



Washington County
Planning and Parks Department
Land and Water Conservation Division

EROSION CONTROL & STORMWATER
MANAGEMENT MEETING

MINUTES

of 03/27/08

Meeting held on 03/27/08 @ 2:05 PM
Washington County Public Agency Center, Room 3224,
333 E. Washington St., West Bend, WI 53095-2003

The meeting was called to order by Paul Sebo, Senior Technician of the Washington County Land & Water Conservation Division @ 2:05 P.M. A meeting notice was provided to the Washington County Clerk and the local newspaper for their information.

Absent: Steve Wendelborn, Town of Barton Zoning Administrator; Matt Bedarski, Village of Newburg Engineer; Kirk Radtke, Village of Germantown Building Inspector; Leander Herriges, Town of Wayne; Jim Haggerty, Village of Slinger Engineer

Those in attendance included the following:

City/Town/Village Representatives

- Max Marechal City of West Bend, Asst., City Engineer
Jim Reinke City of West Bend, Community Dev. Asst. Planner
Jim Bennett Town of Hartford, Chairman
William Ripp City of Hartford, Engineer
Frank Mayer Town of Trenton, Zoning Administrator

Washington County Representatives

- Scott Schmidt, P.E., R.L.S. Washington Co., Engineer/Surveyor
Paul Sebo Washington Co., Senior Technician
Washington Co.,
Jill Hapner County Conservationist
Charlene Brady Washington County Supervisor
Planning & Parks Department,
Resource Manager
Phil Gaudet
Fay Fitts Washington Co., Admin. Secretary

State Representative/Others

- Benjamin Benninghoff DNR, Water Res. Stormwater Specialist
Scott Mathie Metropolitan Builders Association
Brian Pehl Yaggy Colby, Engineer

Review and approve Minutes of October 25, 2007

Mr. Bennett motioned to approve the minutes of 10/25/07 contingent upon any amendments or corrections; seconded by Ms. Brady. Mr. Schmidt noted a grammatical correction on page 4 of 5 indicated in the motion to strike the word except and read as follows - Mr. Mathie motioned to except accept the language... Voice vote taken to approve the minutes with the grammatical correction noted above. Motion carried.

Review proposed language changes based on County Attorneys Comments

Mr. Sebo noted that a copy of the draft had been emailed/mailed to the committee prior to today's meeting (see attachment #1). He stated that text indicated in blue are the County Attorney's recommendations and red text indicates previous recommended language reviewed through the workgroup committee.

Mr. Benninghoff wanted to clarify the fact that the DNR is currently revising NR151 and proposed language changes are pending at the state level, noting that the workgroup committee may decide to move forward with the draft proposal as recommended today with the understanding that when NR151 changes do occur and are adopted as a revised state statute rule the County's document will need to be revisited again to incorporate those rule changes.

The committee decided to proceed reviewing all recommendations made by the County Attorney in its entirety. Mr. Sebo stated that the main changes made by the County Attorney were grammatical changes with those being: "administration authority" changed to upper case text and the words "storm water" changed to one word "stormwater", and the word "ordinance" was changed to "chapter" throughout the entire document. Mr. Schmidt also noted that the recommendation for the "Notes" was to either incorporate them into the document or taken them out of the document entirely.

The following reflects the major discussion points that occurred during the meeting:

Mr. Marechal indicated that his staff had noticed that land disturbing activities had been changed throughout the document to land disturbing construction activity. Questioning the reason why. Mr. Benninghoff noted that the language and definition in NR151 reads the same as land disturbing construction activities. Mr. Sebo and Mr. Schmidt noted that matching language and cross referencing NR151 and the proposed code was one of the County Attorney's objectives.

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17.05 (2)(b) – the word "road" was changed by County Attorney to "roadway" and by definition "roadway" may include either public or private roads. It was also noted that a search will be done throughout the document for the word road, if any changes are necessary, it will be changed to roadway.

