

CITY COUNCIL STUDY SESSION MINUTES

January 3, 2017

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a Study Session at 5:30 p.m. in the Municipal Building Conference Room on the 3rd day of January, 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, Castleberry, Chappel, Clark, Heiple, Hickman, Holman, Karjala, Mayor Miller

ABSENT: None

Item 1, being:

DISCUSSION REGARDING A PUBLIC-PRIVATE PARTNERSHIP AGREEMENT WITH CEDAR LAKES HOMEOWNERS ASSOCIATION FOR THE COLLECTION OF ASSESSMENTS TO ACCOMPLISH DAM REPAIRS AND INITIAL DISCUSSION REGARDING A POLICY TO EVALUATE FUTURE PUBLIC-PRIVATE PARTNERSHIPS FOR STORMWATER RELATED ISSUES.

Mayor Miller said in the Study Session held on December 6, 2016, Council was provided information regarding three neighborhoods with flooding issues that were seeking help from the City. The three neighborhoods included Cedar Lakes Addition dam repairs, Summits Lakes Addition dam repairs, and Vineyard Addition flooding issues. After that meeting Council asked Staff to continue to work on these neighborhoods' issues and move forward with an agreement with Cedar Lakes Addition. Council also showed interest in developing a policy of how the City would consider public/private partnerships with other neighborhoods throughout the City that are experiencing flooding issues.

Mr. Jeff Bryant, City Attorney, said the focus tonight will be on the Cedar Lakes Addition agreement; however, Staff is also presenting information on a policy for public/private partnerships to determine if Council is interested in pursuing it.

Mr. Bryant said there are several private dams in the City of Norman that are not regulated by the City. The Stormwater Master Plan (SWMP) has a provision that recommends the City take over inspection and maintenance of dams on a case-by-case basis because of the significant safety concerns those dams may pose in neighborhoods. The idea is to bring the dams to a particular City standard assuming the City will have an appropriate revenue stream to maintain those dams long-term. Approximately 20 substantial dams, most constructed over 40 years ago, were identified in Norman under the jurisdiction of the Oklahoma Water Resources Board (OWRB) and 290 smaller dams were identified in the SWMP.

Two key questions and recommendations from the SWMP that Council needs to consider are:

- Should the City investigate and identify the responsible parties for the inspection, maintenance, and overall safety of the dams?
 - Recommendation: yes, beginning with dams judged to have the greatest public safety risk
- Does the City want to take over ownership, liability, and maintenance from Property Owner Associations (POAs) or other owners to ensure that dams are made safe and properly maintained?
 - Recommendation: meet with OWRB to consider hazard potential; yes to those that pose safety concerns or hazards; POAs maintain mowing and small scale maintenance; owners bring dam to state dam safety compliance.

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The SWMP also recommends public/private partnerships for enhanced stormwater infrastructure maintenance in neighborhoods including detention basins, pipelines, bridges, structures, pumps, and other key elements.

Ms. Leah Messner, Assistant City Attorney, said Cedar Lakes Addition is located near Cedar Lane and 24th Avenue S.E. and consists of 19 platted lots with a five acre lake that includes a small dam on the east side of the lake. The dam is experiencing some seepage and the solution is expected to cost an estimated \$70,000. The Cedar Lake Home Owners Association (CLHOA) are willing to bear the costs of the repairs, but have asked the City to consider an agreement where the City will collect assessments added to the property owners' utility bills to fund the dam repairs. The CLHOA will seek approval of the property owners indicating their willingness to create a Special Assessment District to fund repairs.

Ms. Messner said the CLHOA will secure private financing and a contractor to complete repairs while the Norman Municipal Authority (NMA) will collect assessments through the utility billing system charging an administrative fee of \$1 per property per billing. The NMA will have the authority to shut off water to delinquent properties. There will be minimal City involvement and the agreement is contingent upon the CLHOA obtaining private funding and approving self-assessments.

If Council wishes to enter into the Cedar Lakes Addition agreement, the details can be finalized with the CLHOA and an item can be scheduled for Council consideration on January 24th.

Mr. Bryant said Summit Lakes Addition and the Vineyard Addition are also requesting help from the City with their flooding issues and the City is progressing towards an agreement with Summit Lakes Addition; however, the Vineyard Addition is still working through a resolution to their problem.

Councilmember Castleberry said when the property owners vote on an agreement for Cedar Lakes Addition, will they also vote on whether or not the City will be authorized to shut off water service for non-payment of the assessment? Mr. Bryant said Staff has encouraged the CLHOA to place that in the agreement, but since there are only 19 property owners, another option would be to have each property owner sign the agreement so it is clear they understand that is a consequence for non-payment. He said the City does not want to be in the position of cutting off water service if they do not have the authority to do that.

