

THE CITY OF WOODBRANCH VILLAGE  
SPECIAL MEETING AND HEARING  
APRIL 20<sup>TH</sup>, 2023

The City of Woodbranch Village council met in a special meeting and hearing at 7:00 p.m., Thursday, April 20, 2023, in the City Hall Building at 58A Woodbranch Drive, New Caney, Texas, 77357. The special meeting and hearing were called to order at 7:00 p.m. by Mayor Mike Tyson. Roll call showed as being present Councilman Scottie Pouncey, Councilwoman Trisha Marie Cranney, Councilman Mark Kroll, Mayor Mike Tyson, City Attorney, Leonard Schneider, Councilwoman Nancy Mulhern and Councilwoman Carey Porter. City Secretary Charlotte Smith was present to take the minutes of the meeting. Councilwoman Mulhern led the meeting with a prayer, followed by the pledge of allegiance to the flag.

SPECIAL MEETING & HEARING (7:00 P.M.)

The special meeting and hearing were opened at 7:00 p.m.

#4. Sign In Sheet

No names appeared on the sign in sheet.

#5. Administrative Hearing to consider, discuss, and/or take possible action on the substantial damage determination of 290 Maple Lane and hear recommendations from the Flood Plain Administrator regarding certificates of non - compliance (Mike Tyson, Mayor)

The hearing began with Flood Plain Administrator, Ryan Tinsley reading aloud the summary of the substantial damage determination for the property located at 290 Maple Lane.

The Federal Emergency Management Agency (FEMA) expects the City and its residents to comply with the City's Flood Damage Prevention Ordinance (Ordinance) to remain in good standing with the National Flood Insurance Program. A significant portion of the city limits is contained within the Special Flood Hazard Area, commonly referred to as the 100-year floodplain. Structures located in the Special Flood Hazard Area are those that must comply with the Ordinance, many of which were damaged by Hurricane Harvey and Tropical Storm Imelda.

Substantial damage is a term that applies to structures located in the Special Flood Hazard Area that has sustained damage of any origin whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

The city has tried to compel the damaged structures, many of which were substantially damaged, towards compliance with the Ordinance, but many are still non-compliant, such as the one located at 290 Maple Lane. This structure sustained damage by both Hurricane Harvey and Tropical Storm Imelda. Montgomery County Appraisal District records show that the value of the structure at 290 Maple Lane decreased from \$144,630 to \$53,680 after the flood associated with Hurricane Harvey, which is equal to 63 percent of the market value of the structure prior to Hurricane Harvey. While this is not a perfect way of determining substantial damage, it is indicative that there is a strong possibility that the structure sustained substantial damage.

Tropical Storm Imelda made landfall on September 17, 2019, and brought large amounts of rain to southeast Texas in the days that followed. The city experienced widespread flooding that, based on a comparison of flood depths in the community, rivaled and, in some instances, exceeded the flood depths experienced during Hurricane Harvey in 2017.

Strand Associates, Inc.<sup>®</sup> (Strand), providing floodplain administration services on behalf of the city, performed rapid damage assessments of the flooded structures located within the Special Flood Hazard Area in October 2019.

Substantial damage determination letters were mailed by certified mail to structure owners in late October 2019 and early November 2019, identifying those structures determined to be substantially damaged. A substantial damage determination letter was mailed to the previous owner of 290 Maple Lane on October 31, 2019, stating the City's position that the structure had sustained substantial damage. The letter also provided information on possible funding opportunities and outlined the information that must be provided to appeal the determination.

The city, with assistance from the Federal Emergency Management Agency (FEMA), performed a more detailed assessment of the Special Flood Hazard Area in early January 2020. A visual assessment of the subject structure was performed on January 9, 2020. This assessment noted the structure appeared to have 4.0 feet of water above the lowest

finished floor, a pre-flooded structure value of \$176,156.89, and a computed damage value of \$116,488.97. As a result, it was determined that the structure was 66.1 percent damaged, which exceeds the 50 percent threshold required for a substantial damage determination.

Ordinance No. 302-2021, Article 5, Section B, Part 1 provides specific standards for residential construction, including new construction and substantial improvement, from which substantial damage is a subset, for residential structures.

Substantially damaged residential structures may be returned to compliance by relocating outside of the floodplain, elevating such that the top of bottom floor elevation is set above the base flood elevation plus two feet of freeboard, or demolishing the structure. The city has attempted to compel both the previous and current owners of the structure towards compliance with no success.

The City can submit non-compliant structures for Section 1316 of the National Flood Insurance Program, which would remove the structure from the program until such a time it is returned to compliance, but first, the City must exhaust all measures to compel compliance with the Ordinance. One such measure is to issue a fine in accordance with the Ordinance. FEMA suggested the City should hold an Administrative Hearing to discuss why the structure is considered to be non-compliant, to provide the structure owner an opportunity to explain how it will return the structure to compliance, and if the structure owner is unwilling to return the structure to compliance, then the City may issue a fine in accordance with the Ordinance.

