

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
NOVEMBER 27, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
DuPage County Stormwater Quality Best Management Practices (BMPs)	Resolution Ordinance ✓ Motion Discussion Only	Robin A. Weaver Interim Director of Public Works

SYNOPSIS

A motion is requested to authorize a letter from Mayor Sandack on behalf of the Village to DuPage County recommending that modifications be made to the proposed stormwater quality best management practice (BMP) ordinance revisions prior to adoption, based on a recommendation from the Downers Grove Stormwater and Flood Plain Oversight Committee.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2006-2011 identified Top Quality Infrastructure and Facilities. A supporting objective of this goal is *Preservation of our Residential and Neighborhood Character*.

FISCAL IMPACT

N/A. If adopted, staff administration of County regulations and resident costs for compliance or waiver could be substantial.

RECOMMENDATION

Approval on the December 4, 2007 consent agenda.

BACKGROUND

Staff is forwarding the following recommendation from the Stormwater and Flood Plain Oversight Committee, as unanimously approved at their November 8, 2007, meeting:

“The Stormwater and Flood Plan Oversight Committee recommends that the Village Council directs staff to immediately write a letter under the mayor’s signature to Mr. James Zay, Chairman, DuPage County Stormwater Management Committee, with copies to the Municipal Technical Advisory Committee; Mr. Anthony Charlton, P.E., DuPage County [Department of Stormwater Management]; and District [2 and 3] County Board Members to express Downers Grove’s opposition to the [proposed] BMP Ordinance as currently written. Since it is not feasible for single family residential developments to meet the requirements instead of paying the fee, the residents of Downers Grove will be ill-served to proceed without further discussion and compromise on this issue.”

County and Village stormwater system permits issued by the Illinois EPA under the federal Clean Water Act require the adoption of best management practice (BMP) standards prior to March 1, 2008, for construction permits. This requirement can be met by revisions to the DuPage County *Countywide Stormwater and Flood Plain Ordinance* and corresponding revisions to the *Downers Grove Stormwater and Flood Plain Ordinance*. DuPage County has proposed that all developments 5,000 square feet or larger must comply with the new standards, while the IEPA does not require BMP implementation for developments less than 1 acre (43,560 square feet). The Stormwater and Flood Plain Oversight Committee expressed concern regarding potential negative impacts on development within the Village,

particularly on single-family residential additions or redevelopment projects. The Village's Stormwater Committee has previously noted that additional technical changes to the County's proposed standards could increase the feasibility of compliance with the new standards and achievement of water quality improvement objectives. If the County remains resolute on including all single-family lots, the staff burden will be placed on the Village of Downers Grove, and the estimated cost per typical homes requesting a waiver would range from approximately \$750 (1/4 acre lot) to \$3,000 (1 acre lot). While the goal of improving water quality is shared by the Village, imposition of the BMP construction requirement or fee on only those lots with additions/ redevelopment fails the fairness test.

ATTACHMENTS

Draft letter from Mayor Sandack

Staff memo to the Stormwater and Flood Plain Oversight Committee dated November 1, 2007

City of Naperville letter to DuPage County dated October 11, 2007

DuPage Mayors and Managers Oct. 25 letter to DuPage County Stormwater Chair

November 27, 2007

James Zay
DuPage County Board
DuPage County Administration Building
421 County Farm Road
Wheaton, IL 60187

Re: Proposed County Stormwater Ordinance Amendments for Best Management Practices (BMPs)

Dear Member Zay,

As the Chairman of the DuPage County Stormwater Management Planning Committee, you are considering amendments to the Stormwater Ordinance to require Best Management Practices (BMPs) for new construction, including single-family residential and roadways, as well as provisions to opt out of the requirements by paying a “fee in lieu of.”

The Committee’s discussion at the October 2 Stormwater Committee meeting prompted me, on behalf of the entire Village Council and the Stormwater and Flood Plain Oversight Committee, to express concern to you over these amendments. I wish to advise you of the outstanding policy questions and concerns that should be addressed before any recommendation is made to the County Board. These include:

- **NPDES requirements.** Which provisions of the proposed amendments are necessary to meet NPDES requirements? While we understand the need to meet the federal mandates in order to avoid stiff penalties, the questions remains: are all of the proposed standards and thresholds necessary to meet the NPDES permit requirements? Can the standards be implemented incrementally?
- **Impacts of increased development costs.** Increasing development costs makes it more challenging to provide affordable housing in DuPage County. The ordinance changes with its current thresholds could impact the market rate of housing units, discourage residential redevelopment, and negatively impact economic development.
- **“Fee in lieu of.”** As presented at the October 2 Stormwater Committee meeting, the amendments seem to encourage payment of the fee in lieu of BMPs over actually providing BMPs. This leads to the conclusion that the goal of the proposed amendments may be raising funds instead of instituting a remedy. Additionally, the decision to require installation of BMPs or provide a “fee in lieu of” is often left as a subjective decision of the Administrator. No clear standard of determining the appropriateness of a “fee in lieu of” is outlined.

