

Johnson, Johanna

To: Johnson, Johanna
Subject: RE: Infiltration Ordinance - Request for Referral at BPW

From: Matt Brink
Sent: Tuesday, August 27, 2024 1:45 PM
To: Gaebler, Phil <PGaebler@cityofmadison.com>; Schmidt, Janet <jschmidt@cityofmadison.com>; Fries, Gregory <GFries@cityofmadison.com>
Cc: Dan Day
Subject: Infiltration Ordinance - Request for Referral at BPW
Importance: High

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Dear Janet, Phil, and Greg –

Thank you, Janet and Phil, for meeting with us on Monday to discuss the potential revisions to the infiltration ordinance and their implications for neighborhood development. Veridian Homes is requesting a referral of item 5 at the August 28, 2024 Board of Public Works meeting which seeks to amend section 37.09(3)(e)1 of the Madison General Ordinances and allow for further discussion on the potential unintended impacts of this revision on projects of various scales.

During our discussion, it became clear that this revision could have significant implications for neighborhood development, potentially affecting affordability and increasing long-term maintenance costs for the City. These factors could substantially impact Veridian's future projects.

We share the goal of creating better-designed neighborhoods that incorporate the infiltration practices at the heart of these revisions; however, we believe more time is needed to fully explore the ramifications of these changes. If the vote is delayed, we would appreciate the opportunity to have a follow-up meeting to clarify certain questions and ensure we can plan our neighborhood designs accordingly.

Thank you for your consideration.

Matt Brink

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Johnson, Johanna

From: Fries, Gregory
Sent: Wednesday, August 28, 2024 11:10 AM
To: BPW Agenda
Cc: Schmidt, Janet
Subject: FW: Smart Growth's Concerns re Legistar 84571-Version 1

Please add to the info for the BPW tonight - thanks

From: Bill Connors <bill@smartgrowthgreatermadison.org>
Sent: Wednesday, August 28, 2024 11:07 AM
To: Board of Public Works <boardofpublicworks@cityofmadison.com>
Cc: Guequierre, John <district19@cityofmadison.com>; Conklin, Nikki <district9@cityofmadison.com>; Aaron Williams <aaron.williams@wisc.edu>; kliems@gmail.com; Fries, Gregory <GFries@cityofmadison.com>; Schmidt, Janet <jschmidt@cityofmadison.com>
Subject: Smart Growth's Concerns re Legistar 84571-Version 1

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Members of the Board of Public Works:

I am writing to express the concerns of Smart Growth Greater Madison regarding the latest version of the proposed ordinance specifying the location of infiltration basins on development and redevelopment sites, Legistar 84571-Version 1, which is item 5 on the agenda for your meeting this afternoon.

Smart Growth's members include real estate developers, civil engineers, environmental consultants, architects, commercial lenders, general contractors--everyone involved in making real estate development happen in the Madison area. Smart Growth is an expert resource for municipal policy makers and staff who want to understand the practical implications of proposed ordinances and policies.

Smart Growth requests that the Board of Public Works pass a motion referring this proposed ordinance to its meeting next month to allow additional time for stakeholders to work with the alders sponsoring this ordinance and city staff to completely understand the impacts of the proposed ordinance and to determine if there is a way to make it not have profound negative impacts, especially on redevelopment projects. Smart Growth only saw the latest version of the proposed ordinance on Wednesday, August 21, and has been scrambling to gather the experts needed to evaluate it. Smart Growth appreciates that the latest version of the ordinance addresses some of the concerns raised by stakeholders, but it also raises more questions and concerns. There is no reason to rush this ordinance through the process. We respectfully request more time to work on improving the proposed ordinance.

When new Madison regulations increase the cost of housing development projects, one of two things happen. Either projects do not go forward because they are no longer financially feasible, meaning badly needed additional housing units are not constructed to address the Madison area's ongoing housing crisis, or projects go forward with even higher rents than the high rents we are already seeing in new development and redevelopment projects. One might focus exclusively on the additional cost of just this proposed additional regulation, but that would ignore the cumulative impact of the vast array of complex

regulations and additional costs Madison city government loads onto housing development projects. It is that cumulative impact that greatly contributes to the lack of supply of housing and high cost of housing in Madison.

