CITY COUNCIL STUDY SESSION MINUTES

February 16, 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 16th day of February, 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 Castleberry, Heiple, Holman, Jungman, Lang, Miller, Mayor Rosenthal
ABSENT:	Councilmembers Allison and Williams

Item 1, being:

DISCUSSION REGARDING POSSIBLE AMENDMENTS TO THE CITY OF NORMAN FLOODPLAIN ORDINANCE.

Ms. Kathryn Walker, Assistant City Attorney, said the City of Norman is part of the National Flood Insurance Program (NFIP) which is a program that provides affordable flood insurance for properties located in the floodplain. She said the City had to adopt floodplain management regulations in order to join the NFIP. She said the City monitors the floodplain utilizing three (3) mechanisms.

1) Flood Hazard Identification (mapping);
2) Floodplain Management (building codes and zoning regulations); and,
3) Flood Insurance (provision of reasonable priced insurance for property owners in participating communities).

Ms. Walker presented a City of Norman Floodplain map to Council reflecting the 100 year flood including the floodways and floodplains located in Norman. She highlighted Norman's approach to floodway regulation as follows:

- No adverse impact regulatory approach:
  - Structures at least two (2) feet above the base flood elevation (BFE); FEMA requires one (1) foot;
  - Certification of no more than .05 feet rise in BFE on any adjacent property as a result of the proposed work;
  - Engineering Design Criteria – requires unimproved drainage ways left in a natural state to dedicate to the public and platted to include the floodplain width; and
  - Engineering Design Criteria – prevents any and all drainage interferences, obstructions, blockages, or other adverse effects upon drainage, into, through, or out of property.

Ms. Walker said when someone wants to construct in the floodplain they must obtain a floodplain permit and highlighted the procedure(s) as follows:

<u>Floodplain permit committee process</u>: 1) the FC hears all applications for floodplain permits; 2) the FC meets on an as-needed basis on the first or third Monday of each month and shall post a public notice accordingly; and 3) property owners adjacent to a proposed development will be notified before a floodplain permit is issued.

<u>Appeals and variances may be granted by the Board of Adjustment (BOA) in limited circumstances</u>: 1) new construction and substantial improvements on lots contiguous to and surrounded by lots with existing structures below BFE; 2) reconstruction, repair, restoration or rehabilitation of historic structures if exception is the minimum necessary to preserve historic character; and 3) no variances in designated floodways if any increase in flood levels during the base flood discharge would result.

Ms. Walker said the City requires at least two (2) members of the BOA to successfully complete the Oklahoma Water Resources Board (OWRB) basic floodplain training, an eight (8) hour course, so they have some technical knowledge with which to review the applications.

Councilmember Castleberry asked what would happen if Staff did not like the outcome of the Floodplain Committee; he said obviously the applicant can appeal to the BOA, but asked if there is a process where Staff can object if the applicant appeals to the BOA. Ms. Walker said Staff makes up the majority of the Floodplain Permit Committee and only in limited circumstances does the floodplain permit application come to Council; therefore, it is not often that Council is aware of the application or involved in the floodplain permit process. She did not believe this particular scenario has happened before, but they could appeal the BOA. Councilmember Castleberry said having Staff on the Floodplain Permit Committee, ultimately making the decision whether or not to approve the application, seemed biased and possibly unfair to the applicant. Ms. Walker felt the ordinance was adopted to include Staff on the Floodplain Permit Committee so there would be members with technical expertise to review the applications.

Mr. Shawn O'Leary, Public Works Director, said he serves as the Floodplain Administrator and is Chair of the Floodplain Permit Committee and other Staff members include: Scott Sturtz, City Engineer; Susan Connors, Planning and Community Development Director; Jane Hudson, Principal Planner; and Ken Danner, Subdivision Development Manager. Mayor Rosenthal said the remaining three (3) citizen members are also required to complete the eight (8) hour OWRB basic floodplain training; however, most of the citizen members have gone further and also completed the Certified Floodplain Managers (CFM) course. Mr. O'Leary felt many Floodplain Committees in other cities, locally and around the nation; include Staff because it is a very detailed and technical process and ultimately making certain there is no harm done to the floodplain.

