

CITY COUNCIL CONFERENCE MINUTES

July 11, 2017

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:00 p.m. in the Municipal Building Conference Room on the 11th day of July, 2017, and notice and agenda of the meeting were posted at the Municipal Building at 201 West Gray, and the Norman Public Library at 225 North Webster 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Allison, Bierman, Clark, Hickman, Holman, Karjala, Wilson, and Mayor Pro Tem Castleberry

ABSENT: Mayor Miller

Item 1, being:

A PRESENTATION REGARDING THE LOWER IMHOFF CREEK STUDY.

Ms. Carrie Evenson, Stormwater Engineer, said in 2009 the Stormwater Master Plan (SWMP) identified 4,200 liner feet (LF) of severe bank erosion along both banks of Imhoff Creek that was leading to trees and fences falling into the creek. The area is listed as Imhoff Creek No.2 (IC-2) with a watershed priority ranking of two with an overall City priority ranking of five for stormwater projects that need to be completed. The SWMP estimated repair costs are \$6.5 million. She said the purpose of the Lower Imhoff Creek Study was to find a solution to prevent further stream degradation and channel widening as well as stopping the progression of the channel banks toward homes and other structures by stabilizing stream banks upstream of Highway 9.

Ms. Evenson said there were two ways to stabilize stream banks:

Traditional Approach: Hard Armoring of Channel

- Pros: Protects property and addresses immediate erosion problems
- Cons: Increases velocity, makes downstream erosion worse, and reduces natural stream functions

Alternative Approach: Natural Stream Restoration Techniques

- Pros: Protects property and restores or maintains natural stream functions
- Cons: Cannot be used in stream conditions

Ms. Evenson said the purpose of the Lower Imhoff Creek Study is to address concerns of the property owners adjacent to the creek; refine design options that the SWMP presented and incorporate in our preference for use of natural stream restoration techniques; update SWMP costs; provide plan conceptual design; and plan for future projects to be considered in the annual Capital Project Budget process.

Ms. Evenson said in 2014, the property owners at 2802 Walnut Drive contacted the City regarding property damage and loss due to erosion of that streambank. She said \$200,000 was included in the FYE 2015 Capital Budget for the Lower Imhoff Creek Study and Council authorized a contract with Meshek and Associates on May 26, 2015, to provide a conceptual engineering design and phasing of stream improvements using more natural stream restoration techniques where possible.

In 2015, flooding led to damage of the channel liner immediately upstream of the study area requiring emergency repairs. An application was submitted to the Federal Emergency Management Agency (FEMA) for funding and Meshek and Associates worked with the contractor for the repair of that channel liner to make sure the designs were compatible. Design work on the channel liner repair and

Item 1, continued:

Lower Imhoff Creek Study continued throughout 2016 and the study was completed in 2017. The channel liner repair contract will be scheduled for Council's consideration on July 25, 2017.

Mr. Brandon Claborn, Meshek and Associates, said Imhoff Creek's flowline has significantly dropped over time and all the water within the creek is now confined inside the drainage channel so all the energy of the water flowing through that channel causes a lot of erosion which makes the banks unstable. When the flowline drops, the channel becomes steeper forming a new channel at the bottom making the channel wider and creating a channel within a channel. He said 2802 Walnut Drive has experienced a large loss of property to the creek, including trees and fencing, leaving a large drop-off in the backyard. There are also a lot of utilities that run along this corridor, such as gas lines, sanitary sewer lines, etc.

Mr. Claborn said Meshek and Associates prepared an updated Basin Hydrology and Hydraulic Model for Imhoff Creek that included a detailed channel survey and updated floodplain maps. He highlighted drainage channel design alternatives for bank stabilization such as using natural vegetation/rocks, in-channel toe protection, or using gabion baskets or other structural measures to stabilize slopes. A gabion is a cage, cylinder, or box filled with rocks, concrete, or sometimes sand and soil and caged riprap is generally used for erosion control (riprap is heavy, large, irregular-shaped rocks that fit into place, without mortar, to manage severely eroded lake banks or shorelines).

