

CITY COUNCIL SPECIAL SESSION MINUTES

June 30, 2009

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in a special session at 5:30 p.m. in the Municipal Building Conference Room on the 30th day of June, 2009, 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 48 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Butler, Cubberley,
Dillingham, Griffith, Kovach, Quinn,
Thompson, Mayor Rosenthal

ABSENT: Councilmember Ezzell

Item 1, being:

DISCUSSION REGARDING PUBLIC COMMENTS RECEIVED ON THE PROPOSED STORM WATER MASTER PLAN AND GREENWAY MASTER PLAN.

Mr. Shawn O'Leary, Director of Public Works, began the meeting with an overview of the Storm Water Master Plan (SWMP) and Greenway Master Plan (GMP). He highlighted the primary goals and objectives of the SWMP as obtaining public input; educating the public on important issues; building consensus and support; addressing water quality and drainage challenges in an environmentally sound manner; enhancing recreational opportunities and developing a GMP; and defining funding solutions. He presented a summary of the potential flooding problem areas and the capital improvement solutions investigated. The key issues outlined in the SWMP are stream planning corridors and additional buffer strips; structural and nonstructural storm water quality controls; acquisition of drainage easements and rights-of-way; enhanced maintenance of creeks and detention facilities; and dam safety. He said 70% of the streams and channels do not have dedicated easements for maintenance purposes. There are 333 miles of stream planning corridors mapped in the SWMP, which provides for water quality benefits, storm water conveyance, riparian habitat, and greenbelt/trail opportunities. He recognized potential greenways and trails outlined on a citywide map identified by priority.

Mr. O'Leary presented the budget needs for implementation of the SWMP and identified the larger portions as 40% for capital improvements totaling \$82.5 million; 18% for enhanced maintenance of the streams and channels; 15% for greenways and trails; and 11% is for the Storm Water Phase II Program required and regulated by the Federal government. He said funding is proposed through the development of a storm water utility fee in conjunction with the issuance of General Obligation bonds in order to address some of the larger capital projects more quickly, i.e., McGee/Lindsey flooding issues, Imhoff Creek, etc. Mr. O'Leary said the storm water utility fee would be based on the total amount of impervious surface per property and Staff has already calculated that number for each property in Norman. He said the SWMP Task Force was opposed to exemptions for anyone and felt everyone contributes to storm water runoff and should be included.

Copies of the SWMP were printed and made available to the public for inspection at the Norman Public Library, Chamber of Commerce, City Clerk's Office, and the Public Works Department and the Plan was also accessible on the City's website. Public comments could be submitted electronically or in writing from April 10 through May 29, 2009. Mr. O'Leary summarized the public comments received and said the key issues surrounding the public comments are as follows:

- Water quality is a key regional issue
- Variances are needed for utility fee
- Enhanced maintenance is needed
- New trails in back yards violates privacy
- Low impact development standards are needed
- Availability of Federal/State funds to address needs
- Term of utility fee system – 20 years?
- Separate the GMP from the SWMP
- Are stream planning corridors and trails considered a taking?

Mr. O'Leary said how the City will proceed is Council's decision and Council can adopt the SWMP and GMP as submitted, adopt with conditions, or only adopt certain elements of the plans.

Items submitted for the record

1. PowerPoint presentation entitled, "Storm Water Master Plan/Greenway Master Plan" dated June 30, 2009

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Item 2, being:

PRESENTATION AND DISCUSSION REGARDING THE DRAFT PROJECT AND ACTION PLAN RELATIVE TO THE STORM WATER MASTER PLAN.

Mr. O'Leary presented a draft SWMP Action Plan by milestone for a 20 year period. Each milestone was identified by category, responsible party, and budgetary impact. He said some of the milestones do not have budgetary impacts and Staff could begin working on them immediately following adoption of the SWMP while others will require identification of a funding source to implement.

Councilmembers questioned whether the SWMP and GMP should be adopted or accepted and discussed various options and the challenges in moving forward without a funding source to implement the Plans. Councilmember Dillingham said Council needed to be careful when talking about adoption of the Plans and should limit direction for implementation. Councilmember Kovach said Council should move forward quickly as residents and business owners in many of the critical flooding areas identified in the SWMP have been battling flooding and erosion problems for many years and felt they deserve remediation of the problems, but did not want to limit the City's ability to make modifications along the way. He also felt consideration should be given for reduced rates and/or waivers for those who would qualify. Mayor Rosenthal was troubled with the term "adopting" as it was somewhat misleading. She said it is impossible to take everything included in the SWMP and put it into an ordinance for adoption and implementation and said the multiple funding options included in the SWMP were a clear example of that. However, she said there is a lot of scientific engineering data embedded in the report that is important to acknowledge and begin to utilize and Council will need to identify and create good policies for the remainder of the SWMP prior to implementation. Whether the Plans were adopted or accepted, Councilmember Butler suggested Council establish goals for implementation similar to the process Council used with adoption of the U.S. Mayors' Climate Protection Agreement.

