

Storm Water Ordinance Talking Points

Differences between Ordinance recommended by Staff and the Ordinance Recommended by the Storm Water Advisory Committee.

Definition of Redevelopment:

- ✚ **Staff:** *"Is on a site that has not been subdivided after (insert date of ordinance); and"*
- ✚ **Storm Water Advisory Commission:** The commission voted to remove this portion of the definition of Redevelopment.
- ✚ **Purpose of Staff's Language:** The reason for the language is to prevent land being subdivided to circumvent the storm water rules. For example, if you had a tract that was three acres with one existing building, an owner could subdivide the tract into one 0.9 acre tract that contains the existing building and then this tract would be exempt from the storm water rules.
- ✚ **The purpose of the Storm Water Advisory Commission Language:** The Storm Water Advisory Commission recognizes this situation and agrees it should not be allowed, The Commission chose to prevent this by changing the definition of site, (see definition of site below) If the subdivision clause is left in the ordinance then many projects that would be good and welcomed redevelopment projects will be disqualified from being redevelopment for storm water purposes. Many tracts Downtown and throughout the old parts of town are required to plat to obtain a building permit. The subdivision clause also prevents all property platted from this time forward from ever meeting the definition of redevelopment. This is a barrier to redevelopment that should not be included in the ordinance when there is a simple solution.

Recommendation: The subdivision clause should be removed from the definition of redevelopment.

Definition of Site:

- ✚ **Staff:** *The total area of parcel(s), tract(s), or of land upon which development or land disturbance is proposed irrespective of the actual limits or size of the proposed development or land disturbance activity.*
- ✚ **Storm Water Advisory Commission:** The land or water area where any "facility or activity" is physically located or conducted, including adjacent land used in connection with the facility or activity.
- ✚ **Purpose of Staff's Language:** The main reason the staff gave for this definition was because the area of a lot, parcels and tracts is easy to determine.
- ✚ **Purpose of Storm Water Advisory Commission's Language:** The Commission chose to use a definition of site to be the actual disturbed area. The size of the lot has no connection to the actual area being disturbed. By using the area disturbed the Subdivision clause proposed by staff is no longer needed because with this definition the size of the lot is not a determining factor. The commission recognized that the actual disturbed area is harder to determine and to eliminate this concern the following language was added to the ordinance: *"The applicant for the permit shall be responsible for field verifying to the city the actual area being disturbed by staking the area to be disturbed prior to the disturbance. In the event the development requires submission of site plans, the area to be disturbed shall be depicted on the site plan."*

Recommendation: The definition of site should reflect the actual area being disturbed. The language used for the definition of site in the Ordinance proposed by the Storm Water Advisory Commission is the best definition that meets all state and federal requirements.

Section 12A-87. Applicability (b)

- ✚ **Staff:** Single Family residences, farmland and domestic gardens are exempt from the provision of this article.
- ✚ **Storm Water Advisory Commission:** Attached and Detached single family residences, farmland and domestic gardens are exempt from the provisions of this article.
- ✚ **Purpose of Staff's language:** Staff is of the opinion only single family detached should be allowed to be exempt.
- ✚ **Purpose of Storm Water Advisory Commission's Language:**
The storm Water Advisory Commission recognizes that single family homes that share a common wall should be afforded the same exemptions as single family homes. The commission felt that in the future attached single family homes will be much more common with the escalating costs associated with the detached single family homes.

Recommendation: The language proposed by the Storm Water Advisory Committee treats all single family the same and does not discourage the use of this type of housing.

Section 12A-87 Applicability (e)

- **Staff:** Redevelopment on a site of one (1) acre or more is eligible for partial exemptions from the requirements of this article, as set out in the storm water manual, if the redevelopment:
 - (1) Does not have an adverse impact on any mapped critical downstream location; and
 - (2) Incorporate water quality protection to the maximum extent practicable.
- ✚ **Storm Water Advisory Commission:** Redevelopment on a site of one (1) acre or more is eligible for partial exemptions from the

requirements of this article, as set out in the storm water manual, if the development does not have an adverse impact on any known mapped critical downstream location; and The director shall track, map, add and remove known critical downstream location and make this information available to the public. The director shall set forth criteria in the storm water manual that details the partial exemptions under this sub section.

- ✚ **Purpose of the Staff's Language:** The staff's language is intended to provide a vague definition by including "to the maximum extent practible".
- ✚ **Purpose of the Storm water commission language:** There are a couple of reasons for this language. The first is to eliminate the vague language of "maximum extent practible". If it is to be used a clear definition of what it means should be included in the definition section of the ordinance. The commission also felt it was an improvement to have the City track on a map all of the critical downstream locations so that this information is available to the public.
- ✚ It should be noted that both propose that partial exemptions for redevelopment projects greater than one acre are to be defined in the storm water manual. Currently this information has not been released to the Commission or the public. It is important that these exemptions be defined and is agreeable to all interested parties, prior to the adoption of the ordinance.

Recommendation: The language from the ordinance proposed by the Storm water Advisory Commission does not contain the vague and confusing language of "maximum extent practible" and requires the mapping of know critical downstream locations which will be used to determine if a redevelopment site will qualify as a redevelopment under the storm water regulations. The Storm Water Advisory Commission also recommends that the proposed partial exemptions proposed by staff be made public.

Section 12A-87 (f)

- ✚ **Staff:** Storm water management shall be provided for land in zoning districts PUD, O-P, C-P, M-R, and M-P for which a conceptual storm water management plan was approved before September 4, 2007 in accordance with the approved conceptual management plan or in accordance with this article.
- ✚ **Storm Water Advisory Commission:** Storm water management shall be provided in accordance with this article for land in zoning districts, PUD, O-P, C-P, M-R, and M-P for which a conceptual storm water plan was approved before September 4, 2007, or land in any other zoning district for which a site plan was approved before September 4, 2007, unless a revision to the plan for the site is requested which adversely impacts the storm water discharge or redirects the storm water discharge in a manner which results in downstream storm water impacts that would not have occurred with the original plan. Approvals for storm water plans approved prior to January 1, 2012 shall expire on January 1, 2019 for sites on which the planned work has not commenced. Approval of storm water plans approved after January 1, 2012 shall expire seven years after the date of approval if the planned work has not commenced.
- ✚ **Purpose of Staff's Language:** The staff has chosen to not deal with revisions to existing approved plans in the ordinance.
- ✚ **Purpose of the Storm Water Advisory Commission Language:** The commission chose to use language that clearly addresses revisions to existing plans approved before the ordinance. The commission also uses language to define when the plans will no longer be able to be used.

Recommendation: The Storm water Advisory Commission language provides clear guidance on how existing plans will be treated and should be used.

Other Items that should be considered while revising the Storm Water Ordinance.

Section 12A-87 (c)

Linear, strip or ribbon construction or maintenance operations within existing city and state right-of-way that are approved by the director and in conjunction with state and federal law are exempt for the provisions of this article.

This appears to be a special exemption for the City to not incur the expense of compliance with the ordinance.

Recommendation: Removal of the language or remove the word existing and allow the exemption for all right of ways.

Maintenance of BMP's in residential developments.

There is a great deal of maintenance required for the BMP's required under the ordinance, Single family residential neighborhoods will be difficult to hold responsible for this maintenance and this should be addressed.

Currently there is a requirement for an access easement and covenants for maintenance of these structures. The easement has been eliminated in the proposed ordinance, but the covenant has not. This covenant should not run with the land forever, it should run with the BMP and when the BMP is removed the City should automatically remove their interest in the covenant.