

CITY COUNCIL OVERSIGHT COMMITTEE MEETING

**MUNICIPAL BUILDING CONFERENCE ROOM
201 WEST GRAY**

THURSDAY, NOVEMBER 19, 2015

5:00 P.M.

- 1. CONTINUED DISCUSSION NORMAN'S FLOODPLAIN ORDINANCE.**
- 2. MISCELLANEOUS PUBLIC COMMENTS.**



office memorandum

DATE: November 18, 2015
TO: Members of the City Council Oversight Committee
THROUGH: Jeff Bryant, City Attorney
FROM: Kathryn L. Walker, Assistant City Attorney III
RE: Floodplain Ordinance

Background

The City Council Oversight Committee met last January and February to discuss the floodplain ordinance after concerns were raised regarding how the current ordinance applied to the Bishops Landing project. Concerns expressed 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 members of Council expressed a desire to clarify the process for Planning Commission and City Council approval of floodplain permits, particularly related to how the City approval processes coincide with Federal Emergency Management Agency (FEMA) Conditional Letter of Map Revision (CLOMR) and Letter of Map Revision (LOMR) processes.

The minutes of the January 22, 2015, and February 19, 2015, Oversight Committee meetings are attached for background information. A significant amount of information was presented at those meetings regarding the purpose and operation of the National Flood Insurance Program, history of the City of Norman Floodplain Ordinance, as well as Council members' discussion on this topic. Seven Council members attended both Oversight Committee meetings, and all but one Council member has attended at least one of the two meetings where this topic has been discussed.

Bishop's Landing Application

Over 200 floodplain permits have been issued since the 2007 Floodplain Ordinance Amendment without significant debate 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. This project proposed to remove multiple existing structures from the floodway and floodplain and then construct a multi-family residential structure that included a wrapped parking garage, some of which would be located on land currently designated as floodplain under FEMA regulatory maps. The application proposed to make improvements in the floodplain that would result in a planned structure to be located out of the floodplain through approval of a future FEMA regulatory map revision process. The permit allowed the excavation of material located in the eastern portion of the lot in order to provide fill on the center to western portion of the lot which would elevate the proposed structure out of the floodplain. Compensatory storage in excess of the proposed fill was to be provided on the east side of the creek including construction of a park area. The creek bed alignment was not proposed to be modified. The

Floodplain Permit Committee, at its meeting of December 1, 2014, conditionally approved Floodplain Permit No. 553 (“Bishops Landing”).

Section 22:429.1.4.(b)(17)i of the City’s Floodplain Ordinance requires that floodplain permits resulting in a change of 10 % or more of the width of the floodplain must be approved by the City Council. The Bishops Landing project fell into this category requiring City Council review, and actually reduces the floodplain area through use of a compensatory storage technique. On projects requiring platting, this information is presented to the City Council at the time of the preliminary plat. Council approved the Preliminary Plat and proposed modification of the Floodplain outlined in Floodplain Permit No. 553 at its meeting on February 10, 2015. Following City Council approval on February 10, 2015, the applicant, through its engineering firm Huitt-Zollers, Inc., then submitted its application for a Conditional Letter of Map Revision (CLOMR) to FEMA.

LOMR Process

To determine the flood hazards in an area, FEMA performs an engineering study called the Flood Insurance Study. This study is based on both historic and highly technical information, including meteorologic data, topographic data, hydrologic data, hydraulic data, open-space conditions, flood-control works, development, and historic information like river flow, rainfall data, etc. This study then results in the Flood Insurance Rate Maps (FIRMs) which can be adopted by cities and incorporated into the cities’ floodplain ordinances to provide for local regulatory jurisdiction for floodplain regulation enforcement.

In considering LOMR requests to modify the FIRMs, FEMA utilized technical data from historic information, topographical studies, and computer generated flow models that are often more detailed and advanced than what was used when the original FIRMs were adopted. To qualify for a LOMR, technical data must be submitted to FEMA which outlines the specific improvements that will be made in the regulatory area along with detailed engineering analysis that documents the effect both upstream and downstream from the proposed area to be modified. After FEMA has reviewed the proposal¹ and confirmed the technical analysis, then a Conditional Letter of Map Revision (CLOMR) will be issued. The CLOMR indicates that if the proposed improvements are documented to have been constructed as proposed, then FEMA will move forward to issue a LOMR, in effect amending the FIRMs. In the LOMR process, before the issuance of the CLOMR, a letter notifying property owners impacted by the proposed change in the floodplain boundaries must be sent, along with a publication in the local newspaper.