The latest version of the proposed ordinance references the DNR Technical Standard 1002 for stormwater infiltration evaluation, but it is important to note that the DNR does not require infiltration for redevelopment projects, nor do most municipalities in the state. Technical Standard 1002 is primarily intended for new development or greenfield projects. This is a crucial distinction, since evaluating infiltration in an urban environment is both costly and challenging.

Madison only recently introduced the infiltration requirement for redevelopment (5% volume reduction of 10-year, 24-hour event) in June 2020. The most cost-effective way to meet this requirement is either by installing a traditional surface infiltration facility or by converting 20% of the existing site's impervious to pervious surface (although converting existing impervious area to pervious area usually sharply decreases revenue from the project, which adversely impacts financial feasibility).

Soil conditions in Madison are highly variable, often presenting challenges for infiltration. Unlike other parts of the state with more uniform and favorable soil conditions, Madison sites often have soils that are not conducive to infiltration. Additionally, many areas within the City have high groundwater levels or redox soil features, further limiting the use of traditional surface infiltration facilities. Meeting the current infiltration ordinance in Madison is already difficult for both new and redevelopment projects.

The latest version of this proposed ordinance will add complexity and increase costs in the development/redevelopment process. Here are some specific issues we foresee:

- Developers will need to spend more money during the due diligence phase to conduct multiple soil borings or test pits to determine whether surface infiltration is feasible and if it meets the ordinance. It is clear that this is the explicit intent of the proposed ordinance.
- Neither the latest version of the proposed ordinance nor the referenced DNR technical standard indicate how close together the points in the grid of test borings/pits must be. How will development teams find out in advance whether city engineering staff will agree that the grid is sufficient to comply with the new ordinance? Will the development team need to submit their grid to the city engineering team for approval before a contractor does the borings/pits?
- The latest version of the ordinance does not explicitly say what happens if the grid of borings/pits is completed and all of the soils found at the grid points are loam or more restrictive soils. In this situation, does the latest version of the ordinance permit the development team to place the infiltration basin where loam or more restrictive soils are located? If so, the ordinance should be changed to say that explicitly.
- For redevelopment projects that are predominantly existing hardscape, soil borings in existing parking lots will be necessary to determine soil infiltration rates. If the project moves forward with an infiltration facility such as a bioretention basin, the developer will be required to conduct an additional soil test pit in the same area as the boring as DSPS (which approves subsurface infiltration) will not accept soil borings.

- For redevelopment projects on sites containing large existing buildings, how can the grid of borings/pits include where the buildings are located?
- Developers make decisions about whether a site is financially and technically feasible for redevelopment before they demolish large existing buildings, based on a specific site layout for the redevelopment project. In fact, before they purchase a redevelopment site, developers almost always obtain zoning entitlement approvals based on a specific site layout. The developers recognize that further site investigation after they purchase the property might reveal issues that will require the site layout to be slightly adjusted, but once they purchase the site and demolish the existing building(s), it is too late from a financial perspective to essentially start over on the site layout based on the kinds of soils found by doing borings/pits. As a practical matter, for redevelopment projects, the latest version of the proposed ordinance will require a developer to assume that the required location of an infiltration basin might make the desired site layout not feasible and and therefore further assume that the 5% reduction in stormwater runoff required by the Madison's 2020 stormwater ordinance must be achieved by more costly green roof and/or greywater reuse systems. This will cause some developers to determine that some redevelopment sites are not financially viable for redevelopment before any borings/pits are done.
- State regulations prohibit locating an infiltration basin in contaminated soils. How would a development team comply with the latest version of the ordinance if the soils on the site that are better than loam for infiltration are contaminated and therefore cannot be used as the site of the infiltration basin? In that situation, would the latest version of the ordinance allow the development team to locate in the infiltration basin in uncontaminated loam or more restrictive soils?
- The ordinance now prohibits the infiltration of “chloride-laden water” (stormwater runoff from parking lots) into soil with more than 5% P200 material. Essentially, this refers to soil with an infiltration rate of 0.24 inches per hour or less. This new requirement will make it even more challenging to use infiltration facilities to meet the required 5% reduction in runoff in Madison's 2020 stormwater ordinance.

Overall, the most recent version of the proposed ordinance will likely add costs during the due diligence phase of a project and may restrict many sites from using infiltration facilities to comply with the stormwater ordinance. This, in turn, will necessitate the use of green roofs or greywater reuse systems, further increasing project costs. Higher project costs cause some projects not to go forward, restricting the supply of housing, and increased rents in the projects that do go forward.

Bill Connors
Executive Director
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