

**FAYETTEVILLE CITY COUNCIL  
SPECIAL MEETING  
LAFAYETTE CONFERENCE ROOM  
OCTOBER 30, 2018  
6:00 P.M.**

Present: Mayor Mitch Colvin

Council Members Katherine K. Jensen (District 1); Daniel Culliton (District 2); Tisha S. Waddell (District 3); D. J. Haire (District 4); Johnny Dawkins (District 5); William J. L. Crisp (District 6); Larry O. Wright, Sr. (District 7); Theodore W. Mohn (District 8); James W. Arp, Jr. (District 9) (via telephone)

Others Present: Douglas Hewett, City Manager  
Karen McDonald, City Attorney  
Kristoff Bauer, Deputy City Manager  
Telly Whitfield, Assistant City Manager  
Gina Hawkins, Police Chief  
Jerry Newton, Development Services Director  
Sheila Thomas-Ambat, Interim Public Services Director  
Giselle Rodriguez, City Engineer  
John Larch, Assistant City Engineer  
Kevin Arata, Corporate Communications Director  
Brandon Christian, Police Attorney  
Alicia Young, Assistant City Attorney  
Mark Brown, PWC Customer Relations Director  
Pamela Megill, City Clerk  
Members of the Press

**1.0 CALL TO ORDER**

Mayor Colvin called the meeting to order at 6:00 p.m.

**2.0 INVOCATION**

Council Member Waddell offered the invocation.

**3.0 PLEDGE OF ALLEGIANCE**

The Pledge of Allegiance to the American Flag was led by Mayor Colvin.

**4.0 APPROVAL OF AGENDA**

**MOTION:** Council Member Wright moved to approve the agenda.  
**SECOND:** Council Member Haire  
**VOTE:** UNANIMOUS (10-0)

**5.0 CLOSED SESSION**

**5.1 Consultation with City Attorney for an Attorney-Client Privileged Matter - Real Estate**

**MOTION:** Council Member Haire moved to go into closed session for an attorney-client privileged matter regarding real estate.  
**SECOND:** Council Member Wright  
**VOTE:** UNANIMOUS (10-0)

The regular session recessed at 6:03 p.m. The regular session reconvened at 6:25 p.m.

**MOTION:** Council Member Dawkins moved to go into open session.  
**SECOND:** Council Member Wright  
**VOTE:** UNANIMOUS (10-0)

## **6.0 OTHER ITEMS OF BUSINESS**

### **6.01 Stormwater Ordinance and Impervious Surface Allowance for Development/re-development**

Ms. Giselle Rodriguez, City Engineer, presented this item with the aid of a PowerPoint presentation and stated on October 27, 2008, City Council adopted Article III of Chapter 23 of the Code of Ordinances which focuses on stormwater controls associated with land development. The purpose of this ordinance is to protect, maintain, and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse effects of the increase in stormwater quantity and the stormwater runoff quality associated with both future land development and consideration of existing developed land within the City of Fayetteville. Proper management of the quantity and quality of stormwater runoff intends to:

- Minimize damage to public and private property;
- Prevent personal damage and bodily harm;
- Ensure a functional drainage system;
- Reduce the effects of development on land and stream channel erosion;
- Promote the attainment and maintenance of water quality standards;
- Reduce local flooding by maintaining as nearly as possible the predeveloped runoff characteristics of the area; and
- Facilitate economic development while mitigating associated flooding and drainage impacts.

Additionally, the purpose of this article is to comply with the post construction stormwater requirements as per the City's National Pollutant Discharge Elimination System (NPDES) stormwater discharge permit. Some elements of the ordinance are required to enforce state regulations while others could be changed by the Council based on the community's desire to adjust the balance between upstream and downstream property concerns. Some of the provisions that have been changed since the adoption of this article are:

- Reduction of the amount of performance guarantees from 150 percent to 75 percent of the stormwater control measure construction cost (February 13, 2012).
- Amount and timing change for performance guarantees on single-family residential subdivision projects (March 25, 2013).
  - o Reduced amount from 75 percent of construction cost to 100 percent of conversion cost [i.e., a large pond on a subdivision could cost \$150,000.00 and the conversion cost (from erosion control pond to permanent pond) could be approximately \$30,000.00].
  - o Delayed timing from permit issuance for construction to final plat. This allows the developer to build the infrastructure in the proposed right-of-way and provide the performance guarantee when ready for final plat.
- Increased impervious area threshold for re-development from 2,000 square feet to 5,000 square feet (June 10, 2013).

- Reduced the stream buffer area for greenways from 50 feet to 30 feet from the top of bank of small streams and from 75 feet to 50 feet for larger streams and rivers (August 14, 2017).