Bishops Landing LOMR Application

The applicant for the Bishops Landing project received a CLOMR from FEMA on September 29, 2015. The CLOMR allowed the floodplain modification work to proceed and that work is ongoing. Once the work is completed, the applicant will then ask FEMA to move forward to formally issue the LOMR. As noted, the applicant will be required to provide data that includes a certified topographic work map, an annotated copy of the

¹ FEMA contracts with private engineering firms who can provide an extensive independent review of proposals for floodplain modifications and subsequent map revisions.

FIRM, as-built plans certified by a registered Professional Engineer, a copy of the public notice distributed by Norman that states its intent to revise the regulatory floodway, and documentation of individual legal notices sent to property owners affected by any change in floodplain or increases in base flood elevation. Additionally, a 90-day appeal period will be initiated, during which interested persons may appeal the revised flood hazard information based on scientific or technical data. Once the 90-day appeal period has passed, if the submitted information satisfies FEMA that the work has been completed as proposed in the CLOMR, a LOMR will be issued by FEMA to modify the floodplain maps (FIRMs) to reflect the proposed development.

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 of 2016. It is anticipated the request to finalize the LOMR application will be under review by FEMA in mid-March 2016.

City Council review of the Final Plat for Bishop's landing will be scheduled for Council after public improvements required by the Final Plat have been completed. The public improvements include the completion of the floodplain work. Under City development regulations, a Project Manager can either wait until the Final Plat has been approved to start construction or construction can be started concurrent with the construction of public improvements before Final Plat approval if appropriate bonds are posted to ensure completion of the public improvements. The Bishops Landing Project Manager has opted for a "concurrent construction", and has posted appropriate bonds. Due to potential flooding sensitivity when modifying a floodplain in an already developed area, staff has reserved the issuance of a building permit for any residential structure on areas that a currently designated as floodplain until such time as the proposed floodplain fill placement and compensatory storage has been documented through the engineer of record. Staff will closely monitor the progress of this development.

Potential Floodplain Ordinance Amendments

The Oversight Committee has discussed this topic on January and February as noted above. Staff reviewed the January and February Council Oversight Committee minutes and has attached hereto modifications to the Floodplain Ordinance based on feedback from the Councilmembers in attendance at those Oversight Committee meetings. Those changes are:

Section 3(c) – modifying the language to clarify that the process described in this section is for incorporating Letters of Map Revisionst (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 correction 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, are not reviewed by the Floodplain Permit Committee because no development activity is proposed with a LOMA application, and are not previewed by 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 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 blanket 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”², 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;

Section 4(b)(1)(v) – adding modifications to the floodplain that are part of a redevelopment or reclamation project, which is more specifically discussed 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.

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).³

² The word “structures” (plural) is consistent with the current ordinance language. However, language was presented to the Oversight Committee in January that proposed to change the word to its singular form. At the Oversight Committee meeting varying opinions were offered regarding the plurality of this word. The language attached hereto mirrors the language in the current ordinance, “structures”. Staff requests additional guidance on this particular point.

³ 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

Section 4(f) Standards for Subdivision Proposals – Chairman Miller identified this as another potential area for cleanup as the current language “All subdivision proposals including manufactured home parks and subdivisions” is redundant.

The proposed language is attached for your review. Staff will be available at the Council Oversight Committee on November 19, 2015 to answer any questions you may have.

Reviewed by: Shawn O’Leary, Director of Public Works
Susan Connors, Director of Planning and Community Development
Scott Sturtz, City Engineer

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.

