CITY OF WILSON

Planning & Design Review Board Agenda Session

Agenda Item #: _____

City Council Meeting: June 20, 2024

TO: **Planning & Design Review Board**

FROM: **Tiffanie Garner, Stormwater Compliance Coordinator**

SUBJECT: **ZONING ORDINANCE TEXT CHANGE REQUEST (Proj# 24-217)**

APPLICANT: City of Wilson
SECTION: Chapter 12 of the UDO
Purpose: Technical amendments to update the UDO with regards to Stormwater practices.

STAFF RECOMMENDATION: 1) Approval. 2) If you move to approve the request, be sure to preface your motion with the "reasonable" statement below. **3)** If you move to deny the request, be sure to preface that motion with the "not reasonable" statement below.

Choose one:

I MOVE THAT THE PROPOSED AMENDMENT IS REASONABLE DUE TO ITS CONSISTENCY WITH THE FOLLOWING COMPREHENSIVE PLAN POLICIES AND THAT IT BE APPROVED: GI-1.5: Update City regulations to align with and support the 2043 Comprehensive Plan.

I MOVE THAT THE PROPOSED AMENDMENT IS NOT REASONABLE DUE TO ITS INCONSISTENCY WITH THE FOLLOWING COMPREHENSIVE PLAN POLICIES AND THAT IT BE DENIED: GI-1.5: Update City regulations to align with and support the 2043 Comprehensive Plan.

BACKGROUND:

Staff has been reviewing areas of the UDO to maintain a high level of customer service and use of best practices in a changing environment. The text amendments in these chapters are presented in the traditional way, Deletions are in Red and Additions are in Green as an attachment. A brief summation of those changes is attached.

COORDINATION:

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Janet Holland, AICP, Land Development Mgr; 252.399.2215; jholland@wilsonnc.org.

ATTACHEMENT: Amendments with Deletions in Red and Additions in Green

12 EROSION, FLOOD, STORMWATER AND WATERSHED PROVISIONS

12.1 GENERAL PURPOSE AND INTENT

12.1.1 FINDINGS OF FACT

A. **Erosion and Sedimentation Control:** The erosion of soil from uncovered development sites has adverse impacts on the condition of public and private property, impairs the City of Wilson stormwater system, and causes pollution and accelerated siltation of lakes, streams and other watercourses.

B. **Flood Damage Prevention**: The flood prone areas within the jurisdiction of the City of Wilson are subject to periodic inundation which may result in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood prone areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

C. **Stormwater Management:** The North Carolina Department of Environmental Quality ~~and Natural Resources~~ has issued regulations entitled "Neuse River Basin - Nutrient Sensitive Waters Management Strategy: Basinwide Stormwater Requirements (15A NCAC 2B.0235)." These regulations require that local governments within the Neuse River watershed establish a program to reduce nitrogen runoff in new developments, to prevent, identify, and remove illegal discharges, to identify potential retrofit sites, and to implement a stormwater public education program.

D. **Watershed Protection:** The Legislature of the State of North Carolina has, in NCGS 143-21, Watershed Protection Rules, directed local governmental units to adopt regulations that meet or exceed the minimum requirements of NCGS 143-214.5 and water supply watershed protection rules adopted by the State Environmental Management Commission in order to protect the water supplies throughout the state.

12.1.2 AUTHORITY AND ENACTMENT

A. **Erosion and Sedimentation Control:** In accordance with 15A NCAC 04 and the North Carolina Sedimentation Pollution Control Act of 1973, the Erosion and Sedimentation Control Regulations of this ordinance were adopted, effective May 15, 2008.

B. **Flood Damage Prevention**: In accordance with the National Flood Insurance Program (NFIP) and the Federal Emergency Management Agency (FEMA) the Flood Damage Prevention Regulations of this ordinance are hereby adopted, effective as detailed in Section 12.4.4.A.

C. **Stormwater Management**: In accordance with 160D-925 and 15A NCAC 2B.0235 and consistent with the adopted Neuse River Basin Requirements, the Stormwater Management and Neuse River Basin Regulations of this ordinance were adopted, effective March 9, 2001.

begun under such outstanding permit within a period of 6 months subsequent to passage of this ordinance or any revision thereto, construction or use shall be in conformity with the provisions of this ordinance.

12.5 STORMWATER MANAGEMENT (NEUSE RIVER BASIN) REQUIREMENTS

12.5.1 APPLICABILITY

A. Land Disturbance Threshold: Unless otherwise specified, for purposes of this section, development or land disturbance shall be defined to include the following:

1. Any activity that disturbs greater than or equal to 1 acre of land in order to establish, expand or modify a single family or duplex residential development or a recreational facility.