An independent research study was conducted to compare the City's requirements on this article with peer communities. In general, the research revealed that the requirements of peer cities are more stringent than those of the City. State regulations primarily address water quality controls. These controls, which consist of requirements to build structures such as stormwater ponds, are designed to prevent water pollution. They catch sediment, heavy metals, trash, and a variety of other contaminants, preventing these pollutants from entering our creeks and streams. While these requirements may slow down the flow of rainwater runoff from a developed property, their primary purpose is pollution prevention. The City Ordinance enforces the state regulations, but also adds some requirements to control water quantity. These controls reduce downstream flooding from developed properties. They are designed to provide a balance between the ability of property owners to develop a piece of property and the right of downstream residents to live in existing homes without the threat of increased flooding. So as properties are developed, the City Ordinance helps to protect both the water quality (as required by the State) and prevent flooding of property downstream of developments. The City's stormwater ordinance is an attempt to balance the development rights of upstream property owners with the rights of those downstream to enjoy their property without creating or worsening flooding problems. The success of reaching this balance has been clearly witnessed in our community as development continues. Neighborhoods that used to experience flooding impact during rain events have experienced a reduction of incidents after the stormwater controls have been installed.

Discussion ensued.

**MOTION: Council Member Haire moved to request the Mayor create a Stormwater Committee to include stakeholders.**

The motion failed for lack of a second.

## **6.02 Review Policy on Performance Guarantees for Stormwater Control Measures on Developments**

Ms. Alicia Young, Assistant City Attorney, presented this item with the aid of a PowerPoint presentation and stated Council requested to review and discuss the policy on performance guarantees for stormwater control measure (SCM) on developments. The provision for this requirement is covered under Section 23-41 of the Code of Ordinances. The requirement for performance guarantees for stormwater control measures was adopted on October 27, 2008. This requirement was relaxed on February 2012 and March 2013. A performance guarantee is required for stormwater control measures (often referred as ponds). The original requirement for a bond was in the amount of 150 percent of the construction cost and was later reduced to 75 percent (February 2012). Later on the development community expressed concerns regarding the duration of single-family residential (SFR) projects which could take up to five years to be developed and tied up bonds for that long. In SFR the "pond" is used as an erosion control measure (as required by NCDENR) and then converted to an SCM once the subdivision is built. On March 2013 Council reduced the bond requirements for single-family residential to 100 percent of the conversion cost at the time of final plat; which is usually significantly less than the construction cost. The bond requirements for BMP are currently as follows:

- Commercial Projects (includes multi-family): 75 percent of construction cost before a permit is issued.
- Single-family residential: 100 percent of conversion cost at the time of final plat. For example, an SCM construction cost

for a large subdivision could be \$150,000.00 and the conversion cost from an erosion control measure to a permanent SCM could be \$30,000.00.

When the ordinance was amended, developers were given the option to get their bonds reduced per the new amendment. Multiple developers elected to do so and the bonds were reduced. In both cases (commercial and residential) the bond is released one year after the pond/system is constructed which allows proper monitoring during the entire rainfall cycle to determine the performance of the pond/system. The bond is released upon request once documents are recorded, performance is documented, and record drawings are completed. Bond types accepted are Letter of Credit, Surety Bond, and Cash Bond. The City allows substitution of one type of bond for another to try and be as flexible as possible for the developers. The City is currently holding bonds that could be released if the owners would get the documentation in place and perform corrective measures as identified by punch list during inspection. The overall response has been very low. The City is currently holding bonds that could be released if the owners would get the documentation in place and perform corrective measures as identified by punch list during inspection. The overall response has been very low.

Discussion ensued.

**Consensus of Council was to direct staff to collect comparisons from our peer cities pertaining to functional maintenance.**

Mayor Colvin recessed the meeting at 7:58 p.m., and reconvened the meeting at 8:06 p.m.

#### **6.03 Watershed Study Program - Program Update and Strategies for Prioritized Completion**

Ms. Sheila Thomas-Ambat, Interim Public Services Director, presented this item with the aid of a PowerPoint presentation and stated Council requested a special work session to discuss stormwater issues including identifying top three areas in the City to redirect watershed studies to these areas and get an assessment for repair of public infrastructure. In FY 2019 we instituted a stormwater fee increase for development of a City-wide stormwater master plan. It typically takes 18 to 24 months to complete one watershed study. Elements of a watershed study include:

- Select survey of culverts, bridges, and closed drainage systems.
- Select survey of major and minor streams.
- Public involvement - Meetings and surveys to gather information.
- Data research - Review of work order history and "hot spots".
- Development of a Hydrologic and Hydraulic model of the watershed.
- Determines how much water a storm will produce and where it will go.
- Evaluates performance of existing system and identifies areas or improvements.
- Development of a watershed plan.
- Prioritizes projects within the watershed.
- Provides cost estimates for the design and construction of those projects.

