



MEMORANDUM

November 17, 2010

TO: Board of Mayor and Aldermen

FROM: David Parker, City Engineer/CIP Executive
Eric Gardner, Director of Engineering
Eric Stuckey, City Administrator

SUBJECT: **Second Reading of Ordinance 2010-68
Stormwater Management Ordinance**

Purpose

The purpose of this memorandum is to present to and recommend to the Board of Mayor and Aldermen (BOMA) Ordinance 2010-68; Title 23 of the Municipal Code as revised for second and final reading.

Background

Staff has been working on an update and revisions to the City's Stormwater Management Ordinance presently found in Title 16, Chapters 7, 8 and 9 of the Franklin Municipal Code for several years. The update of the Ordinance was needed to include required Streamside Buffers, correct areas of the Ordinance that were unclear, appropriately define authority of the Ordinance and staff, and to include changes in the City's MS4 permit from the Tennessee Department of Environment and Conservation. Ordinance 2010-68 also moves the Stormwater Management Ordinance out of Title 16 – Streets and Sidewalk, Etc. to its own title; Title 23 – Stormwater Management.

The proposed Title 23 was approved first reading by BOMA on October 26, 2010, after being recommended to BOMA by the Stormwater Appeals Board (SAB) in a unanimous vote of those board members present. This Ordinance has been reviewed by many different groups, the latest being during a Public Forum held for input on this Ordinance at the October 19, 2010 SAB meeting. Staff received comments from those present and speaking at the Public Forum and has prepared responses to those comments (see attached Public Forum Comments & Staff Responses). As can be seen from the staff responses, some of the comments were taken care of during the approval of Ordinance 2010-68 on first reading. Other revisions to the Ordinance are now being recommended based on some of the other comments that have taken staff additional time to process. The City's Law Department has been a part of the staff review of comments and approved the Ordinance as presented in the attached redlined version.

Financial Impact

None

Recommendation

Staff recommends approval of Ordinance 2010-68 as presented in the attached redlined version.

**Public Forum Comments & Staff Responses
Ordinance 2010-68**

Comments from Adam J. Ballash, Boyle

1. **Page 9 / 10 Paragraph (78) – “Development improvements that have a value less than fifty percent (50%) of the current assessed value and/or increases the floor area by less than twenty-five percent (25%).”**

Paragraph (86) – “Development improvements that have a value greater than fifty percent (50%) of the current assessed value, increases the floor area than twenty-five percent (25%) or more, any change in the Impervious Surface area, redirects the flow of Stormwater in any way, modifies the storm sewer system, or changes the Stormwater characteristics.”

Paragraph (101) – “in which the cost equals or exceeds fifty percent (50%) of the market value of the Structure.”

It is my recommendation to remove any reference to changes in value to any potential trigger clauses to invoke this ordinance. This will have unintended adverse affects on the built environment for both commercial and residential properties. For instance, the redevelopment of a store on Main Street to fully build out the upper floors for a permitted use would raise the appraised value of the building, but require the owner to make major improvements to the stormwater system when they are not making any changes that would adversely affect the current design. My suggestion would be to focus only on changes to impervious area.

City Response: Revised as approved on First Reading, October 26, 2010 to remove any reference to increased value.

2. **Page 16 Paragraph (t) – “The City may require...”**

The term “may” needs to be further defined in this instance and the City should determine when they will affectively make the call for a developer to provide more stringent EPSC measures at a predetermined time, possibly on at the concept plan stage.

City Response: The determination on where more stringent EPSC measures are required will be made during the plan review process. This allows the City to address existing areas of erosion as well as be proactive for prevent erosion on sites with highly erodible soils located within impaired watersheds.

3. **Page 18 Paragraph (3) – “Green Infrastructure – Runoff Reduction Requirements. This section shall be effective for all Development and Redevelopment under the jurisdiction of this Title constructed after July, 1, 2013.”**

The City should define a more definitive time table and trigger for when to enforce the new restrictions. For instance, if a development has a site plan approved anywhere within two years of this date (assuming one year of site plan approval and two six month extensions) and moves forward for construction on or after July 1, 2013 they would be required to fulfill the “new” requirements. This is possibly an overly punitive interpretation on how to enforce the new Ordinance and will undoubtedly cause undue burdens to applicants with previously approved plans. Additionally, it will cause

additional cost to the City in terms of plan review time, coordination with applicant for revised plans, and a delay in receipt of permit fees. Instead, the enforcement of this provision should be applied to any project receiving regulating plan, concept plan or site plan approval following July 1, 2013, and should be a matter addressed in entitlements, not a set of construction plans.

