

CITY COUNCIL STUDY SESSION MINUTES

August 17, 2010

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 17th day of August, 2010, 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 Atkins, Butler Cubberley, Dillingham, Griffith, Kovach, Quinn, Mayor Rosenthal

ABSENT: Councilmember Ezzell

DISCUSSION REGARDING AMENDING THE PROCEDURES AND POWERS OF THE GREENBELT COMMISSION AND THE STANDARDS TO BE USED BY THE COMMISSION INCLUDING BUT NOT LIMITED TO, GREENBELT ENHANCEMENT STATEMENTS.

Ms. Kathryn Walker, Assistant City Attorney, provided background on the Greenbelt System to Council stating the Norman 2020 Land Use and Transportation Plan (LUP) established a greenbelt system for Norman and a Citizens Greenbelt Steering Committee was formed and provided a report in October 1997. She said the Greenbelt Task Force was appointed in 2000 to draft a plan for establishing a Greenbelt System and presented Green Dreams in 2002. In May 2004, Sections 4-2021 through 4-2025 were added to the Norman Code to establish the Greenbelt Commission (GC) for the purpose of promoting and protecting the public health, safety, and general welfare by creating a mechanism for providing a Greenbelt System. Ms. Walker said the GC began working on amendments to the Code in 2007 so that a Greenbelt System to include preserved open spaces, protected natural areas, and greenways/trails in a system of land parcels will work to help maintain and preserve the beauty and livability of the City.

Ms. Walker said one of the duties of the GC was to propose an ordinance that would establish a Greenbelt System of open spaces, greenways and trail systems as well as dictate the contents, duties and responsibilities for the submission of Greenbelt Enhancement Statements (GES). The GC began working over two years ago, and presented the proposed ordinance to the Planning and Community Development Committee (PCDC) on May 21, and June 11, 2010.

The proposed ordinance amends several existing sections in Chapter 4 of the Code of Ordinances of the City of Norman and also adds five new sections. Section 4-2022 contains an amendment requiring the GC to meet "as required in furtherance of its duties set forth herein," so that a meeting is required only when there are developments to review. Current language requires the GC to meet at least once per month.

Section 4-2023 contains an amendment clarifying the duties of the GC to propose an ordinance defining, rather than establishing, a Greenbelt System and requiring all applications for a Land Use Plan (LUP) amendment, a Norman Rural Certificate of Survey, or a Preliminary Plat to submit a GES articulating how the subject development meets the goals and objectives for the Greenbelt System Plan. Ms. Walker said this language will exclude from the GC's review short form plats and zoning changes that do not require an accompanying plat.

Section 4-2023 provides definitions to assist in interpreting the remainder of the ordinance. The term "Green Space" has replaced "Open Space" as a result of the PCDC feedback to help avoid conflicts with the multiple references to open space in the Zoning Ordinance.

Section 4-2026 adds specific principles, goals, and purposes to guide both development applications and the GC in the furtherance of their duties including goals that were adopted from the Greenway Master Plan in November 2009, as well as goals articulated in the Norman 2025 LUP.

Section 4-2027 establishes the requirement of submission of a GES with applications for LUP Amendments, Rural Certificate of Surveys, and preliminary platting. Ms. Walker said this section was revised to provide for an “administrative bypass” after considerable discussion amongst the PCDC members. She said some development applications may not present an opportunity for greenbelt activity and therefore should not be required to submit a review to the GC. If the applicant indicates on the GES form there is no opportunity for greenbelt development, or if details of the application support such a finding, the Planning Director or his or her designee may issue a Finding of No Greenbelt Opportunity and the development application would not be reviewed by the GC. Other applications would be reviewed by the GC within the existing development timeline. The GC would provide an initial review after application for a Pre-Development Meeting is made with an official review by the GC occurring upon application for the Planning Commission.

Section 4-2028 provides guidelines by which the GC would review the GES submissions. It is not intended to regulate how property is developed; rather, the guidelines provide the tool for GC’s comments about a proposed development.

Section 4-2029 requires all easements acquired by the City for expanding or enhancing the Greenbelt System be acquired in accordance with the guidelines and policies of the proposed ordinance and the subdivision regulations.

Ms. Walker said it should be noted the GC spent a considerable amount of time drafting the “whereas” clauses contained in the proposed ordinance and because the City does not typically include such clauses in its ordinances, it may be helpful to consider the effect of such language. She said if the ordinance were to be challenged, the fundamental rule employed by the Court would be to ascertain and give effect to the legislative intent, which is first divined from the language of the code provision itself. If the intent cannot be ascertained from the language itself, the rules of statutory construction are applied. The rules are typically invoked for the purpose of ascertaining the meaning of an undefined term, in which case the court might look to our other ordinances or even to the dictionary to define the term. Ms. Walker said it is not entirely clear what purpose the “whereas” clauses may serve in such an inquiry but it is unlikely the Court would use that language to ascertain legislative intent.

Councilmember Dillingham said she understands Staff’s intent with the pre-ambulatory “whereas” clauses regarding the attempts at legislative intent, but felt legislative intent is clearly set out in Section 4-2026. She said when it is subjected to the rules for statutory construction coming forth through common law she felt it might be potentially confusing at the appellate level should the City ever have to go there with a lot of pre-ambulatory “whereas” clauses. Ms. Walker said when the Courts look at an ordinance to ascertain its meaning; if it is unclear they will try to stay within the ordinance. She said she could not find a case in Oklahoma where a “whereas” clause was the basis for legislative history and agreed Section 4-2026 does outline all the policies and adequate to show legislative intent if ever litigated. Councilmember Butler asked if the “whereas” clauses could be placed in an accompanying resolution and Council agreed that would be a better process.