Councilmember Butler said one piece she thought was missing from the SWMP was the ability to measure the impact of the SWMP. She felt the City should begin a good program now by collecting data and utilizing statistics to remove the impact of climate on the data collected to determine the impact of the changes implemented in each watershed and whether or not the changes were beneficial. She felt it is important to collect our own data and not simply rely on data collected by other agencies. Mayor Rosenthal recognized this is the first draft of the SWMP and after additional work by the Council SWMP Subcommittee or the Planning and Community Development Committee; Council may want to consider adopting a work plan to keep the processes flowing. Mr. O'Leary said both the SWMP and GMP have typographical errors and are in the process of being corrected prior to finalizing the Plans.

Councilmember Thompson referenced a letter received from Mr. Russell Dutnell, P.E., member of the SWMP Task Force, and asked for a response to his concerns. Mr. O'Leary said Mr. Dutnell has some really good points and in some ways he differs with the engineering philosophies promoted in the SWMP. He said Mr. Dutnell leans toward fluviology a little more than the SWMP set out to do and Mr. O'Leary felt some of Mr. Dutnell's issues were addressed in the action plan through the development of criteria manuals, some of which do not exist today. He said the development of the manuals would include input from outside engineers such as Mr. Dutnell as well as citizens and developers. Councilmember Dillingham felt the way to address some of the concerns Mr. Dutnell raises in his letter is for Council to adopt a storm water management system that will grow and change as science and technology grows and changes.

Items submitted for the record

1. Draft Storm Water Master Plan Action Plan by Milestone
2. Storm Water Master Plan and Greenway Master Plan Public Comments including minutes from two public meetings on May 19 and 27, 2009; letters from the Chamber of Commerce, Norman Developers Council, Builders Association of South Central Oklahoma, and Russell C. Dutnell, P.E., Riverman Engineering, PLC, also a member of the SWMP Task Force; comments received on the City's website; comment forms submitted at the public meetings

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Item 3, being:

PRESENTATION AND DISCUSSION BY FRANK GARZA, DAVIDSON AND TROILO LAW FIRM, REGARDING ADOPTION OF THE STORM WATER MASTER PLAN AND THE GREENWAY MASTER PLAN AND LEGAL ISSUES RELATED TO FLOODPLAIN DEDICATIONS AND REGULATIONS.

Mr. Jeff Bryant, City Attorney, introduced Mr. Frank Garza and Mr. Steven Pena with Davidson and Troilo Law Firm in San Antonio, Texas. He said Mr. Garza was the former City Attorney for the City of San Antonio prior to going into private practice and has extensive experience focusing on issues dealing with storm water management and municipal regulation. He said Mr. Garza has conducted seminars in this particular area of expertise and Staff is pleased to have his firm assisting the City of Norman in the adoption of the SWMP. Mr. Garza said he has worked in municipal law for 20 years and land development is an area he enjoys. He said whenever a municipality looks to adopt an ordinance that infringes upon the rights of property owners; it is subject to be challenged and that is the very reason his firm was asked to look at the draft SWMP and GMP.

Mr. Garza said as Council is aware, the SWMP proposes to implement a number of items that will affect private property owners' rights to their properties relative to what they can and can not do. He said the SWMP proposes to require stream planning corridors and flood plain dedications by easement for streams located in the Lake Thunderbird watershed and the GMP proposes side stream buffers of 15 feet on each side of the corridor. He said the question is whether or not the City can legally implement these requirements. Mr. Garza said if the City has completed a thorough analysis and adopts a plan that allows individual property owners to request variances to the Plan, the City will more than likely be successful in this Plan.

Mr. Garza highlighted the rationale for adopting the SWMP and GMP as water quality, flooding, and recreation. He said the Lake Thunderbird Watershed Analysis and Water Quality Report dated June 2007, provides the basic reasons as to why the City is considering the adoption of the SWMP and GMP. The City comprises a drainage area of almost 48% of Lake Thunderbird watershed and Lake Thunderbird is the City's main water source. Mr. Garza said as urban development occurs, the Report states further deterioration of the lake's water quality will occur. He said Lake Thunderbird was added to the State's list as an "impaired water body" in the state of Oklahoma and that is a perfect reason why the City needs to take action to improve water quality and it is clear the application of the current rules will not be sufficient to improve the water quality.

