

## Staff Report

**FOLLOW-UP TO APPROACHES TO DEVELOPMENT IN THE FLOOD PLAIN AND ENVIRONMENTALLY SENSITIVE AREAS**

March 22, 2016

**BACKGROUND:**

The purpose of this report is to apprise the City Council of steps that staff has taken regarding proposed changes to flood plain development regulations within the floodway at the direction of City Council from November 10, 2015. **Staff has received comments from the Planning and Zoning Commission and the public on potential ordinance changes and now seeks further direction from City Council prior to finalizing any particular approach to further regulating the floodway.**

In November 2015, staff provided a report to the City Council with a number of approaches to regulating certain developments and uses in the FEMA-regulated Floodway. This was in response to direction of the City Council in March 2015, which included the following item in the work plan of the Planning and Housing Department.

- Flood Plain and Environmentally Sensitive Overlay Areas: *Add or clarify development standards within the Floodway or natural Riparian Areas for site disturbance and paving (Does not intend to alter the 3-foot fill requirement)*

In that November report, staff presented three general options for the City Council to consider. These options were to:

- Prohibit most development in the Floodway, including those with impervious surfaces, such as parking areas and drive aisles.
- Allow those development uses in the Floodway, but as a Conditional Use Permit approved by the ZBA rather than as a Permitted use.
- Apply the Environmentally Sensitive Area zoning overlay district to the Floodway and require a plan to mitigate the impacts of development through a major site development plan review process.

**City Council directed staff to prepare a map amendment to designate the Floodways as Environmentally Sensitive Overlay (O-E) along with text amendments to the O-E Overlay and Flood Plain regulations to implement the Major Site Development Plan requirements of the O-E Overlay.**

**As staff developed draft ordinances to address the broadest range of potential uses and disturbances within the floodway, it became clear the three key changes**

**to the regulated activities within the floodway were adding discretionary review of grading and fill; impervious surfaces for parking, loading, maneuvering; and storm water treatment features.** (Attachment A is the proposed classifications for permitting) The Chapter 9 revisions also reclassified how certain parks and recreation and Iowa State University projects would be treated administratively under the proposed processes of administrative review versus discretionary review. Although not presented in this report, the Iowa DNR has requested minor changes to Chapter 9 addressing accessory structures and wet proofing as an alternative to elevating structures that are unrelated to the City Council's direction.

Upon reclassification of the uses in Chapter 9, additional text changes are needed within Chapter 29 to administer the discretionary review process of a Major Site Development Plan. A use classified as "Development" that occurred in the Floodway would require an environmental assessment report to accompany an application for a Major Site Development Plan. The developer's plan would need to address, obviate, or mitigate any negative impacts to the Floodway from the development. **It is important to note, that the proposed O-E Overlay does not apply to the Floodway Fringe if no part of the development disturbs the Floodway with a Development use. However, if a project has a development component within the Floodway and the Floodway Fringe, then the whole project site is subject to the Major Site Development Plan review process to assure there is comprehensive review of the development proposal and the need to have activities within the Floodway.**

The Major Site Development Plan process would rely upon existing approval criteria within Chapter 29. The most relevant criteria for a Major Site Development Plan would be criteria #1, 4, 5, and 11. (Attachment B includes Major Site Development Plan Criteria)

#### Other Regulatory Requirements

The City's flood plain development permit standards and storm water management requirements would remain in effect with the proposed changes. This means that activities in the Floodway would still have to meet the essential requirement that an activity results in a "no rise" in flood elevation. In regards to storm water, compliance with the City's post-construction storm water ordinance (Chapter 5B) still applies. These standards apply to disturbances exceeding 1 acre or if development increases impervious surface by 10,000 square feet or more. The two most relevant Chapter 5B regulations to the Floodway are treatment of the first flush of rainfall and control of retention and release rates in relation to 1, 5, 10 and 100-year storm events. The Chapter 5B regulations also include provisions for requiring a setback buffer from a waterway. Smaller order streams have a 100-foot buffer on both sides and larger order waterways, Squaw Creek and the Skunk River, may have larger buffers dependent on a site specific evaluation. The buffer is intended to preserve native vegetation and protect a bank from disturbance by development.

