

February 3, 2014

A Special Meeting of the Council of the City of Manassas, Virginia was held in Public Works Conference Room, 8500 Public Works Drive, Manassas, Virginia, on the above date with the following present: Mayor Harry J. Parrish II, Vice Mayor Andrew L. Harrover, Council Members Marc T. Aveni, Ian T. Lovejoy, J. Steven Randolph, Jonathan L. Way and Mark D. Wolfe; City Manager W. Patrick Pate, Deputy City Attorney Mike Vanderpool, City Clerk Andrea P. Madden, Community Development Director Elizabeth S. Via-Gossman, Planning and Zoning Services Manager Matt Arcieri, Senior Planner Morgan Brim, Public Works and Utilities Director Mike C. Moon, Assistant Public Works Director Patrick Moore, and Engineer Joe Webb.

Mayor Parrish called the meeting to order at 5:33 p.m.

Council Member Wolfe was marked as present at 5:34 p.m.

Members of the Planning Commission were also present for the Joint Work Session.

The City Clerk reported that the news media had been notified of the Special Meeting in accordance with the Freedom of Information Act.

The City Clerk read the Notice of Special Meeting acknowledged by all Council Members stating that the Special Meeting was called for the following purposes:

1. As per the attached agenda dated February 3, 2014;
2. Other pertinent business for the operation of the City.

Item 1 of the Agenda: Work Session on Proposal to Update the City of Manassas Zoning Ordinance.

Ms. Via-Gossman introduced the topic and reviewed the goals associated with the update. Ms. Via-Gossman stated that the update will correct long-standing technical issues and ensure compliance with state and federal regulations while organizing the Code in a logical and user-friendly manner. Additionally, the update will incorporate clear development standards and allow staff to implement best practices.

Mr. Vanderpool reviewed the legal issues that have occurred since the Code was drafted in 1946 and stated that the ordinance is outdated from legal perspective. The lack of clarity and certainty in the zoning ordinance creates problems for City staff, the general public and the courts. Mr. Vanderpool stated that a review of the ordinance would be helpful and noted that it is appropriate for legislative bodies to review what is permitted in various zoning districts on a regular basis.

Darren Coffey, a consultant with the Berkeley Group, reported that as part of the Industrial Zoning Study, an overall ordinance diagnostic was performed. Mr. Coffey stated that there are inconsistencies in potentially a dozen Code sections and highlighted the need for clear definitions, noting that restaurants are currently defined five different ways. Mr. Coffey stated that the permitted uses in each district should be listed in a user-friendly manner and all uses with similar land use impacts should be treated equally within each zoning district.

Mr. Arcieri presented to the City Council its options regarding implementation of a zoning ordinance update. The following two approaches were discussed:

Option A: Comprehensive Zoning Ordinance Update

Phase 1: Definitions and Uses and Public Outreach for Phase 2 & 3; approximately 7 to 9 months for completion;

Phase 2: Zoning Changes Implementing the Comprehensive Plan; approximately 11 to 15 months for completion; and

Phase 3: Technical Issues Addressed; approximately 7 to 9 months for completion.

Option B: Incremental Zoning Text Amendment

Issues Previously Identified or Initiated by City Council

- Places of Assembly
- Medical Care Facilities
- Temporary Structures/Tents

Issues Previously Identified by Staff

- Evaluate and Update Known Definition Issues
- List Permitted Uses in Each Zoning District

Staff recommended that the City Council proceed with Stage 1 of the Comprehensive Zoning Ordinance Update (Option A) with a zoning text amendment initiated at an upcoming Regular Meeting of the City Council.

Council Member Aveni stated that the City Council cannot wait for three years to resolve the three outstanding issues that have been identified. Council Member Aveni recommended moving forward with Option B to begin having some of the questions answered. Although there is merit in a comprehensive zoning study, it is not a good idea to wait to have the matters resolved.

Vice Mayor Harrover stated that every time there is an issue, the City's zoning code is just not capable of handling it. Vice Mayor Harrover expressed his frustration with having to be reactive and deal with individual pieces of the Code and commented that fixing one problem at a time is not a good long-term strategy. The zoning ordinance should be modern and keep the City out of trouble; from a governance view point, the comprehensive approach is the best option.

Council Member Lovejoy asked why the City cannot simultaneously look at the Code comprehensively and address the three most pressing issues.

Ms. Via-Gossman responded that there is not sufficient staff to accomplish this and a consultant would be needed to complete the task. Ms. Via-Gossman indicated that Phase 1 would address the three issues previously identified by the end of the year, ensure that definitions are clear, and complete the chart that identifies allowed uses.

Council Member Lovejoy asked Ms. Via-Gossman to clarify that at the end of Phase 1, there will be answers to the three most pressing issues.