Mr. Garza said the issues his firm was asked to look at was whether or not the City's proposed requirements for flood plain dedication under the SWMP and GMP would be considered a "taking" under the U.S. or Oklahoma Constitutions, whether or not the Lake Thunderbird Watershed Analysis and Water Quality Report was sufficient to demonstrate the need for the SWMP and GMP, and whether or not affected property owners would have the right to request a variance from the ordinance. He said in a successful "takings" case the property owner would have to show the land regulation was so onerous it rendered the property useless. Public welfare regulations enacted by a municipality are granted broad judicial deference if the City can show a basis for regulation; however, each property would have to be looked at individually. If legally challenged, the Court would conduct the balancing test; the right of the private property owner versus the City's right of reasonable regulations that are necessary and bear rational relation to preserving the health, safety and general welfare of the residents. He said the Supreme Court of Oklahoma has ruled property owners' potential use of property is subordinate to the City's right to adopt reasonable regulations. He said if the City is able to show a clear need for water regulations that affect private property owners' rights; their rights are subordinate to the City's. He said Oklahoma Supreme Court has also suggested that only the most extreme and onerous regulations can constitute a "taking." One thing the Supreme Court has been clear about is that every property must be looked at on an individual basis. The City must be prepared to show a rational basis for its adoption of the SWMP and GMP and both would be considered water quality regulations and in some instances, flood regulations. The regulations must be shown to be narrowly tailored to meet the needs of the City and less restrictive regulations are not available. Mr. Garza said the Lake Thunderbird Watershed Analysis and Water Quality Report clearly shows the need to improve water quality, but there is nothing tying it to the SWMP and GMP. It is his opinion, the Lake Thunderbird Watershed Analysis and Water Quality Report needs to be supplemented to show the current proposed SWMP and GMP assist in improving the water quality. He said the City would need to make sure it conducts a case by case review and the Board of Adjustment would have the opportunity to review all variances requested by any private property owner. He said variances should only be granted if the property owner will suffer an undue hardship.

Mayor Rosenthal said from a public safety and private property damage aspect, if the SWMP shows an affect to flood control would that show a validation. Mr. Garza indicated that would tie together with the Plan. Mr. Pena said flooding can be deemed a nuisance and municipalities have the power to declare something a nuisance and take appropriate actions to abate that nuisance.

Mayor Rosenthal asked the Council Subcommittee to develop a resolution/action plan as the "next steps" for Council to review. Councilmember Cubberley asked that the public comments be considered in that process.

Items submitted for the record

- 1. PowerPoint presentation entitled, "Analysis of SWMP and GMP" dated June 30, 2009

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Item 4, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION TO HAVE CONFIDENTIAL COMMUNICATIONS WITH ITS ATTORNEY AS AUTHORIZED BY OKLAHOMA STATUTES TITLE 25 § 307(B)(4) ON THE ADVICE OF SPECIAL LEGAL COUNSEL THAT DISCLOSURE OF SUCH COMMUNICATION WILL SERIOUSLY IMPAIR THE ABILITY OF THE PUBLIC BODY TO CONDUCT LITIGATION AND PROCEED IN THE PUBLIC INTEREST WHEN CONSIDERING THE ADOPTION OF THE STORM WATER MASTER PLAN AND GREENWAY MASTER PLAN.

Item 4 was not considered.

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Item 5, being:

RESOLUTION NO. R-0809-162: A RESOLUTION OF THE CITY OF NORMAN, OKLAHOMA, APPROPRIATING CAPITAL FUND BALANCE TO A CAPITAL FUND EXPENDITURE ACCOUNT IN THE AMOUNT OF \$3,053,000 FOR TRANSFER TO THE UNIVERSITY NORTH PARK TAX INCREMENT FINANCING DISTRICT ("UNP TIF") FUND TO PROVIDE FUNDING FOR EXPENDITURES INCURRED BY THE CITY IN FYE09 (FISCAL YEAR ENDING JUNE 30, 2009) RELATED TO THE ROCK CREEK ROAD OVERPASS OF I-35.

Item 5 was not considered.

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ADJOURNMENT

There being no further business, Councilmember Cubberley moved that the meeting be adjourned, which motion was duly seconded by Councilmember Quinn; and the question being upon adjournment of the meeting, a vote was taken with the following result:

YEAS:	Councilmembers Butler, Cubberley, Dillingham, Griffith, Kovach, Quinn, Thompson, Mayor Rosenthal
NAYES:	None

The Mayor declared the motion carried and the meeting was adjourned at 6:45 p.m.

ATTEST:

City Clerk

Mayor