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Ordinance 14-02
Stormwater Maintenance Districts

An Ordinance to amend Kent County Code, Vol. II, Chapter 187 Subdivision and Land Development, effective June 10, 2003, as amended, by revising Article XVII, Supplementary Regulations to add a new §187-90.4 Stormwater Maintenance District establishing the process for creating and extending such district(s).

NOW, THEREFORE, THE LEVY COURT OF KENT COUNTY, DELAWARE, HEREBY ORDAINS:

Section 1: That the Kent County Code, Vol. II, Chapter 187 Subdivision and Land Development, effective June 10, 2003, as amended, Article XVII, Supplementary Regulations, is hereby amended by adding the following underlined language as a new §187-90.4:

§187-90.4. Stormwater Maintenance Districts

A. Purpose. The purpose of this section is to provide an alternative to homeowner responsibility for long term maintenance of stormwater infrastructure within subdivisions and land developments and relieve homeowners of the burden of minor and major stormwater maintenance. This section establishes the process for creating and extending a district within and among major subdivisions and land developments in which the stormwater management infrastructure, not owned and maintained by the Department of Transportation, will be maintained by Kent County in coordination with the Kent Conservation District for a fee to be billed by the County on the annual property tax bills of individual lot/unit owners.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

(1) “Stormwater management” means:

a. For water quantity control, a system of vegetative, structural, and other measures that controls the volume and rate of stormwater runoff that may be caused by land disturbing activities or activities upon the land; and

- b. For water quality control, a system of vegetative, structural, and other measures that controls the adverse effects on water quality that may be caused by land disturbing activities or activities upon the land.
- (2) “Stormwater maintenance” district means an area in Kent County, within ascertainable boundaries, and that is in the opinion of the county government susceptible to efficient and economical stormwater maintenance pursuant to the procedures of this subchapter.
- (3) “Emergency repairs” means a repair to stormwater collection, conveyance, and/or management infrastructure in a stormwater management district of an unexpected situation or sudden occurrence of a serious and urgent nature that demands immediate action which occurs outside of normal routine maintenance or scheduled capital improvements and/or repairs within the Stormwater Maintenance District. Emergency repairs shall be the responsibility of the District.
- (4) “Stormwater infrastructure” includes stormwater collection, conveyance, and management structures shown on approved stormwater management plans and located outside of state maintained rights-of-way.
- (5) “Routine maintenance” includes tasks such as grass cutting, vegetative management, control of invasive species, and trash removal for residential subdivision and land development only. Routine maintenance is an optional service; the Stormwater Management District will perform this task for HOAs and a separate fee will be assessed based on factors including square footage or acreage and number of times mowing is to occur each season. Routine maintenance is only available for residential development. Routine maintenance activities are further illustrated in the Stormwater BMPs Maintenance Tasks and Responsibilities Guidance Document and activities for specific stormwater infrastructure shall be included in the operation and maintenance plan.
- (6) “Minor maintenance” includes activities which typically occur annually or every two or three years such as removal of accumulated sediments, clearing of obstructions from inlet pipes or outlet structures, management of burrowing animals, stabilization of low flow channels, resetting of rip rap, and repair of eroded banks. Minor maintenance shall be provided for all subdivisions

and land developments included in a Stormwater Management District. Minor maintenance activities are further illustrated in the Stormwater BMPs Maintenance Tasks and Responsibilities Guidance Document and activities for specific stormwater infrastructure shall be included in the operation and maintenance plan.

- (7) “Major maintenance” includes renovations such as replacement of outlet structures and pipes, rebuilding of inlet pipes and aprons, repair of embankments, and in extreme cases, replacing biofiltration media, complete rehabilitation or retrofit. Major maintenance shall be provided for all subdivisions and land developments included in a Stormwater Management District. Major maintenance activities are further illustrated in the Stormwater BMPs Maintenance Tasks and Responsibilities Guidance Document and activities for specific stormwater infrastructure shall be included in the operation and maintenance plan.
- (8) “Operation and maintenance plan” identifies the required maintenance and associated schedule for stormwater management systems. A draft plan shall be provided following the initial letter of intent from a community and a final plan shall be included as part of the resolution adopted by Levy Court creating or extending the Stormwater Maintenance District. The plan may be subsequently revised with the approval of the Technical Advisory Committee should conditions of the stormwater management system change (e.g. conversion of turf areas to meadow).

