

CITY COUNCIL STUDY SESSION MINUTES

November 29, 2016

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 29th day of November, 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, Heiple, Hickman, Holman, Karjala, Mayor Miller

ABSENT: Councilmember Clark

Item 1, being:

DISCUSSION REGARDING STORMWATER FUNDING OPTIONS PRESENTED BY FREESE AND NICHOLS.

Mayor Miller said Council has discussed a Stormwater Utility (SWU) fee since 2008, stating a SWU fee will help address the ever-increasing stormwater needs throughout the community. She said in August, 2016, a SWU was taken to a vote of the people and was rejected; not because a SWU was/is not needed, but rather citizens expressed that more work was necessary in order to bring a better SWU plan forward. Mayor Miller said the City held approximately 20 SWU meetings and she felt the meetings helped raise public awareness regarding stormwater and water quality issues. She felt most citizens were more than willing to pay a SWU fee; however, citizens expressed a SWU fee be more equitable and fair.

Mayor Miller said the fact is the City has 190 square miles and is very complex geographically. Lake Thunderbird provides water to west Norman; however, west Norman does not contribute as much stormwater runoff and/or pollution to Lake Thunderbird and east Norman contributes more stormwater runoff and/or pollution to Lake Thunderbird, but Lake Thunderbird does not provide drinking water to East Norman. She felt the citizens of Norman, Council, and Staff understand a SWU is necessary because stormwater issues and runoff has an impact on all of us. The infrastructure needs to be better protected, expanded and/or maintained to include building bridges, enlarging culverts, and cleaning creeks and/or streams as well as to make certain Norman has a quality water supply long into the future.

Mayor Miller introduced Mr. Trey Shanks, Freese and Nichols, Inc., stating he had given Staff a presentation a few weeks ago and felt it would be beneficial for full Council to hear it as well.

Mr. Shanks said he has developed over 20 SWUs for cities over the last 15 years and each had different experiences, lessons and opportunities regarding stormwater issues and stormwater funding. He said tonight's meeting will be an open dialogue and encouraged Council to ask questions or make comments.

Mr. Shanks said the first fundamental need is for the Community to understand stormwater infrastructure and the need to keep it maintained. He said the City of Norman has good infrastructure and recognizes the necessary required maintenance. Mr. Shanks said other fundamental needs for Norman are water quality and flooding issues; however, when it is not raining the stormwater issues have a tendency to go unnoticed until the next storm related event occurs and the funding for stormwater also tends to be more inconsistent. Mr. Shanks said this creates a reactive funding approach to stormwater, e.g., too little funding when the need is not readily apparent and an abundance of funding after a major event. He said this "catch-up" methodology is likely to be more expensive as well as inefficient.

Stormwater Utility (SWU) Fee

Mr. Shanks said a SWU fee is one of the most common approaches for stormwater funding. He said a SWU fee is a user fee and is based off of the property's use of the stormwater system, i.e., the contribution of stormwater from property to the system that needs to be managed. Mr. Shanks said the revenue funds are restricted to stormwater related uses to include maintenance and capital improvements to the existing system. He said SWU fees are typically assessed on a monthly utility bill and are a stable and predictable form of revenue that would allow for a managed stormwater program.

Stormwater Impact Fee

Mr. Shanks said a stormwater impact fee is a developer fee and a one-time payment for impact of development to a storm system. He said a stormwater impact fee offsets a portion of expanded storm system costs from development and requires a City cost share program. Mr. Shawn O'Leary, Director of Public Works, said when applicable, the City currently assesses a Traffic Impact Fee and a Road Improvement Fee on new development. Councilmember Hickman asked whether those fees are voted on and Mr. O'Leary said no; however, they must be specific to a traffic and/or street improvement. Mr. O'Leary said, if desired, Council could impose a stormwater impact fee administratively on new development and Mr. Shanks said stormwater impact fees would best fit in an area that a great deal of development would be expected in a relatively short time near a specific watershed. Councilmember Castleberry asked whether the city or the developer would pay for the cost of a detention facility in those situations and Mr. Shanks said it would be a cost share; however, there is a limit as to what the City can recover from the developer side and most cities tend not to do the maximum on the developer side. He said typically impact fees go in concert and help complement one another.