City Response: Revised as approved on First Reading, October 26, 2010. The term constructed has been replaced with all plans submitted for plan review after July 1, 2013.

4. Page 19 Paragraph (iii) – “Payment to Stormwater Fund in Lieu of Green Infrastructure.”

It appears that this in-lieu fee may be applied to stormwater quantity infrastructure projects, when the MS4 NPDES permit is targeted at improving water quality.

City Response: The in-lieu fee may be utilized to fund stormwater projects, quality and quantity, which are identified to provide the greatest benefit to impaired watersheds, and the Citizens of Franklin. We speculate the majority of these projects will be Capital Investment Projects, and will require approval from the Board of Mayor and Alderman.

5. Paragraph (23-107) – “It shall consist of a Native Vegetation along both sides of a stream...”

The ordinance needs to clarify that if the Developer does not own both sides of the stream, or has previously developed the other side of the stream, that the buffer shall only apply to one side of the stream.

City Response: This section, as defined in §23-107 pertains to development and redevelopment only. If only one side of the stream bank is included as part of a development, only that side of the stream bank will be required to meet the standards.

6. Page 19 / 20 / 21 Streamside Buffer Zone 1

In general, the proposed Ordinance is more onerous than the approved MS4 NPDES permit (Permit No. TNS000000) issued on August 31, 2010 that will govern the City of Franklin municipal stormwater discharges. Per the “water quality buffer” definition on Page 37 of the permit, the proposed buffer would only be 30’ for drainage areas less than one square mile, and 60’ for drainage areas greater than one square mile. Additionally, the permit clearly allows the permittee to average the 60’ buffer so that at any point it is no less than 30’. Instead of following the governing TDEC NPDES permit, the City has proposed to adopt an Ordinance that could be up to 233% larger than the State recommended buffer (and up to 560% larger than the current 25’ buffer). The City Ordinance has a buffer that is clearly divided into two distinct buffer zones. Zone 1 that is intended to mimic the approved state buffer (i.e. either 30’ or 60’), and Zone 2 that is intended to be an *additional* 30’ on top of the State recommended buffer. Additionally, the City proposes a potentially much more punitive buffer on sloping sites of up to an additional 50’. The City could be commended for its attempt to be a leader in sustainable development and the protection of our natural resources. However, it is my firm opinion that the proposed Ordinance could achieve this goal, by being less punitive and more

flexible with its application. First, the additional slope buffer is clearly more punitive than the State permit and should be removed as it could add an additional 50' of buffer to any given site meeting the specifications. This area should not even be a consideration if Zone 2 is adopted because the water is supposed to "infiltrate" before it even gets to Zone 1 and the above mentioned additional slope buffer. If the concern is for the sinuosity of a stream with steep banks, then the applicant should be required to repair the banks, not provide more land for the given stream to continue to erode. Second, the addition of Zone 2 as written is overly punitive and does not allow for an applicant to take advantage of current, or changing, technology to protect water quality. As mentioned above, the City should be commended for its attempt to improve upon the State mandated buffers. However, the addition of Zone 2 is poorly executed. If Zone 2 is adopted it should simply prohibit "impervious" surfaces. That is, if the goal of Zone 2 is to serve as an Infiltration Zone, then the City needs to allow for alternative measures to accommodate this goal. The City should allow for mass grading within Zone 2 for the development of a site plan that supports "green infrastructure". That is, site plans in Zone 2 should be crafted so that BMPs such as retention ponds, forebays, level spreaders, bioswales, rain gardens, pervious parking lots and roadways, green roofs, or other technologically advanced techniques that improve stormwater quality are promoted while the applicant is allowed to grade the land to achieve such improvements. The adoption of a system such as that above would further improve upon the State's permit goals, and would clearly shift the City from supporting a "no growth", punitive approach to developing, to a progressive City that could lead the Southeast in the promotion and implementation of "smart growth" through "green infrastructure".

City Response: The ordinance has been revised to exempt sites with larger watershed area from Zone 2. Also, the commenter may have misinterpreted the section regarding the additional buffer width for steep slopes. The additional buffer widths are required if the AVERAGE slope of the buffer is greater than 15%; this does not include the slope of the bank, as the buffer begins at top of bank. Also the Franklin Zoning Ordinance provides restrictions on slopes greater than 14%. The purpose of the stream buffer is to provide ecological benefits to the stream and wildlife habitat. Per discussion with Robert Karesh, TDEC Stormwater Coordinator, there is no equivalent BMP for the buffer. However, with this ordinance, the City has developed a mechanism to allow for buffer width reductions under special circumstances. We feel that these buffer requirements are the best benefit to the citizens of Franklin, the impaired streams within Franklin City Limits, and the development community.

