

Stormwater Advisory Commission (SWAC) Recommendation for Chapter 12A
Revisions with Staff comments

Section 12A-5, Definitions, *Redevelopment* Staff's proposed definition lays out a 4-part test for a project to be defined as *Redevelopment*. (Page 1 of the attached proposed ordinance revisions.)

SWAC Comment: The Commission recommends that "...is on a site that is in compliance with all City zoning and subdivision laws and regulations" be removed.

Staff Response: Staff disagrees. Staff believes it is correct to require that a site be compliant with City ordinances in order to do work that would require meeting stormwater regulations. When the site is compliant, the project can be considered redevelopment. For example, if a property owner wants to construct an addition to a building which is not on a legal lot, the site can be platted to be a legal lot and then can be considered redevelopment.

SWAC Comment: The Commission recommends that the term "Site" be changed to "lot".

Staff Response: Staff disagrees. Staff believe that the term "Site" should be used so that the City ordinance is consistent with State and Federal regulations, which use the term "Site".

SWAC Comment: The Commission recommends that language be added/examined in this section to allow a lot to be subdivided or platted into a legal lot without automatically being ineligible for Redevelopment status.

Staff Response: Staff agrees with the Commission but believes that the currently proposed (attached) language provides for this. Therefore, staff is recommending that the proposed ordinance language not be revised.

Under staff's current proposed ordinance language, an owner could plat to create a legal lot, and then improvements currently on the lot would determine whether the project qualifies as redevelopment. (ie, the work being done would determine how stormwater regulations apply).

Since the redevelopment of sites less than 1 acre are exempt in staff's proposed ordinance, staff does not support platting a property in order to divide it and still be considered redevelopment.

SWAC Comment: The Commission recommended (and Staff agreed) that a project on a site of an acre or more with an imperviousness of more than 12% should qualify as redevelopment.

Staff Response: Staff agrees and have incorporated recommendation into the proposed ordinance. Staff originally proposed 20%, and the SWAC felt 5% was more appropriate. Staff and SWAC compromised and have agreed on 12%.

Section 12A-32 and 12A-33, When a Permit is required and Site Development Plan requirements (Page 3 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that a permit be required based on the size of the area being disturbed rather than the size of the site, identical to MDNR requirements. Emphasizing that the burden of proof if called into question is on the property owner to verify that the disturbed area does not exceed that which would not require a permit.

Staff Response: Staff disagrees. Staff believes the current language is consistent with State and Federal regulations. In addition, staff believes that issuing land disturbance permits based upon area being disturbed rather than the size of the site would greatly increase the City's administrative (review, inspection, compliance) responsibility. This aspect is a significant concern to staff given the City's current limited resources.

Section 12A-87. Which developments/redevelopments do the rules apply to. (Page 4 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that single family attached homes be included in the exemption granted to single family detached homes and that the language of the ordinance specifies this.

Staff Response: Staff disagrees, "Single family attached" means duplexes or two-family structures, and state and federal regulations do not support an exemption for them. Therefore, staff's proposed language does not exempt single family attached homes.

SWAC Comment: The Commission recommends that language be added to include City and State right-of-way as an exempted area of a site.

Staff Response: Staff disagrees. This language would exempt a developer from providing stormwater management for streets and sidewalks (a large portion of the imperviousness) in a new development.

There was some discussion during Commission meetings as to whether City projects (especially street projects) should be exempt. These rules (Chapter 12A) are written for development and, while the City is committed to providing stormwater management on its projects, development rules are not the appropriate place to set forth requirements for City projects.

SWAC Comment: The Commission recommends that the words "or sale" be removed from 12A-87 (c).

Staff Response: Staff disagrees. In order to be consistent with State and Federal regulations, staff is proposing to include "or sale" in 12A-87 (c).

SWAC Comment: The Commission recommends that 12A-87 (3) be revised to read "maintenance and repair of any and all impervious surfaces including gravel and stone surfaces".

