

FIRST READING

SECOND READING

Introduced by: Councilman Mortimer
Seconded by: Councilman Messler
Roll call vote: Ayes: 5 Nays: 0
Absent: Excused Councilman Schon
Date: January 17, 2006

Councilman Mortimer
Councilman Turner
Ayes: 5 Nays: 0
Excused Councilman Schon
Mayor Vigiamenti Absent
February 21, 2006

ORDINANCE 1103 - 2006

AN ORDINANCE AMENDING AND SUPPLEMENTING THE STORMWATER CONTROL ORDINANCE AND REQUIRING THAT ENTITIES OTHER THAN THE BOROUGH BE DESIGNATED UNDER SECTION 10B(2) TO MAINTAIN THE STORMWATER FACILITIES EXCEPT WHERE PROHIBITED BY LAW

WHEREAS, the Borough of Mountainside has recently adopted Ordinance No. 1090-2005, the model Storm Water Control Ordinance, promulgated by New Jersey Department of Environmental Protection to implement the regulations contained in N.J.A.C 7:8-4.1; and

WHEREAS, Ordinance No. 1090-2005 will require, in many cases, that new development and redevelopment in the Borough include the construction, maintenance and inspection of storm water control facilities; and

WHEREAS, the Ordinance provides developers a range of options to chose from in addressing storm water, some of which are more costly, and require more maintenance, than others; and

WHEREAS, to the extent permitted by law, the Borough desires require that entities other than the Borough be required to maintain these storm water facilities.

NOW, THEREFORE, BE IT ORDAINED, by the Mayor and Council of the Borough of Mountainside, County of Union, State of New Jersey that the current Section 10 of the Borough's Storm Water Control Ordinance, Ordinance No. 1090 - 2005, be amended as follows:

I. The following language shall be added to the end of the current ordinance at Section 10:

D. Borough Not Responsible for Maintenance:

1. The Borough of Mountainside shall not be designated under Section 10 of the Storm Water Control Ordinance as the person responsible for maintenance of storm water facilities constructed under this ordinance or the corresponding state regulations, unless such designation is:

- a. Required by law;
- b. Specifically approved by the Planning Board/ Zoning Board and the Governing Body;
- c. Required because the property is owned by the Borough of Mountainside.

2. Responsibility for maintenance of storm water facilities constructed for development or redevelopment of **non-residential** properties shall be retained by the non-residential property owner, unless designation of an alternate responsible person is approved by the Planning Board/Zoning Board.

3. Responsibility for maintenance of storm water facilities constructed for **residential** development or redevelopment, shall be retained by the owner or vested in a homeowner's association or other similar entity as may be approved by the Planning Board/Zoning Board, except as provided for in Section 10 B (3) of this ordinance.

4. Prior to issuance of a Certificate of Occupancy for any construction, which includes the construction of storm water facilities under this ordinance, the appropriate documents shall be recorded in the County land records evidencing the

designation of the responsible person for maintenance of the storm water facilities for each affected property. Proof of compliance with this provision shall be evidenced by submission of a copy of the filed document including deed book and page reference to the Borough Building Department.

5. Notwithstanding the above, the Planning Board/Zoning Board shall be permitted, upon a finding of sufficient cause, to approve the designation of the Borough or other public entity as the responsible person for maintenance of the storm water facilities required under this ordinance. Such approval shall be conditioned upon the applicant providing a resolution of the governing body or other public agency accepting such designation. The Planning Board/Zoning Board may also condition the designation of the Borough, or other public agency, as the responsible person upon the provision of a long-term maintenance guarantee, in accord with N.J.S.A. 40:55D-53, or such alternate funding as it may deem appropriate. The amount of such funding shall be based upon a reasonable estimate, provided by a licensed engineer and accepted by the Mountainside Borough Engineer, of the cost of maintenance and repair of the storm water facilities over the next twenty years.

6. Should any person designated as the responsible person pursuant to the requirements of this ordinance fail to conduct the required maintenance and repair of the storm water facilities, the Borough of Mountainside reserves the right to conduct the required maintenance and repairs and to charge the cost of same to the responsible person and/or the benefited property owners as a tax lien on the property. Except in the case of an emergency, the Borough shall provide seven (7) days advance written notice to the responsible person before undertaking repair or maintenance of the storm water facility. This provision shall be included in all documents designating the responsible person including the document(s) filed with the County land records pursuant to Section 10 D (4) above.

II. The last sentence of Section 10 D (4) which states "~~The Borough of Mountainside will require the posting of a two year maintenance guarantee in accordance with N.J.S.A. 40:55D-53~~" shall be deleted.

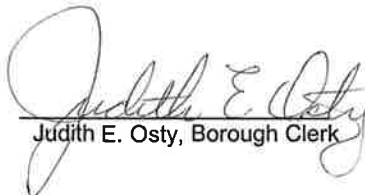
BE IT FURTHER ORDAINED, as follows:

1. This ordinance shall take effect immediately upon final passage and publication as provided by law.

2. The municipal clerk shall provide a copy of the ordinance upon final passage to the County of Union, and same shall be deemed approved by the County sixty days after the date of submission to the County, unless notice to the contrary is received prior to the expiration of that sixty day period.

3. If the provisions of any section, subsection, paragraph or clause of the ordinance shall be judged invalid by a court of competent jurisdiction, such order or judgment shall not affect or invalidate the remainder of any section, paragraph, or clause of this ordinance.

4. Any existing ordinance provisions which are contrary to the provisions of this ordinance are hereby repealed.


Judith E. Osty, Borough Clerk


Robert F. Viglianti, Mayor