

CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

November 19, 2015

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:03 p.m. in the City Council Conference Room on the 19th day of November, 2015, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT: Councilmember Holman, Williams and
Chairman Miller

ABSENT: Councilmember Jungman

OTHERS STAFF PRESENT: Mayor Cindy Rosenthal
Mr. Jeff Bryant, City Attorney
Mr. Terry Floyd, Development Coordinator
Mr. Todd McLellan, Development Engineer
Mr. Shawn O'Leary, Public Works Director
Mr. Scott Sturtz, City Engineer
Ms. Kathryn Walker, Assistant City Attorney
Ms. Karla Chapman, Administrative Technician III

OTHERS PRESENT: Ms. Sophie Chevreaux, OU Student
Ms. Joy Hampton, *The Norman Transcript*
Mr. Harold Heiple, Attorney representing the Norman
Developer's Council
Ms. Katelyn Nelson, OU Student
Mr. Sean Rieger, Attorney representing Builders
Associations of South Central Oklahoma

Item 1, being:

CONTINUED DISCUSSION OF NORMAN'S FLOODPLAIN ORDINANCE.

Chairman Miller said the Oversight Committee (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 included 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. Additionally, some Councilmembers expressed a desire to clarify the process for Planning Commission (PC) and Council approval of floodplain permits, particularly related to how the City approval process coincides with the Federal Emergency Management Agency (FEMA), Conditional Letter of Map Revision (CLOMR), and Letter of Map Revision (LOMR) processes.

Background and Bishops Landing Application:

Over 200 floodplain permits have been issued since the 2007 Floodplain Ordinance Amendment without significant debate and/or controversy; however, the Bishops Landing application sparked renewed interest by Council in reviewing the Floodplain Ordinance provisions. The applicant proposed changes within the floodplain area of Bishop Creek. The project proposed to remove multiple existing structures from the floodway and floodplain and construct a multi-family residential structure with a wrapped parking garage.

Item 1, continued:

The City's Floodplain Ordinance requires that the floodplain permits resulting in a change of 10% or more of the width of the floodplain must be approved by Council. The Bishops Landing project fell into this category requiring Council review, and actually reduces the floodplain area through use of a compensatory storage technique. On February 10, 2015, Council approved the preliminary plat and proposed modification of the floodplain outline in Floodplain permit No. 553 and the applicant then submitted a CLOMR to FEMA.

The applicant for the Bishops Landing project received a CLOMR from FEMA on September 29, 2015, and the CLOMR allowed the floodplain modification work to proceed, including the work that was already ongoing. The applicant will request FEMA to move forward to formally issue the LOMR once the work is completed. For the City to be able to continue to provide local regulatory enforcement authority over the area designated by FEMA as floodplain, the LOMR approved by FEMA should then be adopted by Ordinance. Under the applicant's current construction timeline, it is anticipated that the proposed floodplain modifications approved by FEMA in the CLOMR will be completed in January or February, 2016, and the anticipated request to finalize the LOMR application will be under review by FEMA in mid-March, 2016.

Potential Floodplain Ordinance Amendments:

Ms. Kathryn Walker, Assistant City Attorney, said the proposed language was submitted by Mr. Marion Hutchinson, who was part of the original Floodplain Committee that drafted the 2007-2008 amendments to the Floodplain Ordinance. She said Staff tweaked the submitted language as follows:

Section 3(c): modifying language to clarify that the process described in this section is for incorporating Letter of Map Revisions (LOMR) approved by FEMA into the City's local floodplain ordinance for local regulatory jurisdiction. Language that relates to Letters of Map Amendments (LOMAs) is recommended to be removed. LOMAs are for the purpose of correcting FIRM mapping error 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, 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.

Chairman Miller stated this exception would only come for Council approval as a preliminary plat if it is more than 10% of the width of the floodplain and Ms. Walker said yes, that is correct. Ms. Walker said redevelopment or reclamation projects would need Council approval, separate from consideration of approving the preliminary plat, regardless of whether the project changes 10% or more of the width of the floodplain, which she will speak more about in Section 4(b)(18).

Mayor Rosenthal asked in the case of the LOMR issues and the Bishops Landing application that have been debated; specifically, whether the project should have been approved by FEMA first before Council action has not changed with this amendment and Ms. Walker said that is correct. Ms. Walker said the City (local regulatory body) becomes the co-applicant on the Conditional Letter of Map Revision (CLOMR), and/or a Letter of Map Revision (LOMR); therefore, before submitting the application to FEMA, Council would have an opportunity to "weigh in" before the City would be a co-applicant on the proposed change in floodplain.

Mayor Rosenthal asked why the application to FEMA could not come directly from the Floodplain Committee, before coming to the Planning Commission and/or Council. Ms. Walker said the application requires action from the Floodplain Administrator; however, the current ordinance requires Council action if the proposed changes affect more than 10% of the floodplain.

Item 1, continued:

Mr. Jeff Bryant, City Attorney, said part of the confusion has to do with the Letters of Map Amendments (LOMAs) and Letter of Map Revisions (LOMR). He said LOMA is correcting an error, no development is occurring, and rarely do they come through the Floodplain Committee, rather they go directly to FEMA. He said Council action is not necessary until the end of the process whereas it would be incorporated into the City ordinance so that the City will have local regulatory jurisdiction. Chairman Miller asked why the developer could not acquire the CLOMR directly from FEMA, before obtaining Council action but possibly after the Planning Commission action. Mayor Rosenthal agreed and said Staff and Council are investing a lot of time, energy, and analysis before we even know whether FEMA will accept the application.