Ms. Walker highlighted the special circumstances requiring approval by City Council to include: 1) a modification of the floodplain that results in a change of ten percent (10%) or more in the width of the floodplain; 2) the construction of a pond with a water surface area of five (5) acres or more; and 3) any modifications of the stream banks or flow line within the area that would be regulatory floodway whether that channel has a regulatory floodplain or not, unless the work is being done by the City Staff as part of a routine maintenance activity.

Staff highlighted the FEMA Regulatory Map Amendments are as follows:

- *Letter of Map Amendment (LOMA):* 1) correcting errors or mistakes; 2) Applicant: City and property owner; and 3) must be supported by engineering studies. The LOMA process (single lot, small corrections) includes a letter by property owner to FEMA.
- *Letter of Map Revision (LOMR):* 1) development that modifies floodplain/floodway; 2) Applicant is both the City and the Developer; and 3) must be supported by engineering studies. The LOMR process includes a floodplain permit (conditioned on FEMA approval) and advises FEMA if Community Administrator supports the request;
- *Conditional Letter of Map Revision (CLOMR):* advises FEMA of the development plan; if approved, then construction can begin; following construction, the planned improvements must be fully documented with FEMA.

Councilmember Lang asked whether there would be a reason a property owner would ever look at the floodplain unless they were developing the property, and Ms. Walker said it would be unlikely unless it is already impacting their property. She said an example might be if the property owner had a structure on the property and a new floodplain map was established reflecting the structure and/or property was now located in the floodplain. He asked how the City informed the property owner in such an instance and Ms. Walker said anytime the floodplain map(s) are proposed to be revised, the City gives public notice to any property owners that may be impacted. She said those property owners would have an opportunity to address their concerns, if any, with Staff before any revision(s) to the floodplain map were completed.

Ms. Walker said following FEMA review and approval of either a LOMA affecting multiple properties or a LOMR application, the City's FH Overlay Zoning District must be amended by Ordinance per Section 22:429.1(3). The Planning Commission reviews and makes recommendations to Council and the Council reviews and approves by adopting an Ordinance.

Section 3(a): District Boundaries: Current language requires individual property owners to pursue technical corrections to floodplain via the Planning Commission. A LOMA is the process to correct technical errors for individual properties and is initiated and granted wholly outside the City process. Revised language clarifies the process for LOMRs in that they would come to the City for revision of the maps via a zoning ordinance amendment after FEMA approval.

Section 3(c): modifying language to clarify that the process described in this section is for incorporating a LOMR approved by FEMA into the City's local floodplain ordinance for local regulatory jurisdiction. Language that relates to LOMAs is recommended to be removed. LOMAs are for the purpose of correcting a Flood Insurance Rate Map (FIRM) mapping errors and do not relate to changes in the floodplain or floodway due to development or construction activity. LOMA requests can be made directly to FEMA and are not reviewed by the Floodplain Permit Committee because no development activity is proposed with a LOMA application and are not reviewed by the Planning Commission or City Council. The language regarding the LOMA process that is recommended to be removed has created a lot of confusion regarding the role of the Planning Commission and the City Council in the LOMA process.

Section 4(b)(1): modifying the language to more clearly state what may be permitted, as opposed to what is permitted as an exception to a blank prohibition, removing language considered redundant, and adding language to clarify how the LOMR process fits into the Floodplain Permit Committee and City Council review processes on projects proposing to modify the floodplain through development activity.

Section 4(b)(1): renumbering subparagraphs as (i) – (v) instead of (a) – (e) to be consistent with designation of other subparagraphs in the floodplain ordinance and adding the following lead in language "*the proposed modification is*" to each subparagraph;

Section 4(b)(1)(i): Current language states the use of fill is limited to the elevation of individual residential and non-residential structures; construction or repairs of public roads and bridges; and/or river or stream bank stabilization or reinforcement projects – only the minimum amount necessary. She said proposed language states: minimum amount of floodplain modification is allowed with a permit in limited circumstances to include: elevation of single-family residential and non-residential structures (if no reasonable location outside of the floodplain); farming ponds less than five (5) acres; river or stream bank revitalization or reinforcement projects; construction or repair of public roads and bridges; and/or redevelopment or reclamation projects.

