Passed 9-0

ORDINANCE 01-34

TO AMEND THE TEXT OF TITLE 20
OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED, "ZONING"
(Amending the "Environmental and Urban Design Standards" (20.06.04.00), "Environmental Performance Standards"(20.06.05.00), "Siltation and Erosion" (20.06.05.03), and "Enforcement"(20.09.05) Provisions to Improve Enforcement Capabilities, Further Protect Environmentally Sensitive Areas, and Reflect Changes in Certain Departmental Responsibilities)

WHEREAS, the Bloomington Plan Commission wishes to make changes to the enforcement provisions for the environmental and urban design standards, environmental performance standards, erosion and siltation standards of the Bloomington Municipal Code; and,

WHEREAS, the Bloomington Plan Commission has considered this case, ZO-20-01, and recommended that the Bloomington Municipal Code be changed and requests that the Common Council consider their petition;

NOW, THEREFORE, BE IT HEREBY ORDAINED BY THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA, THAT:

SECTION 1. Section 20.06.04.02 (b) entitled "Enforcement of Landscape Requirements" shall be amended such that it reads as follows:

(b) Enforcement of Landscape Requirements. Wherever site plan review is required by this Zoning Ordinance, a landscape plan shall be a required part of such site plan. No permanent occupancy permit shall be issued without completion of all landscaping shown on the landscaping plan required herein. Failure to implement the approved landscape plan, including preservation of existing features, or to maintain the landscaping shall be a violation of this Zoning Ordinance and subject to enforcement action under Chapter 20.09 of this Zoning Ordinance.

SECTION 2. Section 20.06.04.02 (d) entitled "Preservation of Existing Features" shall be amended to add Part (5) that shall read:

(5) Failure to comply with tree preservation requirements as outlined in this section shall be a violation of this Zoning Ordinance and subject to enforcement action under Chapter 20.09 as well as remediation as outlined in 20.06.04.02 (g).

SECTION 3. Section 20.06.04.02 (g) "Modifications" shall be relettered as (f) and Section 20.06.04.02 (h) "Installation and Maintenance" shall be relettered as (g).

SECTION 4. Section 20.06.04.02 (g) entitled "Installation and Maintenance" shall be amended in the following manner:

(a) The title of the provision shall now read:

(g) Installation, Maintenance and Remediation.

(b) Part (3) shall be inserted which shall read as follows:

(3) Remediation. If disturbance of trees to be preserved occurs during construction, a remediation plan must be submitted to the City Planning Department within 15 days of the disturbance activity. The remediation plan shall consist of a tree replacement plan indicating the proposed locations and species of new trees, as well as a time-frame for their planting. The remediation plan shall also contain an assessment of any damaged trees, including whether they will be removed or treated

to ensure long-term health. Failure to submit the remediation plan within the required time-frame will result in a Citation for Violation.

SECTION 5. Part (2) of Section 20.06.05.02 (d) entitled "Environmental Review Plan for Karst Terrain" shall be amended such that it reads as follows:

(2) The environmental review plan shall include, but not be limited to the following:

(A) Sewer is required for subdivisions of three lots or more when sewer is available for hook-on within three hundred feet.

(B) For residentially zoned areas, any land disturbing activity, including the construction of buildings or pavements over, or within a minimum of twenty-five feet from the last closed contour line of a surface karst feature is prohibited. The last closed contour line will be defined as shown on the City of Bloomington's Geographic Information System (GIS).

(C) For non-residentially zoned areas, any land disturbing activity, including the construction of buildings or pavements over, or within a minimum of twenty-five feet ~~of~~ from the last closed contour line of a surface karst feature is prohibited. The last closed contour line will be defined as shown on the City of Bloomington's Geographic Information System (GIS).

(D) Stormwater discharge into a karst feature shall not be increased over its preexisting rate according to standards as established by the City Stormwater Utility Engineer Sinkholes shall not be utilized for stormwater detention.

(E) Stormwater runoff from paved areas or structures shall not directly enter a sinkhole. Drainage plans shall be designed to route runoff through vegetative filters or other filtration measures before it enters a sinkhole.

