

## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

January 22, 2015

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 4:30 p.m. in the City Council Conference Room on the 22nd day of January, 2015, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmember Holman, Jungman, Williams, and Chairman Miller

ABSENT: None

OTHERS PRESENT: Mayor Cindy Rosenthal  
Councilmember Allison  
Councilmember Heiple  
Mr. Jeff Bryant, City Attorney  
Ms. Susan Connors, Planning & Community Development Director  
Mr. Ken Danner, Subdivision Development Manager  
Mr. Terry Floyd, Development Coordinator  
Mr. Todd McLellan, Development Engineer  
Mr. Shawn O'Leary, Director of Public Works  
Mr. Scott Sturtz, City Engineer  
Ms. Kathryn Walker, Assistant City Attorney  
Ms. Karla Chapman, Administrative Technician III

Item 1, being:

### DISCUSSION REGARDING A POSSIBLE AMENDMENT TO THE NORMAN FLOODPLAIN ORDINANCE.

Chairman Miller said some citizen members (past and present) of the Floodplain Permit Committee (FPC) are at today's meeting. She introduced Marion Hutchison, Neil Suneson, and Sherri Stansel and stated they were very much a part of, and assisted with, writing the City's current Floodplain Ordinance. Chairman Miller said the Council Oversight Committee may have questions for the FPC members after Staff's presentation, as well as, FPC members may want to comment later in the meeting.

Mr. Shawn O'Leary, Public Works Director, highlighted the National Flood Insurance Program (NFIP) which includes: Flood Hazard Identification (mapping); Floodplain Management (regulations such as building codes and zoning); and Flood Insurance (provision of reasonable priced insurance for property owners in participating communities). He said the Federal Emergency Management Agency (FEMA) agrees to make flood insurance available within a community when that community agrees to adopt and enforce floodplain management regulations. Mr. O'Leary said a floodplain permit is required for all new construction and substantial improvements proposed for a Flood Hazard Area. Floodplain permits are reviewed by a Floodplain Permit Review Committee and forwarded to Council for approval when necessary. Mr. O'Leary highlighted the NFIP history in Norman as follows:

- July 8, 1975: The City of Norman joined the NFIP and adopted its first floodplain regulations; Section 22:429.1 of the Zoning Ordinance;
- November 1, 1979: Flood hazard areas of Norman, which are subject to periodic or occasional flooding during a one percent chance flood, i.e., 100-year flood, were identified by Norman's first FEMA Flood Insurance Rate Map (FIRM) Flood Insurance Study (FIS) and the provisions of the Floodplain Ordinance are applied as an overlay district;
- Norman revised FIRM/FIS in August, 1987; January, 1999; September, 2008; and February, 2013;
- Norman revised the Floodplain Ordinance: 1978, 1981, 1986, 1987, 1989, 1997, 2003, 2004, 2007, 2008, and 2013;

Item 1, continued:

- December 1, 2014: A Floodplain Permit Application (#553) was heard by the FPC proposing to demolish structures that predate the Floodplain Ordinance and are located in the floodplain and floodway. The FPC agreed the proposed project would greatly improve the site and unanimously approved the floodplain permit. The proposal included removing the offending structures that pre-existed the Ordinance at least two (2) feet above the base flood elevation; add 1.3 acre-feet of floodplain storage by excavating the east side of the creek channel on the property with no change to depth or flow line of stream. The FPC approved the application on condition of approval by Council (10% rule);
- December 10, 2014: The Planning Commission did not pass a motion on the preliminary plat by a vote of 4-4; and
- February 10, 2015: City Council will consider a Land Use change, Zoning change, and Preliminary Plat (including proposed floodplain modifications) for Floodplain Permit #553.

Mr. O'Leary said concern was expressed by citizen members of the FPC and former Councilmember and Council FPC member Rachel Butler that this project exceeds the level of floodplain modifications the ordinance was intended to allow. Specifically, current ordinance language approach is a "no fill under any circumstance," despite the fact the applicant's proposal will benefit the community, improve floodplain, and remove prior impediments.

