

## CITY COUNCIL CONFERENCE MINUTES

August 9, 2016

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a conference at 5:35 p.m. in the Municipal Building Conference Room on the 9th day of August, 2016, 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 THE FLOODPLAIN ORDINANCE.

Mayor Miller said Staff is not bringing forward any amendments and/or changes to the Floodplain (FP) ordinance at this time. She said tonight's meeting is only a review of the FP ordinance and she felt providing background as well as discussing the basics of the FP ordinance would be very helpful to new Councilmembers.

Mr. Shawn O'Leary, Director of Public Works, said Staff has been working on new amendments to the FP ordinance with the Council Oversight Committee for over a year. He said he will provide basic information on the FP ordinance and City Attorney Staff will highlight possible amendments to the FP ordinance that Council may consider in the future.

### **Floodplain: The Basics**

Mr. O'Leary said a floodplain is any land susceptible to being inundated by water from any natural resource and regulatory floodplain is land that is subject to a one percent (1%) or greater chance of flooding in any given year (often called the 100 year flood and/or 1% Chance Flood).

Mr. O'Leary said development in the floodplain needs to be regulated to reduce future flood risks to new construction in certain flood prone areas. He said Norman is required to participate in the National Flood Insurance Program (NFIP) created by Congress in 1968. The NFIP mitigates future flood losses through sound, community enforced building and zoning ordinances and provides access to affordable, federally backed flood insurance protection for property owners.

Mr. O'Leary said the Federal Emergency Management Agency (FEMA) provides the maps of the flood prone areas (Special Flood Hazard Areas) and designates areas as floodplain or has potential for flooding in the 100 year storm. The maps also designate floodway areas, i.e., channel of a watercourse and the adjacent land that must be reserved to discharge the base flood without increasing the water surface elevation more than a designated height and the Base Flood Elevation (BFE) which is the elevation above sea level of the 1% chance flood. Mr. O'Leary said the local floodplain management regulations are designed to reduce flooding risk for property owners and insurers.

Participating in the NFIP is important for Norman because Norman has 546 active flood insurance policies; 109 claims have been paid since 1979; 894 insurable structures are located in the floodplain; and federal disaster assistance can be received for flood related damages. Mr. O'Leary highlighted the history of the NFIP participation in Norman as follows:

- July 8, 1975: First FP ordinance/City joins the program;
- November 1, 1979: First FIRM/FIS (FEMA floodplain map);
- August, 1987: Revised FIRM/FIS issued;
- January, 1999: Revised FIRM/FIS issued;
- September, 2008: DFIRM/FIS issued; and
- February, 2013: Revised DFIRM issued.

Mr. O'Leary said Council approved revisions to the FP ordinance in 1978, 1981, 1986, 1987, 1989, 1997, 2003, 2004, 2007, and 2013.

Mr. O'Leary said Norman was accepted into the NFIP Community Rating System (CRS) on October 1, 2011, as a Class 5 community, stating only 52 communities in the U.S. (0.25%) of the NFIP communities have received a CRS class rating of five (5) or better on a scale of 10 with one (1) being the highest rating. He said Norman takes floodplain management very seriously and every point on the CRS rating scale reduces floodplain insurance 5% for citizens/constituents. Mr. O'Leary said 21,180 U.S. communities participate in the NFIP; 1,090 (5.1%) of those communities participate in the CRS program; and 12 of the communities are in Oklahoma.

Mr. O'Leary said the Flood Hazard District is in the Zoning Ordinance and functions as an overlay district whereas, the underlying zoning designation still applies with floodplain restrictions. He said a Floodplain Permit Committee reviews applications for development in the Flood Hazard District and the Committee is comprised of a Floodplain Administrator (Public Works Director); Director of Planning; City Engineer; Subdivision Development Manager; Principal Planner; and two (2) citizen members with Oklahoma Water Resource Board's (OWRB) floodplain training.

The general rules for floodplain regulation include allowing property owners to build in the portion of the floodplain that is not in the floodway (flood fringe), if the structure is elevated at least two (2) feet above the BFE. No structures can be built and/or no fill can be applied in the floodway. Fill can be applied in the flood fringe in limited circumstances, i.e., no rise in BFE downstream, compensatory storage provided, etc.

Mr. O'Leary highlighted the process for development in the floodplain as follows:

- Applicants submit application to Floodplain Permit Committee for consideration: lots of detailed information is required for consideration but the Committee has the option to request even more information if needed to make the decision;
- Floodplain Permit Committee holds open meetings to consider floodplain permit applications; and
- Floodplain Permit Committee is charged with determining specific flood hazard at the site, evaluating the suitability of the proposed use in relation to the flood hazard, and issues or denies the floodplain permit.