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17.05(4) **Technical Waiver** (b) Application for Technical Waiver. 4. c. – will be changed to read as one paragraph (combining the note) language recommended as follows:

- c. Documentation of payment of any applicable fees that may be required by a unit of government charged with implementing a regional stormwater management plan. Fees may be through a stormwater utility district or other unit of government and would usually be based on an equitable distribution of costs for land acquisition, engineering design, construction, certification and maintenance of stormwater BMP's implemented through the regional stormwater management plan.

Agreed by consensus.

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17.09 STORMWATER MANAGEMENT PLAN REQUIREMENTS. (4) Specific Stormwater Management Requirements and Performance Standards. (c) Infiltration. 8. Infiltration Exemptions. f. - recommended to be changed to read ...

- f. Roadways in commercial, industrial and institutional land uses; and arterial residential roads.

Mr. Mathie motioned to strike the last word of "roads" in the above sentence. Discussion ensued. Motion rescinded.

Mr. Ripp motioned to recommend the language change as noted above contingent upon forwarding it onto the County Attorney for final review (definition of road vs. roadways) and other necessary changes with road vs. roadways; seconded by Mr. Marechal. Motion carried.

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17.09 STORMWATER MANAGEMENT PLAN REQUIREMENTS. (4) Specific Stormwater Management Requirements and Performance Standards. (e) Requirements within protective areas. 1. Conflicting ordinances. 3. – Discussion ensued and the following changes were recommended by the committee to read as follows.

3. Where land disturbing construction activity occurs within a protective areas, and where no impervious surface is present, adequate sod or self-sustaining non-aggressive ~~invasive~~, flood and drought tolerant ~~vegetative~~ vegetation cover of 70% or greater shall be established and maintained. The adequate sod or self-sustaining ~~vegetative~~ vegetation cover shall be sufficient....

Motion by Mr. Mathie; seconded by Ms. Brady to recommend the corrections as noted above. Motion carried.

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17.09 STORMWATER MANAGEMENT PLAN REQUIREMENTS. (5) Final Stormwater Management Plan Contents. 8. – Changed to read as one paragraph with the “Note” incorporated to read as follows.

8. A detailed construction inspection plan, outlining the critical elements in the plan that need to be surveyed or inspected by a representative of the project engineer, the Administering Authority or the municipality, and the timing and notification requirements involved. Examples of critical elements for a construction inspection plan include...

Agreed by consensus to be included as one paragraph.

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17.10 TECHNICAL STANDARDS AND SPECIFICATIONS (1) Hydrologic and Hydraulic computations. (d) Average annual rainfalls.

Discussion ensued regarding the possibility of referencing a link to a more updated rainfall model which can be found on the DNR website (Noting: these numbers would be higher than the 1969 rainfall pattern data as referenced and found in the current document. It was noted that some engineering software such as HydroCAD and HydroFLOW could not use the new model data figures, but could be used in SLAMM or P8 modeling. The workgroup concluded that based upon that knowledge, no additional changes would be recommended regarding average annual rainfall events at this time.

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17.11 PERMIT REQUIREMENTS (1) General Conditions. (e) – Discussion ensued regarding changing or striking the word “professional” and replacing with “representative” or qualified “individual”. Final discussion included the recommendation to read as follows...

- e. Inspect all best management practices after each rain event of 0.5 inch or more, or at least once each week, and make any needed repairs. The permit holder shall maintain best management practices until the financial guarantee under sub.(3) below is released by the Administering Authority. The permit holder shall provide a qualified ~~professional~~ representative to conduct inspections and maintain an inspection log for the site....

Mr. Mathie motioned to recommend the above language change which indicates striking the word “professional” and adding the word “representative”; seconded by Mr. Mayer. Further discussion ensued. Motion carried.

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17.14 ENFORCEMENT. (2) Prohibited Practices. (a)...

