Passed: 8-0

ORDINANCE 97-16

TO AMEND TITLE 20 OF THE BLOOMINGTON MUNICIPAL CODE ENTITLED "ZONING"
(Revising Section 20.06.05.03 Entitled "Siltation and Erosion" and Providing Related Definitions)

WHEREAS, the City of Bloomington wishes to protect the quality of waters in Bloomington and Monroe County by minimizing the amount of sediment and other pollutants carried by runoff or discharge from construction sites; and,

WHEREAS, since the adoption of the present Siltation and Erosion Control Ordinance in February of 1992 much knowledge has been gained by the erosion control industry at large, the development community, and the City of Bloomington; and,

WHEREAS, the Plan Commission has considered this case, ZO-32-97, and recommended that the zoning ordinance amendment be approved and request 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 20.06.05.03, entitled "Siltation and Erosion," shall be amended by adding the word "Purpose" before the introduction.

SECTION 2. Section 20.06.05.03 (B), entitled " Maintenance of Control Measures" shall be amended by striking the phrase "in a satisfactory manner to ensure adequate performance and to prevent nuisance conditions" and thereby ending the sentence after the words "development of the site."

SECTION 3. Section 20.06.05.03 (C), entitled "Control of Erosion and Pollutants During Land Disturbance and Development," shall be amended by striking the original title in its entirety and substituting the word "Applicability."

SECTION 4. Subsection 20.06.05.03 (C)(1) shall be amended by striking the word "Applicability." as it appears at the beginning of that provision and by adding part (e) at the end of the provision which shall read as follows:

e. Single family lots are required to comply with Sections 20.06.05.03 (D) and 20.06.05.03 (F) of this Chapter.

SECTION 5. Section 20.06.05.03 (C) shall be further amended by deleting part (2) in its entirety and inserting new parts (2) and (3) which shall read as follows:

2. All municipal government departments and utilities are bound by this Chapter. A Memorandum of Agreement will be prepared with each utility doing business within the City of Bloomington regarding its rights and responsibilities during land reconstruction activities.
3. All erosion control measures shall be implemented as specified in the control plan and required by this Chapter and as appropriate for the season.

SECTION 6. Section 20.06.05.03 (D), entitled "Erosion and Pollutant Control Requirements," shall be amended by deleting the section in its entirety and substituting the following:

D. Erosion and Pollutant Control Requirements.

The following requirements shall be met on all sites described in Section 20.06.05.03.C.

1. Site Dewatering. Sediment-laden water flowing from the site shall be

detained by temporary sediment basins. Also, water shall not be discharged in a manner that causes erosion in the receiving channels.

2. Waste and Material Disposal. All waste and unused building materials (including garbage, debris, cleaning wastes, wastewater, toxic materials, or hazardous materials) shall be properly disposed of and not allowed to go offsite or in storm sewers.
3. Tracking. Each site shall have graveled roads, access drives and parking areas of sufficient width and length to prevent sediment from being tracked onto public or private roadways. Any sediment reaching a public or private road shall be removed by street cleaning (not flushing) by those responsible before the end of each workday.
4. Drain Inlet Protection. All storm inlets shall be protected with straw bales, filter fabric, or an equivalent barrier meeting accepted design criteria, standards, and specifications.
5. Sediment shall be controlled and contained on-site.
6. For vacant land held for development, grass or other vegetative ground cover is required.
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 Engineer.
8. All erosion control measures must be installed, inspected and approved by the City Engineer before land disturbing activity can take place.
9. Disturbed areas which are at finished grade with installed utilities shall be permanently seeded within seven (7) days.
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 (30) days or more shall be established with temporary vegetation or mulching. The beginning date of disturbance shall be established by the City Engineers office as indicated in a written log. The landowner shall be notified verbally or in writing of this start date if different from the construction schedule.
11. Disturbed areas not yet at final grade that receives no construction activity including, erection of a building structure, installation of utilities, installation of pavement, installation of sidewalks, installation of landscaping or final grading, for thirty (30) days or more, shall be established with temporary vegetation or mulching.
12. Single family lots that remain inactive for thirty (30) days or more shall be established with temporary vegetation. This requirement may be waived if the landowner has sold the lot and construction activity is scheduled to begin within thirty (30) days of being sold.
13. Single family lots must be controlled with erosion control measures appropriate for the season.
14. Slopes over 18% which are disturbed and are at final grade with installed utilities shall be covered immediately with seeding, mulch, or other covering appropriate for the season.

