

**SPECIAL CITY COUNCIL MEETING**  
**Tuesday, December 23, 2009**

**CITY COUNCIL PRESENT:** Bob Craggs, Richard Glasgow, Peg Larsen, Bob Livingston, Brian Zeller  
**STAFF PRESENT:** John Parotti, Amy Schmidt, Chris Wallberg

1. **CALL TO ORDER** by Mayor Zeller at 4:00 p.m.

2. **PLEDGE OF ALLEGIENCE** was said.

3. **PUBLIC HEARING ON PROPOSED FLOODPLAIN ORDINANCE**

**A. Public Hearing**

1) **Call to Order** at 4:05 p.m.

2) **Introduction of Proposed Ordinance** – Parotti introduced in Mark's absence; thinks this might be the second or third copy of the draft version of this ordinance CC has been provided over the past two months; they are at a 'final draft' meaning they still have opportunities to provide input or ask questions; from Staff's perspective, this would be a draft they would ask they consider for action; in a nutshell, this process started several years ago; they may recall they had some draft floodplain maps they made available to residents throughout the City; one of the things that goes along with updating those maps and overall flood insurance study is requirement by FEMA and DNR to update the local controls, in this case the floodplain regulations for the City within the County; the Countywide update – they will probably be working on similar type updates as times permits; this ordinance is again one that is originated from the DNR; the DNR was kind enough to put together a draft ordinance for cities to use saving considerable amount of time and cost in doing that themselves; what they found in reviewing ordinances is they are very similar to ordinances already on the books; with the exception that many cities didn't keep up with updates over the past decade or more, the ordinances look very similar with a few notable exceptions having to do mainly to references to specific map panels in the current flood insurance study and that kind of thing that were added; since they were also concurrently working on their recodification, they were ask to basically reformat the ordinance provided by the DNR to match the format in the new Code so it would be organized and flow nicely with their new Code format and also they had a meeting or two with the Administrator and City Clerk, one meeting with Molly Shodeen, DNR where they reviewed an earlier draft; Shodeen provided some input and answered questions and they had in fact removed some of the optional language in there up to that point with the exception of a few things that are highlighted in yellow on the current copy they have; one of the things they removed earlier on - and later as they clarified some of that language, they were asked to put it back; on page 50 it refers to a new mobile home park that basically says they don't allow it under the City's code – and that is why it is not included here; other than that, if they page through they can see that there are references to the appropriate body that has been filled in to appropriate Staff since the last draft they saw; yellow references are up to them - if they would like him to page through and look at those individually or just respond to questions; mainly has to do with quantitative tracking of fill; there is one clarification on page 42 with a substantial improvement involved – this one works in the City's favor but it clarifies they are talking about improvements within a 365 day period as opposed to an open ended improvement once and they are done; thinks that one actually might provide a new prospective working in the homeowner's or property owner's favor; with that there, he would just ask if they would like for him to continue going through in more detail some of the things that are highlighted in yellow or would they just like him to respond to questions; that is brief introduction but just one last point they are all well aware they have the February 3 deadline where the ordinance needs to be adopted and in effect and there is of course some administrative process that needs to follow their formal action, so they want probably a couple of weeks at a minimum before that February 3 deadline at which time they would need to provide their final approval; ordinance in its current form as reviewed by the DNR, if they elect not to make further changes, it is his understanding they would approve 'as is.'

3) **Public Comments** -

Letter from Dale Homuth, Minnesota Department of Natural Resources, dated 12/22/09 with DNR conditional approval [on file at City Hall]

Letter from Deborah S. Ingram, FEMA dated 12/18/09 [on file at City Hall].

4) **Written Comments** - none

5) **Hearing Closed** at 4:20 p.m.

**B. Discussion and Consideration**

Craggs asked Parotti what he saw as the differences from what they presently have and in their ordinances and what changes are being recommended. Parotti indicated they stopped short of doing line by line comparisons; what they found was that generally speaking, this ordinance is very similar to other ordinances in the Valley