Chapter 5B allows for storm water control features, e.g. detention ponds, to be located within a Floodway, but likely outside of the buffer. This may seem counter intuitive, but in many ways it fits the layout of the site and meets the storm design events of 1 year, 5

year, 10 year, and 100 year. Not all projects that abut the Floodway have located storm water facilities in the Floodway, but it is an option that is available. Additionally, if improvements are allowed in the Floodway, such as parking, the treatment of parking areas would need to be located at or below the same elevation of the improvements. While the performance standards of Chapter 5B are comprehensive, adding the O-E overlay would add a broader application of criteria to development within the Floodway beyond the quantitative storm water management measures and consider qualitative issues as well.

#### Planning and Zoning Commission

Staff prepared complete draft ordinances for mapping of the O-E Overlay and changes to Chapter 9 Flood Plain Zoning Regulations and Chapter 29 Zoning Ordinance. These amendments were presented to the Planning and Zoning Commission on January 15<sup>th</sup> and February 17<sup>th</sup>. The Commission considered both sets of text amendments and heard public comment on the proposed changes. Mr. Renaud of Fox Engineering spoke on the topic and did not believe the changes that added a public hearing process were necessary to reach environmental protection goals. He believed the majority of issues were covered as part of the City's Chapter 5B storm water quality requirements. He strongly objected to restricting placement of storm water treatment measures in the Floodway and believed that parking could be dealt with through standards rather than a public hearing process if it was even necessary.

The Commission reviewed the goals of the changes and specific language of what would be regulated with maps of which areas would be affected. Commission members expressed concerns about the unnecessary layer of review that the proposed process would require and believed administrative approval was a more predictable process. While environmental protection was a laudable goal and the proposed amendments have the best of intentions, staff resources could be better spent. The Commission voted 5-0 to deny the proposed amendments to the O-E Overlay text that would specify a Major Site Development Plan was needed for activities within the Floodway. The Commission voted 6-0 to approve only the amendments to Chapter 9 (flood plain regulations) regarding accessory garages (this was a change that the Iowa Department of Natural Resources is asking all local communities to make) and did not recommend any additional changes to the Floodway list of uses of standards for activities within the floodway.

The Commission, at its January meeting, had recommended approval (3-2-1) of the map amendments to place the O-E overlay on the designated Floodway. However, without the corresponding changes to the O-E text and the flood plain regulations text, the map change would not be workable as there would be inconsistencies between the Chapter 9 flood plain regulations and the Chapter 29 review process.

#### **OPTIONS:**

Staff originally was given direction to prepare a draft ordinance to map the O-E Overlay to the City's FEMA designated floodways and to make corresponding text amendments as needed to administer the Major Site Development Plan review process. Attachment

A describes the reclassification of uses as proposed by staff with the Development category then subject to approval of a Major Site Development Plan. **As staff prepared more details on how to implement the Major Site Development Plan approach and what uses and activities would be regulated, staff realized additional input from Council is needed to craft the draft ordinance appropriately.**

The key issues revolve around whether parking, storm water treatment facilities, and grading should be subject to a discretionary review process compared to how they are currently allowed subject to performance requirements of Chapter 9. **Staff believes that if these issues are not part of a discretionary review process, there would be no clear benefit to establishing the O-E Overlay and Major Site Development Plan process as compared to the current requirements of Chapter 9.**

**Option 1 Discretionary Review (Prior Direction)**

If City Council wants to have a higher level of public review of development proposals that directly affect the Floodway, it would direct staff to continue to draft an ordinance for Major Site Development Plan review as described within this report. The Major Site Development Plan process would follow its current criteria for project approval, but include an application requirement to provide an environmental assessment report that addresses the potential impacts of the proposed development. Additionally, if any part of a project is within a Floodway, then the whole site would be subject to discretionary review. If Council proceeds with this option the draft ordinance would be scheduled for a public hearing in April.