SECTION 7. Section 20.06.05.03 (E), entitled "Permit Application, Control Plan, and Permit Issue," shall be amended by deleting the section in its entirety and substituting the following:

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 and pay an application fee to Monroe County. By submitting an application, the applicant is authorizing the City of Bloomington Engineering Department 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 office of the City Engineer and Monroe County.
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 Engineer designating a new property owner or responsible party.
5. For each project copies of required State and Federal permits will be provided.

SECTION 8. Subsection 20.06.05.03 (F)(3), entitled "Site Construction Plan," shall be amended by deleting part (d) in its entirety, and substituting the following:

d. Chronological sequence of construction describing the relationship between the implementation and maintenance of controls, including permanent and temporary stabilization and the various stages or phases of earth disturbance and construction. The sequence of construction shall, as a minimum, include a schedule and time frame for the following activities:
   1. Pre-Construction conference
   2. Obtain permits and secure bonds
   3. Clearing and grubbing for those areas necessary for installation of perimeter controls;
   4. Construction of perimeter controls;
   5. Inspection of perimeter controls
   6. Remaining interior site clearing and grubbing;
   7. Location, type and estimated size of soil piles
   8. Road grading;
   9. Grading for the remainder of the site;
   10. Utility installation and whether storm drains will be used or blocked after construction;
   11. Building, parking lot, and site construction;
   12. Final grading, landscaping or stabilization; and
   13. Removal of controls.

SECTION 9. Section 20.06.05.03 (F), entitled "Content of the Control Plan for Land Disturbing Activities Covering One Acre or More," shall be further amended by adding part (4) which shall read as follows:

4. Control and Design. A plan shall utilize the latest edition of the Indiana Handbook for Erosion Control in Developing Areas for technical guidance for all erosion and sediment control practices. A plan shall incorporate the following design criteria where applicable:
   a. Channelized runoff from adjacent areas passing through the site shall be diverted around disturbed areas, if practical. Otherwise, the channel shall be protected as described below in Section 20.06.05.03.F. Sheetflow runoff from adjacent areas greater than 10,000 square feet in area shall also be diverted around disturbed areas unless shown to have resultant runoff velocities of less than 0.5 ft./sec. across the disturbed area for the set of two year design storms. Diverted runoff shall be conveyed in a manner that will not erode the conveyance and receiving channels. (Note: Soil

Conservation Service guidelines for allowable velocities in different types of channels should be followed.);

b. For sites with 10 acres or more disturbed at one time, or if a channel originates in the disturbed area, one or more sedimentation basins shall be constructed. Each sedimentation basin shall have a surface area of at least 1 percent of the area draining to the basin and at least three feet of depth and shall be constructed in accordance with accepted design specifications. Sediment shall be removed to maintain a depth of three feet. The basin shall be designed to trap sediment greater than 15 microns in size based on the set of two year design storms having durations from 0.5 minutes to 24 hours. The basin discharge rate shall be sufficiently low as to not cause erosion along the discharge channel;

c. For sites with less than 10 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 F.4.a. and b. above may be utilized at the discretion of the City Engineer.

d. Land disturbing activity shall be performed in a construction sequence to the satisfaction of the City Engineer in order to minimize the area of bare soil exposed at any one time.

SECTION 10. Subsection 20.06.05.03 (I)(2), entitled "Financial Guarantee of Performance" shall be amended by adding the following sentence at the end of the part (b) and by inserting a new part (c), so that the new text shall read as follows:

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 Engineer shall be kept current. Any lapse of such financial guarantee shall be considered as a violation of this Chapter.

