

1st READING 9-26-05 403
FINAL READING 10-10-05 430
MINUTE BOOK # 23

ORDINANCE NO. 2005-38

AN ORDINANCE OF THE CITY OF CLEVELAND, TENNESSEE, PROVIDING THAT THE CODE OF ORDINANCES, CITY OF CLEVELAND, TENNESSEE, BE AMENDED BY REVISING TITLE 18, CHAPTER 3, SECTIONS 18-301 THROUGH 18-312, OF SAID CODE, AND ALSO BY ADDING NEW SECTION 18-313

WHEREAS, the City of Cleveland adopted an MS4 Phase II Stormwater Management Program by Ordinance No. 2004-41; and

WHEREAS, the Stormwater Regulations Board met on July 26, 2005, and voted to recommend to the City Council that certain amendments be made to said Program; and

WHEREAS, the proposed amendments are set forth in a letter dated August 9, 2005, from the Stormwater Program Manager, and this letter and attachments are attached hereto and incorporated herein by reference; and

WHEREAS, the proposed amendments were reviewed by the Chattanooga office of the Tennessee Department of Environmental Conservation as shown in the attached letter dated September 12, 2005;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Cleveland, Tennessee:

Section 1. That Title 18, Chapter 3, Section 18-302(1)(c)(iv) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-302(1)(c)(iv) in its entirety and replacing it with the following:

18-302(1)(c)(iv) Review and approve plans for development and redevelopment that will result in land disturbing activity.

Section 2. That Title 18, Chapter 3 of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by adding a new definition "Common plan of development or sale" which will be numbered 18-303(9) and all of the existing definitions will be renumbered in alphabetical order so that the definitions will be numbered 18-303(1) through 18-303(61).

18-303(9) "Common plan of development or sale" means the definition in effect that is utilized by the Tennessee Department of Environment and Conservation.

Section 3. That Title 18, Chapter 3, Section 18-303(50) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-303(50) in its entirety and replacing it with the following after the definitions are appropriately renumbered.

18-303(51) “Stormwater Program Manager” means an employee of the City of Cleveland charged with the responsibility of implementing and enforcing the provisions of this Ordinance.

Section 4. That Title 18, Chapter 3, Sections 18-301 through 18-313 of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting the words “Stormwater Engineer” wherever the words “Stormwater Engineer” may appear throughout the Ordinance and replacing the words “Stormwater Engineer” with the words “Stormwater Program Manager.”

Section 5. That Title 18, Chapter 3, Section 18-304(9) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-304(9) in its entirety and replacing it with the following:

18-304(9) “As-Built Agreement.” An applicant for a land disturbance permit shall submit a fully executed “As-Built Agreement.” The form of the As-Built Agreement shall be as set forth in Section 18-313 Appendix A.

Section 6. That Title 18, Chapter 3, Section 18-305(4)(c) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting the sentence:

“All site development or re-development shall provide first flush discharge treatment or an acceptable alternative in accordance with stormwater quality standards.”

Section 7. That Title 18, Chapter 3, Section 18-305(4)(e)(i) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting the last phrase of 18-305(4)(e)(i), which currently reads:

“The outlet structure design criteria shall include slow release of the first one-inch of runoff over a twenty-four (24) to seventy-two (72) hour period;. . .” and replacing it with the following phrase:

“ The outlet structure design criteria shall include slow release of the first three-quarter (3/4) inch of runoff over a twenty-four (24) to seventy-two (72) hour period; . . .”.

Section 8. That Title 18, Chapter 3, Section 18-306(1) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting the following words:

“A final post inspection will be conducted by the engineering division of the department of public works prior to the release of the performance security or performance bond. The engineering division shall have the discretion to adopt provisions for a partial pro-rata release of the performance surety or performance bond on the completion of various stages of development. The performance value of mapping shall be held in abeyance until as-built drawings required under this provision are submitted and approved by the engineering division.”

Section 9. Title 18, Chapter 3, Section 18-307(1) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-307(1) in its entirety and replacing it with the following:

18-307 Post construction landscaping.

(1) When required. A post-construction stabilization and landscape plan shall be required for:

(a) Proposed development requiring a land disturbance permit under the provisions of 18-304(1) with a land use designation or proposed land use of industrial or commercial.

(b) Multi-unit residential structure(s) with a cumulative living area of five thousand (5,000) square feet or greater.

(c) Redevelopment and property improvements.

(i) Existing industrial, commercial, or multi-unit residential structures that are expanded by fifty percent (50%), or greater;

(ii) The addition of parking spaces to serve an existing industrial, commercial, or multi-unit residential structure where the existing parking area is increased by twenty-five percent (25%), or greater.

Section 10. Title 18, Chapter 3, Section 18-307(3) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-307(3) in its entirety and replacing it with the following:

18-307(3) Landscape plan requirements. The applicant for a land disturbance permit shall submit a post-construction landscape plan in accordance with 18-307(1). The landscape plan shall be developed by a professional in accordance with rules promulgated by the State of Tennessee Board of Architectural and Engineering Examiners.