Councilmember Hickman asked whether the City or Homeowners Association (HOA) would be responsible for maintenance of the detention facility if it is funded through an impact fee and Mr. Shanks said ownership and/or responsibility could be determined within a developer agreement. Councilmember Castleberry said easements would need to be obtained so either the developer, HOA, or City would provide maintenance and Mr. Shanks said yes, that is correct.

Grants and/or Loans

Mr. Shanks said there are many grants and/or loans available from the Federal Emergency Management Agency and the Environmental Protection Agency as well as the state level. He said some of the state and federal grants include the following: Clean Water State Revolving Loan Fund; Nonpoint Source Grant Program; Flood Mitigation Assistance Grant; Flood Protection Planning Grant; Hazard Mitigation Grant Program; Pre-Disaster Mitigation Grant; and Continuing Authorities Program.

Mr. Shanks said limited funds are available and the funds are heavily competed against by other entities and it also requires the City to cost share (25-50% typically). He said he does not recommend building a SWU plan solely on grant or loan funding; however, the City should always be aware of the grant and loan funding opportunities and be ready to use "other" funding to do a cost share or match. Mr. O'Leary said the City has obtained grants in the past for infrastructure needs but they can rarely be used for operational needs. He said Staff is presently working on grant funding through a new Oklahoma Water Resource Board program for a current capital project. Mayor Miller said Staff has been very aggressive with grant opportunities and Mr. O'Leary agreed; however, stormwater grants are just now becoming more available and better funded.

Special Districts

Mr. Shanks said improvement districts are sometimes used for a variety of funding purposes but can be used for capital improvements in a targeted area if there is a known issue and the City can have special funds dedicated to the specific initiative. He said this is not a very common stormwater perspective but is an available option.

Special Districts, continued:

Councilmember Castleberry asked whether the property owners affected by the watershed would have to vote on becoming an improvement district or would Council have the authority to declare an improvement district. Ms. Kathryn Walker, Assistant City Attorney, said if Oklahoma statutes pertaining to improvement districts were used, the action would be done by petition and the majority of the property owners would have to sign the petition requesting an improvement district. She said another option would be for Council to initiate it by a petition and would need to have a public hearing on the creation of the improvement district; an engineer would need to be hired to conduct the plan that would define the improvement and determine how the property owners would be assessed; another public hearing on the assessment would be scheduled and the property owners could voice and or challenge the improvement district; and eventually Council can determine the improvement district necessary and approve the action by ordinance which would levy the assessment to the property owners.

Mr. O'Leary said a good example of an improvement district was when the residents of the Marlatt Addition petitioned the City for City water to be brought to their homes. At that time, private water wells supplied the addition. Mr. O'Leary said a water line improvement district was established; water lines were installed in year one and the residents paid assessments annually for ten years until the assessment was paid in full. He said an improvement district for the dam repairs at Summit Lakes Addition could be done in the same manner. Councilmember Castleberry said Summit Lakes Addition has a HOA; therefore, would the HOA or the residents pay the assessment fees? Mr. O'Leary said in his experience, the homeowners, 600+ lots subdivision, would petition Council for a special assessment district to repair the dam. Mr. O'Leary said as long as 51% of the property owners signed the petition, the special assessment district can be granted. He said even though the other 49% (property owners) did not sign the petition and do not wish to have a special assessment district, if the special assessment district is approved and assessments are levied; the 49% would be assessed to pay for the dam improvements too.

