

Stormwater Law For Design Professionals and Developers

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Introduction

- City ordinances affecting development
- Options for compliance with stormwater regulations
- Legal definitions related to stormwater
- Liability for damages
- Where to find City info

How do you spell “storm water”?

- One word = stormwater
- National Stormwater Center, EPA, spells as one word, too – and its their name

Where do you want to build?

- Existing developed lot in Springfield
 - Pre-1983 lots – existing % impervious not required to have detention; if add any impervious, must meet current standards
 - After 1983 – if detention already provided, may use without additional changes unless existing detention does not have water quality Best Management Practices (BMPs), then must meet water quality requirements

Where do you want to build?

- Plat a new subdivision
 - New lots must meet current standards
 - Stormwater detention must be constructed before final plat recorded
 - Can include a plat note to limit amount of impervious development on site to reduce amount of detention required

What if property needs to be rezoned for proposed use?

- Zoning Ordinance requires property to comply with all other ordinances to allow rezoning
- Must meet current stormwater standards for the % impervious allowed for the particular zoning classification
- New option for Conditional Overlay District – limit site development to a lower percentage if want to reduce amount of detention required

What are the City's requirements?

- City does not allow surface water to leave the developed property at any greater rate than the pre-development flow
- Surface water must get to a public stormwater collection system, drainage easement or certified natural watercourse
- Receiving downstream system must have capacity to accept additional flow

What is a natural watercourse?

- From a legal perspective, defined in case law
- “Channel is not enough – must be evidence of a permanent source of water“

What is a “permanent source of water”?

- **“It must be something more than a mere surface drainage over the entire face of a tract of land, occasioned by unusual freshets or other extraordinary causes. It does not include the water flowing in the hollows or ravines in land, which is the mere surface water from rain or melting snow, and is discharged through them from a higher to a lower level, but which at other times are destitute of water. Such hollows or ravines are not in legal contemplation water courses.”**

What is the process for certifying a natural watercourse?

- Design Professional files letter with the City, stating why he/she has determined the area to be a Natural Watercourse
- Copies of letter sent to all downstream property owners, allowing opportunity to object
- If objections, City will not allow discharge unless issues resolved

Once channel is certified, is property owner relieved of liability for any downstream damages?

- No. Certification only for City purposes, to issue permit to allow surface waters to be discharged into some collection system – natural or manmade.
- Owner still responsible for any harm to neighboring properties (upstream or downstream)

“Reasonable Use Rule”

- Owner legally privileged to make reasonable use of his land, including altering the flow of surface water
- Owner has liability when his interference with the flow of surface waters is unreasonable and harms others
- Case by case determination - “principles of fairness and common sense”

Liability for Damages

“ . . . is not based upon intention to obstruct the water . . .
 . . . **The basis of liability is the fact that the obstruction causes the water to overflow, encroach upon and inflict special damage to the property of another. . . .** Whether the impounding of the waters is intentional or accidental, whether the overflow is caused by negligence or without negligence, **the agency obstructing the flow** and causing the overflow of the waters of a natural watercourse to the damage of adjacent property owners **is liable for its misfeasance in an action of trespass.**”

Does City approval of plans mean all surface water issues are resolved and “legal”?

- No. The City’s approval of construction plans and granting of permits does **not** absolve the owner of the land or the design professionals from any flooding, erosion, or other injury to the land caused by the stormwater discharge. Seek legal advice if concerns about potential impact on adjacent owners.

What about agreements with neighboring owners?

- An agreement that is not a covenant will not run with the land (be binding on future owners)
- Two types of covenants:
 - *Personal covenants* (like a simple agreement, or a “settlement agreement” even if filed of record with the Recorder of Deeds)
 - *Real covenants* (requires rights and obligations to pass to future owners of the land – “runs with the land”)

When are stormwater “buy-outs” authorized by the City?

- Only when there is no known downstream flooding from the proposed development site
- If allowed, only on conditions set out by Stormwater Services

Types of Detention

- **Private on-site detention basin**

- serves only the lot it sits on – not in common area – total maintenance responsibility on the owner of the lot

- **On-site detention in public easement**

- Serves only property included in subdivision plat – located in common area – all lots required to maintain through covenants – located in public easement so City can maintain if owner does not

Types of Detention (cont.)

- **Shared/Joint Detention Basin** – serves more than one subdivision – privately-maintained basin, located within public easement in the event City must maintain – covenants over all land benefited so that all or one property owner required to maintain
- **Regional Public Detention Basin** – owned by City – if has capacity to accept flows, developer may pay buy-out to use part of this existing system, or may be allowed to increase size of basin to accept flows, rather than providing on-site detention

Why doesn't City allow one owner to maintain basin like the County does?

- City had similar rule for 10 years and has had problem with maintenance obligation being held by only one owner
- City wants all benefited property to be included in obligation to maintain

What forms are available for easements, etc.?

- Forms are provided as a courtesy by the City, but must be completed either by property owner or their attorney, not design professionals.
- No form for covenants, but a memo sets out issues needing to be addressed in covenants. Plan is to prepare some draft covenants to be used for joint detention basins, to encourage more sharing of these resources. Document must be prepared by property owner or their attorney.

For more information:

- Chapter 96 of Springfield City Code
- Zoning Ordinance – Section 5-2300
- Subdivision Regulations – online version out of date – will get that fixed
- DNR Publication – A Summary of Missouri Water Laws (Water Resources Report No. 54)
- DNR Resource - Frequently Asked Questions