- **Staffing.** Both DuPage County and municipalities will have to augment staff to take on this additional review and enforcement responsibility.
- **Impact on local governments.** The proposed Ordinance amendments will increase the burden on local governments. Municipalities will assume not only additional review and staffing costs, but also costs associated with implementing BMPs for municipal construction projects, including certain road projects.

I respectfully request the DuPage County Stormwater Management Planning Committee not take action on the proposed Stormwater Ordinance amendments regarding BMPs until more information has been provided to elected officials and staff in order to better understand the need to implement BMPs.

Thank you for your consideration. Should you have any questions, please contact Village Manager Cara Pavlicek at (630) 434-5525.

Sincerely,

Ron Sandack
Mayor
Village of Downers Grove

Cc: Municipal Technical Advisory Committee
Anthony Charlton, DuPage County Department of Stormwater Management
Patrick O'Shea, District 2
Jeff Redick, District 2
Brien Sheahan, District 2
Thomas Bennington, District 3
Kyle Gilgis, District 3
Michael McMahon, District 3



Memo

To: Stormwater and Flood Plain Oversight Committee

From: Jonathan C. Hall, P.E. *JCH*
Stormwater Administrator

Date: November 1, 2007

Re: **Stormwater and Flood Plain Oversight Committee**
November 8, 2007 meeting
Agenda Item VI – A
DuPage County Water Quality Best Management Practice Manual

SUMMARY:

The Committee has previously discussed DuPage County's proposed "Technical Guide for Water Quality Best Management Practices," also referred to as the "BMP Manual." This manual is proposed for incorporation into Appendix E of the DuPage County *Countywide Stormwater and Flood Plain Ordinance*. Because the revisions increase the scope and restrictions of the County stormwater ordinance, Village adoption will be required subsequent to final approval by DuPage County. The Village may modify the language provided the modifications do not relax any county provisions.

UPDATE:

Following is a summary of recent and upcoming activity:

- DuPage County opened the 30-day public comment period (July 13, 2007, to August 13, 2007).
- Comment-response document issued September 17, 2007.
- The DuPage Stormwater Management Committee held a public hearing on October 2, 2007.
- DuPage County staff issued a memo on October 23, 2007 requesting additional comments from the Municipal Engineers Technical Advisory Committee regarding the development size threshold.
- The DuPage Stormwater Management Committee scheduled continuation of the BMP revision discussion for November 6, 2007.

RECOMMENDATIONS:

- None at this time.

BACKGROUND:

Best Management Practices (BMPs) are defined by the County stormwater ordinance as *design, construction, and maintenance practices and criteria for stormwater facilities that minimize the impact of stormwater runoff rates and volume, prevent erosion, and capture pollutants.* The DuPage County *Countywide Stormwater and Flood Plain Ordinance* currently includes provisions under Section 15-113.11 "Developments shall, to the extent practicable and necessary, incorporate the following Best Management Practices into the site design to minimize increases in runoff rates, volumes, and pollutant loads..."

The proposed ordinance revisions will strengthen the requirement for BMPs and the BMP Manual will provide detailed guidelines specific to DuPage County. The primary reason for the new requirements is to meet Clean Water Act (NPDES Phase II) obligations from Illinois EPA and the federal EPA. However, the proposed revisions as currently written appear to exceed minimum requirements of the EPA and IEPA. Most notably, EPA requires BMPs for all development sites greater than 1 acre (43,560 square feet) while DuPage County is proposing a threshold of 5,000 square feet.

For the latest revision of the DuPage BMP manual and associated ordinance revisions, please refer to the County web site <http://ec.dupageco.org/bmp/>.

ATTACHMENTS:

- DuPage County Comment-Response Document dated 9/17/07.
- DuPage County memo dated 10/23/07.

ACTION REQUESTED:

- None at this time.



Naperville

October 11, 2007

Ms. Jennifer Boyer
Senior Wetland Specialist
DuPage County Department of Economic Development and Planning
421 N. County Farm Road
Wheaton, IL 60187

Re: Proposed BMP Ordinance
Suggested Changes to Implementation Threshold

Dear Jennifer:

Our thanks to you, Nick Kottmeyer and Clayton Heffter for meeting with Erskine Klyce and I to discuss the proposed BMP Manual and Ordinance. We all agree this is an excellent document; it supports the betterment and sustainability of our environment.

The City of Naperville does have serious concerns about the implementation of these practices. The 5,000 s.f. threshold is way too low. This threshold reminds me of the original speed limit that was set for Naper Boulevard when it was constructed in the mid 1980s. Due to the federal funding, the city had to establish a 30 m.p.h. speed limit. For this type of roadway it was simply too low and the courts would not enforce tickets that were written on it. Despite the federal requirements, the city went back and performed additional studies to justify raising the speed limit to 40 m.p.h. which is enforced and appropriate for the roadway.