(F) Flow of surface water to a sinkhole shall not be substantially reduced from preexisting conditions according to standards as established by the City Stormwater Utility Engineer.

(G) Springs or cave entrances shall not be modified except for the placement of a gate to prevent human access.

(H) Storage tanks shall have impervious secondary containment.

(I) A comprehensive report by a geotechnical consultant or professional engineer shall be provided describing stormwater drainage design, retention, erosion control, and, where appropriate, stormwater quality mitigation measures.

SECTION 6. Part (2) of Section 20.06.05.02 (g) entitled "Environmental review plan for sites containing water resources" shall be amended such that it reads as follows:

(2) Guidelines for Development in Areas Containing Water Resources.

(A) Development within the boundaries of areas regulated by FEMA must comply with the regulations of Section 20.07.15.04 of this zoning ordinance.

(B) All surface water resources shall be protected by a minimum twenty-five-foot vegetated buffer between the normal bank and any land disturbing activity, buildings or pavements, except pedestrian and bicycle paths.

(C) Stormwater from any roof or other improvement shall not be discharged directly into the surface water resource; such stormwater shall be routed to a vegetative filter or other storm water quality mitigation feature according to standards as established by the City Stormwater Utility Engineer.

(D) All proposed structures shall be situated at an elevation above water surface profiles under the one-hundred-year storm condition according to standards established by the City Stormwater Utility Engineer.

(E) The petitioner shall demonstrate that the waterway will be able to accommodate the one-hundred-year storm calculated to the satisfaction of the City Stormwater Utility Engineer.

(F) No person shall undertake any construction activity including, but not limited to, excavating, filling, stripping, or grading in the floodplain of any waterway not regulated in Section 20.07.15.04 of this zoning ordinance without first having obtained a certificate of zoning compliance and a permit from the City Engineering and/or Planning Department(s).

SECTION 7. Section 20.06.05.02 (j) entitled "Inspection" shall be added to the text and shall read as follows:

(j) Inspection. The City Engineering and/or Planning Department(s) shall inspect construction sites at least once a week starting March 1st and ending October 31st and at least once a month during the period starting November 1st and ending February 28th to ensure compliance with the environmental review plan.

SECTION 8. Section 20.06.05.02 (k) entitled "Enforcement" shall be added to the text and shall read as follows:

(k) Enforcement.

(1) Notice of Violation— Violation and Remediation.

(A) The City Engineering and/or Planning Department(s) shall issue a Notice of Violation (NOV) for any site which is found to be in violation of the provisions of this chapter or which is not in compliance with the conditions and specifications imposed for issuance of a permit for land disturbing activities. This notice shall be issued on site or mailed to the responsible party and the landowner at the last known address of each, with a First Class letter sent to each on the same date. It shall enumerate the specific violations which exist and the actions which must be taken to bring the site into compliance with the provisions of this chapter or the conditions and specifications of the permit. The responsible party and/or landowner shall have three business days from the date of this notice to bring the site into compliance with the provisions of this chapter and the specifications of the permit.

(2) Enforcement Options.

(A) After the Notice of Violation period has elapsed, the City Engineering and/or Planning Department(s) shall re-inspect the site to determine whether the violation has been corrected. If it has not been fully corrected, the city shall proceed against the responsible party and/or landowner by issuing a Citation for Violation ticket. This ticket (fine) shall be as set forth in Section 20.09.05. In addition to fines, the City has the authority to pursue any or all of the enforcement options as set forth in Section 20.09.06.00.

(3) Remediation.

Where disturbance of areas identified with environmental constraints occurs, a remediation plan must be submitted to the City Planning Director within 15 days of the disturbance. The remediation plan shall include measures, which protect all areas with environmental constraints on the property, and shall provide mitigation measures for all disturbed areas on the property to the satisfaction of the City Planning Department. Failure to submit the remediation plan within the required time-frame will result in a Citation for Violation.