Mr. Bryant said once the developer has a development plan for land and it does not change the floodplain more than 10% it will go through the regular process; however, it may still require a CLOMR that needs to be reviewed by the Floodplain Permit Committee and forwarded to FEMA, without any Council action. He said Council will still review it as part of the development of that particular plat via the preliminary plat. If Council approves the preliminary plat, the development is allowed to move forward with the public improvements, to include any floodplain modifications. When the development has been built according to the approved FEMA CLOMR, a final plat will be scheduled as an agenda item for Council consideration and approval, as well as have a final survey conducted by FEMA.

Mr. Shawn O'Leary, Public Works Director, said to give a little clarification to this issue, only three (3) CLOMRs have been submitted to FEMA in the last ten years; therefore, it is a rare process. He said more than half of the LOMRs and CLOMRs are initiated by the City because Staff has seen a change in the floodplain relative to working on an issue, project, etc. Mr. O'Leary said the Bishops Landing applicant has spent the majority of time and money because this is a private development and the reason the Floodplain Administrator needs to approve the application is due to the fact the applicant is proposing to revise the City's Floodplain map(s).

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): modifying current language allowing the use of fill for “individual residential and non-residential structures” to allow modification of the floodplain for the purpose of elevating “single-family residential structures and any associated non-residential structures”, while leaving intact the existing language referring to other “non-residential structures” to allow latitude to consider such municipal projects as improvements to the Water Reclamation Facility or potential locations for the Senior Citizen Center.

The word “structures” (plural) is consistent with the current language; however, language was presented to the Oversight Committee in January that proposed to change the word to its singular form. The Committee offered varying opinions regarding the plurality of this word and language attached hereto mirrors the language in the current ordinance, “structures”. An example came to Staff by means of non-residential structures, such as the proposed future Senior Citizens Center and the Water Reclamation Facility, that have gone through the Floodplain Committee; therefore if stricken the City could run into issues. It has been suggested to change the verbiage to “single-family residential” and Staff requests additional guidance on this particular point.

Item 1, continued:

Section 4(b)(1)(i), continued:

Mr. Harold Heiple, Attorney representing the Norman Developer's Council, said changing to single-family only will not allow floodplain permits to be obtained for duplexes, apartments, commercial, or industrial projects. Chairman Miller said the language came from the original Floodplain Committee and Mr. Bryant said the original language did not have single-family in the proposal.

Mayor Rosenthal felt the language Staff has drafted allows for a subdivision with single-family residential structures where the spacing and type of capacity need can be achieved. She said the "non-residential structures" provides an option; however, the language that follows is very important "...provided that there is no reasonable location for the structures outside of the floodplain and such structures are not located in the floodway...". Mayor Rosenthal felt that Staff has struck a reasonable balance.

Councilmember Holman asked whether this would allow the Downtown Shopping Center to be redeveloped into a four-story mixed use building or multi-story office building and Staff said it could be; however, it would fall under the redevelopment provision (Section 4(b)(17)).

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);

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

Section 4(b)(17): adding 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.

Mayor Rosenthal said the proposed amendments to the ordinance need to be more clear that structures are not allowed in the floodway and felt Council needed some guidance on how much beneficial improvements are required. Ms. Walker said a previous draft included the verbiage "and/or" and based on feedback from the Committee, "or" was struck; therefore, the proposal as written would require all of the improvements which can differ in percentage depending on the area and project. Mayor Rosenthal felt the amendment should state that improvements should be "significant" because it can be argued that Council must approve even a small percentage of improvements and Councilmember Williams agreed.

Chairman Miller asked Staff what amount of improvements is looked for on floodplain projects and Mr. O'Leary could not state the specific number/percentage. He agreed the notion of having measurable improvements stated in the ordinance would/could be vital, specifically the measures of storage capacity, reduced velocities, and improved discharge. The Committee requested Staff research and bring back language for review.

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).

Although modifications to the floodplain due to development activity is presented to the Planning Commission and the City Council when considering whether to approve a preliminary plat under the City's subdivision regulations, there was discussion in the minutes about requiring a vote, separate from consideration of approving a preliminary plat, to consider a floodplain modification under the circumstances listed. As this appears to duplicate review already required under existing subdivision regulations, the language attached hereto does not modify existing language. Staff would appreciate additional guidance on this particular point.

Item 1, continued:

Section 4(b)(18) [formerly 17] continued,

Mayor Rosenthal said she cannot imagine a case where the plat would be approved and the floodplain permit would not be approved; however, she can imagine a case where the floodplain permit would be approved and nothing happens afterwards. She said the projects should be treated similarly regardless if they come to Council or not, i.e., those projects less than 10%. Chairman Miller said her concern as a Councilmember is making certain she understands all the amendments and sections of the Floodplain Ordinance and a matter of good communication before the project gets to a certain point rather than the wording of the verbiage.

Section 4(f): Standards for Subdivision Proposals – 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.

Mr. Bryant said the amendments proposed are targeted at specific sections of the Floodplain Ordinance and requested Committee direction on whether they would like more of a broad review of the ordinance. The Committee discussed and agreed a broad review is not needed at this time; the issues that were brought to Staff and Council’s attention have been addressed.

Chairman Miller requested this topic be brought to full Council at a future Study Session and the Committee agreed.

Items submitted for the record

1. Memorandum dated November 18, 2015, from Kathryn L. Walker, Assistant City Attorney, through Jeff Bryant, City Attorney, to Members of City Council Oversight Committee
2. Proposed Ordinance Amendments to Section 22:429.1 Flood Hazard District
3. City Council Oversight Committee minutes dated January 22, 2015, and February 19, 2015.

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Item 2, being:

MISCELLANEOUS DISCUSSION.

None

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The meeting adjourned at 5:51 p.m.