Councilmember Hickman asked whether overlay development restrictions could be added to an improvement district. He said for example, if a neighborhood requested an improvement district to make repairs to a watershed located within their addition, could the neighborhood also request what could or could not be built or developed if it would affect the watershed they paid assessments on to make necessary improvements. Ms. Walker said the neighborhood's petition could not dictate a zoning overlay change because that is not an appropriate purpose of the improvement district. She said that would have to be a separate action done by the City. Councilmember Hickman asked whether a City resolution could be done instead and Ms. Walker said only an amendment to the zoning ordinance could create an overlay. Councilmember Hickman felt it would give property owners who might be assessed improvements a level of protection from new development, etc.

Councilmember Karjala asked whether an improvement district was done by citizen petition or City action and Ms. Walker said typically an improvement district is initiated by citizen petition; however, the statute allows the City to bring the improvement district forward.

Public-Private Partnerships

Mr. Shanks said public-private partnerships are cooperative participation agreements and can be a potential cost optimization to address stormwater issues. He said public-private partnerships are typically for capital improvements in targeted areas and can be used as a mechanism for a City cost share program.

Councilmember Chappel asked which of the above mentioned options would be the most suitable for the City of Norman's operations and capital projects. Mr. Shanks said typically what works well is having a SWU fee for annual maintenance and/or small capital projects and utilizing grant funding for the large capital projects. Mr. Shanks said improvement districts are project based and impact fees for new development are good options as well and the focus for these options would be the annual maintenance, whether City or residents maintained the stormwater area(s).

Public-Private Partnerships, continued:

Mr. Shanks highlighted SWU fees in Oklahoma to include Stillwater, Miami, Midwest City, Edmond, Muskogee, Shawnee, Sapulpa, Broken Arrow, Tulsa, and Oklahoma City. He said SWU fees have a wide range and those with higher fees tend to be cities that are trying to pay for the large capital projects or cities that are utilizing a fee structure approach.

Stormwater Utility Equitability

Mr. Shanks said it is important to tailor a SWU program to what works for the community. He said from a City and staffing standpoint, the easiest would be to have the lowest administrative burden which tends to be the less equitable stormwater program, i.e., every property owner and/or parcel charged a flat fee. On the other side, a more equitable stormwater program would charge every property owner and/or parcel an amount based on impervious area which is more of an administrative burden. Mayor Miller said during the public meeting process, many constituents came up with various ways to calculate SWU fees. She asked whether any of the cities who currently utilize a SWU program actually go site-by-site, to look at the watershed and run-off and Mr. Shanks said there are not many cities that do that currently; however, more and more cities are going towards that direction stating Dallas, Texas, is in the process of going site-by-site which has been approximately a five year process. He said the most common approach is to have a representation of tiers for residential properties, i.e., small, medium, and large, etc., and conduct site-by-site for non-residential properties. From a residential standpoint the burden is not worth it as much because the size of properties/parcels is not that great; however, commercial and/or non-residential property/parcel size variation can be very different.

Councilmember Castleberry asked how other cities treated gravel roads as impervious and Mr. Shanks said there are several answers to this complex question and this topic should be part of the SWU program discussion. Mr. Shanks said it is one of the first questions asked and each City must determine a policy standpoint for their community.

Common Stormwater Utility Fee Approaches

- Fee Structure: Flat residential fees; tiered or site-by-site commercial fees; and
- Use Determination: Impervious area

Enhanced Stormwater Utility Fee Approaches

- Fee Structure: Site-by-site evaluation;
- Use Determination: Effective impervious area to include: volume, rate, velocity, and quality;
- Impact to System: property land use and location in watershed; and
- Offset Credits: Adopt-a-Street; vegetative detention facilities; aeration fountain; parking lot sweeping; detention or retention pond amenity; permanent structural controls; velocity control credit; multi-state detention; riparian preservation; and zero discharge credit.