Mr. Claborn said Meshek and Associates recommends the City develop a Monitoring Plan to document the rate of change to the banks due to erosion and prioritize improvements as well as develop a plan for stream maintenance. He said bank stabilization options include reverse gabion, typical gabion, and rock toe (rock toes are low structures of rock placed along the water's edge used as an armoring technique to provide additional strength to banks). He said dedicated City Staff will need to be trained in techniques of stream restoration and bank stabilization in order to prevent future loss of property due to erosion.

Proposed bank stabilization will be done in two phases with Phase I being the stabilization of banks at Imhoff Road moving south 1,200 feet where there is the greatest risk to infrastructure for an estimated cost of \$3,150,300. Phase II will consist of repairs upstream of Imhoff Road for an estimated cost of \$4,347,950. These estimated costs include the purchase of additional easements.

Councilmember Hickman asked if the velocity of the water caused the damage to the creek and Mr. Claborn said yes. Councilmember Hickman asked if Meshek and Associates examined the culverts that discharge water into the creek and the rate at which that water is discharged versus the way water naturally flows into the creek and Mr. Claborn said no, but felt any discharge from the culverts would have a minor effect on the creek. Mr. Claborn said although damage from stormwater discharge can happen, Meshek and Associates do not believe that is occurring in this area.

Councilmember Holman asked when the original channel liner was installed and Ms. Evenson said in the late 1990s. Mr. Shawn O'Leary, Director of Public Works, said channel liners generally last 20 years, but this particular channel liner may not have been well maintained or failed because of the severe storm conditions experienced in 2015.

Councilmember Holman has heard that riprap can break loose and cause blockages if the rock is not securely placed. Ms. Evenson said this is true because if the velocity of the water is high enough it can shift the rock so the rock needs to be sized and placed appropriately to keep it from breaking loose or shifting.

Item 1, continued:

Mayor Pro Tem Castleberry said the problem and repair costs have been identified so where does the City go from here? Ms. Evenson said Staff is asking for direction from Council based on the report recommendations because the City does not have the funding for Phase I and needs direction on whether Council would like to proceed with these projects through the budget process, a stormwater utility, or General Obligation Bonds, etc. Mr. O'Leary said the process will take time, but the longer the City waits, the more expensive the projects become.

Councilmember Hickman said until funding is identified, is there is anything the City can do to temporarily address water velocity in the creek or help make long term solutions more sustainable? Mr. Claborn said continuing to move toward low-impact development solutions in this area would prevent additional runoff from being added to Imhoff Creek which will help slow the progress of erosion. Also, planting bushes and shrubs along the bare slopes will help slow the velocity of the water and protect the soil from further erosion. He said the more impervious surface the more runoff goes into the streams so minimizing the damage and maintaining that over time is the only option.

Councilmember Clark asked how much FEMA might contribute to the project and Mr. O'Leary said since May 2015, City staff has been working closely with officials from Oklahoma Emergency Management (OEM) and FEMA regarding storm damage assessments and the potential for state and federal disaster relief financing. Mayor Cindy Rosenthal declared a local disaster by resolution on May 19, 2015, and Governor Mary Fallin declared a state disaster by resolution on May 26, 2015. President Obama established a Presidential Disaster Declaration for Cleveland County on May 26, 2015, for the period of May 5-24, 2015, making the City eligible for up to 87.5% reimbursement (75%-federal; 12.5% state) for debris removal from the May 6, 2015, tornado and infrastructure repairs caused by the May 5-24, 2015, floods. He said approximately \$800,000 was approved by FEMA for disaster relief projects from 2015, but the process is slow and arduous.