Ms. Via-Gossman confirmed that upon completion of Phase 1, the three pressing issues would be resolved.

Council Member Randolph stated that his concern is also that the three issues identified be dealt with in a timely manner.

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Ms. Via-Gossman stated that staff will make every effort to get all the work completed by the end of the calendar year.

Council Member Wolfe stated that he concurs with Vice Mayor Harrover and is frustrated with the current reactionary process. Council Member Wolfe stated that it is time that the City move on a comprehensive zoning ordinance that the City staff and Council can work with. Council Member Wolfe proposed that a comprehensive zoning ordinance will likely save the City a considerable amount of money.

COUNCIL MEMBER WOLFE MOVED that the City Manager be directed to move forward with a Comprehensive Zoning Ordinance Update, Option A, as outlined by City staff. Seconded by Vice Mayor Harrover. Roll call vote: AYES - Harrover, Lovejoy, Randolph, Way and Wolfe. NAYS - Aveni. **MOTION CARRIED.**

Mayor Parrish called for a recess at 6:15 p.m.  
Mayor Parrish reconvened the meeting at 6:27 p.m.

Item 2 of the Agenda: Hearing on the Gatherings II Appeal of Site Plan Requirements Requested by Wellington Retail II, LLC.

Mayor Parrish reviewed the appeal process the Council will follow, stating that the hearing is not a court matter; however, what is said or presented could be considered by a court at some future time. The appeal is important and the Council needs to take up and consider carefully multiple matters and perspectives. The appeal is being made by Wellington Retail II, LLC and involves the Public Works and Utilities Director's decision that the developer provide a FEMA Letter of Map Revision (LOMR) for the site, install three street lights along Hastings Drive, and provide a utility easement.

Mayor Parrish noted that the appeal letter was received in the City Clerk's Office on January 10, 2014. The purpose of tonight's meeting is to hear the evidence. The Council may reverse or affirm, wholly or partly, the final decision being appealed. The decision of the Council shall be based on the evidence presented at the hearing and shall include findings of fact and state the grounds and basis for its decision. The Clerk shall promptly transmit a notice containing the results of the decision to the affected parties and to such other parties as she may deem necessary.

Mayor Parrish stated that from a process perspective, the City Council would first hear from the developer for up to twenty (20) minutes. Next, the Director of Public Works and Utilities, Mike C. Moon, will present evidence. At the conclusion, the Council may act or take the matter under advisement for further consideration.

**Mayor Parrish recognized and called upon Mike Dingman with ReedSmith.**

Mr. Dingman reviewed and summarized the developer's appeal to the Director's requirements of a LOMR, three street lights along Hastings Drive, and a utility easement.

A. No Basis for Requirement of a LOMR to Revise FEMA Map

In regard to the LOMR requirement, Mr. Dingman stated that the development that is the subject of the site plan, is not modifying the floodplain or impinging upon the floodplain, which is why there was no requirement under the City Code or the DCSM (Design and Construction Standards Manual) for the developer to have to go forward and prepare a LOMR in a related floodplain study. Mr. Dingman stated that the property was rezoned three (3) times in the last six (6) or seven (7) years; the most recent was last year and although staff referenced the 100 year floodplain, staff did not indicate that the project was in the floodplain or require a LOMR or any documentation with respect to the floodplain to approve the rezoning. This was also the case for the rezoning in 2008 and the rezoning in 2005. This fact was important because when you look at the history of the property and the adjacent properties, it was clear that the floodplain was modified more than twenty (20) years ago and submitted with the appeal a number of plats, including a plat prepared by Greenhorne & O'Mara, Inc. (G&O). Following the G&O study, the modifications to the property included the installation of a box culvert by the City, adjacent to Hasting Drive in the early 1990s, and other box culverts installed by the developer at the time, Kettler & Scott. At that time, a Declaration of Easement was recorded and signed by the City of Manassas. Mr. Dingman stated that what all these documents demonstrate is that the floodplain is not where it is depicted on the FEMA map. Therefore, the developer is not proposing to change or modify the floodplain, because that happened many years ago. Additionally, if there were a requirement to update the FIRM, it should have been done at that time.

Denard Teller with the Engineering Group, discussed the final site plan stage and stated that the G&O Study was relied upon to establish limits. Mr. Teller indicated that the G&O Study was used to approve other site plans, including townhouses and the Giant (Wellington) Shopping Center. Mr. Teller stated that every effort was made to keep the project out of the floodplain. The goal was to not fill the floodplain and avoid raising the base floodplain elevation (BFE).

Mr. Dingman emphasized that the floodplain is not where it is depicted on the FEMA map and requiring a LOMR is not something the DCSM or the City Code requires. Mr. Dingman stated that Section 8-620 is only applicable once floodplain modifications are completed by the party making the floodplain modification and the developer is not proposing any floodplain modifications.