(a) Commence any land disturbing or land development activity prior to:

Ms. Brady questioned why “land disturbing” in the above proposed draft sentence was not changed to “land disturbing construction” activity by the County Attorney. Mr. Sebo noted that possibly the County Attorney had missed the phrase. Discussion ensued regarding the definitions of the terms “Land Disturbing Construction Activity” and “Land Development Activity”; and the term “Redevelopment”. It was noted that the definition of “Land Development Activity” was created in the original ordinance (dated 1997) and may not be necessary or needed in this version as a definition. Discussion ensued. It was recommended to add the word “construction” and the language changed to read as follows.

(a) Commence any land disturbing construction or land development activity prior to:

Mr. Brady motioned to add the word “construction” to the phrase making it consistent with the rest of the chapter, authorizing the recommendation to read as stated above; seconded by Mr. Bennett. Discussion ensued. Motion carried.

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A blank line was added between Line 2 & Line 3.

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17.17 DEFINITIONS. (27) “Land development activity” - by definition states the following language – “means any construction related activity that results in the addition or replacement of impervious surfaces such as buildings, roads, parking lots and other structures.”

Discussion ensued whether the term and/or definition of “Land development activity” was needed in the new draft proposal. Mr. Mathie stated that he felt “Land development activity” was the definition of “Redevelopment” and was possibly outdated language.

Mr. Mathie motioned to strike or remove all references in the document pertaining to “Land development activity” including the definition itself for that term, and replace it with the phrase and term of “Land disturbing construction activity”; seconded by Ms. Brady. Motion carried.

Mr. Mathie motioned to replace the definition of the term “Redevelopment” with the definition of the term “Land development activity” to read as follows, “(41) “Redevelopment” - means any construction related activity that results in the addition or replacement of impervious surfaces such as buildings, roads, parking lots and other structures.” Discussion followed on matching definitions to NR151 and if changed would not match the NR151 definition. **Motion rescinded.**

Mr. Benninghoff recommended adding a definition for “Connected Impervious” suggesting using the term as defined in NR151.

Mr. Ripp motioned to include the definition of “Connected Impervious” into the proposed draft document, by using the adopted or current NR151 definition; seconded by Mr. Mathie. Motion carried.

It was also noted that in the future the reference to SLAMM may need to be changed to WINSLAMM, NR151 currently uses SLAMM.

Review proposed language changes based on other comments received

Mr. Sebo noted that based upon the review of the draft some language had been inadvertently missed regarding the following section - **17.05 APPLICABILITY, EXEMPTIONS AND TECHNICAL WAIVERS (2) Stormwater Management**. Noting that in order to meet the criteria outlined NR151 the following language needed to be added under (2) Stormwater Management to read as follows:

(d) Ultimately results in one acre or more in total land disturbing construction activity; or

~~(d)~~ (e) Other land development...

Mr. Sebo added that the recommended language addition is due to NR151 updating both sections of the Erosion Control and Stormwater construction activity requirements which changed from the requirement of 5 acres to 1 acre or greater. Discussion followed on why it was entirely left out. Mr. Sebo noted that he thought it had been covered under another part of the chapter, but he was mistaken.

Mr. Ripp motioned to accept the recommended language as stated “(d) Ultimately results in one acre or more in total land disturbing construction activity; or”; seconded by Mr. Bennett. Motion carried.

Mr. Sebo referred to the handout titled “Additional language changes proposal after completion and approval of Erosion Control & Stormwater Management Workgroup meeting” made since the last meeting held in October (*see attachment #2*) for the committee to review in it’s entirety. The recommendations were as follows with additions indicated as being underlined and other text struck out as being deletions:

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17.05(4)(a) 2. ~~Internally Drained Sites. The site is internally drained and will not discharge runoff from the site after development occurs; or~~ No Off-Site Impacts. The site will have no appreciable off-site impacts or is internally drained and will not discharge runoff from the site after development occurs; or

Motion by Mr. Ripp; seconded by Mr. Bennett to approve the recommendations as noted above.