**Option 2 Prohibit Parking and Allow Storm Water and Grading**

Based upon comments during Planning Commission public hearing, changing allowances for parking and maneuvering could be segregated from storm water and grading activities. Storm water facilities indirectly affect the layout of a site as there are a variety of options to meet requirements for both above ground and in ground measures. From some perspectives, allowing for storm water facilities consistent with Chapter 5B performance requirements is a technical issue that may not require higher level of scrutiny from a public hearing process to determine it is compatible with the site and surroundings. If such features are routinely determined to be consistent with City objectives for environmental protection and site development, then a public hearing process would likely be unnecessary.

Parking is categorized by staff as more of a development issue that can greatly influence the layout and development of a site. The two most significant examples of large parking improvements in the Floodway are the recent Stadium View apartment project on 4<sup>th</sup> street and the Wal-Mart Super Center on South Duff. The Supercenter project was approved prior to our current Chapter 5B requirements, while the Stadium View project was approved under the provisions of Chapter 5B. The degree of encroachment for parking was brought up during the Commission review as well as if commercial versus residential parking was different in terms of potential hazards from flooding.

If the issues are narrowed to parking, staff believes that it may be more beneficial to specify a size limitation in the floodway or to separate commercial and residential parking as different types of uses, which then could be permitted or prohibited. Staff believes the narrower the scope of the revisions, then the fewer number of properties that would be affected and it could justify focusing on objective standards over a discretionary review approach. Examples of standards could be a 10 percent area encroachment restriction within the Floodway, a square footage limitation of 10,000 square feet (parking for approximately 30 cars), or a greater buffer setback from the top of bank of stream channel.

If Council prefers this option it would need to choose if it is interested in creating objective standards for encroachments to be reviewed administratively only, or, if a project exceeded an encroachment allowance, it would then be subject to a ZBA Conditional Use Permit approval or through the described Major Site Development Plan by City Council.

### **Option 3 No Changes**

Direct staff to bring forward only those changes to Chapter 9 that the Iowa DNR seeks. This option drops the proposed changes to the O-E text, does not map the O-E overlay district, and make only changes to Chapter 9 concerning “wet flood proofing” that the DNR seeks statewide.

### **STAFF COMMENTS:**

Staff presented three options to the City Council in November and advocated the Environmentally Sensitive Area Overlay rezoning and the major site development plan approach as the most comprehensive approach for environmental protection. Staff believed that the concerns identified by the City Council last March could best be addressed through this approach.

If the Council is concerned primarily with parking in the floodway, then staff believes the administrative approval approach with objective standards as described in Option 2 has merit. This approach would still require any development to meet the grading permit requirements, Chapter 5B requirements, and the performance standards of the Flood Plain Regulations.

**If the City Council prefers either of the three options noted above, the Council should provide that direction to staff in order to prepare the necessary ordinances.**

## Attachment A

### Proposed Chapter 9 Reclassification of Uses

“Permitted Uses” are proposed to be approved through an administrative process by staff.

“Development Uses” are proposed to require a Major Site Development Plan rather than by the Conditional Use Permit approved by the ZBA.

