



MAYOR & COUNCIL COMMUNICATION

DATE: July 5, 2016
REGULAR
ITEM 17

AGENDA ITEM: Stormwater Ordinance Amendment – Consideration to Reinstate the “One Percent” Rule.

SUBMITTED BY: Jack Griffin, City Engineer

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Stephen Wensman, Planning Director

SUGGESTED ORDER OF BUSINESS:

- Introduction of Item City Engineer
- Report/Presentation..... City Engineer
- Questions from Council to Staff Mayor Facilitates
- Call for Motion Mayor & City Council
- Discussion Mayor & City Council
- Action on Motion..... Mayor Facilitates

POLICY RECOMMENDER: Environmental Committee. Council Members Fliflet and Lundgren requested this item be placed on the agenda.

ISSUE BEFORE COUNCIL: Should the Council amend the City Code to reinstate the “One Percent” Rule? The rule refers to storm water volume control provisions that were previously within the City Subdivision Ordinance before the City adopted a Storm Water and Erosion Control Ordinance.

LEGISLATIVE HISTORY/BACKGROUND INFORMATION: The Storm Water and Erosion Control Ordinance was adopted and incorporated into the City Code on June 16, 2009 to comply with the City’s MS4 Permit requirements. On July 15, 2008, the City of Lake Elmo was issued a mandatory permit by the Minnesota Pollution Control Agency (MPCA) establishing the conditions for discharging storm water under the National Pollutant Discharge Elimination System/State Disposal System (NPDES/SDS) Permit Program. The permit required that a Storm Water and Erosion Control Ordinance be implemented within six months of MPCA issuance of coverage. The City was granted an extension to June 30, 2009 due to the fact that the City was in the process of completing the Village Area AUAR and the Local Surface Water Management Plan.

Prior to the adoption of the Storm Water and Erosion Control Ordinance, storm water was regulated by the City through the partner watershed districts (VBWD, BCWD, and SWWD), and through various provisions addressing storm water and erosion control requirements that were scattered throughout the City Code. The “One Percent” Rule for instance was a storm water volume control standard found in the City’s Subdivision Ordinance.

The 2009 Ordinance addressed volume control standards by carrying forward provisions necessary to meet the intent of the “One Percent” Rule which states “the volume of storm water runoff discharging from a proposed site shall not be greater than the volume of storm water discharging prior to the site alteration”.

Minor revisions were then made to the Storm Water and Erosion Control Ordinance on May 3, 2011 to better clarify the intent of the City Code due to alternative interpretations by the applicants, City and VBWD. The 2011 revisions did not change the intent of the Code.

Between January 2010 and June of 2013 the Minnesota Stormwater Steering Committee workgroup was formed to research and develop **Minimal Impact Design Standards, or MIDS based on low impact development (LID)**, an approach to storm water management that mimics a site’s natural hydrology. The Minnesota Stormwater Steering Committee was made up of a large diverse group of storm water professionals, watershed districts, state agencies and stakeholders, and Co-chaired by Jay Riggs from the Washington County Conservation District. The Minnesota Legislature allocated funds to the workgroup to “develop performance standards, design standards and other tools to enable and promote the implementation of low impact development and other storm water management techniques”.

In June, 2013, the MIDS work group members agreed on a performance goal that essentially requires projects that create one or more acres of new and/or fully reconstructed impervious surfaces to capture and retain on site 1.1 inches of runoff. This performance goal was found match native runoff volume conditions on an average annual basis while being highly effective in improving water quality. It represents a low impact development approach, where storm water is managed on site and the rate and volume of predevelopment storm water reaching receiving waters is unchanged. The calculation of predevelopment hydrology is based on native soil and vegetation.

Therefore, in October 2013 the City adopted what is now the current Storm Water Ordinance provisions (through Ordinance 08-090) to better align the regulation of storm water management in the City with the new MIDS performance goals and standards. The Ordinance amended the storm water volume control standard to meet the new volume control standards that were adopted by MIDS and the VBWD as part of their 2013 Rule changes.

Ordinance 08-090 revises Section 150.277 Performance and Design Standards to;

- Eliminate the requirement by applicants to prepare and submit for approval by the City a Storm Water Management Plan using storm water modeling design criteria that is different from the State and/or local Watershed District(s). Instead the Stormwater

Management Plan must be submitted to the City, but will be the same Stormwater Management Plan already prepared for watershed district and/or State approvals.

- Align the storm water rate control requirements by the city with the rate control requirements of the State and local Watershed(s).
- Align the water quality control (volume) requirements by the city with the water quality control (volume) requirements of the State and local Watershed(s), both of whom have adopted MIDS.