Mr. Dingman stated that in a letter addressed to Martin Crim, the developer has proposed contributing \$15,000 toward updating the FEMA map. Mr. Dingman explained that there is a contract in place with Beazer Homes that will expire in a couple of weeks; if the site plan cannot be approved, there is little incentive for Beazer to move forward with the project. An update to the FEMA map should be done, but it should not hold up site plan approval and should be done upon completion of the project. Mr. Dingman stated that the G&O Study provides the necessary information and it can be submitted to FEMA to obtain an update once the project is finished.

B. Street Lights Along Hastings Drive / Utility Easement

Mr. Dingman stated that his clients' position is that Hastings Drive is a public road that does not directly serve the property and the project fronts on a private road; therefore, the obligation to install any such lights should have been required at the time of development of earlier projects in the area. In regard to the request for an easement, an easement was already given to the City; unfortunately, the City's contractor completed the electrical work outside of the easement. As part of a proposal to resolve the issue, the developer has offered to provide the easement if the obligation to install street lights is removed.

Mayor Parrish asked what year the G&O Study was completed.

Mr. Dingman and Mike Moon confirmed that the G&O Study was done in the late 1980s.

Council Member Aveni stated that nobody is certain what the results would be if the G&O Study were submitted to FEMA.

Mr. Dingman stated that the Code requires the development that modifies the floodplain to get the update and this development does not modify the floodplain - that was done in the late 1980s and early 1990s. However, the developer believes the G&O Plan is sufficient to show FEMA where the floodplain is and is the basis to update its map.

Council Member Aveni stated that if FEMA is not satisfied, the City assumes all the risk.

Mr. Dingman responded in the affirmative to the question posed by Council Member Aveni. Mr. Dingman said that FEMA could request a more detailed floodplain study, and that was why the developer offered to contribute some dollars to the process if needed. The predicate for making the developer go through that process is that the development at issue has to be what is modifying the floodplain - that is what the DCSM states and all are in agreement that the floodplain was modified more than twenty (20) years ago. To say that this development now has to do what should have been done all those years ago or the development cannot go forward was not only unfair, but contrary to the Code and what triggers that requirement. Why the update was not done in the early 1990s may never be understood and we agree that it should be done, but it is not the obligation of this developer and it certainly should not hold up site plan approval. Mr. Dingman stated that it was his opinion that it would be difficult for FEMA to disagree with the G&O plat.

Council Member Wolfe asked if Beazer would consider extending its contract with the developer if this issue was not resolved immediately.

Mr. Dingman replied that if the developer has to go through the process involving a LOMR and FEMA, the City has estimated that would take approximately six (6) months.

In regard to an as-built submittal to FEMA, Council Member Wolfe asked Mr. Dingman what his experience is with that process.

Mr. Dingman responded that he had never gone through that process, but Mr. Teller stated he had and it takes four (4) to five (5) months.

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Council Member Wolfe asked what the success rate is with this process; how often does FEMA accept this type of documentation as presented.

Mr. Teller replied, "almost never."

Joe Jacobs stated that Beazer finished three buildings and has sold those units out. The only unsold units are the models in Building 1. Beazer currently has ten (10) sales contracts for units not yet built and will go elsewhere if the homes cannot be sold.

Mayor Parrish asked how many total units in the two proposed buildings.

Mr. Jacobs answered that there are fifty-four (54) total units.

**Mayor Parrish called upon Mike Moon, Director of Public Works and Utilities.**

Mr. Moon provided background information on the property and projects. Mr. Moon explained that the box culvert in question was put in as part of the site plan approval for SP 112-88, that was approved by the City Council, and allowed for the shrinkage of the floodplain. Mr. Moon stated that there was still a floodplain on all the parcels, however, it had been contained to an area that does not impact the structures. Equally, the floodplain now, per the G&O floodplain study, is confined to the box culvert, which allows for the development of these structures as illustrated on the plan. City staff contends that a private developer, Kettler & Scott, was able to develop the property in question as a result of the box culvert that was installed as part of SP 112-88. Mr. Moon stated that he cannot speculate on why the floodplain study was not submitted with the proper paperwork and fees to FEMA. Mr. Moon referred to an exhibit displayed on an easel that showed the floodplain on the Gathering II site plan and also showed an exhibit from site plan 112-88 that depicted the location of the box culvert along the Gatherings II site and the fact it was proposed and constructed as part of the private site plan development in 1991.

A member of the City Council asked Mr. Moon to confirm if the City paid for the box culvert being discussed.

Mr. Moon responded that the box culvert was paid for by the private developer.