Mayor Miller asked if the agreement will require the signature of all property owners or a majority of property owners. Mr. Bryant said having all property owners sign the agreement is one approach discussed with CLHOA, but the normal collection process for assessments is a lien placed on the property that can be collected if the property owner sells the property or there is a foreclosure. One of the items Staff is working on is finding a less cumbersome way to ensure collection of the assessments by billing it through the City's utility billing process with the right to be able to shut off the water. This gives the potential lender a better comfort level that the loan would carry less risk.

Councilmember Hickman said Staff has done a great job on the draft agreement which has a provision that property owners must comply or their water can be shut off or a lien can be filed for non-payment. Another clause protects the City by holding the City harmless of all suits, proceedings, claims, demands, actions, loss, and expenses from liability of any kind and from any person connected with the agreement. He asked if the \$1 administration fee will be fair compensation to the City for billing the assessment and Mr. Bryant said according to the Finance Department, the \$1 per property may have to be adjusted annually, but felt the amount would be sufficient and consistent with what the City has done for sewer solutions in some subdivisions to cover costs. Councilmember Hickman was also concerned about

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creating a policy that includes stormwater utility funding when the City currently does not have a stormwater utility. Mr. Bryant said the City's only involvement with Cedar Lakes Addition would be helping in the collection of the assessment and the dam and lake will remain privately owned so there will be no additional maintenance responsibility placed on the City through this agreement. He said as Council continues to discuss the policy there may need to be a component for a funding source to be in place especially if the City is going to be responsible for maintenance costs; however, that can be decided on a case-by-case basis. He said there are some high hazard dam situations in Norman. Mayor Miller felt there may be future agreements in which a funding source may be necessary, but that is not the case for the agreement with Cedar Lakes Addition.

Councilmember Heiple said a loan requires collateral and banks do not usually loan Homeowner Associations money so how is the City going to satisfy a banker in partnership with the HOA? Mr. Bryant said the collateral is the property and he feels the main concern for the bank will be the ease of collection. Councilmember Allison said the City is not a guarantor so if anyone defaults, the City will not be responsible for that default, correct? Mr. Bryant said correct, "guarantor" is not a term being recommended by Staff. He said in discussions with bankers, they were pleased to know collections would be done by the City's utility billing system with the City having the right to cut-off water for non-payment.

Councilmember Castleberry asked if it would be legal for the City to spend money out of the Norman Utilities Authority (NUA) Water Fund to help a neighborhood for a non-water related project because all of these agreements will be stormwater related. Mr. Bryant said these agreements will be streamed through the NMA so funding could come from the Capital Fund. He said the City would not be able to use utility funding unless there was a Stormwater Utility. Councilmember Castleberry asked if there was a problem with the billing of the assessment being done through utility billings and Mr. Bryant said no, because utility billings are handled through the Finance Department.

Ms. Joy Hampton, [The Norman Transcript](#), said the City is looking at investing over \$17 million on Imhoff Creek and private property backs up to that creek so is the City going to assess those property owners the way the Homeowner Association (HOA) or (POA) agreements are being assessed? Mr. Bryant said Council is going to have to be creative on how to fund the various stormwater projects and a couple of options include a Stormwater Utility or General Obligation (GO) Bonds. Ms. Hampton said those options are still using public monies for private property so is the City applying a double standard here? Mr. Bryant said the item before Council tonight is a subdivision with a failing dam that reached out to the City to find a way to work together to enable them to obtain private financing for private repair of a private lake. Ms. Hampton asked if it was a City requirement for Cedar Lakes Addition to build the dam and Mr. Bryant said no, the developer built the lake and dam as part of an amenity or as a drainage solution for the subdivision. Ms. Hampton said it feels like the policy being discussed is inequitable and she would like to know how the policy is going to be equitably applied to everyone. Mayor Miller said this is a good conversation to have, but each problem will be different and will require a different resolution based on numerous complex considerations. She said while Imhoff Creek may run through private property it is an integral part of the City's stormwater system and is necessary to that system.

Mr. Bryant asked if Staff should complete the details of Cedar Lakes Addition and bring the agreement forward to Council on January 24th and Mayor Miller said yes, if all the details are worked out.