OPTIONS:

1. Take no action. The current City Storm Water and Erosion Control Ordinance, VBWD Rules, and MPCA Storm Water Rules adequately addresses the issues of both rate and volume control for storm water management.
2. Direct staff to conduct further research and analysis in preparation of a future council workshop to present specific findings and recommendations regarding the purpose and effectiveness of the “One Percent” Rule; and to provide recommended language for how the “One Percent” Rule could be reinstated within the context of the new state, watershed and City storm water regulations.

FISCAL IMPACT: Unknown. At a minimum, reinstatement of the “One Percent” Rule will result in duplication of detailed engineering design, modeling and review efforts on all projects where the rule is made applicable. The fiscal impact is unknown for each project in regards to whether the requirement results in increased or decreased construction and maintenance costs.

RECOMMENDATION: Staff is recommending that the City Council take no action. Staff believes that storm water volume control is being sufficiently addressed by the City’s current Storm Water and Erosion Control Ordinance adopted in 2013, following the MIDS Workgroup performance goals and the new storm water management rules adopted by the VBWD and the MPCA. The new rules are supported by research and development of criteria by a diverse group of storm water professionals.

Should the City Council wish to continue pursuing the potential reinstatement of the “One Percent” Rule, staff is recommending that the City Council direct staff to retain a Professional Water Resource Engineer to assist staff with conducting further research and analysis in preparation of a future council workshop to present specific findings and recommendations regarding the purpose and effectiveness of the “One Percent” Rule; and to provide recommended language for how the “One Percent” Rule could be reinstated within the context of the new state, watershed and City storm water regulations. The recommended motion for this action would be as follows:

“Move to direct staff to retain Professional Services, as deemed necessary, and to conduct additional research and analysis in preparation of a future council workshop to assist the Council with reviewing the potential reinstatement of the “One Percent” Rule to further regulate storm water volume control.”

ATTACHMENT(S): None.

§ 153.01 REGULATIONS ESTABLISHED.

No land shall be subdivided, nor shall any land be platted, in the city except as provided by this chapter.

(1997 Code, § 400.02) [Penalty, see § 10.99](#)

§ 153.02 GENERALLY.

(A) *Purpose.* In order to provide for orderly, economic, and safe development of land, necessary urban services and facilities, and to promote the public health, safety, morals as to the urban services and facilities, the following subdivision regulations are adopted by the Council of the city. It is the intent of the city to protect the right of landowners to put their land to its highest and best use and protect each owner's right to full beneficial use of his or her land insofar as the use and enjoyment may be accomplished without detriment to the public interest and within the minimum standards established by this chapter.

(B) *Scope.* The provisions of this chapter apply to any division of a tract of land into 2 or more parcels for the purpose of transfer of ownership, building development, or tax assessment purposes by platting, re-platting, registered land survey, conveyance, sale, contract for sale or any other means by which a beneficial interest in land is transferred or any means by which a tract of land is divided into 2 or more parcels for tax assessment purposes.

(C) *Approval necessary for acceptance of subdivision plats.* Before any plat or subdivision shall be recorded or be of any validity, it shall be referred to the Planning Commission and approved by the Council as having fulfilled the requirements of this chapter.

(D) *Building permits.* No building permits shall be issued for the construction of any building, structure, or improvement to any land or lot in a subdivision, as defused in this chapter, until all requirements of this chapter have been satisfied, with the following exceptions.

§ 153.07 PRELIMINARY PLAT.

(A) *Filing.* Twenty copies of the preliminary plat and certified list of property owners located within 350 feet of the subject property obtained from and certified by a licensed abstractor, shall be filed with the Administrator. The required filing fee as established by Council resolution shall be paid and any necessary applications for variances from the provisions of this chapter shall be submitted with the required fee. The proposed plat shall be placed on the agenda of the Planning Commission meeting no later than the second regularly scheduled meeting following the date of filing. No application shall be accepted by the Administrator for filing unless all application information required by this chapter is submitted with the application.

(B) *Submission requirements.* The applicant shall prepare and submit a preliminary plat, together with any necessary supplementary information. The preliminary plat shall contain the following information.

(C) *General provision (preliminary plat).*

(1) Proposed name of subdivision; names shall not duplicate or too closely resemble names of existing subdivisions; in any case, the name must be approved by the County Recorder;

(2) Location of boundary lines in relation to a known section, quarter section, or quarter quarter section lines comprising a legal description of the property;

(3) Names and addresses of all persons having any interest in the property, the developer, designer, and surveyor together with the interested person's registration number;

(4) Graphic scale of plat, not less than 1 inch to 100 feet;

(5) Data and north point; and

(6) Date of preparation.