Proposed Ordinance Amendments to Section 22:429.1 Flood Hazard District

3. Identification, Establishment and Amendment of the District.

- (a) Flood Hazard Lands Governed by this Section: The areas of special flood hazard identified by the Federal Emergency Management Agency in a scientific and engineering report entitled, "The Flood Insurance Study for Cleveland County, Oklahoma and Incorporated areas" dated February 20, 2013, with accompanying Flood Insurance Rate Map (FIRM) are hereby adopted by reference and declared to be a part of this ordinance. The Conditional Letter of Map Revision (CLOMR) for the Ten Mile Flat Creek Area dated December, 2005, shall also be considered a part of the Special Flood Hazard Area until such time it is adopted by FEMA. This "Flood Insurance Study" with its accompanying FIRM, also known as the Official Flood Hazard District Maps, are hereby adopted by reference and declared to be part of this ordinance and may be amended or revised from time to time by the City Council according to procedures established by FEMA. The Official Flood Hazard District Maps shall be placed on file with the City Clerk and copies shall be maintained in the Planning Department and the Public Works Department for public review.
- (b) Establishment of Flood Hazard District as an Overlay: The mapped special flood hazard areas shall be designated as the Flood Hazard District. This district overlays other Zoning districts and the regulations of the Flood Hazard District apply in addition to the district regulations of the underlying district. Whenever a conflict in requirements results, the most stringent requirements shall apply.
- (c) Amendments to the District Boundaries [Letter of Map Amendment (LOMA)]: The boundaries of the Flood Hazard District may be amended from time to time when ~~later~~ more current or precise technical flood hazard information becomes available and approved by FEMA. ~~The Planning Commission shall review such later information and recommend to the City Council any changes to the district boundaries. An owner of land located in the Flood Hazard District may request a review of the location of the district boundaries affecting his land. He shall present such surveys and studies as he desires to the Planning Commission for the review. The Planning Commission shall obtain a technical analysis of the information from an appropriate agency. Where there is a fee required, the analysis and reports shall be made at the expense of the applicant. Based upon the technical analysis approved by FEMA, the Planning Commission shall recommend to and the City Council whether or not may formally amendments to the zoning district boundaries consistent with should be effected and whether to request a letter of map revision amendment from FEMA.~~

- (d) The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions greater floods can and will occur and flood heights may be increased by man-made or material causes.

This ordinance does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the community or any official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

4. Flood Hazard District Land Uses.

- (a) Uses Allowed without a Flood Plain Permit: The uses listed below having a low flood-damage potential and posing little obstruction to flood flows, if allowed in the underlying district, shall be allowed provided they do not require structures, fill or storage of materials or equipment. In addition, no use shall adversely affect the efficiency or restrict the capacity of the channels or floodways of any tributary to the main stream, drainage ditch, or any other drainage facility or system.

(1) Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting;

(2) Private and public recreational uses such as golf courses, bikeways, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and fishing areas, hiking and horseback riding trails;

(3) Accessory residential uses such as lawns, gardens and play areas.

- (b) General Standards. In all special flood hazard areas the following provisions are required for all new construction and substantial improvements and a floodplain permit is required:

~~(1) Fill is restricted because storage capacity is removed from the floodplains, natural drainage patterns are adversely altered and erosion problems can develop. The use of fill shall be limited to:~~

~~(a) the elevation of individual residential and non residential structures, including driveways providing access to those structures;~~

- ~~(b) the construction or repair of public roads and bridges,~~
~~(c) the river or stream bank stabilization or reinforcement projects,~~
~~and in any case where fill is authorized, only the minimum~~
~~amount necessary to accomplish the permitted floodplain~~
~~development shall be used.~~
- (1) Modification of the floodplain, including, but not limited to, excavating, filling, dredging, channelizing and paving may be permitted under the following circumstances. Any permit granted for the modification of the floodplain hereunder shall be limited to the minimum amount of modification necessary to achieve the permitted outcome. Permits for such modifications shall be required from the Floodplain Permit Committee as outlined in Section 5 herein and may require a Letter of Map Revision (LOMR) from FEMA. An application for a LOMR will be forwarded to FEMA by the Floodplain Administrator upon approval of the Floodplain Permit Committee except as provided in subsection 18 herein.
- (i) The proposed modification is being done for the purpose of elevating single-family residential structures and any associated structures, such as a detached garage or barn, including a single driveway providing access to such structures, and non-residential structures, provided there is no reasonable location for the structures outside of the floodplain and such structures are not located in the floodway; or
- (ii) The proposed modification is for the purpose of constructing ponds less than five (5) acres associated with farming and ranching activity; or
- (iii) The proposed modification is part of a river or stream bank stabilization or reinforcement project; or
- (iv) The proposed modification is required to construct or repair public roads or bridges; or
- (v) The proposed modification is proposed as part of a redevelopment or reclamation project outlined in Section 4(b)(17) herein.
- (2) All new construction or substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