2. Any activity that disturbs ~~greater than or equal to ½ acre of land~~ one-half acre for commercial, industrial, institutional, multi-family residential or local government land uses with the following exception: Projects below one-half acre that would replace or expand existing structures on a parcel, resulting in a cumulative built-upon area for the parcel exceeding twenty-four percent (24%). ~~in order to establish, expand or modify a multifamily residential development or a commercial, industrial or institutional facility, or any other development not defined by 12.5.1 A(a).~~

B. All Development to be Cumulative: All development on a site will be considered to be cumulative from the effective date of the state's regulations for nitrogen reduction so that each exempt property must provide statistics to show the amount of disturbed land. When the total additions to a site exceed the appropriate exempt amount, then the entire development must meet the requirements of this section.

1. Existing Development: Existing development of Existing Build-Upon Area (BUA), as referenced in G.S. 143-214.7, means those projects that are built or those projects that have established vested right under North Carolina law as of the effective date of the state stormwater program or applicable local government ordinance to which the project is subject.

C. Exemptions: For purposes of this section, development shall not include agriculture, mining or forestry activities.

12.5.2 NUTRIENT REDUCTION REQUIREMENTS

A. Updates to the Neuse New Development Stormwater Rule: As of July 1, 2024, all plans submitted will be subject to the New Neuse Rules 15a NCAC 02b. 0711. All plans submitted prior to this date and still under review will be grandfathered in under the regulations that were applicable at time of submittal.

B. Calculation of Nitrogen Export: The nitrogen export from each development must be calculated. Stormwater nutrient compliance calculations throughout the City of Wilson require use of SNAP tool. NCDEQ released SNAP v.4.2 late March 2023. The current version of the tool can be found on the DEQ Nutrient Practices and Crediting website under Stormwater Nutrient Accounting Tools. Stormwater control measure (SCM) designs are required to use the current NCDEQ Stormwater Design Manual, which includes the Minimum Design Criteria (MDC's). This export will be calculated in pounds per acre per year (lbs/ac/yr). ~~There are 2 different methodologies for calculating nitrogen export from development~~ (Refer to the City Stormwater Design Manual in the City of Wilson Manual of Specifications, Standards and Design, for calculating nitrogen export loading).

C. Nitrogen Export Standard: All developments must achieve a nitrogen export of less than or equal to 3.6 pounds per acre per year.

D. Nitrogen Reduction Options: If the development contributes greater than 3.6 pounds per acre per year of nitrogen, the applicant shall bring the development into compliance. ~~as outlined in the table below.~~

1. If less than 24% impervious, nitrogen credits may be purchased to lower the nitrogen loading to less than 3.6 lbs/acre/year; or
2. If equal to or greater than 24% installation of a primary SCM pursuant to 15A NCAC 02H.1003 and then further purchase of nitrogen credits to lower nitrogen loading to less than 3.6 lbs/acre/year.

As stated in 15 A NCAC 02B 0711 (5) (b), "Regarding stormwater treatment and other onsite post-construction elements, projects not subject to more stringent standards under one of the following State stormwater rules or a local ordinance shall meet 15A NCAC 02H.1003, which includes specifications for low and high-density treatment threshold of twenty-four percent or greater built-upon area and a storm depth of in inch (1") for SCM design…" The City requires that development density of 24% or greater install or construct a primary SCM as described in the NCDEQ MDC Manual before a nitrogen buy-down purchase is allowed.

~~Residential Development~~	~~Commercial/Industrial Development~~
~~If the computed export is less than 6.0 lbs/ac/yr then the owner may either:~~ ~~1) Install BMPs (as specified in Section 12.6) to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr~~ ~~2) Pay a one-time offset payment to bring the nitrogen down to the 3.6 lbs/ac/yr~~ ~~3) Utilize a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export~~	~~If the computed export is less than 10 lbs/ac/yr, then the owner may either:~~ ~~1) Install BMPs (as specified in Section 12.6) to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr~~ ~~2) Pay a one-time offset payment to bring the nitrogen down to the 3.6 lbs/ac/yr~~ ~~3) Utilize a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export~~
~~If the computed export is greater than 6.0 lbs/ac/yr, the owner must use on-site BMPs to bring the development's export down to 6.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 6.0 and 3.6 lbs/ac/yr.~~	~~If the computed export is greater than 10.0 lbs/ac/yr, the owner must use on-site BMPs to bring the development's export down to 10.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 10 and 3.6 lbs/ac/yr.~~

E. Offset Payment: If it is determined that an offset payment is to be used, the owner shall furnish the city with evidence that a nutrient mitigation bank approved by the NCDWQ within the same hydrologic unit has received payment prior to the city's issuance of a building permit. Purchased nutrient buy-down credits will now be in lb/yr and good in perpetuity, rather than purchased in pounds for an arbitrary 30 years as defined in 15A NCAC 02B.0701(38), 15A NCAC 02B.0703(d)(7-8). Refer to the City of Wilson Manual of Specifications for more information on the calculation of offset payments.