C. Applicability.

- (1) All major residential subdivisions, residential land developments, and mixed use developments (e.g planned unit developments) that contain stormwater infrastructure approved after the effective date of these regulations shall automatically be included within the Stormwater Maintenance District prior to final plan approval.
- (2) Property owners within any subdivision or land development or mixed use developments (e.g planned unit developments) requesting public funds for stormwater management structure restoration shall petition, using forms provided by Kent County, to be included in the Stormwater Maintenance District prior to the dispersal of public funds.
- (3) Applicants/owners of individual nonresidential land development may request, in writing, to be included in the Stormwater

Maintenance District prior to final plan approval. Service shall include only basins, BMPs, and surface drainage facilities but would exclude proprietary systems, underground storage, underground infiltration, closed drainage systems and catch basins, porous pavement, green roofs, Delaware sand filters, and water harvesting. Inclusion in the District shall be noted on the final plan.

- (4) Property owners within existing major subdivisions and land development may petition, using forms provided by Kent County, to create or extend the Stormwater Maintenance District.

D. Establishing a Stormwater Maintenance District for a Subdivision or Land Development Approved After Enactment of this Ordinance.

- (1) For residential and mixed use (residential and nonresidential) subdivision and land development applications, inclusion within the Stormwater Maintenance District shall be automatic as a condition of preliminary plan approval and shall be memorialized on the final and/or record plan.
- (2) Individual nonresidential land development applications may be included in the Stormwater Management District upon the written request of the applicant and/or owner. The inclusion within the District shall be memorialized on the final and/or record plan.
- (3) Perpetual easements granting the District access for the inspection and maintenance of stormwater management infrastructure shall be shown on the record plan. A separate recorded easement agreement in a form determined by Kent County shall also be required.
- (4) The District shall not assume responsibility for the stormwater facilities and infrastructure until the subdivision or land development, or phase thereof, is substantially complete and the Kent Conservation District has provided final approval of construction.
- (5) Fees shall not be assessed to property owners until the District assumes responsibility for maintenance. Once the District assumes responsibility, the units within the subdivision or land development, or phase thereof, shall be subject to annual billing.

E. Establishing a Stormwater Maintenance District for an Existing Subdivision or Land Development Approved Prior to Enactment of this Ordinance or Located Within an Incorporated Area.

- (1) A representative of the subdivision or land development shall submit to the Department of Planning Services a letter of intent to petition for inclusion in the Stormwater Maintenance District.
- (2) The letter of intent shall be forwarded to the Kent Conservation District for technical review. The Kent Conservation District shall provide the community representative and the Department of Planning Services with a report describing any required repairs to the stormwater system. The report shall also include a draft operation and maintenance plan.
- (3) Any required repairs shall be completed by the property owners prior to creation of or inclusion in the District. Alternatively, the property owners may petition the District to complete the repairs and the cost apportioned to the property owners for payment based upon a schedule to be established in the resolution creating the District.
- (4) Fifty-one percent of all lot/unit owners within major subdivision or land development in Kent County may petition the Levy Court to create or extend the Stormwater Maintenance District. Subdivisions and land developments sharing stormwater infrastructure shall be treated as a mixed use development. The petition shall be completed using forms provided by the County and shall include a list of the property owners with their property and mailing addresses to be included within the District. Voting rights shall be determined as follows:
 - a. One vote per individual lot;
 - b. One vote per equivalent dwelling unit (EDU) for nonresidential development and residential development in single ownership (e.g. multi-family) shall be counted; and
 - c. When a subdivision is still under construction, the developer shall represent one vote regardless of the number of individual lots owned.
- (5) The petition shall include a description of the area to be included in the district and the services to be provided (i.e. to what extent will routine maintenance be performed by the District). Each property owner shall be reflected as voting “yes”, “no”, or “not available”. The petition shall be made to the Department of Planning Services and include a certification that the information provided by the property or unit owner is true and correct.