Mr. O'Leary said a 250 foot segment of the existing articulated concrete block channel and a concrete block structure downstream were severely damaged during the May 2015 flood events. Another 150 feet of channel sustained minor damage during these events; however, during a heavy spring 2017 rain, the same 150-foot segment of channel sustained major damage. The debris washed downstream and filled up the plunge pool that was being used to dissipate energy prior to stormwater runoff moving farther downstream in the channel. Currently the debris is acting as a channel restriction instead of a plunge pool. The new damages that occurred after the May 2015 disaster declaration period are not automatically eligible for federal and state funding. Staff did recognize this segment of channel constructed with the same type of articulated concrete block would be subject to failure during future storms, so dialog was started and documented with FEMA about replacing additional segments of the block channel during the Project Worksheet writing stage. FEMA has a Hazard Mitigation Plan (HMP) program that enables them to award additional funds up to 100% of the amount of original damage as a resiliency program to reduce and hopefully eliminate future damage during other disaster events. Staff is working with OEM to start the HMP process in hopes of receiving assistance on this segment of the channel.

Mr. O'Leary said channel improvements will consist of replacing the failed articulated concrete block channel liner with a concrete lined channel within a 650 foot segment of the channel including replacing the damaged drop structure constructed to protect the channel further to the south. These improvements are located approximately 400 feet south of Westbrooke Terrace. Mayor Pro Tem Castleberry asked how repairing one section of the creek will help the entire system and Mr. O'Leary said the City will install a hard-armored channel (concrete) in this section to prevent further erosion. He said concrete is not what the City would prefer to use in terms of natural materials, but is the best option available for future sustainability.

Item 1, continued:

Councilmember Karjala said people are losing their backyards to the creek and that will continued to happen so the City has to do something because once property is lost to the creek it is lost forever. She said there is no guarantee there will ever be a stormwater utility to manage stormwater runoff issues and asked Council to please consider all options for funding Phase I. Councilmember Clark said she was shocked by the expense of the repairs, but does not want to be a part of a Council that ignores the problem; she wants to be a part of a Council that acts on the problem now.

Councilmember Hickman asked why Imhoff Creek has widened and deepened so much over the last 15 to 20 years and Mr. Claborn said a lot of it has to do with the Canadian River feeding into the streams and creeks as well as development around the creek that has taken place over the last 15 to 20 years.

Mayor Pro Tem Castleberry said Staff has given Council plenty to think about and hopefully Council will find a way to move forward.

Items submitted for the record

1. PowerPoint presentation entitled, "Lower Imhoff Creek Study," City Council Conference dated July 11, 2017
2. Lower Imhoff Creek Hydraulic & Hydrologic Study Project prepared by Meshek and Associates, L.L.C.

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Item 2, being:

DISCUSSION REGARDING A POTENTIAL CITY-WIDE ELECTION DATE TO BE HELD IN OCTOBER OR NOVEMBER FOR THE RENEWAL OF THE OG&E FRANCHISE AGREEMENT AND COUNCILMEMBER ELECTION CHARTER AMENDMENT ISSUES.

OG&E Franchise Agreement

Ms. Kathryn Walker, Assistant City Attorney, said in May 2017, representatives from the Oklahoma Gas and Electric Company (OG&E) approached the City about renewing the franchise agreement that expires in 2018. The agreement provides for a franchise fee equal to three percent of OG&E' s

gross revenues arising from the sale of electricity within Norman's city limits. In addition to the franchise fee, OG&E furnishes free electricity to the City for operation of traffic signal lights and municipal buildings in an amount of up to one-half of one percent of the kilowatt hours sold to Norman customers within the preceding fiscal year. This provision resulted in the City receiving free electricity for traffic signal lights and municipal building for 10 months of the last fiscal year.

Ms. Walker said the franchise agreement grants OG&E the right, privilege, and authority to produce, transmit, distribute, and sell electricity within Norman's city limits as well as the right, privilege, and authority to construct, maintain, and operate a system of poles, wires, conduits, transformers, substations, and other facilities and equipment in, upon, across, under and over streets, alleys, public grounds, and other places for the purpose of producing, transmitting, distributing, and selling the electricity to the City of Norman and its inhabitants.