including their own; doesn't know if Amy [City Attorney] had time to look at it in any more depth than that or Chris, but for the most part, it is nearly identical to a couple of the others and very much so the City's as well because they adopted a model ordinance to begin with. Amy Schmidt, City Attorney, agreed with Parotti and didn't do a line by line comparison either; thinks it very similar to what is already on the books and knows it is similar to what is under consideration by at least St. Mary's Point and Lake St. Croix Beach; the definitions added are really FEMA's requirements, and if the City is going to be able to have citizens qualify for flood insurance, those are mandatory additions; doesn't think it changes the substance of the regulations the City has; they pretty much have to do what FEMA says to qualify for the program. Parotti said just some prospective on who this really affects, if they are familiar with their zoning map [referred to map on wall] there are large chunks that is St. Croix River District along the River both to the north and south; this ordinance only really affects the portions of those that are within the floodplain; Lakeland, unlike some of their neighbors, doesn't really have an extensive amount of property within the floodplain; they have Quixote north of I-94 and just isolated building here and there south of I-94 bridge that would be really impacted by this; the ones that come to mind in particular are those near the beach between I-94 and the beach; very few residents – not to say that minimizes the importance of being prudent in their review; just in terms of people this really affects or residents that are affected are a pretty small number actually affected by this change. Glasgow asked regarding page 56, #3, it doesn't spell out who is responsible directly for record keeping; looks like there is extensive record keeping on all the properties; maybe always has been that way, but he doesn't think they have kept those kinds of records and referred to City Clerk. City Clerk verified they haven't. Glasgow continued now they will have to if they are the record keeping authority. That would be Clerk's assumption. Glasgow said since it doesn't spell it out in the ordinance, he asked the City Attorney if they would be responsible for it or is there another agency that will be keeping the record. Schmidt is not aware of any other agency that is supposed to keep the records. Zeller would assume that would fall on them. Schmidt said any changes that are going to occur or any alterations a property will incur will require some sort of permit from the City anyway; City will have those records as they would keep any other permanent information, they would probably have it anyway so won't add a real burdensome administrative procedure; just a matter the permit will have to be applied for in any event. Glasgow asked since this is the City's ordinance, shouldn't they spell that out that they will be responsible for the record then. Schmidt said she supposed they could; doesn't know it is really necessary. Glasgow said otherwise future City Councils can say it wasn't their job to do. Schmidt thinks again it designates that the decisions will be made by the CC to approve for non conformance issues and the proceeding section for conditional uses; thinks it reasonable to assume it will be the City who will be making those records. Glasgow said normally in a legal document you don't assume things. Schmidt said that is true; they can if they want to; not exactly sure where the most appropriate place would be to do that. Livingston would recommend if they don't have to make a change to this document they don't; doesn't think it is necessary; agrees it is an additional burden on the City; what is new about things coming from Feds to the State; would recommend if there are things that really impact their citizens or their ability to govern, they should do something; in this case, he would recommend they take note on it and not make a change. Glasgow suggested directing Staff to start the record keeping process; someone has to do it and to him they might just as well start it now and not be under pressure; like Parotti said, they have limited number of properties they have to keep record of, but there are certain things in this ordinance they have to start keeping records on and it would be easier if they updated as they go through. Craggs went back to his question, and maybe the City Attorney or the City Clerk could help him understand; #3 on page 56 – how is that different than what they presently have; reason is he recollects this particular 50% rule is presented in the zoning ordinance; are they adding an additional requirement relative to monitoring the cost; seems to him they are not; already existing. Schmidt doesn't think they are. Parotti said that is what they have heard Shodeen say over and over again is they aren't really asking the cities to adopt something that is new in those instances because these are the things that are catching people's attention because the DNR themselves flagged them as optional paragraphs; as they look back, they find most cities have been included in the ordinance already. Livingston said if they have it in their ordinance already, are they maintaining those records per their ordinance? Parotti thinks from the standpoint that they have a file on every project that is permitted correctly within the City, so the answer is that there are probably records in the City that would have all this information in it; whether it is easily at the City Clerk's fingertips in this format, or a separate sheet in there that indicates cumulative placement of fill in 1999 - 50 yards, 2005 another 100 yards; doesn't know that exists; information should all be in the City files. Livingston would then concur with Glasgow that they should direct Staff to do it in this format from now on. Glasgow would doubt that the cost of structural alterations and additions, he doesn't think they kept those records what the cost of each alteration was. Craggs asked how they had that information. Larsen and Zeller answered through the building permits; permit fee is determined by market fee of those costs. Craggs thought comparing specifically to the market value itself; they should maybe have a policy associated with confirming they are doing that. Zeller said there was discussion how to determine market value; glad he attended Bayport's meeting and they thought maybe using the assessed value