F. Variances: Only the State Environmental Management Commission shall have the authority to grant variances from any provisions of the Neuse River Basin Program for Nitrogen Reduction unless future rule changes by the state address the handling of variances by the local government.

12.6 ~~STORMWATER BEST MANAGEMENT PRACTICES /~~ STORMWATER CONTROL MEASURES

12.6.1 DESIGN CRITERIA

All stormwater systems shall be designed by a North Carolina registered professional engineer or landscape architect in accordance with the City of Wilson Manual of Specifications, Standards and Design and the North Carolina Division of Water Quality Stormwater ~~Best Management Practices~~ Design Manual.

12.6.2 SELECTION OF ~~BEST MANAGEMENT PRACTICES~~ STORMWATER CONTROL MEASURES

Stormwater ~~Best Management Practices (BMPs)~~ Control Measures (SCM) for nitrogen reduction shall be selected in response to the site's location within the city, the recommendations of the ~~*North Carolina Division of Water Quality: Stormwater Best Management Practices Manual* (NC BMP Manual)~~ NCDEQ Stormwater Design Manual (NC DEQ SDM). Because of Wilson's unique geologic and hydrologic conditions (i.e., poorly drained soils and a shallow water table), the types of appropriate ~~BMPs~~ SCMs that can be effectively utilized in Wilson is limited.

A. Preferred ~~BMPs by District~~ SCMs: NCDEQ Stormwater Design Manual part A-8 "Guidance on SCM Selection" details many options which can be used in Wilson. ~~The following table includes BMPs from the State Manual that are recommended for use in Wilson because they are effective in areas with both poorly drained soils and a shallow water table (NC BMP Manual Section 4.5). The table does NOT indicate required BMPs in each district; rather it is simply intended to provide general guidance as to the most appropriate location for these BMPs within each of the city's zoning districts based on the desired development pattern for that district.~~ Applicants are encouraged to develop innovative and creative solutions for managing stormwater that satisfy the stormwater requirements of this section and the overall intent of this ordinance. The Stormwater Administrator will have final discretion in making a site specific determination for the most appropriate use of ~~BMPs~~ SCM on a project-by-project basis in accordance with the NC ~~BMP Manual~~ DEQ SDM and the functional and visual goals of this ordinance. The Administrator shall have discretion to establish alternate methods of compliance with this ordinance where it is determined that necessary stormwater management structures make strict compliance with this ordinance arduous or impractical.

~~BMP Tool (as listed in the NC BMP Manual)~~	~~R/A, OS~~	~~MHR, SR4, SR6, GR6~~	~~NC, GC, HC, LI, HI, ICD~~	~~UR, RMX~~	~~NMX, IMX, CCMX~~
~~Stormwater Wetland~~	~~•~~	~~•~~	~~•~~		
~~Wet Detention Basin~~	~~•~~	~~•~~	~~•~~		
~~Grassed Swale~~	~~•~~	~~•~~	~~•~~		
~~Restored Riparian Buffers~~	~~•~~	~~•~~	~~•~~		
~~Rooftop Runoff Management~~			~~•~~	~~•~~	~~•~~
~~Proprietary BMPs~~			~~•~~	~~•~~	~~•~~
~~Filter Strips~~	~~•~~	~~•~~	~~•~~	~~•~~	~~•~~
~~Others (as approved by the Administrator)~~	~~•~~	~~•~~	~~•~~	~~•~~	~~•~~

B. Preferred Location of ~~BMPs~~ SCMs: Generally, ~~BMPs~~ SCMs should not be located along any public right-of-way, in the first layer of a lot ~~(as defined in Section 9.3)~~, or along any required buffer yard areas. When no other acceptable location for ~~BMPs~~ SCMs can be found, only those ~~BMPs~~ SCMs which are compatible with perimeter landscaping, as outlined in the NC ~~BMP Manual~~ DEQ SDM shall be located in such areas. Where the stormwater and landscaping requirements of this

ordinance are found to conflict, the Administrator may approve alternate methods of compliance that satisfy the intent of this ordinance.

C. **Nutrient Removal Rates:** The regulatory credits for the total nitrogen (TN) removal rate of each ~~BMP~~ SCM are outlined in the NC ~~BMP Manual~~ DEQ SDM.