Item 1, continued:

Items submitted for the record

1. Memorandum dated December 30, 2016, from Leah Messner, Assistant City Attorney, through Jeff Bryant, City Attorney, to Honorable Mayor and City Councilmembers
2. Drawing of Cedar Lake Blanket Drain
3. Draft contract for Private Drainage Improvement Billing and Collection Agreement
4. PowerPoint presentation entitled, "Stormwater: Dams Public/Private Partnership" City Council Conference dated January 3, 2017

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Item 2, being:

UPDATE AND DISCUSSION REGARDING CORE NORMAN PLANNING DEVELOPMENT PROCESS.

Mayor Miller said Council has had many discussions regarding Core Norman issues and struggled with development, redevelopment, and parking issues in R-3, Multi-Family Dwelling District, parcels scattered throughout the core area. In May 2016, the Community Planning and Transportation Committee (CPTC) discussed several options for R-3 Zoning that included setbacks; reduction in allowed impervious coverage; parking restrictions; increase in required lot size for construction of larger structures, etc. Council has also been discussing the Center City Visioning Plan; a road diet for Main and Gray Streets; a parking garage for downtown and Campus Corner; parking regulations on Campus Corner; Center City Form-Based Code (CCFBC); neighborhood downzoning requests; and establishing a third Historic District. In the meantime, very large duplexes are springing up like mushrooms all over Core Norman and that continues to escalate so during these discussions, Council has been put in the position of needing to take some type of action to slow that construction down until Council can work out Core Norman issues.

Mayor Miller said she became seriously concerned when she heard about an application to construct a duplex with seven and eight bedrooms on each side in Core Norman, which is so out of character of the neighborhood and not the type of density the City is planning in Center City.

Councilmember Castleberry said the City has a three unrelated rule so how does the City approve those types of projects knowing they will not be in compliance? Ms. Susan Connors, Director of Planning and Community Development, said the Legal Department advised her that the City does not have authority to limit the number of bedrooms and bathrooms in a structure. Councilmember Castleberry asked why the City cannot stop something it knows is going to violate the City Code and Ms. Messner said that is a legitimate question and the Legal Department knows Council is concerned about it, but when a permit is issued, the developer is not violating the three unrelated ordinance. She said no one is living there and no one is occupying the structure so it could foreseeably be a family moving into the structure and under the R-3 regulations, legal structures are being built although they may arguably be illegally occupied. Mayor Miller said there is a very complicated process to try to prove three unrelated people live in these structures. Councilmember Hickman said he would be happy to have discussions on redefining the three unrelated person ordinance because there are currently challenges to enforcing the ordinance.

Ms. Connors said the City is currently engaged in a number of planning processes that impact Core Norman. Core Norman boundaries were defined many years ago as Robinson Street to the north, 12th Avenue to the east, Imhoff Road to the south, and Berry Road to the west.

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Ms. Connors highlighted processes and concerns in Core Norman that are causing tension as follows:

- The Center City Form Based Code which encourages increased density
- Downzoning to R-1, Single-Family Dwelling District, reducing allowed density in affected neighborhoods
- Proposed garage apartment overlay district allowing increased density
- Construction of large multiple-bedroom duplexes that change the character of neighborhoods
- Griffin-Urban Land Institute (ULI) proposal contemplating mixed commercial and residential uses with increased density
- Increased density impacts on public infrastructure particularly in the older Core Norman neighborhoods

In trying to resolve some of the tension, Council could revisit possible amendments to allowed uses in R-3 Zoning Districts; continue to work to finalize CCFBC; charge the Planning Commission with investigating any subject matter affecting or relating to the development and improvements of the City and make recommendations; and/or adopt an Administrative Delay on future activity within Core Norman for a specified period of time.

Ms. Connors said an administrative delay is the temporary halt of the issuance of certain building permits in a defined area for a defined period of time. A delay is typically enacted in order to call a “time out” on rapid redevelopment to ensure future impacts are carefully studied. She said Norman enacted a year-long administrative delay while the Porter Corridor Study was completed to balance interest of residential and commercial property owners within the study area. An administrative delay would preserve the current conditions in Core Norman while allowing Council the opportunity with citizen input to review all current activities in Core Norman holistically and implement policies to harmonize those activities.

Councilmember Clark said Cleveland County development in Core Norman needs to be reviewed as part of the overall process and Mayor Miller agreed.

Councilmember Hickman said he would support an administrative delay, is comfortable with the designated boundaries of Core Norman, and feels a one-year period to be a reasonable amount of time. He said that would give Council time to work on the issues identified. He suggested the administrative delay have an exception for R-1 Zoning Districts. He said R-2, Two-Family Dwelling District, and R-3 Zoning District definitions are confusing and he would like the Planning Commission to review the various residential zoning categories.