Mr. O'Leary said since this particular floodplain application has raised an issue with the ordinance; Staff felt the Floodplain Ordinance language *may* need to be modified for clarification and is now requesting guidance from the Committee. He said Staff proposes the following ordinance amendment should the Committee desire to move this issue forward for Council consideration:

- ❖ Section 429.1.4(b)1: (d) special-case floodplain reclamation or redevelopment projects that reduce flood hazards through the removal of existing non-compliant development and/or which provide beneficial improvements to the function of the floodplain, including increased storage capacity, reduced velocities and erosion, and improved discharge efficiency, through appropriate modifications to the existing character and topography of the floodplain.
- ❖ Section 4.29.1.4(b)17(iv): requires Council approval for "special case" noted above.

Mr. O'Leary said that the Floodplain Permit Application #553 and proposed project will stay under the current floodplain ordinance and noted there is no urgency to the proposed ordinance amendments. He said if Council should approve the proposed project on February 10, 2015, the Developer will still to obtain a Conditional Letter of Map Revision (CLOMR) and a Letter of Map Revision from FEMA; a Final Plat approved by Council; and a building permit issued.

Chairman Miller felt if the Floodplain Ordinance is left as is, Council could be setting precedence if the proposed project is approved by Council. Mr. Jeff Bryant, City Attorney, said each application has to be looked at individually and was not concerned with setting precedence. Chairman Miller felt the current floodplain ordinance language and approach of "no fill under any circumstance" was done so that single-family dwelling(s) could not be constructed in a floodplain area. Mr. Bryant said the verbiage in the current ordinance did not specify single family dwelling and he does not feel it would be an issue. Mayor Rosenthal disagreed; stating she sat in many of the FPC meetings regarding amending the Ordinance and the verbiage "individual residential and non-residential structures" were implied to be houses - not apartment complexes.

Chairman Miller said the applicant proposed to not change the flow line and wondered how/what would keep the sides from eroding into the channel. Mr. O'Leary said it is a careful process of construction that includes erosion control, fill dirt, compaction, vegetative cover, and possible retaining walls. He said a FEMA representative that has looked over the applicant's development proposal has stated that it is model floodplain managed project taking out old buildings blocking the floodplain and constructing new development in such a manner is something they wished all communities would abide by.

Item 1, continued:

Councilmember Jungman said the proposed language in Section (d) is very broad regarding the standards. He said if a project will reduce flood hazards by the removal of existing non-compliant development and/or which will provide beneficial improvements to the function of a floodplain, the applicant can in-fill whatever they desire. He said he was not sure what would be out of bounds in terms of in-fill; however, he did feel the key would be to make certain the ordinance language stated if a proposed project were to improve the floodplain then the City should allow it. Mayor Rosenthal asked Councilmember Jungman if he thought more specific language was needed to identify the standard for judging whether or not a proposed reclamation or re-development project would be acceptable and he said yes, because as written, the amendment does not prohibit an applicant from proposing to build a subdivision within the floodplain as long as non-compliant structures were torn down and in-fill was used. Mayor Rosenthal agreed and felt the verbiage should be more specific, meeting all criteria rather than just one. Councilmember Jungman said scope limitations may also need to be considered because he does not think the intent would be to allow a floodplain to be built out with in-fill. Mayor Rosenthal and Councilmember Allison agreed if a developer/applicant's project proposes to change and better the floodplain area then the City should not deter them. Mr. O'Leary said the proposed language was merely a starting point and that the language could definitely be modified.

Councilmember Heiple said the language about elevating a single-family residential structure needs to be tightened, as well having specific and separate language for both single-family structures and multi-family structures. He felt if a project proposed to improve the floodway that the City should have tool(s) to allow it rather than having a blanket standard or message of no more building at all in the floodplain. Councilmember Heiple said building in the floodplain should be allowed if there is an engineered resolution and felt careful thought was needed regarding taking personal property and/or personal rights away. Mayor Rosenthal said the language in Section 17 is unclear how Council "will act to approve" and felt the approval of the Plat and Council consideration of a Flood Plain Permit are different actions. Mr. Bryant said Staff left the existing language "...for projects that require platting, this information will be presented at the time Council considers the preliminary plat..." He said for projects that do not require platting, the report will be made to Council prior to issuance of the floodplain permit. Mayor Rosenthal felt it would be appropriate to separate the two (2) actions because different thought processes are used when considering a plat versus a floodplain permit and Staff said they would do so.