Discussion ensued on what was the definition of appreciable. An explanation of how no appreciable off-site impacts were interpreted in the past and the group felt that this could be left to the regulator discretion. It was also noted that soil loss could be measured by using the Universal Soil Loss Equation or RUSLE model – equating to a measurable soil loss (greater or less than 5 tons/ac/yr.) **Motion carried.**

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17.09(4)(h) 1. Drainage easement. Perpetual drainage easements or other deed restrictions shall be recorded on the property to preserve major storm water flow paths and permanent storm water BMP locations. Covenants in these areas shall not allow buildings, or other structures, ~~and shall~~ prevent any grading, filling or other activities that interrupt or obstruct flows in any way. Covenants shall also specify maintenance responsibilities and authorities in accordance with sec. 17.12.

Motion by Mr. Mayer; seconded by Mr. Bennett to approve the recommendation as noted above. Motion carried.

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17.09(4)(h) 2. Site grading. Site grading shall ensure, to the maximum extent practicable, positive flows away from all buildings, roads, driveways and septic systems, be coordinated with the general storm water drainage patterns for the area, and minimize adverse impacts on adjacent properties.

Motion by Mr. Mathie; seconded by Mr. Mayer to approve the recommendation as noted above. Motion carried.

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~~17.10(5) **Soil Evaluations.** All soil profile evaluations and forms submitted for review by the administering authority under the provisions of this ordinance shall be completed in accordance with Chapter COM 85 Wis. Adm. Code and any applicable standards under sub. (2) above. Where there are no specific standards for the number, location or depth of soil profile evaluations for a proposed BMP, the administering authority shall determine the minimum requirements based on the design of the BMP and the likely variability of the on-site soils.~~

17.10(5) **Soil Evaluations.** All soil profile evaluations submitted for review by the administering authority under the provisions of this ordinance shall be conducted by a qualified professional in accordance with s. COMM 85.20 and s. COMM 85.30 Wis. Adm. Code. Evaluation report forms submitted for review by the administering authority shall be completed in accordance with s. COMM 85.40 Wis. Adm. Code or on forms supplied by the administering authority. Determination of soil saturation or groundwater monitoring wells shall be done in accordance with s. COMM 85.60 or ch. NR 141 Wis. Adm. Code. The number, location or depth of a soil profile evaluation shall be based on the applicable standards under sub. (2) above. In the event that the standard does not indicate the soil profile evaluation requirements the administering authority shall make the determination based on the design of the BMP and the likely variability of the on-site soils.

Motion by Mr. Ripp; seconded by Mr. Marechal to approve new language regarding Soil Evaluations. Discussion ensued. Mr. Mathie suggested changing the phrase “by the administering authority” to the phrase “to the Admⁱⁿistering Authority”. It was further suggested that the qualified professional submits the soil profile evaluations to the Administering Authority for review, suggesting that any final recommendations be reviewed again by the County Attorney. **Mr. Ripp amended the motion to include language changes contingent upon the County Attorney’s final review and recommendation. Motion carried.**

Review draft language changes to NR151

Mr. Benninghoff discussed that the proposed changes for runoff can be found on the DNR’s website. It was again noted that the NR151 changes will be pending a public comment period and legislature approval in the near future. Noting that the result may include significant changes to the rule. Some examples of the major proposed NR151 changes include the following (as of February 14, 2008) based on documentation on the DNR website:

- ∇ Changing the 80% reduction recommendation to no more than 5 tons/ac./yr. of sediment load carried in runoff for measuring compliance. Soil loss prediction tools (i.e., models) and Best Management Plans will be used to determine compliance.
- ∇ Post-Construction Percent of reduction changes – percentage of reduction depends on the type of development (e.g., infill greater (80%) or less than 5 acres (40%) or redevelopment (60%))
- ∇ Changes to Post-Construction Infiltration requirements the percentage of stormwater required to be infiltrated is based on percent of connected impervious of the development. Mr. Benninghoff gave the following examples of infiltration requirements:

Connected Impervious with 10% or less are not subject to Post-Construction Requirements.

