

**OFFICE OF THE CITY COUNCIL**

117 WEST DUVAL STREET, SUITE 425

4TH FLOOR, CITY HALL

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**SPECIAL LUZ WORKSHOP ON DRAINAGE AND FLOODING ISSUES**

**MEETING MINUTES**

**City Council Chamber, 1st floor, City Hall**

**November 13, 2017**

**12:00 p.m.**

**Location:** City Council Chamber, City Hall – St. James Building; 117 West Duval Street,

**In attendance:** Council Members Matt Schellenberg (Chair), Danny Becton, Lori Boyer, Al Ferraro

**Excused:** Council Members Katrina Brown, Doyle Carter and Reggie Gaffney

**Also**: Council Member Aaron Bowman; Susan Grandin – Office of General Counsel; Bill Killingsworth, Folks Huxford, Mike Sands and Kristen Reed – Planning and Development Department; Jessica Matthews – Legislative Services Division; Jeff Clements – Council Research Division; Bill Joyce – Public Works Department; John Flowe – Environmental Quality Division; Dave Miracle – St. Johns River Water Management District

**Meeting Convened**: 12:00 p.m.

Chairman Schellenberg convened the meeting and the attendees introduced themselves for the record. Mike Sands of the Planning and Development Department reported that the department is in the process of developing an ordinance to make revisions to the City’s current policies and regulations regarding stormwater management and has looked at the regulations in other Florida jurisdictions. Tampa’s regulations are very similar to Jacksonville’s, while Orlando uses a substantially different methodology. In response to a question from Council Member Boyer about the City’s inspection and enforcement procedures, Mr. Sands said that lack of adequate enforcement power is one of Jacksonville’s primary weaknesses with regard to stormwater regulation. The new ordinance will help to remedy that weakness. Dave Miracle of the St. Johns River Water Management District said that the WMD has regulatory authority over surface waters and the wetlands that impact them and that its enforcement action is generally reactive to citizen complaints, although some is initiated by the district’s field personnel in the course of their regular duties. The typical enforcement action is to require removal of illegally placed material in wetlands or waterways and perhaps the imposition of a fine. Alternatively the district could retroactively require application for a permit for the action taken.

The committee and staff discussed problems posed by development of isolated infill lots in previously developed areas and how to ensure that drainage from the infill development does not adversely impact the adjoining properties. In response to a question Mr. Miracle stated that single residential lots are exempt from WMD regulation unless those lots impact regulated wetlands. Activities by the city, state and federal governments, U.S. military, FDOT, JEA, etc. are all subject to WMD regulation. Council Member Boyer requested that the issue of raised lots/infill development be placed on a list of topics for additional future discussion. Council Member Ferraro felt that the current 5-year performance bond requirement on new development is insufficient to deal with potential long-term issues. Kristen Reed of the Planning Department said that the City does not currently require “maintenance of drainage” plans, but that is being considered for the new revised ordinance discussed earlier. In response to a question from Council Member Ferraro, Ms. Reed explained that state law requires the Coastal and Conservation Elements of local government comprehensive plans to enact goals and policies that address sea level rise. In response to a question from Council Member Reggie Brown, Ms. Reed said that the capital improvement needs identified in the Comprehensive Plan are funded annual through the adoption of the Capital Improvement Plan and the annual budget. Regarding dredging of navigable waters, Ms. Reed said the working group involved in the ordinance re-write has not yet dealt with that issue but will do so. Council Member Brown expressed concern with the City’s apparent lack of enforcement power and said that the burden of obtaining some kind of remedial action falls on the adjacent affected property owners who have to sue for relief.

Regarding inspections Mr. Sands said that the City has inspection authority over residential subdivisions but not over commercial properties unless the commercial project generates an identifiable issue. Developers can hire a private inspector to do interim inspections but the City must do the final inspection when a subdivision is completed in order to issue the certificate of occupancy and release the performance bond. Ms. Boyer requested that the issue of inspections be added to the list of items for future discussion.

In response to a question from Council Member Becton, Mr. Sands said that a certificate of occupancy can be issued when the horizontal construction of infrastructure is complete but before any vertical building is done. Subsequent inspections when buildings are built is problematic and needs to be improved. Mr. Miracle said that pre-1990 developments are “grandfathered in” and the WMD has no regulatory authority over the operation of those systems, if they exist. There are no regulations on unpermitted facilities. In response to a question Mr. Miracle said that there is no renewal requirement for WMD permits. They are inspected and accepted when completed and maintenance is required thereafter, but there is no real inspection process thereafter until a problem arises. In response to a question from Ms. Boyer about impervious surface calculations and standards, Mr. Sands said that the City compares actual pre- and post-construction drawings to determine the amount of impervious surface being created. Mr. Miracle said that the WMD uses published runoff coefficient tables based on the type of development being proposed. Ms. Boyer asked that the engineering design coefficients for runoff be put on the list of items for future consideration. She is concerned that the trend toward allowing development of smaller lots in new subdivisions has the potential to increase the percentage of impervious surface in developments (the impervious percentage of a house, driveway and patio on a 50 foot lot is much higher than on a 100 foot lot), and therefore has the potential to increase the amount of total runoff. She is very concerned that many properly permitted and properly constructed projects don’t produce the expected result when completed; something is going wrong somewhere in the process. Council Member Ferraro echoed that concern and felt that the City must have some responsibility to protect the interests of citizens when a stormwater facility design goes wrong and negatively impacts neighboring property owners.