12.7 OWNERSHIP, MAINTENANCE AND INSPECTION OF STORMWATER STRUCTURES

12.7.1 OWNERSHIP AND MAINTENANCE

Stormwater structures which are constructed on public land, within public rights-of-way and/or within public easements shall be maintained by the public body with ownership/jurisdiction of the subject property according to the infrastructure acceptance provisions of Section 6.10.4. All other stormwater structures shall be privately operated and maintained according to the provisions below.

A. **Individual Lots:** The operation and maintenance of stormwater control structures which serve only 1 lot or unit shall be the responsibility of the owner of such lot or unit.

B. **Owners' Associations:** The operation and maintenance of stormwater control structures which serve more than 1 lot or unit shall be the responsibility of an Owners' Association. Prior to or concurrently with the submission of the Final Plat for review and approval, the subdivider or developer shall submit to the Administrator a copy of the Owners' Association Declaration and the proposed Bylaws. The Owners' Association Declaration shall contain, at a minimum, the following:

1. **Responsibilities:** That the Owners' Association is responsible for: the payment of any premiums for liability insurance and local taxes with respect to common areas which include stormwater control structures; the operation and maintenance of stormwater control structures in accordance with the approved plans and specifications and the approved Operation and Maintenance Agreement; and the payment of any application and/or inspection or other fees assessed by the City of Wilson and any assessments for improvements made to or for the benefit of any stormwater control structure by the City of Wilson or on its behalf.

2. **Default:** Upon default by the Owners' Association in the payment of any fees or assessments with respect to, or ad valorem taxes levied against, any common areas which include stormwater control structures, which default shall continue for a period of 3 months, the owners of each lot or unit in the development shall become personally liable for the proportionate amount of unpaid taxes or assessments, which proportionate amount shall be determined by dividing the total amount of the taxes and/or assessments due by the total number of lots or units in the development. If the sum thus determined is not paid by the owners within 30 days following receipt of notice thereof, then such amount shall become a continuing lien on the property of each owner, his heirs, devisees, personal representatives, successors and assigns. The taxing or assessing authority also may either bring an action at law against the owner or may elect to foreclose the lien against the owner's property.

3. **Powers:** That the Owners' Association is empowered to levy assessments against the owners of lots or units in the development for the payment of expenditures made by the Owners' Association for the items set forth herein, and any such assessments not paid by the owners shall constitute a lien against their property.

2. A deeded single-family lot owned by an individual prior to the effective date of this section (July 1, 1993), provided it is developed for single-family use, is exempt from the watershed district development standards of this section.

12.8.2 WATERSHED PROTECTION DISTRCT DEVELOPMENT STANDARDS

A. Specific Standards by Watershed Basin Area: The following standards shall apply to the Watershed Protection Overlay Districts and shall take precedence over the underlying zoning district standards.

1. Watershed Area III – Toisnot Reservoir/Swamp & Lake Wilson Area	Critical Area (WS3-C)	Protected Area (WS3-P)
Low Impervious Surface Option (Residential Only Maximum)	1 unit / 40,000 sq ft	2 units / 40,000 sq ft
Low Impervious Surface Option (Built Upon Area Maximum)	12%	24%
High Impervious Surface Option (Built Upon Area Maximum)	30%	50%, or 70% (see 12.9.2.B)
Stream Buffers (Minimum Each Side)	See 8.9.2	

2. Watershed Area IV – Wiggins Lake and Contentnea Creek Area	Critical Area (WS4-C)	Protected Area (WS4-P)
Low Impervious Surface Option (Residential Only Maximum)	2 units / 40,000 sq ft	2 units / 40,000 sq ft
Low Impervious Surface Option (Built Upon Area Maximum)	24%	24%
High Impervious Surface Option (Built Upon Area Maximum)	50%	70%
Stream Buffers (Minimum Each Side)	See 8.9.2	

B. Higher Impervious Surface Development Option for WS3-P Districts: A higher density development option is available for non-residential development within 5% of the WS3-P district, provided the following conditions are met:

1. No more than 70% of an area, lot or project within 5% of the entire protected area in the district can be built upon.
2. The development will minimize impacts on water quality through the use of best management practices (BMP's), directing of stormwater runoff away from surface waters, and provision of increased buffers from perennial waters. (Cluster development arrangements and designs are also encouraged.)
3. The development will be consistent with the Wilson Comprehensive Plan;
4. Careful records are kept by the Watershed Administrator to ensure the 5%/70% rule is not exceeded.
5. Any development that is proposed using this option must provide stormwater runoff control structures to control the 1-inch storm as set forth in Section 12.8.2.D.2.

C. On-Site Erosion Control Measures

1. No development permit shall be issued until approved watershed management protection measures are in place.
2. No land disturbing activities shall be allowed until all plans are approved and necessary permits have been obtained.