7. Page 23 Paragraph (d) – “Signage shall be posted at the edge of the buffer zone, each lot line, and at a maximum spacing of one hundred fifty feet (150’).”

If minimum lot dimensions are met in some instances there could be an inordinate amount of signage along a buffer zone that the City is obviously trying to protect and celebrate. Instead, you could literally have signage every 25' – 30' along a buffer if it matches every lot line. A more practical approach needs to be implemented.

City Response: The second portion of Paragraph (d) states “Properties with a large amount of stream frontage may request a reduction in spacing requirements, subject to

approval from the City Engineer.” This would also apply to a larger common development with multiple small lots with stream frontage.

8. **Page 24 Paragraph (4) – “...posting of a maintenance bond... for a term of eighteen (18) months...”**

This term does not match current practices and should be updated to match the Zoning Ordinance.

City Response: Revised as approved on First Reading, October 26, 2010 to reference City’s Zoning Ordinance as to requirements for bonds.

Comments from J. Bryan Echols, Stites&Harbison, PLLC

1. I believe that the “grandfathering” provisions should be built into the underlying ordinance or the actual code provisions, so that there is clarity for future situations. While putting the provisions in the ordinance is helpful, the provisions will not be readily available unless actually placed into the City code.

City Response: After discussions among City staff, including the Law Department, we have concluded that it is best to included the “grandfathering” provisions as Section III of the establishing Ordinance and not TITLE 23 itself.

2. **Page 5, item (25). “Developer” includes any legal or engineering representative of Developer.**

The Developer is then given liability potential in other sections of the Code. I understand that this is not the intent, and believe it should be clarified. Professional advisors will be unwilling to assume this liability.

City Response: Staff is proposing to revise the Ordinance to remove professional advisors from a part of this definition.

3. **Page 7, item (54). Historic Structure Designation requires actual Department of Interior designation.**

I suggest eligibility for such designation should be the determining factor. Compare Section 5.7.2 of the Zoning Ordinance.

City Response: The ZO does not define Historic Structure Designation; it defines Historic Structure. The definition in the Stormwater Ordinance is a FEMA definition that refers to National Register properties, and is proposed to be added to the ZO to meet FEMA requirements to maintain eligibility in the NFIP.

4. **Page 9, items (78), (86) and (101).**

Use of value as a trigger for stormwater governance when all work is on the interior imposes requirements and fees, and potentially in lieu contributions, where there is no

legal nexus between the requirements and the impact of the development on stormwater conditions.

City Response: Revised as approved on First Reading, October 26, 2010 to remove any reference to increased value.

5. Page 11, 23-104.

As an overall comment, I believe that the City Engineer is given excessive authority and discretion under the document. This is particularly true with respect to the imposition of civil penalties. I suggest that notices of violation be issued at the discretion of the City Engineer, but that only the Stormwater Appeals Board should have the authority to impose penalties.

City Response: City Engineer is defined as “City Engineer and designated staff...”. This authority is consistent with other MS4s’ stormwater ordinances, as well as the recommendation from UT-MTAS. The imposition of civil penalties is consistent with the Administrative Hearing and Civil Penalties training provided by UT-MTAS and is allowable in TCA§ 68-221-1101. Since the Stormwater Appeals Board hears and deliberates on an appeal concerning civil penalty, then it wouldn’t be appropriate for them to impose the penalty.

6. Page 16, item (t). There is broad authority to impose “more stringent” practices within “sensitive or impaired” watersheds.

Since much of the Harpeth River is impaired, this broad and somewhat arbitrary authority should be defined, limited or deleted.

City Response: The determination on where more stringent EPSC measures are required will be made during the plan review process. This allows the City to address existing areas of erosion as well as be proactive for prevent erosion on sites with highly erodible soils located within impaired watersheds.

7. Page 17, item (z).

The incentives will be ineffective and illusory unless a more defined and specific incentive scheme is developed. There is also no statement of when these incentives are determined, or by whom.

City Response: Revised as approved on First Reading, October 26, 2010 to be determined during the plan review process.

8. Page 19, 23-107.

The buffers established by this section go far beyond what the MS-4 permit requires, are applied to water resources that are not required to be protected under the MS-4, are applied to water resources in the apparent total discretion of the City Engineer, can be significantly increased due to site conditions, and will have an adverse impact on many sites in the City, particularly for commercial development. I understand some comparison

is made to the County's streamside buffers, but there is a significant difference between county sites and the denser sites located with the City and the urban growth boundary. I believe that this will be apparent once sites are reviewed and the true impact of these provisions is known.

City Response: Revised as approved on First Reading, October 26, 2010 to remove any discretionary determination by City Engineer.