was a fair and simple easy way and something of record that didn't cost any money; that was one of the comments raised. Larsen said the tax assessor could probably come up with numbers they need because they do evaluate your home and any improvements done. Wallberg said when Molly and she had initially had conversations about some of these projects – maybe it could be added so that each project shows that discussion was held; they do have that conversation about the 50%; a number of things that have needed to have variances, it is very often on file and DNR does make record as long as it doesn't exceed the 50%; is in the City records, and agrees with Craggs that probably the best idea to have a checklist or to come up with a policy that says exactly how they are going to keep those records. Parotti thinks that is where they are picking up on the most significant change in this in terms of the record keeping, establishing the market value so to speak, while they are tracking perhaps the cost of the improvement over time, doesn't know they would necessarily would have been tracking the market value of the existing structure at the time the improvement was done; back to the substantial improvement definition, it does say specifically and thinks right out of FEMA's definition that it is 50% of the market value of the structure before the start of construction of the improvement; that is on page 42 at the top; there is some definition there, but whether they agree that market value should be the assessor's determination appropriate to insert there or not might be up to them; doesn't appear to him FEMA provided any further guidance. Livingston asked what other information they would have other than the assessor's. Parotti said at their fingertips, probably nothing unless the home was recently purchased or something like that; the only other thing would be to have the house appraised and doesn't know if that is what this is requiring; doesn't read that in here; in answer to Zeller, if someone were going to tear a house down that is currently in the floodplain and below elevation and build a new home, as long as they would bring the fill to raise it into compliance then they can construct the new structure; that is a tricky question, but for the most part, if they bring in fill in and construct the new structure above the regulatory floodplain and then there is a buffer there too, doesn't know if 1 -2', but they hit that elevation, anything above that complies with this; that is the time when they file a letter of map amendments with FEMA and then their property is recorded as being, at least the structure itself, out of the floodplain. Zeller made blanket statement thinking about those comments that were made at the State Supreme Court where the authority they have was granted to them by the City's own ordinances; that just makes him nervous; idea of passing a document that was drafted by FEMA makes him nervous; really fundamental; wondering while reading through this if he is missing something; felt Bayport did a good job of asking a lot of questions because he thinks a number of their properties, a good portion of their city, is technically in the floodplain; knows they struggled with secondary structure, that language; the 50% issue; they were going to get additional clarification; asked the City Attorney if she knew if they received that. Schmidt didn't know if they did. Zeller really got the impression from Shodeen that it is a model ordinance, but again a model they drafted; he thinks there is a tendency for people to go along with everyone else's accepting it, and then they might as well accept it; there was one community in the Valley that didn't accept any of the additional language, they just passed it barebones; doesn't know what community that is; with that said, he is personally not comfortable approving this just yet; would like to see what Bayport settles on because he thought they did a good job of working through it and asking the 'what if?' Schmidt doesn't think there is anything in this ordinance that would mimic previous situation and what happened with Supreme Court; doesn't see that there is anything in here where the DNR takes away, or tries to take away, authority from the City; right now the City has authority to do 'x' but it has to be approved by DNR first –doesn't see anything specifically that would try to interfere in that way. Larsen asked the City Attorney if they just passed the barebones – are there consequences to that. City Attorney thinks they can do that; barebones, as far as she can tell, there is very little functional difference between barebones and what is here; the parts that are required by FEMA is what she understands to be barebones; they have to at least get what FEMA requires; she thinks the sections that were labeled as optional by the DNR, some of the ones that Parotti highlighted, thinks if they omit those sections, the difference is actually quite minimal; there are a couple of provisions where Parotti and she have agreed they are getting the impression that at least one optional section isn't as optional as the DNR wants said as it was because if they take out that language and have to have other language, that to her is not as understandable, then it is convoluted and what they designated as optional section is a much more straightforward way of expressing the requirement. Zeller referred to page 45, item 3 highlighted in yellow - would that be an example; thinks they covered that through the WMO agreement; agreed the filling permit would be required – 500 ft. or more. City Attorney was actually thinking of something else. Parotti said a similar paragraph but expanded to that is on page 47, both addressing the same issue; those were identified in the original model or draft provided by the DNR as being optional paragraphs. Wallberg said that goes back to what Zeller was saying to the permit process; to her this is more a question of making sure they have that checklist taking them through the permit process. Craggs asked if the WMO looked at this and weighed in on this. Zeller attends their meetings on a pretty regular basis, but doesn't recall this coming up; would be surprised in one way or another they haven't looked at it. Craggs said they should. Parotti said they are aware the cities are going through this; not sure they been asked to review any of the draft ordinances to date. Craggs'