Connected Impervious Areas = 10-40%, 40%-80% and greater than 80% will require a post-development infiltration volume of at least 90%, 75% and 60% of the pre-development infiltration volume.

*1% or 2% of the overall site to be infiltrated.

Mr. Schmidt recommended moving forward with the draft proposal as presented today with any amendments needed and final approval and review from the County Attorney. He recommended approval of the draft with the full understanding and consensus from the workgroup members that the proposed NR151 rule is still under review and will be adopted in the near future noting that the County's ordinance will also need to be updated to reflect the newly adopted NR151 rule changes when that does occur; proposing that this draft be forwarded onto the Land Conservation Committee (LCC) for their review and approval; and upon pending approvals forwarded onto the County Board for their review and approval in June of 2008.

DNR comments regarding NR216 Municipalities – Benjamin Benninghoff, DNR

Mr. Benninghoff stated that in Washington County the deadline for a draft proposal to be submitted to the DNR for NR216 municipalities is May 31, 2008. Mr. Benninghoff also noted that in order to address compliance issues, communities will have a 6 month period to implement their ordinance (or end of November 2008) – which means an ordinance needs to be adopted and the beginning of implementation needs to occur by end of November of 2008.

Mr. Benninghoff stated that he is responsible for the review of all draft ordinances, noting that if the NR216 communities adopt the County's ordinance as proposed they will be found in compliance meeting the NR151 requirements. A letter from Mr. Benninghoff will be sent to the municipalities notifying them that compliance has been met. He also noted that if the NR216 municipalities can not meet the deadline of May 31st, but they do intend to adopt the County's ordinance or their own ordinance, a letter can be submitted indicating their intentions of adoption and noting that their draft ordinance is as least as restrictive as the County's ordinance.

Mr. Benninghoff noted that the Village of Richfield had requested an exemption from the DNR as being a NR216 community – the request is currently under review at the DNR.

Informational Meeting to be held April 29, 2008

Mr. Sebo noted that a public informational meeting discussing the draft proposal changes to Chapter 17 will be held on April 29, 2008 at the Washington County Public Agency Center, inviting all Washington County municipalities and ECSM Workgroup Committee Members and interested parties to attend the meeting.

County Approval/Adoption Process

Tentatively scheduled for May, the LCC will be presented with the draft proposal for their review and consideration, the public will also have an opportunity to comment and give input on the draft during this meeting as a public hearing. Upon LCC approval it will then be forwarded to the County Board for their review and approval tentatively scheduled for the June meeting.

Mr. Sebo noted that based upon the outcome of the May meeting, a special LCC meeting may need to be conducted to consider incorporating public comments into the draft.

Consideration of Approval of Final Draft – Chapter 17 Erosion Control & Stormwater Management forwarding document onto the Land Conservation Committee

Mr. Sebo asked if there were any further questions, or comments from the workgroup, hearing none, he entertained a motion for the approval of the draft.

Mr. Bennett motioned to approve the draft as presented today, contingent upon incorporating all the amendments as discussed today along with incorporating the County Attorney's final recommendations into the draft; seconded by Mr. Marechal. Voice Vote taken. Motion carried unanimously.

Mr. Ripp expressed his gratitude to the ECSM Workgroup Committee Members and County staff for all their efforts during the process of the draft. Mr. Sebo also expressed his gratitude to all members for their involvement in developing the draft.

There being no further questions, comments or concerns.

Ms. Brady motioned to adjourn; seconded by Mr. Marechal. Motion carried.

Meeting adjourned at 4:18 P.M.

Respectfully Submitted,

Fay Fitts, Administrative Secretary