Discussion ensued.

#### **6.04 Implementation Plan for Enhancement of the Regulatory Review Process for Development**

Ms. Giselle Rodriguez, City Engineer, presented this item with the aid of a PowerPoint presentation and stated an independent research study was conducted to compare the City's regulatory review process as it related to the Infrastructure Permit issued by the Engineering Division. The research revealed that the City has an opportunity to enhance the regulatory review process by enforcing several process adjustments and increasing the staffing level. Council is asked to allocate funding for three positions starting in April 2019. Last August, Raftelis presented to Council the results of their Stormwater Program Review with a particular focus on the requirements for new developments and re-development, and the review process for infrastructure permit issuance. The level of service provided by our reviewers is greater than the one provided by our peer communities. In addition to that, their staffing levels are higher than ours. In order to enhance the plan review process, additional positions are needed. The additional positions will allow for faster reviews, better documentation, and reduction on the inspection gap. Staff is requesting that as part of the implementation plan, three positions be funded starting in April 2019. Positions will be advertised in January 2019. These positions are one Engineering Technician, one Development Reviewer and one Engineering Inspector. An implementation plan that addresses the immediate actions needed to enhance the plan review process is included in the agenda packet. The City's process attempts to be customer friendly to the detriment of efficiency and timeliness. The result is a set of processes that slow the review and burden the already short-staffed department with unnecessary and redundant tasks. The fact that the City struggles to get plans reviewed in 30 days, while peer communities are generally completing reviews in about 10 days, is a testament both to the need for additional plans review staff as well as the difficulty introduced through flexible or unevenly enforced submittal requirements. Raftelis report indicates that they were struck by the limited growth in staffing levels amidst the enormous growth of the City these staff serve. The Stormwater Program only added one position in ten years, while City growth has been occurring at over 6.5 percent a year and the large annexations added a lot of poorly-functioning drainage infrastructure to the City. This is critically relevant to the plans review staff, who have an ever-increasing number of plan submittals to manage. While in the past it may have seemed like development would slow down any moment, this simply has not occurred, and there is no evidence that it is about to. The additional positions requested will require \$56,262.00 in FY 19 and \$223,016.00 from FY 20 and beyond.

Discussion ensued.

**MOTION:** Mayor Pro Tem Mohn moved to direct staff to move this item forward to a regular meeting for further discussion and official vote.  
**SECOND:** Council Member Haire  
**VOTE:** UNANIMOUS (10-0)

#### **6.05 Converting Failed Dams to Stormwater Control Measures**

Mr. Kristoff Bauer, Deputy City Manager, presented this item and stated Council Member Dawkins requested to discuss this topic. In the aftermath of Hurricane Matthew, staff provided Council with significant information and analysis regarding the operation and cost to repair private dams damaged thereby. The last presentation provided in June of this year discussed the option of converting breached dams into stormwater control measures. Council decided, however, not to fund the engineering study proposed to provide cost estimates and preliminary design information related to this option. If Council would like to consider this issue further, then it will be necessary to identify which structures should be included in any study and the primary objectives of such an effort. This activity is not funded in the current budget and would not be eligible for any

federal, state, or grant funding. Staff can provide an estimate of any study cost once the scope is clarified by Council.

Discussion ensued.

**Consensus of Council was to direct staff to explore the additional information supplied by Council Member Dawkins and move this item forward for further discussion.**

#### **6.06 Hardening of Creek Banks**

Ms. Sheila Thomas-Ambat, Interim Public Services Director, presented this item with the aid of a PowerPoint presentation and stated Federal permits issued by the U.S. Army Corps of Engineers (USACE) may be required for any work that takes place in a jurisdictional stream, wetland or open water, whether the impact is permanent or temporary. Permits issued by USACE include Section 10 permits (Rivers and Harbors Act) and Section 404 permits (Clean Water Act). In addition (depending on the scope of the project) the applicant could be subject to National Environmental Policy Act, National Historic Preservation Act, Endangered Species Act, and, Federal Emergency Management Regulations. Council requested a special work session to discuss stormwater issues including information "regarding hardening of creek banks". Common activities that may require permits include any disturbance to the bottom or sides of a stream including streambank stabilization or dredging/digging, any disturbance to the soil or hydrology of a wetland, damming of a stream channel to create a pond or lake, and placement of any material in a stream or wetland. The USACE and the North Carolina Division of Water Resources require applicants to consider alternatives to impacting waters and wetlands during the design of their project to include "avoidance" and/or "minimization".

Discussion ensued.

**Consensus of Council was to have Mayor Colvin initiate a Stormwater Focus Group; to include stake holders.**

#### **7.0 ADJOURNMENT**

There being no further business, the meeting adjourned at 9:40 p.m.