


FROM	NAME & TITLE	THOMAS J. STOSUR, DIRECTOR <i>Whole/for T.J.S.</i>	CITY of BALTIMORE MEMO	
	AGENCY NAME & ADDRESS	DEPARTMENT OF PLANNING 417 E. FAYETTE STREET, 8 th FLOOR		
	SUBJECT	CITY COUNCIL BILL #09-0434/ STORMWATER MANAGEMENT		

TO

DATE
April 5, 2010

The Honorable President and
 Members of the City Council
 City Hall, Room 400
 100 N. Holliday Street
 Baltimore, MD 21202

This is to inform the President and members of City Council of the Planning Commission's efforts to review and present a recommendation to Council on CCB #10-0434/Stormwater Management.

The Planning Commission has been deliberate and thoughtful in the consideration of CCB #10-0434 as this action will impact the development of the City for years to come. Impacting the Commission's deliberations is the continuing dialogue on stormwater management in Annapolis that would impact the recommendations from the Planning Commission.

Planning Commission first heard this issue at their February 18th meeting. At this meeting we were made aware that there was continuing dialogue in Annapolis and that this matter had not been settled. There also was a continuing dialogue between City's Department of Public Works and Maryland Department of the Environment over edits in the City's stormwater management regulations. The Commission voted to continue this hearing until the March 18th hearing.

At the March 18th hearing it was noted that the discussions in Annapolis had led to the creation of 'emergency regulations' that dealt with grandfathering and waivers for redevelopment. Both of these issues are critical to development within the City. Since these matters were not settled in Annapolis the Commission voted to continue the meeting until April 1st.

At the April 1st meeting the Commission found out that the 'emergency regulations' had evolved into amended HB 1125 that was passed by the House and forwarded to the Senate. HB 1125 as amended represents a compromise between stakeholders and it is anticipated that it will pass the Senate by Sine Die (April 12th). The Commission wants to ensure that this extremely important bill is fully vetted by the Commission prior to voting on recommendations to City Council. The Commission fully expects to have resolution on HB 1125 by their April 15th meeting and will be in a position to make recommendations to City Council.

The following is the recommended schedule for the passage of CCB# 10-434:

- April 1, 2010: PC Hearing is continued to April 15, 2010. However, report from Department is sent to City Council providing status of the commission's effort
- April 7, 2010: City Council Hearing on CCB#10-0434/Stormwater Management. Chair requests a Continuance until April 16, 2010
- April 12, 2010: State General Assembly ends and HB1125 (Amendments are finalized). Amendments to CCB#10-0434 can be finalized
- April 15, 2010: PC Hearing and report is sent to City Council. Amend and Approve
- April 16, 2010: Continuance of City Council Committee hearing. Bill and final amendments are approved and recommended to Council for second reader.
- April 19, 2010: City Council meeting and bill goes to second reader
- May 3, 2010: City Council meeting and bill goes to third reader and is voted on and passed

Additionally, attached you will find a Preliminary DRAFT Staff Report that encompasses some of the issues the Commission has considered. Your willingness to work with the Commission on this matter is greatly appreciated and the Commission will continue its work in making Baltimore a world class City.

TJS/GC/kh

Attachments

cc:

Mr. Andy Frank, Deputy Mayor
Ms. Sophie Dagenais, Chief of Staff
Ms. Kaliopé Parthemos, Assistant Deputy Mayor
Ms. Angela Gibson, Mayor's Office
Mr. Wilbur E. "Bill" Cunningham, Chair of Planning Commission
The Honorable Bill Henry, City Council Commission Representative
Ms. Nikol Nabors-Jackson, DHCD
Mr. Larry Greene, Council Services
Mr. David Scott, Director, DPW
Ms. Marcia Collins, DPW
Ms. Kim Clark, BDC