Mr. Moon stated that Development Staff agree that the map revision needs to be done; however, the question is who should do it. Mr. Moon noted that there are typically two processes followed to submit paperwork to FEMA. There is typically a conditional letter of map revision (CLOMR) done in advance of development. After as-builts have been submitted, an actual letter of map revision is submitted. Therefore, if this matter moves forward, a conditional letter of map revision would not be submitted; a letter of map revision would be requested.

Mr. Moon pointed out that the official City floodplain is detailed on the FEMA map; Chapter 66 of the City Code recognizes the FEMA boundaries. So, while City staff has looked at this plan and other plans in this area in the past, with the engineering analysis associated with the G&O Study, the official map of the City that the Building Official has to look at in regard to what is in the floodplain, is in fact the FEMA map. Mr. Moon stated that if structures are placed

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in a floodplain, loans for owners may require flood insurance and FEMA could drop the City from its insurance program.

Mr. Moon reiterated that the G&O Study was completed twenty-five (25) years ago and the likelihood that it would be accepted by FEMA is a five (5) to ten (10) percent chance. Mr. Moon stated that the property would likely be subject to a new study - FEMA would require that. The question then is what happens if that floodplain is modified; the answer is you may have buildings permitted, under construction, and they could be in the floodplain. Mr. Moon confirmed that there is a timing issue with this project and referred to an email sent in July 2013 to the developer as part of a pre-submission meeting. This is an issue we have been very upfront about and the letter dated October 31, 2013 indicated there was a mapping requirement. There is a concern about moving forward and issuing permits based on the twenty-five (25) year old G&O Study. Mr. Moon emphasized the importance of requiring private entities to continue to be responsible for private development and the costs associated with it.

In regard to the street lights, the City requires public street lights based on photometric studies. Mr. Moon noted that the new structures will front on Hastings Drive and there will be additional residents in the area who may use the sidewalk. In regard to the utility easement, the City would not hold the site plan up for this issue and could relocate the facilities.

Mr. Moon asked that the briefing packet dated January 20, 2014 attached to the Agenda Packet be included as part of the official record, along with the email from Sung Jin Chung to Stan Orndorff dated July 15, 2013 on the requirement of the floodplain and the Agenda Statement and back-up dated September 11, 1989. (These three (3) documents/packets will be filed with the February 3, 2014 Agenda Packet and retained with the approved Minutes.)

Council Member Way stated that he was concerned about homeowners already living in the townhouses that were already built and in the floodplain. These homes were built just a few years ago and with the approval of the City using the G&O floodplain map. Mr. Way referred to an exhibit that was submitted by the developer but showed the FEMA floodplain overlaid on top of the Generalized Development Plan (GDP) for the Villages of Wellington townhomes in the FEMA floodway.

Mayor Parrish asked who developed and built the townhomes on the property.

The response was that Elm Street built the homes.

Mayor Parrish asked questions regarding the additional pedestrian traffic that may be expected with the new residences.

Council Member Wolfe asked questions regarding the existence of townhomes built in the floodplain and now occupied and being sold.

Mr. Jacobs stated that the developer uses title companies that are builder-friendly title companies and the Fannie Mae and Freddy Mac requirements for processing a settlement and a loan are a little gray. On a re-sale, someone would likely find the missing flood certificate survey and it could then be an issue.

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Mr. Moon briefly discussed the difference between a floodway and a flood fringe; FEMA will not allow building in the floodway.

For clarification purposes, Council Member Aveni summarized staff's position as follows: a study needs to be submitted by the developer to FEMA and if the study is not approved by FEMA and updates are required, the developer should be responsible for the costs, and no land disturbance will be allowed until that is completed.

Mr. Moon agreed with Council Member Aveni's summation and emphasized that the maps do need to be cleaned up to protect property owners and the City.

Mr. Dingman responded that Kettler & Scott was the original developer and they have no connection to Wellington Retail II, LLC. The obligation to submit a LOMR to FEMA was not enforced twenty (20) years ago and there is no basis to enforce it today. Everyone agrees that the floodplain is not where FEMA shows it. Section 66-82 is only applicable if the floodplain elevation is being changed, and Mr. Teller has told you that is not happening.

Mr. Moon agreed that this issue is a paperwork clean-up, but cautioned that it is very unlikely that FEMA will accept the G&O Study and maps. This is a private development and they were advised of this issue early in the process.

COUNCIL MEMBER AVENI MOVED that a decision regarding the appeal be tabled to allow for further consideration by the City Council. Seconded by Council Member Wolfe. Roll call vote: AYES - Aveni, Harrover, Lovejoy, Randolph, Way and Wolfe. **MOTION CARRIED.**

Motion was duly made, seconded and **CARRIED UNANIMOUSLY** to adjourn the meeting.

Mayor Parrish declared the meeting adjourned at 7:23 p.m.

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MAYOR

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CITY CLERK

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DATE APPROVED