the public hearing notice, and there were no “interested parties” registered.

Planning and Zoning Director Jon Oliphant gave a brief overview of the request noting the following: Mr. Oliphant shared that this has been in discussions concerning landowners and easements that contain stormwater maintenance. He stated that the current language doesn’t clarify “vegetative cover” and “maintenance” and this will add clear language as to who is responsible for those areas. Mr. Oliphant noted that the landowner would be responsible for maintaining stormwater easements on their property. He also noted that language doesn’t change in regards to non-single family residential developments. Mr. Oliphant explained that there is an added provision that digital copies of the final plats will be provided to the city for the upload of plans.

Commissioner comments: Commissioner Ritter and Mr. Oliphant discussed briefly the length of time residents are notified of maintenance issues, the response time of the City and what steps the City takes to mitigate issues. Commissioner Milot clarified that an easement would be included on a plat and the importance to not construct on a stormwater easement and to maintain it. Mr. Oliphant noted that the city had a recent issue with the lack of maintenance but the language in the current code did not help the City enforce it. Commissioner Milot that a stormwater easement is usually very clear but wondered if anyone does not know they have one to maintain. Mr. Oliphant shared that an easement should have been disclosed as part of their title when they close on a property. Mr. Oliphant noted that every property is held to the same standard of grass/weeds height of eight inches but an easement that is retaining water would be hard to mow and grass may get higher. Commissioner Milot and Planner Aaron Paque briefly discussed how the City would not grant permits allowing residents to build structures within an easement. Mr. Oliphant noted that utility easements can allow the construction of a fence, however, the property owner is made aware that it may be removed by a utility company needing access to that area.

Public comments: None provided

On roll call the vote was:
Ayes: 5 Burdette, Milot, Reeder, Ritter, and Williams
Nays: 0
Motion carried.

Old Business

Mr. Oliphant shared that there will be an open house on December 16th from 4pm-7pm in a banquet room for review of the Comprehensive Plan.

Commissioner/Staff
Comments

None was provided.

Adjournment

At 6:47 p.m. Commissioner Milot moved and Commissioner Reeder seconded to adjourn.
Motion carried unanimously by voice vote.

Valeri L. Brod, City Clerk