SECTION 11. Section 20.06.05.03 (I), entitled "Permits ," shall be further amended by adding part (3)(k) and part (4) all of which shall read as follows:

k. A Memorandum of Erosion Control Responsibility shall be on file with the City Engineer.

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 office of the City Engineer 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 Subchapter 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 ordinance.

SECTION 12. Section 20.06.05.03 (K), entitled " Enforcement," shall be amended by deleting the entire section and substituting the following:

K. Enforcement

1. Notice of Violation Violation and Remediation

a. The City Engineer may issue a Notice of Erosion Control Violation 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 served by certified mail on the responsible party (as provided in 20.06.05.03 (E) above) 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 five 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.

b. When, in the opinion of the City Engineer or Planning Director, the condition of the site causes a danger to the health, safety or welfare of the public, the City may enter upon the site to remedy the dangerous condition without notice to the responsible party and landowner. If such action has been taken, the City may recover the costs set forth in K.2.a.ii. below. If the City acts to recover the costs, an affidavit concerning the necessity of emergency remediation must be made by the City Engineer, and included with the statement from the City Controller. The City may also seek a penalty as provided in K.2.a.iii below. Best efforts will be made to notify the responsible party.

2. Enforcement Options

a. Within ten days after the date of the Notice of Erosion Control Violation as provided in K.1.a., the City Engineer shall reinspect the site to determine whether the violation has been cured. If it has not been fully cured, the City of Bloomington may proceed against the responsible party and/or landowner by pursuing any or all of the following options:

i. The City Engineer or the City Planning Director may request that the appropriate Monroe County official issue a stop work order. If the site is not brought into compliance within 24 hours of issuance of the stop work order, the City Engineer or the City Planning Director may request that the appropriate Monroe County official revoke any permit which has been issued for land disturbing activities at the site. Upon receipt of adequate notice that the site has been brought in compliance, the City Engineer or the City Planning Director may request that the appropriate Monroe County official retract the stop work order or revocation of

permit.

ii. The City may enter onto the site and take appropriate action to bring the site into compliance with the provisions of this chapter or the specifications for issuance of the permit. The City Controller shall make a statement of the expense involved by the City in curing the violation, and that statement shall be served upon the responsible party and that land owner by mailing of certified mail. That amount shall be paid to the City of Bloomington Legal Department within ten days after mailing of said statement. If that amount is not paid within the ten-day period, a certified copy of the statement of costs shall be filed in the office of the County Auditor. The Auditor shall place the amount claimed on the tax duplicate against the property affected by the work. The amount shall be collected as taxes are collected and disbursed to the general fund of the Department of Public Works. In the alternative, the City Engineer may pursue collection of said costs by making a claim against the Surety Bond, irrevocable letter of credit, certificate of deposit held as security, or other form of financial guarantee of performance which has been deposited with the City Engineer by the responsible party to assure compliance with the provisions of this chapter and the conditions and specifications of the permit.

iii. The City Engineer may issue to the responsible party and landowner a citation for violation of the erosion control ordinance which states the relevant offense(s) and which assesses the appropriate penalty. Each enumerated item of non-compliance may be considered to be a separate violation, and each day the site is out of compliance may be considered to be a separate violation. Fines may accrue from the date of the Notice of Erosion Control Violation. The fine for said violations shall be fifty ($50.00) dollars. The City may file a proceeding in court to enforce this fine(s). In the alternative, the City Engineer may pursue collection of said costs by making a claim against the Surety Bond, irrevocable letter of credit, certificate of deposit held as security, or other form of financial guarantee of performance which has been deposited with the City Engineer by the responsible party to assure compliance with the provisions of this chapter and the conditions and specifications of the permit.

iv. The City may bring a civil action to enjoin the responsible party and/or landowner from violating the provisions of this chapter or engaging in conduct without a required permit.

b. An appeal of the written Notice of Erosion Control Violation must be made in writing, within five days of the date of the notice 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.