The group discussed issues involved with reliance on plans produced by design professionals and the liability for remediation when plans produced by those professionals don’t operate as planned after construction. Council Member Boyer questioned the effectiveness of the WMD allowing mitigation for wetlands impacts in areas distant from the location of a project. Mr. Miracle said that the district allows mitigation anywhere within the basin of the impacted water body. Ms. Boyer asked that the potential for local regulations to add water quality protections to the WMD’s regulations be added to the tickler list of items for further consideration. Ms. Boyer also asked that further consideration be given to potential ways of requiring contractors to mitigate for failures to keep silt out of regulated waters and wetlands. The current practice of levying fines for silt fence failures does not get the illegal material out of the impacted water body. Mr. Miracle said that the WMD has the power to require removal of illegally placed material, but it is often difficult to definitively prove the origin of the material and assign liability to a particular project.

In response to a question from Council Member Brown about regulation of retention ponds, Mr. Sands reported that most of the several thousand ponds in the City are privately owned and maintenance is the responsibility of the owner. The City does not inspect private stormwater facilities after they are constructed. A big problem is that developers turn over stormwater ponds to homeowner associations when a new subdivision is constructed, but sometimes those associations become defunct and no one takes responsibility for maintenance. Plat regulations previously made the property owners directly abutting the retention pond responsible for its maintenance in the absence of a homeowner association. The plat regulations have since been changed to make the pond the responsibility of all of the property owners in the subdivision if the HOA defaults. Ms. Boyer asked that post-construction maintenance of ponds be added to the future discussion list, including the potential for requiring that private owners provide annual evidence to the City that the pond has been inspected and is functional. She believes that many property owners do not realize that swales in their yards are part of an overall neighborhood drainage system, and therefore fill them in without recognizing the problems that will result. In response to a question from Council Member Ferraro about the importance of pond aeration, Mr. Sands said that aerators are useful for aesthetic purposes but don’t really affect water quality. Mr. Miracle said that if aeration is desired, it needs to be professionally designed and substantial enough to meet the application, not just a small bubbler.

Ms. Boyer raised the issue of rising sea level and the attendant increase in the frequency of very high tides and asked if the City is considering remedial actions such as installing backflow preventers and pumps, raising outfall levels, and changing design standards. Public Works Department Operations Director Bill Joyce agreed that standards need to be revised to reflect the new reality of higher water levels. Ms. Boyer urged that that the changes be made sooner rather than later to avoid permitting new developments based on standards that are sure to fail in the coming years.

In response to a question from Council Member Boyer about the policy on permitting development that drains to a private marsh and ultimately to a water body, Mr. Sands said that current regulations require that an easement be in place to guarantee the right to convey water from a development to a receiving water body. Mr. Sands also reported that the City allows filling for development in floodways and flood plains if sufficient compensation is made elsewhere. Ms. Boyer asked that floodway/flood plain development regulation be added to the list for future discussion. She also expressed concern that the Comprehensive Plan level of service standards for drainage allow too much flooding in LOS B and C without tripping a violation.

Public comment

Tom Larson said that the City needs to be making investments with a 50-100 year time frame in mind and should immediately begin planning for sea level rise and require building elevations to be safe from rising water levels. He urged the City to produce a map of every part of the county that flooded during Hurricane Irma so that the full extent of the potential danger can be easily seen and assessed.

Lad Hawkins said that sea level rise is clearly underway and the City is still allowing development to happen under outdated standards. Everyone will suffer when waterfront development is flooded because it will erode the city’s tax base and increase the revenue generation burden on all the other properties. The 2-foot sea level rise that the City is beginning to plan for is only a start – the problem is only going to worsen over time. Many costs will be imposed from many different aspects.

Greg Matovina, a long-time Jacksonville developer, said that has not received a single call about flooding from any of the subdivisions he’s built over the years. Most drainage complaints are generated from developments built before the City commissioned a major drainage study and imposed modern development standards in 1992. From is perspective the City is rigorous about enforcing floodway/flood plain fill and mitigation requirements. He recommended that plan reviews require another sheet or scaled site plan showing properties adjacent to new developments so that planners can assess potential drainage effects on adjacent properties.

G. Very Testy asked how much the Planning Department’s current drainage regulation rewrite effort is costing and whether the study was contracted out or done in-house. Council Member Schellenberg asked Mr. Testy to e-mail the request to him and he will see that his questions are answered.

**Meeting adjourned:** 2:28 p.m.

Minutes: Jeff Clements, Council Research Division

11.16.17 Posted 10:00 a.m.

Tapes: Special LUZ workshop meeting – LSD

11.13.17