interest would be as the Mayor said, what the requirements are, how is it similar or dissimilar, stringent or less stringent; if the DNR drafted it, they would probably take that into account; can they request the WMO take a look at this – do they think that would be prudent? Zeller stated yes and no; there are a number of cities who have already approved it that are in their WMO, so now are they undoing some things that have already been accomplished; thinks a courtesy copy from the Administrator asking for specifics to Lakeland if she sees anything that raises cause or concern; is sure she would be willing to do that. Craggs is really interested in how are their rules and requirements similar. Larsen asked about timeframe as to what they need to do at the meeting today; do they need to take action? Zeller said they don't have to, but they need to have the final version approved and published and in effect by February 3; discussion needs to be started if they just pass the fundamental requirement of FEMA so that they meet the timeline and circle back. Wallberg concerned about the time; instructions initially were to get it in by February 3, 2010. Larsen would agree with Zeller to pass the barebones and then really take time to evaluate where the changes are; their history with the DNR has not been a positive one; wouldn't feel she personally would feel comfortable just saying okay to everything they have said especially since no one has gone through it line by line and actually evaluated it; there is another city that has just done the barebones and thinks that satisfied the timeframe. Zeller pointed out page 53 where it talks about conditional uses; the red language that is optional language [Parotti corrected not the red, just highlighted yellow] if they look at the red language, the CC followed the review and recommendation by the PC and you go on that the PC reviewed and recommended – going back to the Hubbard issue, the PC recommended denial, CC recommended approval. Schmidt doesn't think that creates a problem; thinks Parotti actually did the red line there, but is similar to what they did in other cities that it is just standard process the City goes through anyway for conditional uses; goes through the PC and the ultimate decision is made by the CC. Larsen asked if they don't have a PC. Schmidt said then they have to amend the ordinance. Parotti said the reason it was left in at this point is because they haven't taken formal action to his understanding to dissolve the PC. Zeller confirmed true for the most part; thinks they need to go back. Parotti said certainly what this would do, regardless of whether they had a PC or not, it would come straight to the CC. Zeller said it wouldn't have to come straight to them, but it wouldn't preclude them from taking it through the PC but wouldn't require them to take it through the PC. Schmidt thinks it is open to interpretation quite a bit; if they take out the review by the PC, it looks like it would go straight to the CC; at the same time if they leave it in there, it ties into having a PC review; if they want to make a decision and make the language to essentially making it a CC decision, they can do that. Wallberg said with the former ordinance and the way things were structured, that was consistent with the fact that this went through public hearing without going through the PC; to her, the more workable thing is that portion of the ordinance – it would be just that portion of the ordinance that gives the options to the governing body. Zeller clarified what she is suggesting is they put governing body language back in. Parotti asked for his own clarification not having been part of the discussion regarding the PC, is CC considering making itself as a Planning Commission in lieu of a separate body. Zeller said no; they are considering renaming the PC changing their roles and responsibilities. Parotti quite frankly doesn't think this paragraph is anything that would trip up the regulatory instance; something they want for their own accuracy. Zeller suggested they have CC and/or governing body. Craggs recommend governing body as Wallberg suggested; it provides the discretion for them to make the determination what the governing body is. Glasgow said it could be the DNR. Parotti said it wasn't language exactly; it was a fill in the blank where they put in parentheses 'for instance.' Zeller comfortable with governing body. Schmidt added leaving out review and recommendation from PC. Glasgow asked if they would put governing body under definitions. Schmidt and Zeller said no. Schmidt thinks it leaves it very open ended. Zeller said for the purposes of discussion this evening, should they highlight that as something they want to tighten up. Schmidt thinks that probably better. Schmidt thinks coming in as a new person, asked if her understanding that if a person has an application for a CUP, do they specifically go first to the PC and then final decision by CC; asked if that is procedure in place right now. Wallberg noted the status of the Conditional Use Permit process in Lakeland right now is that they are a business permit until they change the ordinance; their practice is in the last 18 years now there was one CUP that was not simply a business permit; thinks the codification will help them do that; do they typically go through the PC, absolutely - understanding their CUPs are different permits; historically business permits; made change in the codification so that there is a CUP for St. Croix Business Center but not for each individual business that comes through. Livingston has a problem with calling the responsible party anything but the CC; they are the responsible party; putting 'responsible party' or whatever it is 'governing body' leaves it open. Zeller likes that it goes through the zoning office and then forwarded to the CC. Wallberg said to her way of thinking, these types of questions that she and Parotti are working to buckle down a lot are really engineering questions. Zeller looked at page 43 and issue of Beanie's and whether they are permitted under that language; certainly their ramp is; referring to permitted uses in general; do they have a permitted use in their Community and is Beanie's covered in that; they aren't going to issue any new licenses for any new commercial businesses but wants to make sure the one they have is covered. Wallberg confirmed that Beanie's is permitted by the