Mr. Shanks said the credits allow for an activity approach such as being a part of Adopt-a-Street Program to something more robust such as a zero discharge, i.e., for a two-year storm - there is no discharge or run-off from the site and could receive a 40% credit. Councilmember Allison said even if a site has zero impact, they would still be charged 60% of the SWU fee and Mr. O’Leary said the zero impact is for a “smaller storm,” i.e., two-year storm versus a 100 year storm. Councilmember Allison asked how the measurement of such would occur and Mr. O’Leary said engineers calculate the measurement/rates. Mr. O’Leary said Cambridge Addition is a very good example stating it has a very large basin pond/lake that will hold a certain amount of water as well as hold a certain amount of water above the water level for detention. Mr. Shanks said this type of detention pond will help eliminate run-off from the smaller, more frequent storms that are causing more erosion and sediment to be carried into Lake Thunderbird.

Stormwater Utility Equitability, continued:

Councilmember Chappel suggested the definition of what is considered an impervious surface, volume, rate, velocity, etc., be defined before discussions begin about the amount of money needed to be raised for stormwater. Mr. Shanks said that is a good point and for the most part the costs of a stormwater system far outweigh what is generated in revenue. He said it is very important to determine the property's use of the system before the rates are defined. Mr. Shanks said the Norman community is very educated about stormwater and felt the property owner would embrace a more robust approach to stormwater if the specific evaluation of the property's use is defined. He said, as an example, property owners who have a detention pond may want to know if they will be able to earn a credit and this is the very type of factor that will be useful, up front, for the property owner as well as the City.

Mayor Miller said many towns she researched had fairly small geographical areas and not the same (large) amount of rural area that Norman has. She asked whether Freese and Nichols has worked with cities that compare geographically to Norman and Mr. Shanks said no, not to the degree that exists in Norman. He felt the concept that would probably come into play for the large rural properties is a combined consideration of not only the amount of impervious area but also the amount of pervious area.

Mr. Shanks highlighted what amount of credit would be considered for a vegetative detention facility and permanent structural controls for the City of Frisco, Texas. Councilmember Castleberry asked whether the credits would be a one-time credit or an annual credit and Mr. Shanks said they are considered an on-going monthly credit. Mr. Shanks said some credit would not require any engineering documentation; however, the more robust stormwater credit options do require engineering documentation.

Fee Structures

Mr. Shanks said a SWU fee structure can and should be adjusted to meet the needs or the goals of the community. He said the City of Lubbock, Texas, recently adjusted their SWU fee structure from a four-tier rate system to a three-tier rate system. He said the four-tier rate system had the majority of the low-income area paying at the higher rate; therefore, it made more sense for the community as a whole to drop to the three-tier rate system while still collecting equitable rates.

Mr. Shanks said SWU funding is a toolbox and a SWU is one of many tools being used across the nation. He said most cities are recognizing that a combination of funding mechanisms is needed to meet the needs and funding options for costs shares are complementary. Funding approaches work best when tailored to the community's interests and goals. Mr. Shanks said the City should actively engage the community for input and buy-in.

Mayor Miller asked whether cities used bond funds as a stormwater option in addition to the SWU fee and other funding options. Mr. Shanks said yes, bonding is the logical option when larger stormwater projects need to be completed. He said the bond funds can be paid back by the General Fund and/or the SWU revenues; however, with the SWU, a challenge to be careful with is not to dedicate all of the revenue to paying off the debt for 10 to 20 years so that other projects cannot be done. Mr. Shanks said a good healthy balance of bonding with SWU revenue is important so new needs/services can be addressed if and when they arise.

Councilmember Castleberry asked if a bonding option is utilized, would all the revenue go into one fund or several funds and what is the best plan to attack capital projects. Mr. Shanks said it would depend on the size of the capital project(s); one approach is to have a bond action that will address a plethora of capital projects while another approach is a bond action that would address a large single project. He said it is common to have a stair step sequence for bonds and Councilmember Castleberry said Norman currently does similar rolling bond(s) for transportation projects.

Council Comments

Councilmember Chappel asked whether experience shows developers/owners are responding to stormwater design in order to obtain the possible credits and Mr. Shanks said yes, from his experience, stormwater design has been very positive and very well received by Councils as well as the communities.