(D) *Existing conditions.*

(1) Boundary line of proposed subdivision, clearly indicated;

- (2) Existing zoning classifications for land within and abutting the subdivision;
- (3) A general statement on the approximate acreage and dimensions of the lots;
- (4) Location, widths, and names of all existing or previously platted streets or other public ways, showing type, width, and condition of improvements if any, railroad and utility rights-of-way, parks and other public open spaces, permanent buildings and structures, easements and section and corporate lines within the tract and to a distance of 350 feet beyond the tract;
- (5) Location and size of existing sewers, water mains, culverts, or other underground facilities within the tract and to a distance of 350 feet beyond the tract; the data as grades, invert elevations, and locations of catch basins, manholes, shall also be shown;
- (6) Boundary lines of adjoining unsubdivided or subdivided land, within 350 feet, identified by name and ownership, including all contiguous land owned or controlled by the subdivider;
- (7) Topographic data, including contours at vertical intervals of not more than 2 feet; water courses, marshes, rock outcrops, power transmission poles and lines, and other significant feature shall also be shown; N.G.V.D. shall be used for all topographic mapping; and
- (8) In plats where public water and sewer are not available, the City Engineer may require the subdivider to file a report prepared by a soil scientist or a registered civil engineer on the feasibility of individual on-site sewer and water systems on each lot. The report shall include a soil boring analysis and percolation tests to verify conclusions.

(E) *Proposed design features.*

- (1) Layout of proposed streets showing the right-of-way widths, center line gradients, typical cross sections, and proposed names of streets in conformance with all applicable city ordinances and policies. The name of any street used in the city or its environs shall not be used unless the proposed street is a logical extension of an already named street, in which event the same name shall be used. The street names and numbering system shall comply with the County Uniform Street Numbering System;
- (2) Locations and widths of proposed alleys and pedestrian ways;
- (3) Locations and size of proposed sewer lines and water mains;
- (4) Layout, numbers, lot areas, and preliminary dimensions of lots and blocks;
- (5) Minimum front and side street building setback lines;
- (6) When lots are located on a curve, the width of the lot at the building setback line shall be shown;
- (7) Areas, other than streets, alleys, pedestrian ways, and utility easements intended to be dedicated or reserved for public use, including the size of the area or areas in acres;
- (8) Water mains shall be provided to serve the subdivision by extension of any existing community system wherever feasible. Service connections shall be stubbed into the property line and all necessary fire hydrants shall also be provided. Extensions of the public water supply system shall be designed so as to provide public water in accordance with the standards of the city. In areas where public water supply is not available, well plans must comply with applicable state regulations and shall be submitted for the approval of the City Building Official;
- (9) Sanitary sewer mains and service connections shall be installed in accordance with the standards established by the city;
- (10) All private sewage treatment systems shall be installed in accordance with standards established by the city;
- (11) (a) Surface water disposal, drainage, and flood control shall be provided within the boundaries of the proposed property division;
- (b) The rate and volume of surface volume runoff within the boundaries of a proposed property subdivision shall not, in any event, be greater than the rate and volume of runoff existing on the proposed property division prior to the proposed development. Surface volume runoff is water leaving the property on or very near the surface. To the extent possible, provisions shall be made for controlling runoff by construction or enhancement of ponding facilities on the site of and within the boundaries of the proposed property division, which ponding facilities should provide for both permanent and temporary storage of runoff waters.
- (c) The increased runoff volume from new development shall be calculated at 0.35 acre feet for each acre of impervious surface proposed in the development. Impervious surface shall be all streets, parking lots, roofs, walks, driveways or other hard surface materials

proposed in any development. For residential developments, each lot shall be assumed to contain 3,000 square feet of impervious surface for the house, garage, and driveway. Existing ponds or other facilities may be used for runoff volume control. Any storage ponds shall be designed to retain the volume of runoff calculated under this provision below its outlet or overflow point and above the water table.

(d) The Soil Conservation Service method of analysis shall be used to calculate the runoff rate prior to development. The pre-development land use shall be considered permanent meadow with a soil conservation curve number of 58. The 100-year, 24-hour storm of 5.9 inches of precipitation shall serve as the basis of the analysis.

(e) This chapter shall apply to all areas of the city exclusive of that portion for the city within the Ramsey-Washington Metro Watershed District.

(12) A plan for soil erosion and sediment control both during construction and after development has been completed. The plan shall include gradients of waterways, design of velocity and erosion control measures, and landscaping of the erosion and sediment control system.