Article 18, Section 5(a) of the Oklahoma Constitution requires voter approval of a franchise in order for a City to grant the right to use its streets to sell and distribute utility services to its residents to a public utility company. Ms. Walker said OG&E is proposing the City place approval of the renewal of a 25 year

Item 2, continued:

OG&E Franchise Agreement, continued:

franchise agreement on a citywide ballot in November 2017. In order to meet Cleveland County Election Board notice requirements the First Reading Ordinance calling for an election would need to be considered by Council on August 8, 2017, and Second Reading on August 22, 2017.

Mr. James Chappel, OG&E Community Affairs Manager, said OG&E has a franchise agreement with 276 communities in Oklahoma and all provisions in the franchise agreement are consistent within all of these communities. He said feels like they have been a good corporate citizen in Norman. He said in 2010 OG&E replaced 42,000 meters with smart meters, so OG&E has approximately 43,000 customers in Norman and 54 employees that report to the Norman based office as well as several retired OG&E employees who live in Norman. He said the franchise agreement indemnifies the City from any lawsuits due to negligence and all rates are set by the Corporation Commission. He said the cost of the election will be borne by OG&E. He said safety is the number one priority for OG&E and this franchise is not exclusive as other utilities have franchise agreements with the City.

Mr. Chappel said he received some questions earlier from Councilmembers that he would like to address and one was concerning the City of Norman creating its own electric utility. He said there is nothing in the franchise agreement that would prevent a municipality from pursuing their own utility so if the City of Norman wants to review providing electricity for their citizens then they have that right. Another question regarded street light maintenance and Mr. Chappel said OG&E tries to repair street lights as soon as they are aware there is a problem; however, some of the lights are old and parts are becoming more difficult to obtain. Any street light damaged to the extent of needing to be replaced is being replaced with Light Emitting Diode (LED) fixtures, which are more energy efficient, more environmentally friendly, and a cost-saving alternative to the older conventional lights.

Mr. Chappel said OG&E has always tried to be a good steward and work out every issue with every customer that might have a problem. He said tree trimming has been an issue mentioned and tree trimming is a necessary evil in the electric business, but placing electric lines underground is difficult and costly. He said electric lines will always disturb something in the area whether they are placed

Item 2, continued:

above or below ground. OG&E advises people to check what is above them as well as what is underground before planting a tree. He said OG&E does not have anything against trees, in fact, OG&E recently helped plant trees at Terre Verde School. He said OG&E does its best to provide quality reliable service without disruption and the only reason a tree is touched is to improve service quality and reliability.

Councilmember Clark asked if the franchise term could be shorter than 25 years in case Norman wanted to move towards renewable energy. She asked if any other community shortened the franchise term. Mr. Chappel said not really because the franchise agreement does not restrict cities from using alternative energy. He said OG&E has a 20/20 plan that includes alternative energy and a solar project is currently being done in Enid by OG&E. He said people are signing up for this service and there is already a waiting list.

Councilmember Bierman asked if there is an opt-out clause in the franchise agreement if the City decides to pursue alternative energy and Mr. Chapel said there is no opt-out clause. Councilmember Bierman asked why there is no opt-out clause that would allow Council to reevaluate the franchise agreement because she likes the idea of having more municipal flexibility. Mayor Pro Tem Castleberry said if the City wants to create its own electric utility six months from now or five years from now the City can do

Item 2, continued:

OG&E Franchise Agreement, continued:

that. The City will still have a franchise agreement with OG&E, but the City does not necessarily have to use OG&E's services so the City does have flexibility. The franchise agreement is simply granting OG&E the right to operate in Norman for the next 25 years whether people want to use their service or not.

Councilmember Bierman asked what percentage of the three percent franchise fee paid to the City comes from OG&E customers and Mr. Chappel said all of it, but free electricity for traffic signals and some municipal buildings is provided by OG&E.