SECTION 9. Section 20.06.05.03 (a) entitled "Design Criteria and Specifications for Control Measures" shall be amended such that it reads as follows:

(a) Design Criteria and Specifications for Control Measures. All control measures required to comply with this chapter shall meet the design criteria, standards, and specifications identified by the City Engineering Department.

SECTION 10. Part (1) of Section 20.06.05.03 (c) entitled "Applicability" shall be amended such that the beginning of the sentence shall now read as follows:

(1) This section applies to the following types of land development or land disturbing activities:

SECTION 11. Section 20.06.05.03 (d) entitled "Erosion and Pollutant Control Requirements" shall be amended in the following manner:

(a) Part (7) shall now read as follows:

(7) The control plan and control plan schedule must be followed. Changes to the control plan and control plan schedule must be approved in writing by the City Engineering Department.

(b) Part (8) shall now read as follows:

(8) All erosion control measures must be installed, inspected and approved by the City Engineering and/or Planning Department(s) before land disturbing activity can take place.

(c) Part (10) shall now read as follows:

(10) Disturbed areas not yet at final grade with installed utilities that have no construction activity as indicated on the construction schedule and/or control plan for thirty days or more shall be established with temporary vegetation or mulching. The beginning date of disturbance shall be established by the City Engineering Department as indicated in a written log. The landowner shall be notified in writing of this start date if different from the construction schedule.

SECTION 12. Parts (1), (2), (3), and (4) of Section 20.06.05.03 (e) entitled "Permit Application, Control Plan, Permit Issuance, and Memorandum of Erosion Control Responsibility" shall be amended such that the preface and first four parts shall read as follows:

(e) Permit Application, Control Plan, Permit Issuance, and Memorandum of Erosion Control Responsibility.

(1) Permit Application. For each project, at least one developer, landowner or land user desiring to undertake a land disturbance or land development activity subject to this chapter shall submit an application for a permit and a control plan. For building permits, this application shall be filed at the Monroe County Building Department. For grading permits, this application shall be filed at the City Engineering Department. By submitting an application, the applicant is authorizing the City Engineering and/or Planning Department(s) to enter the site to obtain the information required for review of the control plan.

(2) Control Plan. Site plan must be drawn to scale showing erosion control features. The services of a professional engineer may be employed at the discretion of the developer.

(3) Permit Issuance. No developer, landowner or land user may commence a land disturbance or land development activity subject to this chapter without receiving approval of a control plan for the site and a permit from the City Engineering Department or the Monroe County Building Department.

(4) Memorandum of Erosion Control Responsibility. With such application, permittee is required to submit a memorandum of erosion control responsibility. This memorandum shall designate a responsible party for all erosion control measures. This memorandum shall incorporate this chapter by reference and bind the applicant to all regulations contained therein. This memorandum is in effect until the project is completed or a new memorandum of erosion control responsibility is filed with the City Engineering Department designating a new property owner or responsible party.

SECTION 13. Section 20.06.05.03 (e) entitled "Permit Application, Control Plan, Permit Issuance, and Memorandum of Erosion Control Responsibility" shall be amended by adding part (6), which shall read as follows:

(6) For projects requiring approval by the City Plan Commission, no grading permits shall be issued in advance of Plan Commission approval.

SECTION 14. Part (4)(C) and Part (4)(D) of Section 20.06.05.03 (f) entitled "Content of the Control Plan for Land Disturbing Activities Covering One Acre or More" shall be amended such that these parts read as follows:

(4) Control and Design....

(C) For sites with less than ten acres disturbed at one time, filter fences, straw bales or equivalent measures shall be placed along all side slopes of the site. If a channel or area of concentrated runoff passes through the site, filter fences shall be placed along the channel edges to reduce sediment reaching the channel. Diversion ditches and other sediment control measures meeting the specifications outlined in subsections (f)(4)(A) and (B) above may be utilized at the discretion of the City Engineering Department;

(D) Land disturbing activity shall be performed in a construction sequence to the satisfaction of the City Engineering Department in order to minimize the area of bare soil exposed at any one time.