Mayor Miller said during the Porter Corridor Study administrative delay, a matrix was developed stating what could and could not be done during that delay and that was a great guide for people in that area.

Councilmember Castleberry is concerned about the elderly property owner who has to go into a nursing home or assisted living facility and their major asset is their mortgage-free home and they want to sell their home to pay for their new living facility, but because of downzoning they cannot sell their home for the same value they could have sold it for if the property was R-3. How does the City protect property rights so property owners get the value out of their property and still protect the neighborhood? If the maximum use of that property is to demolish the existing house and rebuild and the City will not issue a demolition permit then what are these people to do? He understands that would be a unique situation, but if the City is going to have an administrative delay these are things that need to be considered. Ms. Connors said there can be an appeal process in which Staff can review the situation on an individual

Item 2, continued:

basis. Councilmember Castleberry asked if the appeals process will be looked at through the buyer's or seller's standpoint and Ms. Connors said Staff will look at it from the standpoint of what the goals are to achieve the process. Mayor Miller said this is a temporary delay and the City wants to do it as expeditiously as possible to give the City time to get Center City approved, R-3 zoning ordinance updated, or both.

Councilmember Holman felt six months would be more appropriate than one year. He would expect Center City to be approved within six months since it has been a two and one-half year process already. He felt the boundary was too large and the City needed to specify exactly where the problem is. Mayor Miller said any R-3 zoning within the boundary area is a potential problem, but it is exacerbated within the central part of Norman.

Councilmember Hickman wanted to clarify that the administrative delay is a period of time when the City will not accept applications for new construction and demolition on specified zoning categories. Ms. Messner said the City could receive a building permit application tomorrow for an eight-bedroom house in R-1 so that should be included in the zoning categories. Councilmember Castleberry asked if that meant he could not get a building permit to build an eight-bedroom house for his personal use and Ms. Connors said for a period of time the City would not accept the building permit application.

Councilmember Holman asked the difference between an eight-bedroom single-family home built in R-1 versus an eight-bedroom duplex built in R-3 and Ms. Connors said a single-family home would probably not have eight bathrooms.

Councilmember Hickman asked Staff if they are beginning to see building permit applications for properties other than R-3 zoned properties for what has been described as the duplex-type structure with multiple bedrooms. Ms. Connors said those types of applications are being seen primarily in R-3 because a duplex cannot be built in R-1. Councilmember Hickman asked how often Staff is seeing building permit applications for new construction on R-1 property for single-family homes in the core area and Ms. Connors said there have been three in the last three months.

Councilmember Allison said the City cannot legally enforce the three unrelated rule, but the City can enforce the administrative hold? Why not put some teeth into the three unrelated rule because if the City can enforce an administrative hold they should be able to enforce the three unrelated rule. Councilmember Castleberry said it cannot be that difficult to find out if three people are related or not. Mr. Bryant said the problem is "proving" three unrelated people are living in the house versus two people living in the house with the third person being a "guest" who says they only stay at the home two to three nights a week. Mayor Miller has seen the process Code Enforcement must go through to prove three unrelated people live in a house and Staff spends a lot of time on that. She said anyone involved in that process knows it is a very complicated and time consuming process. Mayor Miller said Council has discussed the three unrelated person rule many times and has not taken action to alter to remove the ordinance. Councilmember Holman asked if children are included in the three unrelated person rule and Ms. Messner said yes. Councilmember Holman said part of the problem Council had when discussing the rule was that there are families who may have adopted children or there are same sex couples with adopted children who are not legally related so there are issues about what constitutes a family.

Councilmember Karjala asked how many Code Enforcements Officers the City employs and Ms. Connors said five. Councilmember Karjala said there are many compliance problems within the City, but Council is getting off-track by deciding whether or not an administrative delay is the best way to handle this particular problem. She agrees something needs to be done about enforcement issues because these are problems Council hears about from constituents every single day. She would support an administrative

Item 2, continued:

delay for six months, but felt it was going to take at least another year for Council to decide on Center City.

Councilmember Hickman would like to continue the R-3 Zoning Ordinance changes discussed by the CPTC in May 2016, and Mayor Miller said that is being scheduled. Councilmember Hickman also wants Center City Visioning Committee to come back to Council to decide on incentives, infrastructure, etc., to move that forward. He believes the Planning Commission should be tasked with reviewing the residential categories. He believes an administrative delay is needed and should be on a January agenda for Council approval because he is the Ward 4 representative and hears from constituents on a daily basis about the tear downs and rebuilds. He suggested the boundary be from Flood Street to Robinson Street and from Lindsey Street to 12th Avenue which he believes captures all the R-2 and R-3 properties in the primary core area.