I doubt that many of the municipal administrators or engineers have given thought to all of the impacts they will face if this ordinance is implemented as currently proposed. The current thresholds will greatly affect the permit costs, plan review and approval time, administration and code enforcement of every single family permit that is issued by a municipality. It is my honest belief that trying to implement this on every development that exceeds 5,000 s.f. is a recipe for disaster and ultimate failure of an excellent document.

Understanding that the county's Notice Of Intent (NOI) for Year 5 of their NPDES permit requires the implementation of a BMP Ordinance for any project one acre or greater, begs the question of why the threshold is not set at one acre. The one acre threshold allows the petitioner the option of either implementing the BMP on site or paying the fee. Requiring it on any development over 5,000 s.f. almost automatically defers to the payment of the fee.

Jennifer Boyer
Re: Proposed BMP Ordinance
Suggested Changes to Implementation Threshold
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In summary, the City of Naperville supports the BMP Manual but not the proposed implementation of it. We do not support the implementation at the 5,000 s.f. threshold. We would support the manual if the threshold was set to apply to parcels one acre or greater in size.

Thank you for taking the time to meet with us. If you would like to discuss these matters further please feel free to contact me at 630/420-6704.

Very truly yours,

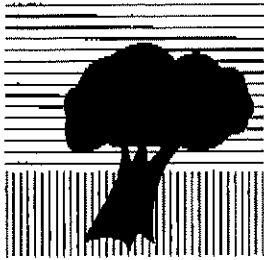


William J. Novack, P.E.
City Engineer/Engineering Services Team Leader
Transportation, Engineering and Development Business Group

WN/bw

c: Peter T. Burchard, City Manager
Erskine Klyce, Project Engineer

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October 25, 2007

Jim Zay
DuPage County Board
DuPage County Administration Building
421 County Farm Road
Wheaton, IL 60187

RE: Proposed County Stormwater Ordinance Amendments for Best Management Practices (BMPs)

Dear Member ^{Jim} Zay:

As the Chairman of the DuPage County Stormwater Management Planning Committee, you are considering amendments to the Stormwater Ordinance to require Best Management Practices (BMPs) for new construction, including single-family residential and roadways, as well as provisions to opt out of the requirements by paying a "fee in lieu of." The Committee's discussion at the October 2 Stormwater Committee meeting prompted the Conference's Intergovernmental Relations Committee to take an in depth look at the proposed amendments.

While the Conference has not taken a formal position on the proposed amendments, the Conference agrees there are many outstanding policy questions and concerns that should be addressed before any recommendation is made to the DuPage County Board. These include:

- **Which provisions of the proposed amendments are necessary to meet NPDES requirements?** While we understand the need to meet the federal mandates in order to avoid stiff penalties, the question remains: Are all of the proposed standards and thresholds necessary to meet the NPDES permit requirements? Can the standards be implemented incrementally?
- **Impacts of Increased Development Costs.** Increasing development costs make it more challenging to provide affordable housing in DuPage County. The ordinance changes with its current thresholds could impact the market rate of housing units, discourage residential redevelopment, and negatively impact economic development.
- **"Fee in Lieu of."** As presented at the October 2 Stormwater Committee meeting, the amendments seem to encourage payment of the fee in lieu of BMPs over actually providing the BMPs. This leads to the conclusion that the goal of the proposed amendments may be

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raising funds instead of instituting a remedy. Additionally, the decision to require installation of BMPs or provide a "fee in lieu of" is often left as a subjective decision of the Administrator. No clear standard for determining the appropriateness of a "fee in lieu of" is outlined.

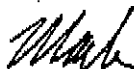
- **Staffing.** Both DuPage County and municipalities will have to augment staff to take on this additional review and enforcement responsibility.
- **Impact on Local Governments.** The proposed Ordinance amendments will increase the burden on local governments. Municipalities will assume not only additional review and staffing costs, but also costs associated with implementing BMPs for municipal construction projects, including certain road projects.

County staff have been helpful in assisting DMMC staff understand the proposed ordinance changes. Because of the numerous concerns expressed to us by DMMC municipalities, the Conference expects to hold a briefing in the near future to help member elected officials and staff better understand the need to implement BMPs. We will invite County representatives to participate in this meeting and to discuss these issues outlined in this letter. DMMC will coordinate with Anthony Charlton to make the necessary arrangements.

In the mean time, the Conference respectfully requests the DuPage County Stormwater Management Planning Committee not take action on the proposed Stormwater Ordinance amendments regarding BMPs until elected officials can be educated on the issue through a briefing and municipal issues and concerns are reasonably addressed.

Thank you for your consideration. Should you have any questions, please contact me at 630-571-0480.

Sincerely,



Mark A. Balgoa
Executive Director

c: Anthony Charlton, DuPage County
DMMC IGR Committee members