Changes to the FEMA floodplain maps include:

- Correcting mistakes in the map: Letter of Map Amendment (LOMA) – corrects an error in the maps and the City is not involved in the application process unless the City is requesting the correction; and
- Changing the designated floodplain on the map due to proposed or actual manmade alterations within the floodplain: placement of fill; modification of a channel; construction or modification of a bridge; construction of single or multiple residential or commercial structures on single or multiple lots. The application is made through the local community and applicant pays for the FEMA review.

Mr. O'Leary said the applicants can also request FEMA to change maps due to development. He said before developing begins, the applicant can submit a Conditional Letter of Map Amendment (CLOMR) and request FEMA's comments on the proposed structure(s) and/or project(s) that would, upon construction:

- Be located on existing natural ground above the BFE in the floodplain;
- Affect the hydrologic or hydraulic characteristics of a flooding source and result in modification of floodplain; and
- Based on fill – result in the modification of the SFHA through the placement of fill outside the existing regulatory floodway.

Mr. O'Leary said a Letter of Map Revision (LOMR) would change the floodplain map based on the implementation of physical measures that affect the hydrologic or hydraulic characteristics of a flooding source and result in modification of existing regulatory floodway, BFE or the SFHA. A LOMR officially revises the map. Mr. O'Leary said a Letter of Map Revision Based on Fill (LOMR-F) changes the map's SFHA based on the placement of fill outside the existing regulatory floodway.

### **Proposed Ordinance Amendments**

Ms. Kathryn Walker, Assistant City Attorney, said in 2014, a developer approached the City about the Bishops Landing Project which entailed razing an existing apartment structure and constructing new apartments. She said the property had a stream going through the property and a number of buildings that predated the FP ordinance were constructed in the floodplain and floodway. The developer removed the structures from the floodplain; added 1.3 acre feet of FP storage by excavating the side of a creek channel with no change to the depth or flow line of the stream; and constructed new apartments outside of the floodway.

Ms. Walker said during the Bishops Landing Project review and approval process, Staff identified some ordinance amendments that could be done to make the process work better should another similar application/project be submitted. She said the Councilmembers did not want to discourage these types of projects; however, Council also wanted to make certain the process covered the City and the projects were done correctly. Ms. Walker said the Council Oversight Committee discussed possible ordinance amendments at multiple meetings during 2015 at the Committee's direction, and full Council discussed the proposed amendments at a study session in February, 2016. She said Staff met with Sean Rieger, Harold Heiple, Neil Suneson, and Shari Stansel to gather input regarding the proposed changes.

Ms. Walker said the developer did seek a CLOMR from FEMA and FEMA granted the CLOMR stating they would change the floodplain boundaries based on what the developer said they would do. She said the Floodplain Permit Committee also reviewed the project and issued a Conditional Letter of Approval conditioned upon FEMA coming back stating the CLOMR was okay. The developer has received the CLOMR from FEMA and is in the process of installing the improvements/making changes to the property.

***Intersection of FEMA and City Process***

Ms. Walker highlighted the City's current process as outlined in the ordinance stating the owner of land requests a review of flood boundaries on his property and presents the information to the Planning Commission for review; the Planning Commission obtains technical analysis and recommends to Council whether boundaries should be changed as well as whether the City should request a LOMR. She said the City's current floodplain process directs the land owner to have corrections made on the floodplain map via the LOMA and reminded Council that the City is not involved in the LOMA process. Ms. Walker said the proposed amendment(s) would modify the language to clarify the process for incorporating LOMRs approved by FEMA into the FP ordinance and remove language related to LOMAs.

***When is Fill Restricted***

Ms. Walker said another issue that was identified from the Bishops Landing Project review process was regarding fill restrictions. She said current ordinance language reads fill is limited to elevation of individual residential and non-residential structures; construction or repair of public roads and bridges; and river or stream bank stabilization or reinforcement projects and, where authorized, fill must be the minimum necessary to accomplish the permitted development.

Ms. Walker said the proposed language refers to the LOMR process to ensure clarity and also references modification of the floodplain, including fill, excavation, dredging, channelizing and paving limited to:

- Elevation of single-family residential structures (and associated structures) and non-residential structures if no other reasonable location outside of floodplain. Structures cannot be located in the floodway;
- Construction of ponds less than five (5) acres for farm/ranch activity;
- Stabilization/reinforcement of river or stream bank;
- Construction/repair of public roads and bridges; and
- "Redevelopment or reclamation projects."

Mr. O'Leary said one of the attractions of the Bishops Landing Project was that the developer wanted to remove approximately seven (7) buildings that were located in the floodplain and modify the property before reconstructing new buildings that would no longer be in the floodplain.

***Define "Redevelopment or Reclamation Projects"***

Ms. Walker said the next proposed change will define "redevelopment or reclamation projects." She said this definition will address projects like Bishops Landing that disturb the floodplain more than a typical project, but actually improve its function. It will allow projects, with Floodplain Permit Committee's approval, that propose to reduce flood hazards through the removal of existing non-compliant development and which provide beneficial improvements to the function of the floodplain.