Councilmember Hickman asked whether credits were given to property owners/parcels that already had stormwater design, i.e., detention ponds, vegetative detention facilities, etc., in place before the stormwater program began and Mr. Shanks said yes, credits were allowed for existing facilities.

Councilmember Hickman asked whether state, county, and/or city properties as well as school districts are exempt and Mr. Shanks said in Texas there is a specific state law that identifies what must be and/or can be exempt. For example, in Frisco, Texas, it is mandatory that state properties are exempt; however, Frisco made a policy decision to also exempt City and County property, school districts, and churches.

Councilmember Allison asked what the average SWU budget is nationwide, i.e., how much SWU revenue should a city collect to have a successful program and Mr. Shanks said it varies based off of the size of the city, existing and future infrastructure, etc. Mr. Shanks said a common residential SWU fee can range from \$5.00 to \$6.00 and appears to be trending upwards due to the increasing water quality regulations.

Mayor Miller asked whether there is a pattern as to how cities are addressing the stormwater issues and funding and Mr. Shanks said there are many different approaches. He said cities are encouraged to develop a five-year program in order to have a stable revenue stream and most cities do not raise SWU fees annually. Mr. Shanks said he did work with one city that incrementally raised the SWU fee to phase in the program by increasing \$0.50 on an annual basis.

Councilmember Castleberry asked whether the approach has been for cities to determine the amount that citizens are willing to pay every month or for cities to identify the capital projects including the amount of revenue needed to complete the capital improvements. Mr. Shanks said it is a process as well as “what the market could bear” approach; for example, a city may identify that \$10 to \$20 million in capital improvements was needed for a Stormwater Program, but the monthly SWU fee range would be too high for the market. He said, as with any budget, a city would need to prioritize the projects in order to get back into a reasonable fee range. Councilmember Castleberry felt maintenance and operations should be tended to first and anything “left-over” would be used for capital projects. Mr. Shanks said recently the City of Grand Prairie, Texas, raised their SWU fee after it had been the same for 20 years. He said Grand Prairie re-examined the SWU program and realized it would take 60+ years to complete the capital projects with the current SWU rate; therefore, they determined a more successful SWU program could be garnered if the monthly SWU fee was raised to accommodate the capital projects within 25 to 30 years. Mr. Shanks said it is common for cities to want to complete all of the capital projects in a “tomorrow” timely manner, but most of the time it is not cost feasible; therefore, each city needs to determine how much can be tolerated for cost versus time.

Councilmember Karjala asked what the average is for a commercial SWU fee and Mr. Shanks said he did not have any commercial figures right now, but would be glad to get them for Council.

Councilmember Hickman asked who pays for the pipe/pipelines and stormwater drainage within a new housing development and Mr. O’Leary said the developer pays for all the infrastructure to include, streets, water, stormwater and sewer. Mr. O’Leary said when the development is completed the City inherits the infrastructure for perpetual maintenance; therefore, the developer pays for the capital costs of the new infrastructure of a new development and the City pays for the maintenance of the infrastructure.

Council Comments, continued:

Councilmember Castleberry asked whether an HOA would pay for the maintenance of stormwater infrastructure and Mr. O'Leary said if a HOA exists for a private facility, the HOA would pay for the stormwater maintenance, e.g., Summit Lakes has a private dam and the Summit Lakes HOA pays for the maintenance of the dam.

Councilmember Castleberry said he has had constituents who feel the SWU rates should be the same for a 5,000 square foot home and a 5,000 square foot commercial business. Mr. Shanks said if Norman decided to use a *common* SWU fee approach, both residential and commercial would have the same flat fee; however, if an *enhanced* SWU fee approach is used, the rates will likely be different for residential and commercial because a site-by-site evaluation would be done.