Councilmember Castleberry asked Staff to research how many outside investors are building duplexes in the core area and how many local citizens are just fixing up their own property. Ms. Connors said Staff would do that. Councilmember Castleberry said the City is in the midst of reviewing the 2025 Land Use and Transportation Plan (2025 Plan) and as the City downzones neighborhoods and limits in-fill projects where will these types of projects take place in Norman? They will all take place in east Norman in Wards 1, 5, and 6 and felt that impact needed to be considered.

Councilmember Hickman said Center City allows for more density so if Council could get that passed, it would allow for more density than what is even currently allowed in R-3. He said the whole point of Center City is to allow the right kind of density and a higher level of density than what is currently allowed and the administrative delay will hopefully allow for Center City to get passed allowing more density in the core area. He said the duplexes currently being built are inhibiting and prohibiting the type of development the City has worked on for Center City.

Mayor Miller said it is important to remember that the problem is a single use type of structure. These structures serve as mini dormitories for students. These structures cannot be used for the missing middle, they are not good for senior citizens, they are not good for the young professional and those are the people the City is talking about attracting in the re-urbanized center area of Norman. The City wants to provide housing for these people, but right now Norman is providing more and more and more student housing, which the City wants to have because the City loves the University of Oklahoma (OU) and loves students, but Norman needs non-student housing options.

Mayor Miller said no one seems to have an issue with R-3 being discussed at CPTC or the Planning Commission reviewing the residential categories definitions. Councilmember Karjala said she did not want these issues to slow down the entirety of what Council is working on. Councilmember Castleberry said if the CPTC is going to review R-3 there is no reason for the Planning Commission to review R-3 as well. Councilmember Holman said there also needs to be a more defined map than what has been recommended for the administrative delay boundary.

Councilmember Allison said the City just needs to approve Center City and move onto stormwater issues.

Councilmember Heiple asked Ms. Connors how old the Zoning Code is and Ms. Connors said it was originally adopted in 1954. Councilmember Heiple asked if it is a fair statement to say the City is dealing with an outdated set of rules trying to solve a herculean problem and Ms. Connors said there are certainly some outdated portions of the Zoning Code that need to be reviewed. Councilmember Heiple said it is time for a new set of tools; otherwise Council will be in a perpetual fight. Mayor Miller said she did not

Item 2, continued:

disagree with that, but Council has an item on the table, is Council willing to go forward with an administrative delay? She would like enough time to study the issues, slow down what is going on in Core Norman, and try to move forward on discussion of Center City. She said an administrative delay could be the catalyst Council needs to do that. Councilmember Allison said he could not support a moratorium at this point and felt Council needed to solve the problem in other ways.

Councilmember Hickman said if Council does not like the tear downs and rebuilds that have been taking place in Core Norman then Council needs to support an administrative delay. He said ten demolition permits have been issued from October 7th to December 29th in Ward 4 and challenged other Councilmembers to find any neighborhood in their Ward where ten houses are being torn down. He said more and more applications are being submitted and this is becoming a serious situation in the core area. He said these duplexes are changing the look of Core Norman, not only the aesthetics of the structures, but the fact that older trees are being torn down and not replaced because there is no space for replanting. If Council wants to turn Core Norman into a bunch of boxes that house students with no trees then they can vote that way, but that is where Core Norman is headed. He said there are property owners who do not want these structures abutting their property and are asking the City for help prevent these intrusions into their neighborhoods. Part of Council's responsibility as elected officials is "police power" to protect the health, safety, and welfare of the citizens of Norman and that is done in part through zoning. That also gives Council the right to enact an administrative delay to push the pause button to allow Council time to review solutions to a problem. Council cannot stop the applications from coming in unless there is an administrative delay and there will be more demolition permit applications coming in at an accelerated rate.

Mayor Miller said she would agree with a six month administrative delay and would like that to be brought forward for a Council vote on January 10th. She said this would give Council time to decide what to do moving forward and give constituents some relief that the City is working towards a solution.

Items submitted for the record

1. Memorandum dated December 30, 2016, from Susan Connors, Director of Planning and Community Development, to Mayor and Councilmembers
2. PowerPoint presentation entitled, "Update of Core Norman Planning Processes," Council Conference dated January 3, 2017

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The meeting adjourned at 7:00 p.m.

City Clerk

Mayor