Conditional Use Permit. Livingston said this can only be overwritten by an underlying ordinance that prohibits a boat launch. [Changes] Zeller started with the cover page and working his way back, really the first substantive change is substantial improvement and the definition; asked if anyone had issue with that additional language; moved on to the next area highlighted on 45 that includes placement of fill; would be his preference it be eliminated. Craggs and Larsen would agree. Zeller continued to mobile home parks that is probably a non issue for the City; will come back to Board of Adjustment because he needs clarification there; conditional uses on page 53 they are going to change that to CC; thinks they can't figure out what they want there; everything else refers to CC on the next page, so then they come back to non-conforming uses, page 56, item 3, that is highlighted. Craggs noted that isn't a requirement for complying with FEMA at the barebones; he would say they would want to eliminate it unless they can resolve the record keeping aspects of this which they discussed. Zeller said consensus to strike it; other than that, unless there is something they missed, he would like to ask the question on Board of Review/Board of Adjustment, page 52, 'Board of Adjustment shall adopt rules for the conduct of business and may exercise all the powers...' asked who the Board of Adjustment is. Parotti said it is the City Council that was confirmed by City Attorney. Schmidt's understanding is it is the Board of the Council sits at the Board of Adjustment and if there is any function that needs to be performed by the Board of Adjustment, they do as they have done here where they call order and consider as the Board of Adjustment, do your business, and then convene back to their City Council function; there are cities where there is a separate Board of Adjustment, but it is her understanding that they as a Council sit at the Board of Adjustment; separate functions in the Statutes that are Board of Adjustment; could put in definitions that Board of Adjustment is the City Council, but doesn't think it is necessary because it is probably elsewhere in the general Code. Zeller asked if they could just confirm language is consistent here that the Board of Adjustment or Board of Appeal – that they are consistent within their Code; as long as they have a definition section, would prefer to just have it for clarity. Schmidt said it would probably be a simple statement that pursuant to Code Section 1234, the CC sits at the Board of Adjustment/Board of Appeals; doesn't have to be anything elaborate; thinks it often referred to as Board of Adjustment; thinks that the whole name has been abbreviated down but they can double check the references throughout the rest of the zoning ordinance to make sure consistent; can talk with Nick Vivian about Bayport's discussions about secondary structures. Craggs noted there is reference to accessory structures on page 45. Livingston said accessory use or structures is defined on page 40. Zeller thinks that may have been the question he had; primarily all page 45 looks like it requires all accessory structures to be elevated on fill. Schmidt will double check and see if they reached any conclusion in Bayport. Parotti said if okay with CC he would like to accept all edits that he instructed them to view and basically turn them to black text so it looks like the rest of it and then they would simply continue to track any further edits from here forward in the red so they can see what has changed and subsequent version of that. Craggs thought they basically discussed they would vote on it and come back if they wanted to address specific issues.

**M/S/P (Zeller/Craggs) to adopt Resolution 2009-40, a Resolution adopting the Proposed Floodplain Ordinance with changes as discussed. By roll call, Craggs, Glasgow, Larsen, Livingston, and Zeller voted aye. Resolution 2009-40 adopted.** Wallberg questioned if they are adopting the ordinance and then adopting a resolution.

**M/S/P (Glasgow/Craggs) to adopt Resolution 2009-41, a Resolution directing summary publication of the Proposed Floodplain Ordinance. By roll call, Craggs, Glasgow, Larsen, Livingston, and Zeller voted aye. Resolution 2009-41 adopted.**

**4. ADJOURN – M/S/P (Zeller/Larsen) to adjourn the meeting at 4:56 p.m.**

---

Brian Zeller, Mayor

---

Kate Piscitello, Recording Secretary