Councilmember Hickman asked whether cities have assessed SWU fees per apartment unit using the basic standpoint for an impervious area, whether two stories or 10 stories and Mr. Shanks said Austin, Texas, implemented this; however, they recently lost a lawsuit for doing so. Mr. Shanks said by and large he does not recommend charging individual apartment units a SWU fee, rather treating an apartment complex as commercial property and dividing the commercial SWU fee total by the number of apartment units. Councilmember Castleberry asked whether the apartment complex owner would be billed the SWU fee or would the renter and Mr. Shanks said from his experience the preference is to send a single bill either to the apartment property owner or the management company that manages the apartment building.

Ms. Joy Hampton, *The Norman Transcript*, asked Mr. Shanks whether any of the other cities he worked with had to take rates to the vote of the people and Mr. Shanks said no; however, one city he worked with decided to go out for public referendum.

Ms. Hampton asked would the HOA or the individual homeowner(s) receive the SWU credit for having a retention/detention pond and Mr. Shanks said generally, getting the community input about what is the preferred approach is vital to the success of a SWU program. He said the credit structure for the City of Frisco is only specific to commercial/non-residential properties; however, another city he is working with has been looking at a rate structure specifically from a residential standpoint which includes a policy discussion of whether the HOA receives the credit or each individual property owner.

The next question was whether Freese and Nichols dealt with "net impervious surface areas," i.e., impervious area on a one-acre tract versus a ten-acre tract as a base ratio to calculate rates and Mr. Shanks said yes, it is important to learn how to recognize what is the context of the land the parcel is located on rather than treating the impervious areas as a vacuum.

Mayor Miller thanked Mr. Shanks and felt this meeting was very helpful. She said Council will continue to look at the next steps and begin working on stormwater public education as well as request community input. Mayor Miller said public meetings can be held a number of ways, but felt general ideas will need to be in place before the public meetings begin, i.e., a mechanism for the type of SWU funding the City desires; what type of rate structure are we focusing on; and future election dates, etc.

Councilmember Allison felt future SWU public meetings should not have pre-conceived ideas like the past public meetings because citizens were upset. He said citizens were opposed to the SWU proposal being brought forward and felt the City should encourage and listen to their ideas about a proposed SWU. Councilmember Castleberry agreed stating the community can tell the City what the community desires versus the City telling the community what the City desires.

Council Comments, continued:

Mayor Miller asked whether having some templates of general idea(s) reflecting a common SWU fee approach as well as an enhanced SWU fee approach would be a good idea and Council agreed. Councilmember Allison felt the public meetings should start with what does the market bear versus what can be done with the amount raised versus the dollar amount/budget the City needs.

Mr. Shanks said a proposed SWU budget is a somewhat needed approach because it is hard to support an issue if the impact is not known. He said in his experience, a model that allows for the continuous “what ifs” analysis is very helpful, i.e., what if the City exempts a certain type of property; what if the City implements a credit system; what will the rates be for a three-tier system versus four tiers; what will the rates be for a 20-year SWU capital improvements project versus a 10-year SWU capital improvements project, etc. Mr. Shanks said this model will allow the City as well as the community to “tinker” with proposals in order to get the right fit for Norman’s SWU needs.

Mayor Miller asked what kind of groups are needed for the public meetings, i.e., one large group, different focus groups such as HOA or Property Owner Association representatives, etc., and Mr. Shanks said recently one of the cities he was working with held a public SWU meeting at a scheduled Council meeting. He said the city had narrowed down seven different key issues with two to six options for consideration, which was over 1,000 different scenarios. Mr. Shanks said with Council, Staff, and community input, the options were tinkered with until the city found what SWU program worked best for them as a whole.

Mr. Shanks said some cities have stakeholder committees, i.e., community representatives that represent different segments of the community, obtain the buy-in, and make recommendations about the SWU program.

Items submitted for the record

1. PowerPoint presentation entitled, “Stormwater Funding Options,” City of Norman, dated November 29, 2016

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The meeting adjourned at 6:55 p.m.

City Clerk

Mayor