Section 4(b)(1)(v): adding modifications to the floodplain that are part of a redevelopment or reclamation project, which is more defined in Section 4(b)(17).

Ms. Walker said the big change to this section is the elevation of single family residential and non-residential structures and there was a lot of discussion on this topic at recent Oversight Committee meetings. She said discussions really centered on "how much" modification to the floodplain does the City want to allow, i.e., does the City want to allow large-scale projects or limit the modification(s) to single family type homes.

Section 4(b)(16): clean-up to reflect FEMA's current zone designations.

Section 4(b)(17): adding new language to specify that redevelopment or reclamation projects that reduce flood hazards through removal of non-compliant development and which provide beneficial improvements to the floodplain through modifications to the floodplain may be permitted. This will reduce flood hazards by removing existing non-compliant development AND provide beneficial improvements to the function of the floodplain including: increase storage capacity; reduced velocities and erosion; restored natural functions of the floodplain; and improve discharge efficiency.

Section 4(b)(17), continued: Ms. Walker said this new language is due to the Bishops Landing process because it was a non-compliant property in the floodplain and the redevelopment project allowed the developer to get the property out of the floodplain/floodway. She said Staff wanted to create a circumstance by which Council and/or the Floodplain Permit Committee could approve similar projects that actually bettered the original floodplain properties, such as properties in the core area that were built before the City had floodplain regulations.

Section 4(b)(18) [formerly 17]: clean up redundant language in subsection (iii), clarify that a redevelopment or reclamation project under 4(b)(17) will require Council approval regardless of whether the project changes 10% or more of the width of the floodplain (subsection iv).

Ms. Walker said the proposed language clarifies the current practice of obtaining Council approval after the Floodplain Permit Committee reviews the proposal. She said this requires a project report and recommendation of the Floodplain Permit Committee's conditional approval to be given to Council and adds one additional type of floodplain modification requiring Council approval – the redevelopment and/or reclamation projects.

Section 4(b)(18)(iii): Ms. Walker said the proposal will remove the redundant language in this section.

Section 4(f): Standards for Subdivision Proposals – During Oversight Committee discussions, Chairman Miller identified this as another potential area for cleanup as the current language "all subdivision proposals include manufactured home parks and subdivisions" is redundant. Ms. Walker said this proposal will remove redundant language.

The Council Oversight Committee met in January and February, 2015, to discuss the floodplain ordinance after concerns were raised regarding how the current ordinance applied to the Bishops Landing project. Concerns expressed included some members of Council expressing a desire to clarify the process for Planning Commission and Council approval of floodplain permits, particularly related to how the City approval processes coincide with FEMA CLOMR and LOMR processes. Additional concerns include the level of modifications to the floodplain that should be allowed, whether current language allowed residential structures other than single family dwellings to be constructed in the floodplain, and how to accommodate projects that improve the floodplain's function.

Ms. Walker said the Committee recently discussed the floodplain ordinance again on November 19, 2015, and Staff presented draft changes to the Committee. During the discussions, Harold Heiple, on behalf of the Norman Developer's Council, and Sean Rieger, on behalf of the Builder's Association of South Central Oklahoma (BASCO) stated they had objections to the ordinance. Ms. Walker said Chairman Miller requested Staff meet with Mr. Heiple and Mr. Rieger to discuss the proposed amendments and requested Staff bring the ordinance draft to full Council at a Study Session.

Council comments:

Councilmember Castleberry asked whether or not the Developers Representatives' concerns were addressed and whether or not their suggestions were added to the proposed Floodplain Ordinance amendments. Mayor Rosenthal said the Oversight Committee requested Staff bring this issue to full Council in order to gain Council input before they made any proposed changes to the ordinance amendments. She suggested Council look at each of the sections/proposals one at a time and discuss them.