Stephanie Rawlings-Blake
Mayor

PLANNING COMMISSION

Wilbur E. "Bill" Cunningham, Chairman

PRELIMINARY STAFF REPORT



Thomas J. Stosur
Director

April 5, 2010

REQUEST: City Council Bill #10-0434/Stormwater Management

For the purpose of modifying the provisions governing stormwater management to comply with new requirements of State law; requiring the development, review, and approval of phased plans for stormwater management; establishing certain minimum control requirements to manage stormwater by using environmental site design to the maximum extent practicable; requiring certain site design techniques and certain structural and nonstructural practices; requiring certain reports and inspections; providing for certain exemptions, waivers, and variances; imposing certain fees; defining and redefining certain terms; correcting, clarifying, and conforming related language; providing for a special effective date; and generally relating to the protection, maintenance, and enhancement of the public health, safety, and welfare through the management of stormwater.

RECOMMENDATION: Amend and Approve: The amendment will reflect the changes from the Maryland Senate's actions on HB 1125 (attached).

STAFF: Kenneth Hranicky

PETITIONER: Administration (Department of Public Works)

SITE/GENERAL AREA: Citywide

HISTORY

- Ordinance 78-869 - Establishing a mechanism to enforce provisions of a Baltimore City Erosion and Sediment Control Manual, and to impose fines for violations of requirements of the Manual, under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 84-84 - Establishing a Baltimore City Stormwater Management Program under the jurisdiction of the Department of Public Works, Article 26 – Streets and Highways of the Baltimore City Code.
- Ordinance 87-1130 – Amendment to the Stormwater Management Program to incorporate the Chesapeake Bay Critical Area regulations; placed Stormwater Management under the jurisdiction of the Department of Transportation.
- 2000 Code Revision - Placed the Stormwater Management Program in a new Article 7 – Natural Resources (Subtitles 21 through 26), under the jurisdiction of the Department of Public Works.

- Ordinance 02-367 – A major overhaul of Stormwater Management for the purpose of revising the laws governing stormwater management; requiring the development, review, and approval of stormwater management plans; establishing certain minimum control requirements; requiring certain structural and nonstructural practices; requiring certain reports and inspections; requiring easements for certain purposes; providing for certain exemptions, waivers, and variances; requiring certain permits; imposing certain fees; establishing certain maintenance requirements; defining certain terms; establishing certain penalties; and generally relating to the protection, maintenance, and enhancement of the management of stormwater.

CONFORMITY TO PLANS

The proposed legislation is found to be consistent with the following element of the Baltimore City Comprehensive Master Plan: LIVE Goal 2: Elevate the Design and Quality of the City's Built Environment. PLAY Goal 3: Increase the Health of Baltimore's Natural Resources and Open Spaces for Recreation and to Improve Water Quality. Furthermore, this legislation is consistent with the adopted City Sustainability Plan: Pollution Prevention Goal #3: Ensure that Baltimore water bodies are fishable and swimmable.

ANALYSIS

This report is an addendum to the February 18th, and March 18, 2010, staff reports. This item was continued at the Planning Commission February 18th, and March 18, 2010, hearing. This report gives further background behind CCB #10-0434, and explains staff's recommendations. Understanding that background behind this legislation will give the reader an appreciation of the depth of the effort behind cleaning the waters of the Bay and how this CCB and other efforts are playing a role in the Bay cleanup.

The March 18th staff report covered a timeline of State and local activity since the passing of the Stormwater Management Act of 2007. That Act owes its heritage to the Clean Water Act (CWA). CWA accounted for point-source pollution (e.g. industrial plant effluent, wastewater treatment plants...) but did not address non-point sources. The Water Quality Act of 1987 (1987 WQA) responded to the stormwater problem by requiring that industrial stormwater dischargers and municipal separate storm sewer systems obtain National Pollutant Discharge Elimination System (NPDES) permits, by specific deadlines. The Municipal Separate Storm Sewer System (MS4) permit is the regulatory means of setting local goals/targets of meeting the requirements of the Total Maximum Daily Load (TMDL). More specifically, MS4 has specific targets for a range of issues. Attached you will find a copy of the Montgomery County MS4 permit. On February 16, 2010, MDE issued the third round of the Montgomery County's MS4 permit. This 5-year permit complies with the Environmental Protection Agency's National Pollutant Discharge Elimination System (NPDES) regulations that require large urban jurisdictions to control pollution from stormwater runoff to the maximum extent practicable. The Montgomery County MS4 permit shows the regulatory trail that extends from the MS4 permit to the Clean Water Act. Along that regulatory path is the TMDL. Though the final TMDL for the Chesapeake Bay is due in December of this year, it has been tentatively agreed that the Bay is going to have a TMDL that is 200 million pounds of nitrogen and 15 million pounds of phosphorous. A copy of this letter from the EPA is included in your materials.