Mayor Rosenthal asked for clarification of the proposed changes pertaining to the GES, specifically when there is no greenbelt opportunity, and asked if such would appear on the GC’s agenda prior to going to the Planning Commission. Ms. Walker said because the decision would be made when the applicant applies for pre-development, which is approximately a month before a Planning Commission, it would appear on the next available GC agenda, and therefore the GC would find out about the GES rather quickly. Mayor Rosenthal asked if the GC wished to comment on a particular finding of no greenbelt opportunity, would their comments become part of the public record and Ms. Walker said it could be included in the Staff report. Mayor Rosenthal felt any GC comments would be valuable.

Ms. Brenda Hall, City Clerk, said GC comments or concerns about the report could be noted in the GC minutes and go forward to the PC and Council. Councilmember Dillingham asked how the applicant would know if GC comments have been made and said one of the goals was to not have the applicant make an appearance at GC meetings resulting in a lesser charge for clients. Councilmember Cubberley asked what documentation will be submitted to the GC when a finding of no greenbelt opportunity exists and Ms. Walker said a copy of the GES as well as a detailed Staff report explaining the conditions that led to the finding. Council discussed and agreed the value of the comments, if any made, are important and Ms. Walker said the process can be refined to include any GC comments about no greenbelt opportunity.

Mayor Rosenthal said there is a desire for balance between the need for the GC to have some oversight for the greenbelt process, making sure the process goes smoothly, and does not add additional time or cost to the developer/applicant. She felt public record is important and having comments on the GC's agenda with the opportunity for comment does provide some oversight. She said it will at least draw attention to those applications where the GC's opinion might differ with the Staff's opinion. She felt it should be up to the development community to decide then whether the applicant would want to be at the meeting or not. Councilmember Kovach asked whether the GC's comments would override Staff's finding and Mayor Rosenthal said no. Councilmember Butler said the value is in the actual GC comments and those comments could be considered by the PC and Council. Councilmember Dillingham said if everything is going to the GC anyway then what is the value of an administrative bypass and Councilmember Cubberley felt putting the comments on a consent docket would take care of the issue. He said it will allow Staff to say whether the application warrants a full discussion and move forward. He felt the small amount of mistrust will be solved over time as Staff, GC, PC, and Council work through the process and a comfort level is obtained.

Councilmember Cubberley suggested putting no greenbelt opportunity findings on the GC consent agenda for a year; revisit and review the process at that time to make certain it is running smoothly and determine if any changes should be made. Councilmember Dillingham liked the idea of the consent docket because she felt it will give the developer(s) and/or applicant an opportunity to talk about any issues with either Staff, GC, etc. Mayor Rosenthal reminded the Committee even if items are put on the consent docket there may be occasions the items are pulled off the consent docket and agreed with Councilmember Cubberley that over time the concerns, issues, and process will become streamlined. The Committee discussed and agreed the no opportunity items should be put on consent docket and revisit this issue in a year to review the process.

Councilmember Kovach asked if easements could be acquired by the City for multiple purposes, i.e., trails along some of the drainage and storm water systems, and would it be possible for the City to obtain easements for maintenance purposes as well. Ms. Walker said she felt purposes for maintenance could be accommodated. Councilmember Kovach asked if there are tax incentives for citizens who wished to donate easements to the City and Ms. Walker said the City does not currently have any incentives; however, she believed there are tax benefits available but did not know the specifics.

Councilmember Kovach asked Staff to define "review" in the current ordinance Section 4-2025 and Ms. Walker said Council has the right to review everything the GC does, whether it is decisions or recommendations. Councilmember Kovach asked if "review" meant Council could override GC decision(s) or recommendation(s) and Ms. Walker said yes it does. Councilmember Dillingham felt the verbiage *decision* should be changed to evaluations or recommendations and the Committee agreed.

Councilmember Butler asked Staff to discuss Section 4-2023A(g), specifically Green Space definition and added language "...open to public use on such conditions as may be reasonably required by the granting authority." Ms. Walker said the verbiage was taken out of a memorandum based on PCDC feedback and the provision simply means if a citizen granted an easement to the City for a greenbelt, but wanted to put conditions on the easement such as they did not want it open for public access or only opened for public access during certain times; the granting authority would be the grantor of the easement and could request such provisions.

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Mayor Rosenthal said the GC has requested adding verbiage "...through conservation easements or other means." to Section 4-2026(d)(6) and said felt it was important and acknowledges the way the City has embraced agricultural lands within the City.

Mayor Rosenthal suggested Staff make changes and add the additional language to the proposed ordinance and bring back to the PCDC for review, then back to Council for consideration.

Items submitted for the record

1. Memorandum dated August 11, 2010, from Ms. Kathryn Walker, Assistant City Attorney, through Mr. Jeff H. Bryant, City Attorney, to Honorable Mayor and Council Members
2. Proposed Ordinance No. O-1011-6
3. Article XXI Greenbelt Commission Norman City Code
4. City Council Planning and Community Development Committee Minutes dated May 21, 2010, June 11, 2010, and July 9, 2010
5. PowerPoint presentation entitled, "Proposed Amendments to the Greenbelt Ordinance," dated August 17, 2010

The meeting adjourned at 6:17 p.m.

ATTEST:

City Clerk

Mayor