3. Emergency Stop Work Order Enforcement Authority

a. In addition to the enforcement options provided in Section 20.06.05.03. K. 1. and 2. set out above, in cases where it is determined by the City Engineer that the health, safety or welfare of the public is endangered, the City Engineer or the City Planning Director may, without giving notice to the responsible party or landowner, request that the appropriate Monroe County official

issue a stop work order if:

i. A provision of this chapter is being violated;

ii. Any land disturbing or land developing activity regulated under this chapter is being undertaken without a permit;

iii. The control plan is not being implemented in a good faith manner as determined by the City of Bloomington Engineering Department;

iv. A pre-construction conference for sites greater than one acre prior to land disturbing activity has not occurred; or

v. The conditions and specifications of the permit are not being met.

b. If the permittee does not cease the activity or comply with the control plan or permit conditions within 24 hours, the City Engineer or the City Planning Director may request that the appropriate Monroe County official revoke any permit which has been issued for land disturbing activities at the site. Upon receipt of adequate notice that the site has been brought in compliance, the City Engineer or the City Planning Director may request that the appropriate Monroe County official retract the stop work order or revocation of permit.

c. Where no permit has been issued, if the landowner or land user does not cease the activity within 24 hours after receipt of written demand by the City Engineer, the City Engineer may request that the City Legal Department bring a civil action to enjoin the responsible party or landowner from engaging in the prohibited activities and to require that the site be brought into compliance with the provisions of this chapter.

SECTION 13. Section 20.06.05.03, entitled "Siltation and Erosion ," shall be amended by adding subsection (M) which shall read as follows:

M. Annual Report
City staff shall prepare an annual report on the erosion control ordinance. This report shall be presented to the Plan Commission.

SECTION 14. Section 20.02 of the Bloomington Municipal Code, entitled "Definitions and Rules of Word Usage," shall be amended by inserting the following in alphabetical order among the other definitions listed in the section:

Erosion The wearing away of the land surface by water, wind, ice, gravity, or other geological agents.

Sediment Solid material (both mineral and organic) that is in suspension, is being transported, or has been moved from its site of origin by air, water gravity, of ice and has come to rest on the earth's surface.

Silt (1) A soil fraction consisting of particles between 0.0002 and 0.05 mm in diameter, or (2) A soil textural class indicating more than 80% silt.

Stabilization The process of establishing an enduring soil cover of vegetation and/or mulch or other ground cover/or in combination with installing temporary or permanent structures for the purpose of reducing to a minimum the erosion process and the resultant transport of sediment by wind, water, ice or gravity.

SECTION 15. Severability. If any section, sentence, or provision of this ordinance, or the application thereof to any person or circumstances shall be declared invalid, such invalidity shall not affect any of the other sections, sentences, provisions, or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are declared to be severable.

SECTION 16. This ordinance shall be in full force and effect from and after its passage by the Common Council of the City of Bloomington and approval of the Mayor and promulgation by law.

PASSED and ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this 5th day of November, 1997.

Anthony Pizzo

ANTHONY PIZZO, President
Bloomington Common Council

ATTEST:

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this 6th day of November, 1997.

Patricia Williams

PATRICIA WILLIAMS, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this 6 day of November, 1997.

John Fernandez

JOHN FERNANDEZ, Mayor
City of Bloomington

Synopsis

This ordinance revises the original siltation and erosion control ordinance adopted in February of 1992. Since that time much knowledge has been gained by the erosion control industry at large, the development community and the City of Bloomington. The main changes include: reorganizing sections D and F, creating a violation section called Erosion and Pollutant Control Requirements in section D, adding a Memorandum of Erosion Control Responsibility requirement in section E, adding a renewal requirement for financial guarantees in section I, requiring a preconstruction conference in section I.4, and deleting the enforcement section and replacing it with an entire new enforcement section.

Env. Comm
Public Works
Planning
BMC File
Legal (5)

Utilities
H+T (legal)
Clerk/CACA