- (6) Upon receipt of the petition, the Department of Planning Services shall verify the signatures on the petition, ensure that a majority of the lots are represented on the petition, and forward the request to the Kent Conservation District for technical review and report.
- (7) For subdivisions and land developments located within incorporated areas, the petition shall be accompanied by evidence of concurrence by the local governing body. Such evidence may include a resolution adopted by the governing body or approved minutes documenting a vote of concurrence by the governing body.
- (8) After receipt of the Kent Conservation District report, the Levy Court shall introduce a resolution creating or extending the Stormwater Maintenance District for public hearing. The resolution shall describe the geographic limits of the area, the fee structure used to establish the annual fee to homeowners, any required repairs to be completed for additional payment, and the operation and maintenance plan for the community.
- (9) Public Notice.
 - a. Notice to the general public of the Levy Court hearing shall be accomplished by publishing the date, time, place, and nature of the hearing in a newspaper of general circulation in the County.
 - b. Said notice shall be published by the Department of Planning Services once not more than 21 and at least 10 days before the public hearing and shall contain a description of the boundaries of the proposed Stormwater Maintenance District and a statement that the county government will hold a hearing to solicit public comment prior to consideration of whether or not to create or extend the proposed district.
 - c. The notice shall state that in the event the county government decides to create or extend the proposed Stormwater Maintenance District, the county government will assess the unit costs of stormwater maintenance against each tax parcel or unit property within the Stormwater Maintenance District.
 - d. The Planning Services staff will post a notice outlining, the date, time, place, and nature of the hearing at all the entrances to the subdivision or land development.
- (10) If the Levy Court determines, after a public hearing, that it is in the public interest to create or extend the proposed Stormwater

Maintenance District, it shall pass a resolution creating the Stormwater Maintenance District.

- (11) A perpetual easement agreement in a form determined by Kent County granting the District access for the inspection and maintenance of stormwater management infrastructure shall be recorded prior to the District assuming responsibility for maintenance.
 - (12) The Levy Court may, without further public hearing, consolidate 2 or more Stormwater Maintenance Districts into a single district.
- F. The Stormwater Maintenance District may be created at any time; however, Levy Court may establish dates certain that maintenance of and billing for new or extended districts shall commence (e.g. annually or semi-annually).
- G. Stormwater Maintenance District may be modified or dissolved only after a public hearing and vote of the Levy Court. Any application to modify or dissolve the Stormwater Maintenance District shall follow the steps enumerated in Item E above.
- H. Fee Assessment.
- (1) In order to fund the annual and long-term costs for the Stormwater Maintenance District, the Levy Court shall establish a fee structure as part of the annual budget and divide the annual cost, plus a pro rata administrative cost by the number of dwelling units within the Stormwater Maintenance District to arrive at the annual unit cost.
 - (2) Fees for residential land development (i.e. manufactured home parks or apartments) shall be assessed to the property owner rather than the unit owner.
 - (3) For mixed use subdivisions and land developments (e.g. planned unit development), the fee for the nonresidential portion and residential portion in single ownership (e.g multi-family) shall be calculated based upon equivalent dwelling units (EDU). An EDU would represent the average imperviousness (combined rooftops and driveways / sidewalks) of the residential lots draining to the structure. For example, if the average lot has 2,500 square feet of impervious surface and a commercial building and parking lot has 25,000 square feet, the commercial component represents 10 EDUs.