SECTION 15. Section 20.06.05.03 (h) entitled "Review of Control Plan" shall be amended such that it reads as follows:

(h) Review Of Control Plan. Within five working days of receipt of the application and/or control plan statement, the office of the City Engineering Department shall review the application and/or control plan to determine if the requirements of this chapter are met. This review, whenever practicable, shall be done concurrently with other related construction permit applications. The City Engineering Department may request comments regarding the plan or statement from other departments or agencies. If the requirements of this chapter are met, the City Engineering Department shall approve the plan, inform the applicant and issue a permit. If the conditions are not met, the City Engineering Department shall inform the applicant in writing and either may request needed information or disapprove the plan. Within thirty days of receipt of the newly submitted information, the City Engineering Department shall again determine if the plan meets this chapter's requirements. If the plan is disapproved again, the City Engineering Department shall inform the applicant in writing of the reasons for the disapproval. Appeal from this decision may be brought to the Board of Zoning Appeals, as provided for by Indiana Code Section 36-7-4-918.01.

SECTION 16. Section 20.06.05.03 (i) entitled "Permits" shall be amended such that it reads as follows:

(i) Permits.

(1) Duration. Permits shall be valid for a period of one hundred eighty days, or run concurrently with the building permit or other construction authorizations, whichever is longer. At the written request of the permitee, the City Engineering Department may extend the period one or more times for up to an additional one hundred eighty days. The City Engineering Department may require additional control measures as a condition of the extension if they are necessary to meet the requirements of this chapter.

(2) Financial Guarantee of Performance.

(A) A financial guarantee shall not be required for the construction of one- or two-family dwelling units and related accessory structures or improvements.

(B) In all other instances, as a condition of approval for issuance of the permit, the City Engineering Department shall require the applicant to deposit a surety bond, irrevocable letter of credit, certificate of deposit held as a security, or any other form of financial guarantee of performance acceptable to the City Engineering Department to guarantee a good faith execution of the approved control plan and any permit conditions. The amount of the financial guarantee shall be provided by the developer or project engineer and

approved by the City Engineering Department. The financial guarantee of performance will not be released until project is in compliance with erosion control measures, including the establishment of a vegetative cover appropriate for the season. The financial guarantee may be cashed by the city to provide for payment of any costs or penalties imposed due to violations of the provisions of this chapter or noncompliance with the conditions and specifications for the issuance of a permit.

(C) The surety bond, irrevocable letter of credit, certificate of deposit held as a security, or any other form of financial guarantee of performance acceptable to the City Engineering Department shall be kept current. Any lapse of such financial guarantee shall be considered as a violation of this chapter.

(3) Permit Conditions. All permits shall require the permittee to:

(A) Notify the City Engineering Department within two working days of commencing any land disturbing activity;

(B) Notify the City Engineering Department of completion of any control measures within seven days after their installation;

(C) Obtain permission in writing from the City Engineering Department to modify the control plan;

(D) Install all control measures as identified in an approved control plan;

(E) Maintain all road drainage systems, stormwater management systems, control measures and other facilities identified in the control plan;

(F) Repair any siltation or erosion damage in adjoining surfaces and drainageways resulting from land developing or disturbing activities;

(G) Inspect the construction control measures at least once each week and make needed repairs, and inspect after each rain of 0.5 inches or more;

(H) Allow the City Engineering and/or Planning Department(s) to enter the site for the purpose of inspecting for compliance with the control plan or for performing any work necessary to bring the site into compliance with the control plan;

(I) Keep a copy of the control plan on site; and

(J) Certify at project's completion that all utilities have been installed on site and erosion control measures that were damaged or destroyed have been repaired or restored by the utility companies involved.

(K) A memorandum of erosion control responsibility shall be on file with the City Engineering Department.

(4) Pre-Construction Conference. For all sites of one acre or more, a pre-construction conference is required before any land-disturbing activity can commence. This conference will be with the City Engineering Department and the permittee. This conference shall be recorded. If land disturbing activity commences without the benefit of pre-construction conference, it shall be considered a violation of this chapter. This conference shall include but not be limited to:

(A) Construction schedule;

(B) Memorandum of erosion control responsibility;

(C) Permit conditions;

(D) Conditions of approval;

(E) Discussion of BMC subsection 20.06.05.03 Siltation and Erosion;

(F) Identification of types of soil stock piles (working versus storage) and seeding requirements for such piles that achieve the objectives of this chapter.

