



MINUTES OF THE CITY OF BURLINGTON CITY COUNCIL WORK SESSION

OCTOBER 2, 2017

The City Council of the City of Burlington held a regularly scheduled work session in the Municipal Conference Room, 425 South Lexington Avenue, Burlington, N.C., on October 2, 2017, at 5:00 p.m.

Councilmembers Present: Mayor Ian Baltutis and Mayor Pro Tem Celo Faucette
Councilmembers Robert Ward, James Butler and Kathy Hykes

Councilmembers Absent: *None*

City Manager: Hardin Watkins, *present*

City Attorney: David Huffman, *present*

City Clerk: Renee Ward, *present*

Staff Present: Nolan Kirkman, Bob Patterson, Amy Nelson, Peggy Reece, Peter Bishop, Tony Laws, Rachel Kelly, Daniel Shoffner, Jason Geary, Police Chief Jeff Smythe, Bob Patterson, Lisa Wolff

Media Present: Tomas Murawski, Alamance News; Kate Croxton, Times-News

A. Willowbrook Park Stream Restoration Design – Amendment

Bob Patterson
Water Resources Director

Kevin Tweedy
Ecosystem Planning & Restoration, LLC

Water Resources Director Bob Patterson shared that at the September 6, 2016, meeting City Council approved a contract in the amount of \$114,319.00, with Ecosystem Planning and Restoration (EPR) to design a stream restoration/streambank stabilization project for Willowbrook Creek (aka Brown Branch) which runs the length of Willowbrook Park. The City was working with the New Leaf Society to coordinate the streambank restoration project with New Leaf's arboretum project. Since we became aware of the arboretum project, staff had worked with New Leaf and their landscape architect so that the two projects would complement

each other, and not have one project removing, disturbing, or replacing the work installed by the other project.

The Floodplain Management Branch of the North Carolina Department of Emergency Management (NCDEM) regulates development in mapped floodplains. The proposed development for Willowbrook Park includes alterations to Willowbrook Creek, a mapped stream, and significant development within the floodplain. While efforts have been made to minimize the impact of the development on the base flood elevations for Willowbrook Creek, the proposed development for the park was significant, including the installation of a commons building and multiple pedestrian bridges, and would not meet the criteria to obtain a No Impact Certification according to Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) regulations. Therefore, it was necessary to apply for a Conditional Letter of Map Revision (CLOMR) and, upon project completion, a Letter of Map Revision (LOMR).

While the project does not meet the criteria for No Impact Certification, there is expected to be minimal impact outside of the park boundaries. We have minimized all impacts to the surrounding residents. However, due to the proximity of the proposed arboretum building to the creek (it will sit on fill material within the current floodplain) and the amount of dirt we are removing from other locations in the park to provide the storage necessary to mitigate for the building's location, we cannot submit this to FEMA as a "No Impact" project because there are very significant and real changes to the floodplain within the park itself.

Since the preparation of the CLOMR and LOMR were not included in the original scope of the design contract with EPR, we are requesting an amendment to the contract to provide professional services to perform the necessary hydraulic modeling and other required engineering services to prepare and submit the permit applications to FEMA for the CLOMR and LOMR and any related response to gain FEMA approval. Also included in the contract extension is the design of a stormwater control measure, such as a bioretention area, capturing run-off from a parking lot.

Mr. Kevin Tweedy, Ecosystem and Planning Restoration, LLC, shared that the stream designs were complete at this point other than a few final tweaks with park plans. He said that there was a much more extensive permitting process associated with CLOMR and LOMR. He said that the other additional work was the implementation of small best management practice to treat stormwater that was coming into the park in one location. He said that everything was still on track to have the project ready for bid the first part of 2018.

Mr. Patterson said that if approved, there will be a net increase in the contract amount of \$50,000.00, from \$114,319.00 to \$164,319.00. The stormwater control measure design was estimated to cost \$10,000.00 and the flood plain submittals to FEMA are estimated at \$37,854.04. The remaining \$2,145.96 was for additional coordination with the arboretum design ($\$10,000 + \$37,854.04 + \$2,145.96 = \$50,000$).

Mr. Patterson said that he had confirmed with other consultants that these figures fell within expected levels of cost for a CLOMR and LOMR submittal to FEMA, as well as design costs for a stormwater bioretention device.

Consensus of Council was to add the amendment to the October 4, 2017, City Council agenda for consideration.

B. Consistency Statement Revisions Due to Recent Legislation

Amy Nelson

Director of Planning and Community Development

Director of Planning and Community Development, Amy Nelson said that S.L. 2017-10 was adopted during the 2017 Legislative Session by the NC General Assembly. It amends the plan consistency statement requirement, with the changes to take effect for zoning amendments made on or after October 1, 2017.

In 2017 the General Assembly amended N.C.G.S. 153A-341 and 160A-383 to add more specificity to the law regarding the mandated plan consistency statements.

Section 2.4 of S.L. 2017-10 amends the statutes and makes these new requirements applicable to all zoning amendment applications filed on or after October 1, 2017. This bill also made amendments to the subdivision statute, discussed by colleague Adam Lovelady.

The amended statute still requires approval of a statement and the statement still must describe plan consistency and explain why the proposed action was reasonable and in the public interest.

However, the form of the required statement is changing as of October 2017; the statement must take one of three forms:

1. A statement approving the proposed zoning amendment and describing its consistency with the plan
2. A statement rejecting the proposed zoning amendment and describing its inconsistency with the plan; or
3. A statement approving the proposed amendment and declaring that this also amends the plan, along with an explanation of the change in conditions to meet the development needs of the community that were taken into account in the zoning amendment.

With each of these alternatives, the statement is also to include an explanation of why the governing board deems the action reasonable and in the public interest.

The motion and the consistency statement would be read together instead of separately as recommended by the School of Government.

Staff would provide guidance and suggestions when necessary, but that this legislation intends to get Board members to discuss the issue a bit further.

Ms. Nelson said that the Legislature wanted cities and towns to look at the plans, consider them and make a statement that showed it was considered. She said that Council could say anything they wanted that was reasonable and legal and there could not be any legal action taken, however if you there was not a statement, then action could be taken.

City Attorney David Huffman shared that the Legislators were trying to force City Councils, even though it's a legislative process where you could just simply vote, but that on rezoning matters Legislators were trying to get cities to articulate findings of pattern. He said that the Legislators were also trying to get City Council to acknowledge Comprehensive Plans and think in terms of the elements in that plan. He said if Council was choosing to say yes to rezoning a property, then you would have to articulate what was consistent with the plan. If you chose to vote against it, you would need to state the inconsistency.

Councilmember Ward said that if you wanted to vote against it you could just straight up vote against it and not articulate it.

Ms. Nelson said that if the majority voted in favor, the majority would need to articulate a consistency statement stating reasons and that the other two would not have to state why they voted against it.

Ms. Nelson stated that all zoning amendment applications filed on or after October 1, 2017, would fall under the new statute.

C. Boards and Commissions Reports

- Planning and Zoning Commission – 1 Rezoning Request (On Appeal)
 - ✓ Request to amend a conditional rezoning – South Church Street – Gates and fences under construction along South Church Street – On Appeal
- Traffic Commission – None
- Public Transit Advisory Commission (PTAC) – Link Transit Fare Free Service Recommendation
 - ✓ October 10 and November 7, 2017, to be fare free days during the upcoming election dates.

D. City Manager Comments

There were no comments.

ADJOURN

Meeting adjourned at 5:40 p.m.

 Renee M. Ward

Renee M. Ward
City Clerk

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