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Memorandum

To: Ordinance and License Committee, Common Council
From: Brian Running
Re: Proposed New Municipal Code §16.075

You'll recall that proposed revisions to Municipal Code §22.18, regarding landscaping requirements, generated a negative response from homebuilders when it was proposed earlier this year. Community Development staff went back to the drawing board with the builders' concerns in mind, and are now proposing a new section in Chapter 16, the building code, rather than in Chapter 22, the zoning code.

The issue that these proposals address is the many one- and two-family developments in the City that do not complete their lawn or driveway installation promptly after construction of the building is complete. There are various reasons that this happens: frequently, it's because the builder does not complete the work, or it's because the homeowner has agreed to do that work instead of the contractor, and the homeowner just doesn't get the job done. Either way, it results in unstabilized lawns that erode heavily during rain storms, with the run-off going onto neighboring properties, filling up detention ponds and swales, clogging culverts and storm sewers, and running into streams and ponds. Not only does someone have to clean up the mess it generates, but it exposes the City to fines from the DNR for allowing run-off into natural water features.

Current code provisions require that the certificate of occupancy be withheld until the site is "stabilized," meaning covered with perennial vegetative ground cover to a density of 70% or more. Withholding the occupancy permit is a very effective way to gain compliance and ensure that the lawns and driveways get installed promptly. However, there are times when the driveway or lawn can't be completely installed because winter weather arrives before it can be done. That leaves the possibility that occupancy can't happen until the spring and the lawn can be established. That is obviously an unsatisfactory situation, which has in the past been handled by the issuance of a "temporary occupancy permit" and the filing of a bond or letter of credit to ensure that the work will be completed as soon as possible. Builders objected to that arrangement because they say it is an unreasonable financial burden for them to post the bond or letter of credit.

The changes to §22.18 earlier this year were objected to by builders because they argue that occupancy cannot be withheld until the lawn is established, according to the Uniform Dwelling Code, a state regulation.

Clearly, there is a balancing of interests that has to be done. The City cannot allow unfinished, unstabilized lots to cause run-off problems, and we also cannot create unreasonable burdens on homeowners who might have to wait for occupancy due to reasons beyond their control.

This new proposal requires that final grading, site stabilization, and driveway installation all have to be complete by the time the certificate of occupancy is issued, but

- The certificate of occupancy will be issued when the UDC requires, and won't be withheld until they are completed. Instead, there will be citations and forfeitures issued until they're completed.
- If the certificate of occupancy can't be issued until October 15 or later, then the deadline for completion moves to the subsequent May 31.

This puts everyone on notice of requirements in advance, so run-off issues can be prevented before they happen, and it gives a strong incentive to get the work done in a timely manner and head off erosion problems – and when winter weather closes in, it gives seven more months, ample time for the work to get done, even in bad weather years.

The ordinance also requires the homeowner to sign off on the permit, so everyone is aware of the requirements and can't claim ignorance if and when citations are issued. No bond or letter of credit are required.

All parties' concerns are addressed by this draft, and it balances the interests as well as can be done.

16.075 Site Stabilization, Grading, and Driveway; Seasonal Delay; Permit.

- (1) **Applicability.** This section applies only to new construction of one- and two-family residential buildings.
- (2) **General Rule.** Completion of final site grading, installation of driveway, and stabilization of disturbed land as defined in Wis. Admin. Code SPS 321.125(1)(c) shall take place by the date the certificate of occupancy is issued, except as provided in subsection (3). Failure to comply shall not preclude the issuance of the certificate of occupancy, but will result in penalties as described in subsection (8).
- (3) **Exception for Seasonal Delay.** If, in the exercise of good faith by the builder, a certificate of occupancy cannot be issued before October 15 of the year in which construction began, then the completion of grading, installation of driveway, and stabilization of disturbed land as defined in Wis. Admin. Code SPS 321.125(1)(c) shall take place by the subsequent May 31. Failure to comply by May 31 will result in penalties as described in subsection (8).
- (4) **Erosion Control.** Erosion control measures complying with Wis. Admin. Code SPS 321.125 must remain in place at all times prior to stabilization of disturbed land as defined in Wis. Admin. Code SPS 321.125(1)(c), including during the delay period described in subsection (3). If during the delay period erosion control measures have become ineffective for any reason they must be replaced; the delay period does not excuse failed

erosion control measures. Failure to maintain erosion control measures will result in penalties as described in subsection (8).

- (5) Permit Required.** When an application for a building permit for the construction of a one- or two-family dwelling is submitted to the City, an application for an Erosion Control, Grading, and Driveway Permit shall concurrently be submitted, and the Erosion Control, Grading, and Driveway Permit shall be issued upon the submission of a complete application with all attachments required by the application, and the required fee. The fee shall be as stated in the fee schedule maintained by the Community Development Department and amended from time to time.
- (6) Transitional Provision.** One- and two-family residential buildings that are otherwise fully eligible for issuance of a certificate of occupancy as of the effective date of this section but have not completed final grading, installed a driveway, or stabilized disturbed land shall have certificates of occupancy issued promptly, and if completion of those items cannot in good faith be done before October 15, then upon application for and issuance of an Erosion Control, Grading, and Driveway Permit under subsection (6) they shall have until May 31, 2020 in which to complete those items.
- (7) Responsibility for Compliance, Transfer of Permit.** The application for a permit under this section shall be signed by both the general contractor performing the construction and the owner of the land on which the construction is taking place, and both parties signing the application shall be jointly and severally liable for compliance with the requirements of this section unless the construction contract specifically states that only one of the parties is responsible for completion of those items and that party expressly acknowledges sole responsibility in writing and filed with the City. Permits are transferable by the filing with the City of a written assignment and acceptance by the transferee of responsibility for compliance with the requirements of this section. Upon such transfer, the transferor shall no longer be responsible for compliance with the requirements of this section.
- (8) Penalty.** Violation of this section shall subject the responsible parties to a forfeiture of \$100 per each day of continuing violation.