Essentially Baltimore City is a partner in doing it's very best to clean up the Bay – meet the TMDL – meet the targets of the MS4 permit. In essence, meeting the targets of the MS4 permit will impact how we develop the landscape, in terms of control – local control. In other words, we are working cooperatively with our neighboring jurisdictions to reach the Bay TMDL. The more control we maintain over our waterways, the more favorable we can make the development environment. Meeting the targets of the MS4 permit is something the City needs to do to maintain that local control. Current MS4 permit was issued January 2005; requires 20% impervious area treatment; treatment of impervious area due mostly to large stormwater BMPs and stream restoration projects; nutrient removal estimated as of 2009 is 3% by BMPs and 4% by street sweeping.

Anticipating issuance of new draft MS4 permit (current one is expired); an additional 20% of impervious area to be treated or reduced, for a total of 40%; stormwater discharge to be treated as point source pollution similar to a treatment plant discharge; TMDL anticipated for 35% nutrient removal, trash and floatable debris TMDL for 100% reduction (allocation shared with Baltimore County). What follows is some of the previous and ongoing efforts by the City to meet the goals of the MS4 permit.

City restored:

- City restored 3,453 acres of impervious area at a cost of \$30 million; 5,895 acres of restoration for 2010 required
- City restored 2 miles of stream restoration; approximately 28 miles in need of additional restoration
- 2,422 acres of trash removed; 58,831 acres required for removal – reduce trash by 100%
- targeted pollutant reductions were 3% by BMPs, 4% by street sweeping; will need to reduce nutrients by 35%, bacteria by 98%, sediment by 25-35%
- 7,437 inlets repaired since 2001; have 33,000 inlets and 1,500 miles of storm drains

Another example of the financial impact of meeting the Bay TMDL is the City meeting the requirement of the 2002 Consent Decree. On April 24, 2002 the City of Baltimore entered into a Consent Decree with the Maryland Department of the Environment (MDE), the US Environmental Protection Agency (USEPA) and the US Justice Department for the expressed purpose of enabling the City of Baltimore to comply with the Clean Water Act and the Environmental Article of the Annotated Code of Maryland. The Consent Decree provides a specific time table for inspection and repair of every sanitary (sewage) line 8” and larger within Baltimore City. The timetable lays out a 14 year schedule with individual project deadlines that equate to an estimated \$900 million-\$1.4 billion dollar cost. The City of Baltimore, through the Department of Public Works, Bureau of Water and Wastewater, provides drinking water to over 1.8 million people and provides the majority of sewerage treatment for these same customers. Most of the design and construction costs are being covered by the sale of Municipal bonds and increases in water and the newest water/sewer rates for both residential customers and businesses.

As stated before, the whole effort behind this SWM Act 2007 is one task that will help to meet the Bay TMDL (Point source and non-point source make up the TMDL). The City has a tremendous amount invested in this effort and a continuing liability that it is only fair that development is built in a way that does not add to the financial burden of the City. To ensure that this does not happen means having development account for its runoff (quantity and quality) impact.

Beyond the obvious environmental benefit of cleaner waters, we have the sword of Damocles above us in the form of Federal involvement in our local development permit process. It is fair to say that we have knowledgeable people at a local and state level that know better what needs to be done and how best to get there. Maintaining and monitoring our collective systems to better understand what methods are most effective and what gives us more return for the dollar. That is one of the reasons DPW pursued the waiver alternatives in this bill. These alternatives are the City's way of saying that these are very efficient to controlling our pollutant runoff. We want to work with developers to implement these ways and those of ESD and MEP to reduce nutrients and sediments.