(F) *Supplementary information.* The following supplementary information shall be submitted when deemed necessary by the Planning Commission:

(1) Proposed protective covenants;

(2) An accurate soil survey of the subdivision prepared by a qualified person. In areas of questionable soil conditions, percolation tests may be required on a lot-by-lot basis to determine the suitability of any particular site for building;

(3) A statement prepared by a qualified person identifying tree coverage in the proposed subdivision in terms of type, weakness, maturity, potential hazard, infestation, vigor, density, and spacing;

(4) Statement of the proposed use of lots stating type of residential buildings with number of proposed dwelling units and type of business or industry, so as to reveal the effect of the development on traffic, fire hazards, and congestion of population;

(5) If any zoning changes are contemplated, the proposed zoning plat for the areas, including dimensions, shall be shown;

(6) Where the subdivider owns property adjacent to that which is being proposed for the subdivision, the Planning Commission may require that the subdivider submit a sketch plan of the remainder of the property so as to show the possible relationships between the proposed subdivision and the future subdivision. All subdivisions shall be shown to relate well with existing or potential adjacent subdivisions;

(7) Where structures are to be placed on large or excessively deep lots which are subject to potential replat, the subdivider shall provide in the preliminary plat, a sketch plan which indicates minimum building setback lines and future roadway alignments which would not interfere with structural placement at the time of future subdivision; and

(8) A vegetation preservation and protection plat that shows those trees proposed to be removed, those to remain, the types and locations of trees and other vegetation that are to be planted;

(a) Developer shall provide a landscape plan which shows how a subdivision will assume a rural character through the placement of ponding, berms, trees, and tree seedlings, shrubs, and shrub seedlings and native grasses;

(b) Developer shall plant a minimum of 6 trees, 1 inch caliper deciduous, or coniferous trees; 3 feet in height per acre unless a lot within the subdivision is determined by the Zoning Administrator to be naturally wooded which would, at a minimum, consist of the caliper and height of trees required by this chapter; and

(c) Developer shall provide spaced or clustered plantings of 1 and 1/2 inch caliper deciduous trees at a rate of 2 per 100 lineal feet on both sides of the street, between 0 feet and 5 feet to the inside of the right-of-way for rural sections and between 5 feet and 10 feet to the inside of right-of-way for urban sections. Four foot conifers may be substituted.

(G) *Other information.* Other information shall be provided as may be reasonably requested by the city staff. Planning Commission, or Council.

(H) *Review by staff and other commissions or jurisdictions.*

(1) The city shall refer copies of the preliminary plat to the City Engineer, Planner, and Attorney, the Park Commission, and the appropriate county, state, or other public agencies for their review and comment.

(2) Comment must be received within 30 days or it will be assumed there are no objections.

(I) *Hearing.*

(1) The Planning Commission, upon receipt of the application shall instruct Administrator to set a public hearing on the proposed preliminary plat no later than 45 days from the date of filing of the application. The Planning Commission shall conduct the hearing and report its findings and recommendations to the Council. The Administrator shall give notice of the hearing. The notice shall consist of a property description and a description of the request. The notice shall be published in the official newspaper at least 10 days prior to the date of the hearing and written notification of the hearing shall be mailed at least 10 days prior to all owners of land within 350 feet of the boundary of the property in question. The Planning Commission, at its discretion, may direct that notification be sent to property owners at distances of greater than 350 feet.

(2) The failure of any property owner to receive notice shall not invalidate the proceedings.

(J) *Planning Commission action.* The Planning Commission shall make a recommendation to the Council within 30 days following the close of the public hearing. If the recommendations of the Planning Commission are not received within that time, the Council may act on the preliminary plat without the recommendations.

(K) *City Council Action.*

(1) The Council shall act upon the preliminary plat and may impose the conditions and restrictions as are deemed necessary by the Council in view of the purpose of this section and the recommendations of the Planning Commission within 30 days after receiving the recommendations of the Planning Commission or within 60 days after the close of the public hearing on the preliminary plat should the Planning Commission fail to forward recommendations.

(2) If the preliminary plat is not approved by the Council, the reasons for the action shall be recorded in the proceedings of the council and transmitted to the applicant. If the preliminary plat is approved, the approval shall not constitute final acceptance of the layout. Subsequent approval will be required of the engineering proposals and other features and requirements as specified by this chapter to be indicated on the final plat. The Council may require revisions in the preliminary plat and final plat as it deems necessary for the public health, safety, general welfare, and convenience.

(L) *Submission of final plat; request for extension.* If the preliminary plat is approved by the Council, the subdivider must submit the final plat within 180 days after the approval, or approval of the preliminary plat shall be considered void, unless a request for time extension is submitted in writing and approved by the council.

(1997 Code, § 400.08) [Penalty, see § 10.99](#)