The landscape plan shall contain the following:

(a) Plant schedule. The plant schedule shall contain:

- (i) Quantity of plant material;
- (ii) Common and botanical name of plant material;
- (iii) Size and spacing of landscape materials at time of planting;
- (iv) General plant comments;
- (v) Plant materials located in the public right-of-way;
- (vi) Location and description of landscape improvements, including perimeter landscaping, landscaping within parking lots, and buffer zones if the parking area is two (2) or more acres, (the description shall include the size of the parking area and the actual percentage of the parking area used for landscaping) ;

- (vii) Planting and installation details to ensure conformance with all required standards; and
- (viii) Irrigation system details.

Section 11. Title 18, Chapter 3, Section 18-307(5)(b)(v) of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by deleting Section 18-307(5)(b)(v) in its entirety.


Section 12. That Title 18, Chapter 3 of the Code of Ordinances of the City of Cleveland, Tennessee, be amended by adding a new section to be numbered 18-313 as follows:

18-313 Appendix

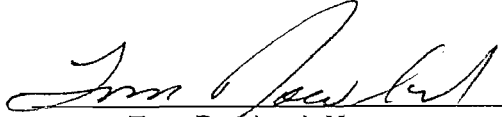
A. As-built Agreement Form.

Section 13. That this Ordinance shall be effective from and after its passage on final reading, the public welfare requiring it.

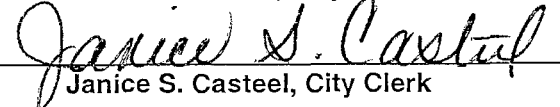
APPROVED AS TO FORM:



L. Harlen Painter, City Attorney



Tom Rowland, Mayor



Janice S. Casteel, City Clerk



City of Cleveland
Division of Engineering
Stormwater MS4 Phase II

Project Title: _____

Tax Map-Group-Parcel _____

Agreement

This agreement is entered into in accordance with the provisions of the City of Cleveland's Stormwater Management Program codified as Sections 18-301 through 18-313 of the City of Cleveland's Municipal Code.

The undersigned _____ is the Developer of a Tract of land as shown and described on the attached Exhibit A. The property shall be referred to herein as "the Property."

Developer agrees that this agreement shall be and is binding upon the undersigned developer, his or her heirs, assigns and successors in interest. Developer, his or her heirs, assigns and successors in interest are collectively referred to herein as "Developer".

As Built Drawings. In compliance with Section 18-306 of the Cleveland Municipal Code, Developer agrees to provide as built drawings of the stormwater infrastructure associated with the proposed development on the Property. Developer understands and agrees that Developer is responsible to provide a cost estimate for the cost of these as built drawings. This cost estimate must be provided at the time this agreement is executed. Developer will not be able to obtain a land disturbance permit until this cost estimate has been provided to the City. Developer understands and agrees that this written estimate must bear the seal of a licensed Tennessee Civil Engineer or the seal of a licensed Tennessee surveyor.

The as built drawings shall be provided to the City of Cleveland by Developer upon completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code. If Developer fails to provide the as built drawings to the City within 30 days after completion of post construction site stabilization as defined in Section 18-306 of the Cleveland Municipal Code, then Developer is in default under this agreement. The City will notify the Developer of this Default and give Developer 30 days to cure the Default. If the Default is not cured within 30 days after notice to the Developer, then the City will have the right to hire a licensed Tennessee Surveyor to provide the as built drawings to the City. If the City is forced to hire a surveyor to provide the as built drawings due to the Developer's default, Developer will be obligated to pay the City an amount equal to twice the City's cost in obtaining the as built drawings. In addition, the Developer will be responsible for the City's attorneys fees and litigation expenses should the City be required to hire an attorney to enforce the City's rights under this agreement.



**City of Cleveland
Division of Engineering
Stormwater MS4 Phase II**

Post Construction Site Stabilization. In compliance with Section 18-306 of the Cleveland Municipal Code, the Developer further agrees to complete post construction site stabilization on the Property. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

Post Construction Landscape Plan. If applicable, Developer further agrees to provide a post construction landscape plan in accordance with the provisions of Section 18-307 of the Cleveland Municipal Code. If the Developer fails to comply with this provision, the Developer will be subject to enforcement action under Section 18-310 of the Cleveland Municipal Code.

The undersigned understands and agrees that this Agreement and ultimately the overall Application for a Land Disturbance permit shall be subject to the acceptance, amendment and/or rejection by the City Engineer.

Dated this _____ day of _____, 20_____.

DEVELOPER

By: _____

Title: _____

STATE OF TENNESSEE)
COUNTY OF BRADLEY)

Before me personally appeared _____, to me known to be the person(s) described herein (or proved to me on the basis of satisfactory evidence) and who executed the foregoing instrument, and acknowledge the execution of the same as his/ her free act and deed.

WITNESSED by me this _____ day of _____, 200__.

NOTARY PUBLIC

My commission expires: _____.