The updating of Baltimore's stormwater management regulations, required State Stormwater Management Act of 2007, is necessary for Baltimore to retain its authority over managing stormwater runoff. In recent weeks there has been a flurry of debate surrounding the impacts of the State's new stormwater legislation, set to take effect May 4, 2010. Participants have included the State legislature, Maryland Department of the Environment (MDE), local jurisdictions, the Maryland Association of Counties and the Maryland Municipal League, and stakeholders in the development and environmental advocacy communities. The State legislation requires that MDE approve City's stormwater management code. There has been an ongoing of dialogue between the City's Department of Public Works (DPW) and MDE that is still currently underway.

In March, in an effort to modify regulations that addressed grandfathering and redevelopment waivers, MDE produced 'emergency regulations' that were eventually captured in HB 1125 as amended and approved by the house and is now in the Senate. It is anticipated that the Senate will concur with the House Bill as it is reflective of agreements of various stakeholders reached during hearings on the House Bill. That should occur by April 12th - Sine Die (i.e. end of legislative session).

Staff amendments will capture the 'emergency regulations' allowances while also expressing a desire that DPW argue for a unique condition of Baltimore City while in negotiations with MDE. The amendment will allow the City to issue a waiver of the new, more stringent stormwater regulations for projects that had completed part of the development review process but had not received 'Final Approval' by May 4, 2010. Those projects must have received "Preliminary Project Approval". HB 1125 defines "Preliminary Project Approval" as a plan approval or completed review by a local jurisdiction that includes:

- 1) the number of planned dwelling units or lots and proposed density;
- 2) the proposed size and location of all land uses in the project; and

- 3) a plan that identifies the proposed drainage patterns, locations of all points of discharge from the site, and the type, location and size of all stormwater management controls based upon site-specific computations of stormwater management requirements.

Per the proposed MDE Emergency Regulations, these projects could qualify as “grandfathered” under the existing stormwater management regulations with an Administrative Waiver, and could be allowed to be built out utilizing today’s less stringent stormwater standards. Regulations will also require that Administrative Waivers expire if the project does not obtain Final Approval by May 4, 2013 or begin construction before May 4, 2017. Final Project Approval means that the developer has an approved final erosion and sediment control plan, and an approved final stormwater management plan, and, if applicable, bonding and/or financing has been secured based on the final plans for the development. To allow this “grandfathering” to occur, Baltimore’s stormwater management code must include provisions outlined in the ‘emergency regulations’. Staff’s recommended amendments incorporate terminology that is consistent with the ‘emergency regulations’ as outlined in MDE’s March 2010, “Guidance for Implementation of Local Stormwater Management Programs”. Planning staff strongly believe that the City’s ordinance should incorporate the grandfathering provision, so the City may maintain a competitive position with other jurisdictions in encouraging redevelopment and development and increasing the City tax base.

To maintain maximum flexibility to encourage development, staff’s amendments embrace the grandfathering provisions outline by the MDE guidance document and add one twist. The difference between Baltimore’s PUD requirements and SWM Act 2007 “Preliminary Project Approval” is that the City does not require as part of its PUD requirements “a plan that identifies the proposed drainage patterns, locations of all points of discharge from the site, and the type, location and size of all stormwater management controls based upon site-specific computations of stormwater management requirements”. Significant time, expense, and effort went into the creation of these PUDs. Financial considerations and planning were for these development projects to be built out over time. It is inconsistent with the spirit of the SWM Act 2007 to exclude the City’s PUDs in terms of ‘grandfathering’. To account for this shortcoming Staff recommends:

(2) CITY PLANNED UNIT DEVELOPMENTS (PUD’S) TYPICALLY DO NOT CONTAIN THE REQUIREMENT 4.III. ABOVE, BUT HAVE UNDERGONE AN EXTENSIVE PUBLIC REVIEW AND APPROVAL PROCESS, INCLUDING MULTIPLE PUBLIC HEARINGS AND CITY COUNCIL APPROVAL. FOR ALL PUDS THAT HAVE RECEIVED APPROVAL BY CITY COUNCIL, ON OR AFTER MAY 4, 2000 AND UP TO MAY 4, 2010, CAN BE CONSIDERED UNDER THE 2000 REGULATORY REQUIREMENTS. FOR PROJECTS TO BE CONSIDERED UNDER THIS PROVISION THEY ARE REQUIRED TO BE ACTIVE BASED ON:

- a. FUNDING PRIOR TO MAY 4, 2010,
- b. BUILDING PERMITS AND PRIOR DEVELOPMENT ACTIVITY.

c. CHANGES IN THE PUD THAT INCREASES IMPERVIOUSNESS WILL REQUIRE THAT INCREASED IMPERVIOUS SURFACE MEET THE CURRENT REGULATIONS.

Staff realizes that economics change the mix and use but should not come at the sacrifice our efforts.

Staff amendments also include other waiver provisions (quantitative) found in the ‘emergency regulations’ to cover phased projects that have already constructed stormwater management facilities and infill development projects that are located in the Priority Funding Areas (in which all of Baltimore is located) with existing stormwater conveyance and public water and sewer, and where the economic feasibility of the project is tied to the planned density.

On the issue of Redevelopment, also addressed in the MDE guidance, the City ordinance again needs to incorporate the maximum flexibility allowed by the State. The focus here is quality treatment for one-inch rainfall for at least 50% of the existing impervious area. This standard is significantly less stringent than the requirements for new development, which require the use of *environmental site design to the maximum extent practicable*. Regarding redevelopment, the regulations list alternative stormwater management measures that may be considered if addressing 50% of the redevelopment site’s impervious area cannot be readily accomplished. These measures include a combination of environmental site design and on-site or off-site structural Best Management Practices, participation in a stream restoration project, pollution trading with another entity, Watershed Management Plans, and Payment of a fee-in-lieu. Because of Baltimore’s highly urbanized built environment, providing City redevelopment projects these alternative stormwater management approaches are critical, since in many instances on-site treatment options may be impractical as well as cost prohibitive.

The MDE guidance that would need to be incorporated in our code to enable Baltimore to decide what alternatives may be approved for a redevelopment project includes the following 3 considerations:

1. whether the project is in an area targeted for development incentives, such as a PFA, a designated Transit Oriented Development area, or a designated BRAC Revitalization and Incentive Zone;
2. whether the project is necessary to accommodate growth consistent with comprehensive plans; and
3. whether bonding and/or financing has already been secured based on an approved development plan.

Even though Annapolis has not signed into law the ‘emergency regulations’, Planning staff believes it is critical to include language in the City ordinance now to provide for grandfathering and redevelopment provisions to allow the City to maintain maximum flexibility to allow development to access the full range of stormwater approaches and tools that could be allowed by State law. Although there may not be ‘consequences’ if the City were not to adopt this ordinance by May 4th, it is Planning’s understanding that DPW believes that it is in the City’s interest to treat that deadline as a requirement.

Beyond CCB #10-0434, there are still other outstanding SWM issues that will need to be addressed. The 2010 Baltimore City Stormwater Design Guidelines still need to be written. Also, due to the necessity for coordinated site planning it is imperative that the DPW's review process of SWM include participation in the Site Plan Review Committee's meetings. Environmental site design measures also need to be reviewed for 'green building' credits.

CCB #10-0434 has been written to meet the requirements of the Stormwater Management Act of 2007 while addressing Baltimore's urban environment challenges. This effort is also in line with the City Master Plan and Sustainability Plan along with other initiatives that are cleaning our waters. The details are an ongoing effort but CCB #10-0434 does provide the legal framework for the City to move forward while meeting the requirements of the SWM 2007 Act. Staff recommends approval of the bill, with the recommended amendments for grandfathering and redevelopment discussed above.

In advance of today's hearing on this matter, staff mailed 90 letters to a diverse set of stakeholders, including community associations, environmental organizations and members of the development community.