SECTION 17. Section 20.06.05.03 (j) entitled "Inspection" shall be amended such that it reads as follows:

(j) Inspection. City Engineering Department shall inspect construction sites at least once a week during the period starting March 1st and ending October 31st and at least once a month during the period starting November 1st and ending February 28th to ensure compliance with the control plan.

SECTION 18. Section 20.06.05.03 (k) entitled "Enforcement" shall be amended such that it reads as follows:

(k) Enforcement.

(1) Notice of Violation— Violation and Remediation.

(A) The City Engineering and/or Planning Department(s) shall issue a Notice of Violation (NOV) for any site which is found to be in violation of the provisions of this chapter or which is not in compliance with the conditions and specifications imposed for issuance of a permit for land disturbing activities. This notice shall be in writing and shall be sent by first class mail or given in person to the responsible party and the landowner. It shall enumerate the specific violations which exist and the actions which must be taken to bring the site into compliance with the provisions of this chapter or the conditions and specifications of the permit. The responsible party and/or landowner shall have three business days from the date of this notice to bring the site into compliance with the provisions of this chapter and the specifications of the permit.

(2) Enforcement Options.

(A) After the Notice of Violation period has elapsed, City Engineering and/or Planning Department(s) shall reinspect the site to determine whether the violation has been cured. If it has not been fully cured, the City shall proceed against the responsible party and/or landowner by issuing a Citation for Violation ticket. This ticket (fine) shall be as set forth in Section 20.09.05. In addition to fines, the City has the authority to pursue any or all of the enforcement options as set forth in Section 20.09.06.00.

(B) An appeal of a written Notice of Violation or Citation of Violation ticket must be made in writing, within five days of the date of the notice or citation to the Board of Public Works, which shall issue its written findings. All appeals from written findings of the Board shall be made to the court within ten days.

SECTION 19. Section 20.06.05.03 (l) entitled "Project Termination" shall be amended such that it reads as follows:

(l) Project Termination. When a project has been completed, the person holding the permit shall petition the City Engineering Department, in writing, for approval of erosion control measures which are to remain on the site. The City Engineering Department shall subsequently inspect the site to evaluate the adequacy of these control measures.

(1) If the erosion control measures are approved, the surety bond shall be released promptly. However, any maintenance responsibilities shall remain with the person owning or occupying the land.

(2) If the erosion measures are not approved, the City Engineering Department shall notify, in writing, the person holding the permit, regarding the unacceptable features. After a minimum period of two weeks during which corrective measures are taken, a petition, again in writing, may be sent asking for the City Engineering Department to evaluate the adequacy of the erosion control measures. If, in good faith, the City Engineering Department again decides that the erosion control measures are inadequate, the city shall delay the release of the surety bond for up to two months. After two months or longer has elapsed without corrective measures taken, the City Engineering Department shall use the surety bond to finance changes or additions to the erosion control measures needed to complete the project.

SECTION 20. Section 20.09.01.00 entitled "Authority" shall be amended such that it reads as follows:

20.09.01.0 Authority

All departments, officials and public employees of the city which are vested with the duty or authority to review and/or issue permits shall conform to the provisions of this title and shall issue no permit for any use, building, or purpose which would be in conflict with the provisions of this title. Any permit or license issued in conflict with the provisions of this title shall be null and void. The planning director, and the Manager of Engineering Services, or

their designees, will be designated enforcement officials with full authority to investigate, issue notices of, and secure remedies, including but not limited to injunctive relief, for, any violation of this zoning ordinance. (Ord. 97-06 § 54; Ord. 95-21 § 3 (part), 1995).