- (3) Any new construction or substantial improvement which would individually or when combined with all other existing and anticipated development expose additional upstream, downstream or adjacent properties to adverse flood effects that would otherwise not be exposed to such effects due to the regulatory flood shall not be permitted;
- (4) Any new construction or substantial improvement which would increase velocities or volumes of flood waters to the extent that significant erosion of floodplain soils would occur either on the subject property or on some other property either upstream or downstream shall not be permitted;
- (5) Compensatory storage must be provided within the general location of any storage that is displaced by fill or other development activity and must serve the equivalent hydrologic function as the portion which is displaced with respect to the area and elevation of the floodplain;
- (6) All new construction, substantial improvements, or other development (including fill) shall not be permitted within the floodplain area, unless it is demonstrated that the effect of the proposed development will not increase the water surface elevation of the base flood by more than .05 feet on any adjacent property;
- (7) Fill shall be protected against erosion and sedimentation by such measures as riprap, vegetative cover, bulkheading, or sedimentation basins as approved by the City Engineer;
- (8) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (9) All new construction or substantial improvements shall be constructed with materials resistant to flood damage;
- (10) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. All Public Utilities and facilities shall be constructed so as to minimize flood damage;
- (11) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system;

- (12) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters;
- (13) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding;
- (14) The storage or processing of materials that are in time of flooding buoyant, flammable, explosive, or could be injurious to human, animal or plant life is prohibited excepted as provided in Section 4(d) herein.
- (15) Storage of material or equipment may be allowed if not subject to major damage by floods and firmly anchored to prevent flotation or if readily removable from the area within the time available after the issuance of flood warning by The National Weather Service.
- (16) Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either
 - (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use, or
 - (iii) Meet the permit requirements of (b)(2) of this section and the elevation and anchoring requirements for "manufactured homes" in (c)(1) in this section.
- (17) Redevelopment or Reclamation Projects – Projects that propose to reduce flood hazards through the removal of existing non-compliant development and which provide beneficial improvements to the function of the floodplain, including increased storage capacity, reduced velocities and erosion, restored natural functions of the floodplain, and improved discharge efficiency, through appropriate modifications to the existing character and topography of the floodplain.
- (18) The following floodplain modifications approved by the Floodplain Permit Committee shall also require approval by the City Council. A project report and the recommendations of the Floodplain Permit Committee's conditional approval will be provided to City Council at the time of Council's consideration of approval of such a Floodplain Permit. For projects that require platting, this information will be presented at the time Council considers the preliminary plat. For projects that do not require

platting, the report will be made to Council prior to issuance of the floodplain permit.

- (i) A modification of the floodplain that results in a change of ten percent (10%) or more in the width of the floodplain.
- (ii) The construction of a pond with a water surface area of 5 acres or more.
- (iii) Any modifications of the stream banks or flow line within the area that would be regulatory ~~floodway whether that channel has a regulatory~~ floodplain, unless the work is being done by the City of Norman staff as part of a routine maintenance activity.
- (iv) Any redevelopment or reclamation project, as provided for above in Section 4(b)(17).

* * * *

(f) Standards for Subdivision Proposals:

- (1) All subdivision proposals ~~including manufactured home parks and subdivisions~~ shall be consistent with Section 4(b) of this ordinance;
- (2) All proposals for the development of subdivisions ~~including manufactured home parks and subdivisions~~ shall meet all applicable permitting requirements of this ordinance.
- (3) Base flood elevation data shall be generated for any subdivision proposals and other proposed land development activity ~~including manufactured home parks and subdivisions~~, if not otherwise provided pursuant to Section 3 and 4 of this ordinance;
- (4) All subdivision proposals, ~~including manufactured home parks and subdivisions~~, shall have adequate drainage provided to reduce exposure to flood hazards;
- (5) All subdivisions proposals ~~including manufactured home parks and subdivisions~~ shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate infiltration or flood damage;
- (6) Whenever possible, a proposed subdivision which contains some land within the floodplain shall be developed using the Planned Unit Development process, so that dwelling units could be located out of the floodplain and such areas left undeveloped or without residential structures.