Councilmember Hickman said Council needs more time to discuss approving a 25 year agreement. He said he would like a presentation about what a franchise agreement is, why the City has to have a franchise agreement, whether OG&E can operate in the City without a franchise agreement, etc. Mr. Bryant said the franchise agreement is an Oklahoma Constitutional requirement that requires a vote of the people. He said Staff would be more than happy to provide a more detailed discussion and Staff had been under the impression that this item was a routine renewal of a franchise agreement.

Mayor Pro Tem Castleberry said if voters say no to the franchise, would electricity be available in the City of Norman once the current agreement expires? He said Council needs the answers to these questions prior to approving the franchise.

Municipal Elections/Charter Amendments Options

Mr. Bryant said in 2016, Council filing dates had to be moved to the first Monday, Tuesday, and Wednesday in December instead of January because State law changed the dates in which municipalities can hold an election which created a conflict in the City Charter. Out of that came a request by Councilmembers to study the issue and propose amendments to the Charter to align with State law.

Mr. Bryant said in the March 16, 2017, City Council Oversight Committee meeting the Committee directed Staff to inquire about the possibility of having ranked voting municipal officer elections instead of runoffs and to provide an update on pending legislative bills regarding municipal elections. Other items discussed included length of terms of office, preferences for elections dates (spring vs fall), and changing the swearing in date from the first Tuesday in July to a date closer to the end of the election cycle. He said the Cleveland County Election Board said they were not equipped to conduct ranked voting elections.

Mr. Bryant said when OG&E approached the City about the franchise agreement renewal that requires an election, Staff talked to them about packaging the non-controversial Charter amendment items in with the OG&E election since OG&E would be paying the election costs. The cost of that election would be approximately \$35,000 so if Council does not want to move forward with the franchise agreement election, the City still needs to move forward with the Charter amendments in October or November.

Mayor Pro Tem Castleberry said if a Charter amendment election was held in November that would give Council time to discuss the OG&E franchise agreement as well as further discuss Council election issues.

Councilmember Hickman said he still has problems with moving the swearing in dates because at the inception of that proposed rule, some Councilmembers would be cheated from serving a full term. Mr. Bryant said that issue can be taken off the non-controversial list and discussed further.

Item 2, continued:

Municipal Elections/Charter Amendments Options, continued:

Councilmember Holman felt the Charter amendments and OG&E franchise agreement should be on the same ballot and would prefer a November election. He would also like the Charter amendments to not be effective until the 2019 election cycle.

Mayor Pro Tem Castleberry suggested continuing discussion of these two topics on Tuesday, July 18, 2017, at 5:30 p.m. and Councilmembers concurred.

Items submitted for the record

1. Memorandum dated July 7, 2017, from Kathryn L. Walker, Assistant City Attorney, through Jeff Bryant, City Attorney, to Honorable Mayor and City Councilmembers
2. Letter dated June 9, 2017, from James W. Chappel, Community Affairs Manager, OG&E Energy Corporation, to Steven D. Lewis, City Manager
3. Ordinance O-9394-12
4. Potential Election Dates
5. Memorandum dated May 12, 2017, from Kristina L. Bell, Assistant City Attorney, through Jeff Harley Bryant, City Attorney, to Oversight Committee, with Exhibit 1, City Council Oversight Committee minutes of March 16, 2017; Exhibit 2, Legislatively notated Charter amendment for Section 2, Term of office; Exhibit 3, Legislatively notated Charter amendment for Alternate Section 2, Term of office; and Exhibit 4, Length of Office
6. Potential Election Dates
7. Memorandum dated May 31, 2017, from Kristina L. Bell, Assistant City Attorney, through Jeff Harley Bryant, City Attorney, to Oversight Committee

The meeting adjourned at 6:30 p.m.

ATTEST:

City Clerk

Mayor