Councilmember Miller requested Staff provide clarification of a CLOMR versus a LOMR, as well as "who" sends map revisions to FEMA. Mr. O'Leary said the Floodplain Ordinance directs the floodplain administrator, i.e., City Staff, to take floodplain map revisions to FEMA; however, floodplain map revisions can be derived from a number of resources. He said both a LOMR and CLOMR are developments that modify the floodplain/floodway, must be supported by engineering studies, and the floodplain administrator advises FEMA that they support the request(s). The CLOMR allows construction to begin and when finished it must be fully inspected/documented with FEMA.

Council comments, continued:

Section 4(b)(1) regarding "minimum amount of modification necessary":
Councilmember Castleberry said the proposal as written does not allow a developer to do more (improvements), only the minimum within the floodplain and Ms. Walker said the proposal is written as such to discourage unnecessary modifications to the floodplain. Mr. O'Leary said the principle is to leave the river and/or stream as natural as possible unless a compelling reason can be established and there is a science concept that natural streams are better off left alone rather than cutting up or changing them. Councilmember Castleberry questioned if that means improving or making the river and/or stream better and Mr. O'Leary said "improving and/or making it better" would take you back to the "minimum amount of modification necessary."

Mayor Rosenthal said Section 4(b)(17) regarding redevelopment and/or reclamation projects addresses the scenario of what can be done in the floodplain to achieve the developers' and/or City's goal and she felt that neither the developer nor the City would want to do more than is necessary. Councilmember Miller agreed and felt the ideal standard is not to impede the floodplain any more than is necessary.

Councilmember Castleberry said he would feel better if "at least" was added before the language "minimum amount of modification necessary" and Ms. Walker stated the applicant would indicate the goal which they desired to reach on their floodplain permit application and if/when approved, Staff would require the applicant, according to the proposed amendment, to use the "minimum amount of modification" or "disturb the minimum amount of floodplain" to achieve that particular goal. She said the proposal will not inhibit the applicant from making improvements, but rather require only the minimum amount to achieve the applicant's goal. Councilmember Jungman said the City does not state or determine the applicant's project. He said the applicant comes to the City with a project located in the floodplain, submits an application for a floodplain permit, after receiving a floodplain permit and approval, the City would tie the applicant's actions to their project stating they have to do only the minimum modification necessary to accomplish the project they submitted to the City.

Section 4(b)(1) regarding "allowing the use of fill for individual residential and non-residential structures":
Staff said the current ordinance states "individual structures and non-residential structures," but after discussions at the Oversight Committee Staff was requested to change verbiage to "single-family structures" rather than "individual structures." Councilmember Castleberry asked why not use the word "structure" regardless of its use and Ms. Walker said concern expressed at the Oversight Committee included whether or not the City would want to allow large-scale developments versus a single family home on a single family lot. Councilmember Miller said a huge multi-family complex is considered a single structure.

Councilmember Castleberry said he did not see the difference if a developer wanted to build a multi-family structure or a single-family structure if they were willing to make the necessary modifications and improvements to the floodplain. Mayor Rosenthal asked if there would be issues if property is located in the existing RM-6, Multi-Family Dwelling District, with a Flood Hazard District Overlay and Staff said yes. Ms. Walker said construction would not be allowed on property in the Flood Hazard District Overlay without a building variance and building variances are only allowed in certain circumstances. Ms. Walker said this issue may need to be addressed in this language/section.

Mayor Rosenthal felt the City did not need to be encouraging intense development within the floodplain. She said the purpose of adding this language is because Staff did not want to restrict improvements to the floodplain because there are many non-conforming structures located in Norman that pre-date the floodplain regulations. Councilmember Castleberry asked how a project would become a redevelopment or reclamation project as opposed to a new project and Ms. Walker said redevelopment and/or reclamation projects are directed more towards the Norman core areas because they pre-date floodplain regulations.