Staff Response: Staff disagrees – Staff does not feel the suggested language is needed. Staff believes that the current proposed ordinance language provides adequate protection to those maintaining and repairing gravel/stone surfaces.

SWAC Comment: The Commission recommends that the City staff work closely and cooperatively with area practitioners and engineers to revise the stormwater design manual and that this revision be made a high priority.

Staff Response: Staff agrees. This is a high priority for staff.

SWAC Comment: The Commission recommends that language be reinserted in this ordinance to exempt the Central Business District from detention requirements.

Staff Response: Staff disagrees. Staff has removed this exemption from the ordinance because staff does not believe this is a legal exemption.

12A-87 (d) (1) The partial exception for Redevelopment does not apply if there is a known downstream problem. (Page 4 of the attached ordinance revisions.)

The intent is to have a mapped list of critical downstream locations (An objective test is spelled out in 12A-5, Definitions for what constitutes a “Critical Downstream Location”.) so that, when a redevelopment is brought forward, if there is a stormwater related problem downstream on the mapped list, the redevelopment has to implement stormwater management with no partial exception. If there is a problem that has not been mapped yet (this will be a significant task for staff) then the redevelopment still receives a partial exception.

SWAC Comment: The Commission recommends that the word “mapped” be inserted before “known critical downstream locations” and that further detail be inserted into the paragraph below (2) to require these maps to be updated by the City twice annually on specified dates.

Staff Response: Staff agrees and will incorporate these changes into the proposed ordinance language.

12A-87 (d) (2) Maximum Extent Practicable. (Page 5 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that this item with the language “Incorporate water quality protection to the maximum extent practical” be removed from the ordinance.

Staff Response: Staff disagrees. Staff believes that in order to be consistent with State and Federal Regulations, “Incorporate water quality protection to the maximum extent practical” must remain in the proposed ordinance revision.

12A-87 (e) Grandfathered Planned Developments. (Page 5 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that all plan revisions, major or minor, to plans approved prior to September 4, 2007 be grandfathered in to the stormwater ordinance in effect on January 1st, 2007.

Staff Response: Staff disagrees. This language would mean that even a very different plan than the one originally brought forth would not have to meet modern stormwater requirements. Staff does not believe this meets the spirit of the original grandfather language and therefore recommends leaving the language as it is in the attached revision.

SWAC Comment: The Commission recommends that the Council review the sunset requirements for all plans, plats, and PUD's and make changes as deemed necessary.

Staff Response: Staff agrees.

12A-95 (a) Maintenance responsibilities. (Page 5 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that the term "may" be replaced with "shall" and "properties" be changed to "lots".

Staff Response: Staff disagrees. Changing "may" to "shall" would require the stormwater utility to accept the maintenance responsibilities of all stormwater management facilities. Given the financial status of the stormwater utility, staff cannot support the proposed revisions. The utility does not have the resources to take on the additional maintenance responsibility at this time.

In addition, staff believes that changing "properties" to "lots" means that the storm utility could be required to maintain the facilities for one development owned by one person or entity. Staff does not believe that maintaining infrastructure for an individual property owner is the proper function of the storm utility.

12A-110 Variances. Spells out the process for getting a variance from the rules. (Page 6 of the attached ordinance revisions.)

SWAC Comment: The Commission recommends that changes be made to the Variances section to remove the adjectives "detailed", "unreasonable", and "in detail", as well as the phrases "available in the stormwater manual or under this chapter" and "that are acceptable and requested".

Staff Response: Staff disagrees. The goal of this ordinance is to protect properties from flooding and protect water quality by ensuring that developments/redevelopments manage stormwater on their own sites and minimize the risk to downstream properties.

To this end, the variance process is supposed to be difficult and should only be accessed when true hardship is encountered. The Board of Adjustment needs detailed information in order to make informed decisions about the merits of each case.

Staff believes the proposed language in the attached revisions is appropriate and should be left as it is.