Councilmember Williams asked Staff how many examples of existing non-compliant developments would require changing the flood plain and Mr. O'Leary said there are probably dozens of candidates; however, the City will probably only see one (1) to two (2) a year, at best. He said many developers will not want to take on such projects due to the fact that these types of projects are difficult, expensive, and complicated. Mr. O'Leary felt a dozen such projects over the next forty years would be a good estimate. Councilmember Williams said if a developer is willing to put time and energy to improving the floodplain, the City should make that possible so long as it does not deter the natural flow of the creek itself.

Mr. Marion Hutchison said FEMA standards are the minimum standards nationally and have been around for decades. He said FEMA and flood plain managers began to realize that offering suggestions and/or ideas of how to build in the flood plain would be better practice than the (old) routine idea of encouraging people to stay out of the flood plain. Mr. Hutchison said when the FPC amended the flood plain ordinance in 2006, the Committee researched dozens of flood plain management policies and ordinances from municipalities across the country that had already adopted new recommendations beyond FEMA standards. He said in 2006, he felt a large part of the effort was use the same policy of encouraging the least amount of change to the flood plain. Mr. Hutchison said the intent of the in-fill restrictions was, in essence, stating that "a project cannot be built in the flood plain if the project had to use in-fill." He said the FPC did not want to go so far as to say absolutely no development in the flood plain, but rather allow someone who owned a parcel within a flood plain the ability to construct or add to residential or non-residential structures, e.g., a detached garage on an existing house. Mr. Hutchison encouraged Staff and the Oversight Committee to take their time with proposed amendments and look for any conflicts the Floodplain Ordinance would have regarding other current and/or proposed City Ordinances, e.g., proposed Oil and Gas Ordinance, etc.

Item 1, continued:

Mr. Harold Heiple, attorney representing the Norman Developer's Council, said whether Council approves the proposed Bishops Landing project or not, he felt it was a very fine project and should be approved. He said initially he felt the proposed language in Section 22:429.1 (d) was appropriate because it explicitly hands Council the authority to approve projects such as the one proposed on Bishop. Mr. Heiple said after re-reading proposed sub-paragraphs (a) and (b), it will simply take out existing sub-paragraphs (a) and (b) and it will not allow infill in the flood plain in the development of residential subdivisions and/or construction or repair of bridges and roads. He said the language will make it impossible to develop subdivisions. Mayor Rosenthal said the intent of the original language was so that subdivisions in the ten-mile flat area could not be developed and said Council has allowed and approved several subdivisions with modifications in the floodplain since 2006. Mr. Hutchison said Council has not approved a subdivision in the flood plain, since the last ordinance amendment, unless the land was pre-platted prior to the ordinance amendment.

Mr. O'Leary said the 2006 amendment to the Flood Plain Ordinance was a model ordinance; however, he felt that there is never a perfect Flood Plain Ordinance and the opportunity to improve it might be now. Chairman Miller said concerns regarding the current flood plain ordinance have been brought to light; it is obvious pieces are missing and the ordinance needs work/amendments. The Committee agreed today's presentation was a good starting point and requested Staff begin working/tweaking the proposed amendment.

Items submitted for the record

1. Memorandum dated January 16, 2015, from Shawn O'Leary, Director of Public Works, to Members of the Council Oversight Committee
2. Proposed Amendments to Section 22:429.1 Flood Hazard District
3. PowerPoint Presentation entitled "Proposed Norman Flood Plain Ordinance Amendment," Council Oversight Committee, presented by Shawn O'Leary, Director of Public Works, and Scott Sturtz, City Engineer, dated January 22, 2015

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MISCELLANEOUS PUBLIC COMMENTS.

None.

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ADJOURNMENT.

The meeting adjourned at 5:32 p.m.

ATTEST:

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City Clerk

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Mayor