Council comments, continued:

Section 4(b)(1) regarding "allowing the use of fill for individual residential and non-residential structures", continued: Councilmember Lang asked what the verbiage "fix it" (in the floodplain) meant; and asked whether it would apply to individuals who make application to construct within the floodplain on a one-on-one basis. Ms. Walker said the standard for "fixing" or redevelopment/reclamation projects is located in the next section and states what the applicant would need to do in order to "fix" or improve the function of the floodplain. Mayor Rosenthal said that is why the first principal of this section is so very important (minimum amount of modification necessary) and wants to make certain the language clarifies construction for either new development in green open space versus redevelopment. Councilmember Miller said she was also concerned about property currently zoned multi-family and asked if the proposed language "single-family" would eliminate this issue. Councilmember Jungman did not feel like there were a lot of vacant properties zoned multi-family that are also located in the floodplain.

Section 4(b)(1) regarding "if no reasonable location outside the floodplain": Councilmember Lang and Councilmember Castleberry said they were concerned about the word "reasonable." Mayor Rosenthal restated she felt the City should not encourage more structures in the floodplain and felt it was a very practical policy to encourage construction outside the floodplain if there is a reasonable alternative. Councilmember Castleberry said some citizens felt the City is not reasonable and he is not certain any entity can determine the meaning of the word "reasonable," i.e., Council, Developer, and/or BOA, etc. Ms. Walker said reasonable is hard to define because it varies from circumstance to circumstance. Councilmembers Jungman and Miller suggested striking the word "reasonable." Councilmember Holman asked if the proposal would change to "…if no location outside of the floodplain…" and Mayor Rosenthal suggested replacing "reasonable" with "structurally feasible." Councilmember Jungman felt "structurally feasible" could become problematic.

Section 4(b)(17) regarding Redevelopment or Reclamation Projects: Mayor Rosenthal said this is a new section designed to make it possible to redevelop properties such as in the downtown core area. She said concerns have been raised as to what constitutes as beneficial improvements to the floodplain when referring to the four points in the proposal 1) storage capacity; 2) reduced velocities and erosion; 3) restored natural functions of the floodplain; and 4) improved discharge efficiency. Councilmember Castleberry asked how the City would handle a scenario if one or two of the points did not need to be completed, i.e., storage capacity was acceptable and did not need to be improved.

Ms. Walker said the Developers' Representatives recommended adding "...but not limited to… increased storage…" and also adding verbiage "or" because leaving only "and" rather than "and/or" would still indicate the applicant(s) still has to fulfill all four points. Mayor Rosenthal said adding "but not limited to" is useful addition; however, she felt leaving only "and" was sufficient.

Section 4(b)(18) regarding Process and Council Review: Mayor Rosenthal said she has no issue if floodplain modifications come to Council for consideration. Councilmember Jungman asked Staff if there would be a situation where an application was denied by the Floodplain Permit Committee, then come to Council where it might be approved and Ms. Walker said currently, if the floodplain permit is denied the next step would be to appeal to the BOA; however, the Developers'/Builders' Representatives would like the ability to move the floodplain permit directly to Council, not to the BOA, along with a project report and the recommendations of the Floodplain Permit Committee. Staff said the ordinance would need to be amended if Council desires this change.

Section 4(b)(18) regarding Process and Council Review, continued: Councilmember Jungman said he did not agree with taking the BOA step out of the process and wondered what was trying to be addressed with the suggestion. Councilmember Jungman asked what issues the BOA is having and Mr. Steve Lewis, City Manager, said the BOA is comprised of five (5) members and regular attendance has been down. Mayor Rosenthal said a concern that has been expressed is if there are only three (3) BOA members in attendance, essentially one (1) vote can veto the BOA as opposed when all five (5) BOA members are present. She said Council will have a new and reappointment BOA member on the next Council agenda to consider. Mr. Sean Rieger, representing BASCO, said the BOA process has become more and more difficult over time, but was aware of changes being made to address the issues. He felt the BOA members are not as qualified, i.e., floodplain certified, etc., as the Floodplain Permit Committee members to make recommendations regarding floodplain issues. He said when a project is in the flow of development, it is awkward to sidestep and go to the BOA and the recommended process would be similar to the Planning Commission process, i.e., if an application is denied at Planning Commission, the project moves forward for Council consideration. Likewise, if an application is denied by the Floodplain Permit Committee, it would move forward to the Council for appeal instead of the BOA.