Permitted	Comment	Conditional Development
Agricultural uses such as general farming, pasture, grazing, outdoor plant nurseries, horticulture, viticulture, truck farming, forestry, sod farming, and wild crop harvesting.	Same	
<del>Industrial-commercial uses such as loading areas, parking areas, airport landing strips.</del>	Amended and moved to Development	
Private and public recreational uses such as golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, boat launching ramps, swimming areas, parks, wildlife and nature preserves, game farms, fish hatcheries, shooting preserves, target ranges, trap and skeet ranges, hunting and wildlife areas, hiking and horseback riding trails <b>and non-habitable structures accessory to them that meet the applicable performance standards of the Floodway Overlay District Performance Standards</b>	Amended	
Residential <b>accessory</b> uses such as lawns, gardens, <del>parking areas</del> and play areas.	Amended	
Such other open-space uses similar in nature to the above uses.	Same	
Public infrastructure such as bridges; roads; trails; culverts; fill, excavation or grading; channel changes, relocations or placement of riprap or similar material; provided that any required permits from the Iowa Department of Natural Resources or Army Corps of Engineers have been approved. Such uses must also meet the applicable provisions of the Floodway Overlay District Performance Standards. This also includes any activity defined as maintenance under the nationwide permit issued by the Army Corps of Engineers.	Same	
	Removed	<del>Uses or structures accessory to open spaces</del>
	Amended	<b>Transient commercial uses such as</b> circuses, carnivals, <b>flea markets,</b> and similar transient amusement enterprises
	Amended	<b>Permanent commercial uses such as</b> drive-in theaters, new and used car lots, roadside stands, <del>signs and billboards</del>
	Amended	<b>Borrow pits, storm water detention and retention areas, and</b> extraction of sand, gravel, and other materials
	Same	Marinas, boat rentals, docks, piers, wharves
	Amended and moved to Permitted	<del>Utility Transmission lines, underground pipelines</del>
	Same	Other uses similar in nature to uses described as permitted or listed conditional uses, which are consistent with the performance standards of Subsection (3) below and the general spirit and purpose of this ordinance.
<b>Signs, billboards, utility transmission lines and pipelines</b>	Amended and moved to Permitted	
	Amended and moved to Development	Residential, commercial, and industrial vehicular <b>accessory</b> uses such as loading areas, drive aisles, parking areas.
<b>Government uses not subject to City zoning ordinances.</b>	New	
<b>Grading provided there is no change of surface topography of more than one foot and no fill is introduced into the Floodway</b>	New	
	New	<b>Grading in which the surface topography may be increased greater than one foot.</b>

## Attachment B

### Excerpt from Major Site Development Plan Criteria of Zoning Ordinance

(vii) City Council Decision. After the transmittal of the recommendation from the Planning and Zoning Commission, the City Council shall consider the application at a public hearing conducted as part of a regularly scheduled meeting. Notification of the public hearing shall be made by mail and posting, in accordance with Sections 29.1500(2)(d)(i) and (iii) above. The City Council must approve, deny or modify the Major Site Development Plan approval application within 60 days of the public hearing.

(d) Design Standards. When acting upon an application for a major site plan approval, the City Council shall rely upon generally accepted site planning criteria and design standards. These criteria and standards are necessary to fulfill the intent of the Zoning Ordinance, the Land Use Policy Plan, and are the minimum necessary to safeguard the public health, safety, aesthetics, and general welfare. These criteria and standards include:

(i) The design of the proposed development shall make adequate provisions for surface and subsurface drainage to limit the rate of increased runoff of surface water to adjacent and down stream property;

(ii) The design of the proposed development shall make adequate provision for connection to water, sanitary sewer, electrical and other utility lines within the capacity limits of those utility lines;

(iii) The design of the proposed development shall make adequate provision for fire protection through building placement, acceptable location of flammable materials, and other measures to ensure fire safety;

(iv) The design of the proposed development shall not increase the danger of erosion, flooding, landslide, or other endangerment to adjoining and surrounding property;

(v) Natural topographic and landscape features of the site shall be incorporated into the development design;

(vi) The design of interior vehicle and pedestrian circulation shall provide for convenient flow of vehicles and movement of pedestrians and shall prevent hazards to adjacent streets or property;

(vii) The design of outdoor parking areas, storage yards, trash and dumpster areas, and other exterior features shall be adequately landscaped or screened to minimize potential nuisance and impairment to the use of adjoining property;

(viii) The proposed development shall limit entrances and exits upon adjacent streets in order to prevent congestion on adjacent and surrounding streets and in order to provide for safe and orderly vehicle movement;

(ix) Exterior lighting shall relate to the scale and location of the development in order to maintain adequate security, while preventing a nuisance or hardship to adjacent property or streets;

(x) The proposed development shall ensure that dust and other forms of air pollution, noise disturbances, odor, glare, and other nuisances will be limited to acceptable levels as prescribed in other applicable State and City regulations; and

(xi) Site coverage, building scale, setbacks, and open spaces shall be in proportion with the development property and with existing and planned development and structures, in adjacent and surrounding property.