9. Page 23, subsection (5).

Requiring the applicant to detail all parameters of the Streamside Buffer at the pre-application phase of a concept plan and at other early planning stages puts a costly burden on applicants, requiring surveys, slope studies, and likely consultation with City staff members.

City Response: It is important to delineate Stream locations and buffer widths at the conceptual stage of development as it may influence allocation of entitlements (densities and set-backs), which are approved with the Concept Plan.

10. Page 24, 23-108(4).

The eighteen month bond is longer than currently required. Other similar bonds are required for only twelve months.

City Response: Revised as approved on First Reading, October 26, 2010 to reference City's Zoning Ordinance as to requirement of bonds.

11. Page 25, 23-109.

Once again, this is an open-ended and seemingly arbitrary provision that grants excessive discretion to the City Engineer and staff.

City Response: See response to 5 above.

12. Page 29, subsection (5).

There is no basis for charging an administrative fee that is anything other than the normal administrative fee. Administrative fees should not be punitive.

City Response: Staff is proposing that Subsection 23-112(5) Administrative fee be removed.

13. Page 30, subsection (12).

If the appeal is successful, no fee should be charged to the applicant. Further, successful appellants should be entitled to attorney fees to promote the access to justice equal to the City.

City Response: Revised as approved on First Reading, October 26, 2010 to include a refund.

14. Page 38, subsection 2(e).

This section is totally inappropriate for variance requests. In the event that a person requests a variance, the City should not be entitled to the costs of such a proceeding. This is not a punitive process, no violation has occurred, and the applicant may be simply requesting a variance to respond to a particular site condition. There is no basis for imposing fees on such an applicant. If this is appropriate, then the successful applicant should have a corresponding right of compensation.

City Response: Staff is proposing that what is referenced above as Subsection 23-204 2 (e) be removed. This subsection is mislabeled, but there are two subsections 23-204 3 and the Ordinance will be corrected to number the subsections correctly.

Comments from Ryan McMaster, Littlejohn Engineering and Associates

1. Areas that allow for reductions in some locations. Would the Zone 2 be allowed to be reduced or at least allow stormwater quality features that could potentially allow infiltration?

City Response: No, unless under special circumstances. The purpose of the stream buffer is to provide ecological benefits to the stream and wildlife habitat. Per discussion with Robert Karesh, TDEC Stormwater Coordinator, there is no equivalent BMP for the buffer. However, with this ordinance, the City has developed a mechanism to allow for buffer width reductions under special circumstances.

Comments from Matt Dowdle, Southern Land Company

1. **Page 11 Waterbody.** Does that include low flat areas that are not defined streams? Where would the buffer be if there isn't really a bank?

City Response: In this case, a field review of the site would be necessary to make a determination, which would depend on the site specific conditions of the site and of those surrounding the site. If it is apparent that a defined channel was lost due to sedimentation and disturbance activities, channel restoration may be required and stream buffers be placed. If it is apparent that the channel naturally fans out into overland flow, no stream buffers would be required. It is also important to note that stream determinations are based solely on hydrologic conditions, but also take into account ecological and biological parameters.



HISTORIC
FRANKLIN
TENNESSEE

MEMORANDUM

October 1, 2010

TO: Board of Mayor and Aldermen

FROM: Eric Stuckey, City Administrator *ES*
David Parker, City Engineer/CIP Executive
Eric Gardner, Director of Engineering

SUBJECT: **Ordinance 2010-68**
Stormwater Management Ordinance

Purpose

The purpose of this memorandum is to present information to the Board of Mayor and Aldermen (BOMA) to consider Ordinance 2010-68; Title 23 of the Municipal Code to revise and update the City's Stormwater Management Code.

Background

Staff has been working on an update and revisions to the City's Stormwater Management Ordinance presently found in Title 16, Chapters 7, and 9 of the Franklin Municipal Code for several years. The update of the Ordinance was needed to include required Streamside Buffers, correct areas of the Ordinance that were unclear, appropriately define authority of the Ordinance and staff, and to include changes in the City's MS4 permit from the Tennessee Department of Environment and Conservation (TDEC). Ordinance 2010-68 also moves the Stormwater Management Ordinance out of Title 16 – Streets and Sidewalk, Etc. to its own title; Title 23 – Stormwater Management.

The proposed Title 23 has been reviewed by many different groups and is being recommended to BOMA by the Stormwater Appeals Board (SAB) in a unanimous vote of those board members present. Also, the City's Law Department has reviewed and approved the Ordinance as presented. This Ordinance requires two (2) readings by BOMA with a public hearing at the second reading.

Financial Impact

None

Recommendation

Approval of Ordinance 2010-68 is recommended.