Councilmember Miller said she feels it is up to Council to deal with and solve the problematic issues, whether they are political or not. She asked Staff, in terms of frequency, how many items this "new" provision might be used over the years and Mr. O'Leary said in the last nine (9) years there have been only three (3) instances out of 100 applications. Ms. Walker reminded Council the provision would be used if one (1) of the applications coming forward is one (1) of the floodplain projects outlined in Section 4(b)(18). Mayor Rosenthal said trying to streamline the processes has been a goal so adding another step to go to the BOA when the application will be coming to Council anyway would not be persuasive to her.

Councilmember Lang felt if there is no way to appeal a process then the public's perception is that the City does not care. He said citizens feel like they have better influence dealing with someone they can vote in or out of office versus citizen volunteer committees.

Developer Representative's Concerns:

Mr. Rieger said he would appreciate Council's consideration of the following suggestions for the possible ordinance amendments:

- **Section 4(b)(1)**: has concerns about adding the language limiting modifications of the floodplain to the "minimum amount of modification necessary" would now apply to all modifications of the floodplain, not just river or stream bank stabilization or reinforcement projects;
- **Section 4(b)(1)(i)**: has concerns that this change would not allow for any elevation of individual residential structures that are not single-family, i.e., multi-family, duplex, etc., would no longer be allowed and elevation structures in the floodplain would only be allowed if there is "no reasonable location for structures outside of the floodplain," i.e., it is difficult to define "reasonable" because what may be reasonable to one, may be unreasonable to another;
- **Section 4(b)(17)**: has concern that the list of things that could be done to make beneficial improvements to the floodplain was all inclusive and did not include all floodplain improvements that could be considered beneficial. Mr. Rieger said leaving the word "and" in the verbiage states the applicant will still have to fulfill all four points. and
- **Section 4(b)(18) [formerly 17]**: would like the language to allow for a mechanism to allow Council review in the limited circumstances set forth, even if the Floodplain Committee denies the application. Currently, denials from the Floodplain Committee are appealed to the BOA.

Mr. Harold Heiple, Norman Developer's Council (NDC), said he is concerned about the process of Council's study on the issues, i.e., not having all the people with skin in the game at the table, etc., and he is concerned that Council has not heard all the reasons that support the NDC's concerns.

Audience Participation

Mr. Steve Ellis, 633 Reed Avenue, asked Staff what happened to the use of fill in the floodplain language in Section 4(c)(1). Mr. O'Leary said the City of Norman's ordinance is a "no net fill" ordinance; however, in the case of the Bishops Landing project and many similar cases as well, dirt was being moved around but the net difference was zero and met the 'no net fill" requirement. He said the Floodplain Permit Committee discussed it and felt "no net fill" was satisfactory.

Ms. Cindy Rogers, 633 Reed Avenue, said she is concerned about Council reviewing appeals without technical expertise and Mayor Rosenthal said the process will still include the expertise of the Floodplain Committee which will also include the Floodplain Committee's recommendation to Council. Mayor Rosenthal said this process was suggested by the Developer's Representatives and still allows the applicant appeal options.

Items submitted for the record

1. Memorandum dated February 12, 2016, from Kathryn L. Walker, Assistant City Attorney III, to Honorable Mayor and Councilmembers
2. Proposed Ordinance Amendments to Section 22:429.1, Flood Hazard District
3. City Council Oversight Committee minutes of January 22, 2015, and February 19, 2015
4. Memorandum dated November 18, 2015, from Kathryn L. Walker, Assistant City Attorney III, through Jeff Bryant, City Attorney, to Members of the City Council Oversight Committee
5. PowerPoint presentation entitled, "Norman Flood Plain Ordinance, City Council Study Session," dated February 16, 2016

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The meeting adjourned at 6:46 p.m.

ATTEST:

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City Clerk Mayor