SECTION 21. Section 20.09.05 entitled "ENFORCEMENT PROCEDURES AND OPTIONS" shall be amended in the following manner:

(a) Part (a) shall be amended to read as follows:

(a) If the Planning Director, Zoning & Enforcement Manager, or Manager of Engineering Services or their designees, collectively referred to as "Staff", find that any provision of this ordinance, with the exception of 20.06.05.03, is being, or has been, violated, said person shall issue a Notice of Zoning Violation (NOV) to the responsible party. For purposes of issuing notice of violation, the following persons shall be considered responsible parties, with liability for fines and responsibility for remedy of the violation: the property owner(s); persons with any possessory interest in the property; and/or any persons and/or their agents who have caused the violation.

(b) The chart entitled "Compliance Deadlines & Fines" which is found directly after part (b) shall be amended to read as follows:

Compliance Deadlines & Fines			
Type of Violation	Correction Period from Date of NOV	Daily Fine During Correction Period	Daily Fine After Correction Period has Elapsed
Zoning Ordinance			
Illegal temporary signage	0	$25	$50
BMC 20.06.06.04			
Parking on an unimproved surface	0	$25	$50
BMC 20.06.02.05			
Temporary Occupancy	0	$50	$100
BMC 20.06.07.00			
Structure in setback	20 business	$25	$50
BMC 20.07.16.03			
Illegal permanent signage	10 business	$50	$100
BMC 20.06.06.03			
Occupancy without permit	20 business	$50	$100
BMC 20.05.08.03			
Home Occupation	20 business	$100	$100
BMC 20.05.11.00			
Junkyard/auto storage	10 business	$50	$100
BMC 20.07.01.00			
Environmental &Urban Design Standards (Tree Preservation)	3 business	$100	$100
BMC.20.06.04.02D			
Siltation and Erosion Control	3 business	$100	$100
BMC 20.06.05.03			
Environmental Performance Standards(other than 20.06.05.03)	3 business	$100	$100
BMC 20.06.05.00			
Site Plan Requirements			
No parking lot striping	10 business	$25	$100
BMC 20.06.02.08			
Missing bike racks	15 business	$25	$100
BMC 20.06.02.10			
No dumpster screens	15 business	$25	$100
BMC 20.06.04.06c			
No handicapped parking provided	15 business	$50	$100
BMC 20.06.02.04			
Missing landscaping	30 business	$50	$100
BMC 20.06.04.02			
Missing paving	30 business	$50	$100
BMC 20.06.02.08			
Missing sidewalk	30 business	$50	$100
BMC 20.06.04.03			
Other condition of approval	30 business	$50	$100

SECTION 22. Parts (4), (5) and (6) of Section 20.09.06.00 (b) entitled "AUTHORIZED REMEDIES FOR VIOLATIONS" shall be amended such that those three parts read as follows:

(4) Revoke or withhold other approvals, certificates and/or permits relevant to the development or use of the site on which the violation has occurred; and/or,
(5) Request the County Building Department or City Engineering Department, where appropriate, to issue a stop work and instruct the Building Commissioner to suspend and withhold all building code inspections relevant to the development or use of the site on which the violation has occurred; and/or,
(6) Draw on an application letter of credit, or other financial guaranty, as necessary, with permission of the Manager of Engineering Services to effect any remedial actions required to abate the violations; and/or,

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 3rd day of October, 2001.

Patricia Cole

PATRICIA COLE, President
Bloomington Common Council

ATTEST:

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to Mayor of the City of Bloomington, Monroe County, Indiana, upon this 4th day of October, 2001.

Regina Moore

REGINA MOORE, Clerk
City of Bloomington

SIGNED AND APPROVED by me upon this 4 day of October, 2001.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

These amendments to Title 20 (Zoning) allow ticketing for violations of siltation and erosion control requirements, environmental performance standards, and tree preservation requirements. They also enhance protection of environmentally sensitive areas by, for example, prohibiting the issuance of certain grading permits prior to site plan review by the Plan Commission. And, lastly they shift certain duties to reflect changes in various departmental operations.

Signed copies to:
legal (5)
Controller
Planning
CA/CA
BMC file
P.Works
engineering
MC Building dept.
utilities
ENV Commission