


## COUNCIL COMMUNICATION

|   |               |   |            |                     |
|---|---------------|---|------------|---------------------|
|  | Number:       | <b>21-228</b>                               | Meeting:   | <b>May 24, 2021</b> |
|   | Agenda Item:  | <b>42A</b>                                  | Roll Call: | <b>21-0800</b>      |
|   | Submitted by: | <b>Steven L. Naber, P.E., City Engineer</b> |            |                     |

### AGENDA HEADING:

Granting a Variance of Floodplain Development Code Section 50-34 (14) for development in a Floodway that results in an increase in base flood elevation to the Des Moines Area Metropolitan Planning Organization (MPO) on behalf of Central Iowa Water Trails, LLC (CIWT) for the CIWT Scott Avenue Project.

### SYNOPSIS:

The Central Iowa Water Trails: Phase I Dam Mitigation and User Access Project includes mitigating the low-head dam at Scott Avenue to help facilitate a water recreational trail (CIWT Scott Avenue Project) and enhance three (3) additional sites along the Des Moines River, including Prospect Park, Birdland Marina, and the Harriet Street Corridor.

The scope of improvements for the CIWT Scott Avenue Project include modifications to the Scott Avenue dam, construction of two (2) drop structures and multiple rock outcrops for recreational purposes, safety improvements, and improved river access. The project is located within and adjacent to the Des Moines River and is bounded by Scott Avenue (upstream) and SE 6<sup>th</sup> Street (downstream).

The City Engineer reviewed and denied a Floodplain Development Application submitted by CIWT for the CIWT Scott Avenue Project. The reason for the denial is because the proposed project fails to meet the performance standard identified in Section 50-34 (14), which states the following: “All encroachments, including fill, new construction, substantial improvements, and other development, within a designated floodway are hereby prohibited unless it has been demonstrated to the reasonable satisfaction of the city engineer through hydrologic and hydraulic analysis performed in accordance with standard engineering practices that the proposed encroachment will not result in any increase in flood levels within the flood plain during the occurrence of a 100-year flood.”

Pursuant to Section 50-35 (c), the applicant may appeal this denial to the City Council for a variance on the grounds that an exception or modification should be made in order to avoid unnecessary hardship to the applicant or to further the public interest. The City Council shall only authorize such a variance with affirmation of the six (6) provisions stated below. Below each listed provision in *italics* are responses from the CIWT project team that address each provision.

- Variances shall only be issued upon (i) a showing of good and sufficient cause, (ii) a determination that failure to grant the variance would result in exceptional hardship to the applicant, and (iii) a determination that the granting of the variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public or conflict with existing local codes or ordinances.

- *The project goals include increasing public safety through mitigating the Scott Avenue drowning hazard, increasing fish habitat, promoting economic development, and providing recreational benefits. Numerous attempts at modifying the design to meet the project goals and meet no-rise criteria were not successful. The United States Department of Transportation BUILD Grant funding of \$25 million requires the project goals to be met, so failure to receive the variance would result in forfeiture of this funding. The increase in flood heights occurs in a reach that is already contained by levees, with no effect on levee system performance. Therefore, this would create no additional threats to public safety, public or private property, or require the city to incur additional expense.*
- Variances shall not be issued within any designated floodway if any increase in flood levels during the 100-year flood would result. Consideration of the effects of any development on flood levels shall be based upon the assumption that an equal degree of development would be allowed for similarly situated lands.
  - *The increase in flood heights occurs in a reach that is already contained by levees. The future design of the levees through this reach account for this increase while still meeting the City's other design criteria.*
- Variances shall only be granted upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
  - *After numerous attempts to meet the project goals and maintain a no-rise condition, a 0.07-foot increase has been determined to be the minimum increase achievable over a one (1) foot length of channel under the Scott Avenue bridge. The increase in the remainder of the reach are between 0.01-feet and 0.06-feet. The levee's future design accommodates this increase, so no additional flood hazard will be created.*
- In cases where the variance involves a lower level of flood protection for buildings than what is ordinarily required by this article, the applicant shall be notified in writing over the signature of the city engineer that: (i) the issuance of a variance will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage and (ii) such construction increases risks to life and property.
  - *Not applicable to this project.*
- All variances granted shall have the concurrence or approval of the Iowa Department of Natural Resources (IDNR).
  - *IDNR provided formal letter correspondence stating that they have received draft plans and preliminary hydraulic modeling of the proposed construction. After review of those documents and calculations, they expect that a permit will be granted when the design is completed and final submittal is provided to the IDNR so long as specific conditions are met. A waiver from Iowa Administrative Code is needed at the state level due to the project's expected increase in the base flood water elevation (similar to the variance request for the City Code). The conditions and waiver are dependent on the future completion of the city's levee project along this reach.*

- In addition to the above conditions in this subsection, variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
  - *The project received cultural resources clearance and a finding of “No Adverse Effect” from the Iowa Department of Transportation and State Historic Preservation Office.*

**FISCAL IMPACT: NONE****ADDITIONAL INFORMATION:**

- The granting of this variance is specific to the CIWT Scott Avenue project and offers no relief for any other CIWT project. In addition, the granting of this variance is specific to the performance standard identified in Section 50-34 (14) and offers no relief from any other performance standard identified in Section 50-34 (including but not limited to compensatory storage, freeboard, utility requirements, and geotechnical requirements).
- Following City Council approval of the agreement with CIWT by Roll Call No. 20-1829 on November 9, 2020, the CIWT design consultants determined that changes to the City levee design would not be required to mitigate the impact of the increased water surface elevation and preserve the City's design requirements in accordance with the United States Army Corps of Engineers and Federal Emergency Management Agency requirements.
- The City participates in the Community Rating System (CRS), which is a voluntary program for recognizing community floodplain management activities that exceed the minimum standards and rewards property owners of those communities with discounts to flood insurance premium rates. Des Moines has recently adopted new floodplain development standards and is in the process of improving its CRS score to provide a greater discount to its residents. The granting of this variance will not have an impact to the City's CRS score or class rating.

**PREVIOUS COUNCIL ACTION(S):**

Date: November 9, 2020

Roll Call Number: [20-1829](#)

Action: [Agreement](#) with Central Iowa Water Trails, LLC regarding proposed impact to City levee as part of the Central Iowa Water Trails Project. ([Council Communication No. 20-475](#)) Moved by Gatto to adopt. Motion Carried 7-0.

**BOARD/COMMISSION ACTION(S): NONE**

**ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:**

Agreements between the City, CIWT, Des Moines Area MPO for proposed improvements associated with the BUILD Grant and funding, 28E Agreement with CIWT regarding operations and maintenance.

For more information on this and other agenda items, please call the City Clerk's Office at 515-283-4209 or visit the Clerk's Office on the first floor of City Hall, 400 Robert D Ray Drive. Council agendas are available to the public at the City Clerk's Office on Thursday afternoon preceding Monday's Council meeting. Citizens can also request to receive meeting notices and agendas by email by calling the Clerk's Office or sending their request via email to [cityclerk@dmgov.org](mailto:cityclerk@dmgov.org).