***Clarify Approval Process***

Ms. Walker said the current ordinance language states Council must approve the following floodplain modifications: modifications that would change the width of the floodplain 10% or more; construction of

a pond with a water surface area of five (5) acres or more; and modification of stream banks or flow line within the regulatory floodway unless work is done by the City. She said reports regarding floodplain modifications will be given to Council when plats are scheduled as agenda items for Council consideration. If no platting is involved, the reports will be given to Council prior to the issuance of the Floodplain Permit Committee permit.

Proposed language will add “redevelopment or reclamation projects” to the list of modifications Council must approve. New language will require a project report and the recommendations of the Floodplain Permit Committee be provided to Council at the time of its consideration for the floodplain permit.

Mr. O’Leary said Council has dealt with a couple of these recently; the first was the Lindsey Street/Imhoff Creek Project and the second was the West Main Street/Brookhaven Creek Project, when the stream banks were modified.

#### ***Miscellaneous Cleanup Items***

Ms. Walker said “including manufactured home parks and subdivision” is proposed to be deleted from the current ordinance and changed to “standards for subdivision proposals” because it is redundant. She said the FEMA’s zone designations will be updated as well.

#### **Council Comments**

Mayor Miller said the Bishops Landing Project was so different from any project ever brought before Council. She said the project included removing the existing apartments located in the core area of Norman that were also next to a stream. Some of the apartment buildings were located in the floodplain. Mayor Miller said the developer proposed not only to remove the existing structures, but to change/modify the entire contour of the earth and add storage to the property before they reconstructed the apartment building.

Mayor Miller said currently the Center City Visioning Committee is discussing the considerable amount of floodplain areas within core Norman as well as the number of buildings that are constructed within the floodplain. She said it would be difficult to continue the Center City Visioning Committee process unless the FP ordinance language is amended.

Councilmember Clark asked what areas of Norman would see this utilized and asked if there are areas we would not want to rebuild. Mayor Miller said it is primarily the core area and Ms. Walker agreed, stating the older core area(s) which includes the downtown shopping center. Ms. Walker said the FP ordinance was not adopted until the late 1970s; therefore, any structure built in the core area before that time could theoretically be impacted by the floodplain because there were not any regulations to prevent it.

Councilmember Hickman asked whether other cities allowed redevelopment or reclamation projects. Ms. Walker said Tulsa approved one of the first and best FP ordinances after a significant flood event in the 1980s and would be surprised if Tulsa did not allow redevelopments. She said although she does not have a list of cities who allow redevelopments, many, including Tulsa, may not address it as a redevelopment project but rather address through their General Standards.

Councilmember Hickman said he is concerned about being able to remove a structure in the floodplain and replace it with something larger. Ms. Walker said there is language in the FP ordinance that talks about “substantial damage”; however, looking at a purely zoning perspective, it would be a non-conforming use until the land use is changed. Mr. O’Leary said the “substantial damage” language states

all floodplain regulations would have to be met if more than 50% is damaged during redevelopment. Ms. Walker said a larger structure could replace a smaller structure if it meets the FP ordinance.

Mr. Jeff Bryant, City Attorney, said the FP ordinance is an overlay focusing specifically as to what types of structures can be in the floodway and floodplain. He said the underlying zoning of the property will dictate what type of use can be built. Mr. Bryant said if a developer totally tore down a structure, the non-conforming use would be gone and the developer would have to comply with the existing, underlying zoning and would only be able to build what is allowed under the zoning.

Councilmember Castleberry would like something to address pipeline in the floodplain and/or floodway and Councilmember Hickman agreed. Councilmember Hickman asked whether the City had any notice requirements for homes that have flooding problems and Mr. O'Leary said notices are sent for every floodplain permit application; Staff does public education, i.e., sends floodplain information to the 894 owners with insurable structures located in the floodplain; and notifies the repetitive loss properties (currently six properties) located in Norman.

Councilmember Karjala felt wildlife and/or environmental analysis should be part of the Floodplain Permit Committee application process.

Councilmember Allison said he felt the verbiage "reasonable" was a subjective term in the proposed change regarding fill stating "...Elevation of single-family residential structures (and associated structures) and non-residential structures if no other *reasonable* location outside of FP...". He said what may be reasonable to one may be totally different to another and asked whether this could be quantified. Ms. Walker said this has been discussed before; however, "better" terminology was not determined. She felt leaving the verbiage "reasonable" may be both favorable and un-favorable; however, good projects may be overlooked if it is defined a certain way in the ordinance. Councilmember Allison said he preferred hard, fast rules rather than broad.

Items submitted for the record

1. PowerPoint presentation entitled, "Floodplain Ordinance," dated August 9, 2016

The meeting adjourned at 6:28 p.m.

ATTEST:

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City Clerk

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Mayor