- (4) For individual nonresidential land developments, the fee shall be calculated based upon equivalent dwelling units (EDU). An EDU would represent the average imperviousness (combined rooftops and driveways / sidewalks) of AC zoned residential lots served with public water and sewer and located within the Growth Zone.
- (5) EDUs for nonresidential development and for residential development in single ownership shall be calculated based upon the drainage area and change in land cover as reflected in the stormwater management plan.
- (6) For subdivisions and land developments in which the property owners choose to give the District responsibility for Routine Maintenance, a separate fee shall be added to the standard unit cost.
- (7) The annual unit cost shall then be assessed against each unit located within the boundaries of the Stormwater Maintenance District. No parcel of real estate shall be exempt from paying its annual unit cost.
- (8) After levying the stormwater maintenance fee, the county government shall deliver a separate fee collection warrant to the County Finance Director commanding him or her to collect the stormwater maintenance fee and its amount. The fee shall be levied and collected at the same time and in the same manner as other county taxes and shall be a lien on real property the same as other county taxes. The fee shall be included on the county tax bills under the heading "stormwater maintenance fee."
- (9) The County shall establish a separate enterprise fund for the Stormwater Maintenance District(s). District revenue shall be accounted for separately and shall not be available for non-district related expenditures but may be used throughout any of the established district(s).
- (10) Should responsibility for maintenance be assumed by the District after the commencement of any fiscal year and expenses incurred prior to the first billing, the county government shall include in the next annual budget an amount sufficient to reimburse the general fund for the expenditure during the last fiscal year as well as an amount sufficient to pay the cost for the coming fiscal year. Alternatively the County may conduct a mid-year supplemental billing for the pro-rated amount.

I. Maintenance and Oversight

- (1) Kent County shall enter into an agreement with the Kent Conservation District for the completion of routine maintenance, capital improvements, and emergency repairs within the Stormwater Maintenance District(s). Upon the mutual agreement of the Kent Conservation District and the County, either entity may enter into a contract with any private entity or entities to complete maintenance or improvement projects within the Stormwater Maintenance District(s). Such contracts may encompass work within an individual subdivision or land development or a group of subdivisions or land developments. All Routine Maintenance activities assumed by the District shall be contracted out to qualified private sector professionals.
- (2) The Stormwater Maintenance District Technical Advisory Committee shall be appointed by the Levy Court to assist in the review and prioritization of capital projects, the annual budget, and general administration of the Stormwater Maintenance District program. The Committee shall meet a minimum of semi-annually and be comprised of 1 staff member each of the Kent County Departments of Public Works, Planning Services, and Finance, three private sector engineers, two representatives from the Kent Conservation District, one representative from the Delaware Department of Natural Resources and Environmental Control, a representative from a private stormwater maintenance company, and a citizen representative.
- (3) The annual budget adopted by the Levy Court shall include a capital budget for significant repairs to and reconstruction of stormwater infrastructure within the district(s) and separate line items used for maintenance, administrative costs, and emergency repairs/reconstruction.
- (4) Specific capital projects shall be recommended by staff and the Kent Conservation District for review and approval by the Levy Court. To the extent possible, specific projects shall be described in the annual capital budget.

Section 2. Severability.

The provisions of this Ordinance are severable and if any of its provisions or any sentence, clause, or paragraph or the application thereof to any person or circumstance shall be held unconstitutional or violative of the Laws of the State of Delaware by any court of competent jurisdiction, the

decision of such court shall not affect or impair any of the remaining provisions which can be given effect without the invalid provision or application.

Section 3. Effective Date.

This ordinance shall become effective upon the date of adoption except that applications for subdivision and land development for which the pre-application meeting has been conducted and remains valid prior to the effective date of this ordinance shall not be subject to these provisions.

ADOPTED BY THE LEVY COURT OF KENT
COUNTY, DELAWARE



President, Kent County Levy Court

This 11th day of March, 2014

ATTEST: 

Clerk of the Peace

Synopsis: This ordinance adds a new §187-90.4 Stormwater Maintenance District establishing the process for creating and extending such district(s).