Once a fine has been issued, the structure can then be submitted for Section 1316 with the National Flood Insurance Program. Concurrently, FEMA suggested the city should also send a Certificate of Non-Compliance to Montgomery County so potential future buyers would also be made aware of its non-compliant status with the Ordinance.

In conclusion, the purpose of this administrative hearing is to discuss steps needed to return the structure to compliance, and to determine whether the structure owner is willing to take those steps.

#### Brandon Smith, S& S Properties, LLC

Mr. Smith gave a brief description of his, and his family's investment history and of the purchases of the properties in the City of Woodbranch. He further stated he believed he, and his family, are consumers and they purchased the property at 290 Maple in February 2022. He stated he pulled title insurance and he is licensed agent with the Texas Real Estate Commission. He stated they followed the board on title commitment and title policy and had no knowledge that the structure was substantially damaged or of the letter the City Secretary provided him in February.

He stated his concern, as a consumer and an investor and as a homeowner in Woodbranch is if the City of Woodbranch, or FEMA, would have filed a public record, of the substantial damage letter, none of this would have occurred. He wouldn't be here today. He stated is over \$30,000 in the hole due to mortgage payments, taxes and insurance. He has mowed the lawn trying to upkeep everything he can as they go through compliance. He also stated another point is they are requesting the FEMA flood insurance be removed as they plan to go forward with private flood insurance and they plan to disclose that information if they end up selling the property. They plan to disclose it properly as he is licensed in the State of Texas and is required to have private flood insurance. They are requesting the FEMA flood insurance be removed so he can make the proper disclosures and do the right things on the front side of this community. Also, his insurance broker pulled a clue report, in reference to the property, which only showed two different damages as far as insurance goes. He reported a freeze report and a wind event with no knowledge of flooding at all on the clue report.

Councilwoman Cranney asked when the clue report was pulled.

Mr. Smith stated it was pulled after the purchase.

Councilwoman Cranney asked if he requested the seller's disclosure.

Mr. Smith stated it was not disclosed by the seller. He stated he asked for it, but it was not disclosed.

Councilwoman Cranney asked if he purchased the property through a wholesaler.

Mr. Smith stated that was correct.

Councilwoman Cranney asked if the prior owner purchased the home from the same title company.

Mr. Smith stated he did not know.

Councilwoman Cranney asked if the previous owner also purchased the home from the same wholesaler.

Mr. Smith stated he did not know.

Councilwoman Cranney asked if he looked at the information on MLS.

Mr. Smith stated it only shows the person of record. He thinks she was estranged in Georgia, per the wholesaler.

Mayor Tyson asked questions from City Council.

City Attorney, Leonard Schneider, on behalf of the city, told Mr. Smith if he needed time to talk with his attorney, to let him know.

Mr. Schneider stated the purpose for the hearing is to hear from the Flood Plain Administrator, to help with the determination if the City needs to file for the 1316 process with FEMA requesting the property be removed from the National Flood Insurance Program. He asked Mr. Smith if that is what he is requesting to happen with his property.

Mr. Smith stated that was correct and it was his wish the property be removed from the program.

Mr. Schneider asked Mr. Smith if he intended to comply with the requirement to elevate the house.

Mr. Smith state he did not intend to comply as it was not cost effective.

Councilman Kroll asked when Mr. Smith became aware of the FEMA situation.

Mr. Smith stated, once again, he closed on the property, on February 11, 2022, applied for proper permitting with the City and then the letter, all of the sudden, popped up that he had no knowledge of.

Mr. Kroll stated the letter didn't just pop up, that someone received the letter.

Mr. Smith said yes in 2017 or 2019.

Mr. Tinsley, confirmed October 2019.

Mr. Schneider stated for the record, and for clarification, part of the 1316 procedure requires the issuance of a fine. He asked if Mr. Smith understood that.

Mr. Smith stated he did understand.

Mr. Schneider requested Mr. Tinsley' copy of the ordinance to read the penalty phase portion.

Councilwoman Cranney asked Mr. Smith if he realized, if he was granted the removal of the home from the National Flood Insurance Program, he not only has to disclose to a potential buyer, but also will have to disclose the home was remodeled without being in compliance, the home is in the special flood hazard area and was not elevated.

Mr. Smith stated that was correct.

Mr. Schneider asked if Mr. Smith understood that in order for the city to make the application, with FEMA, they have to impose a fine for a violation of non-compliance and that the fine is \$500.00 per violation.

Mr. Smith agreed.

The motion to go in to closed executive session, to receive legal advice, was made by Councilman Pouncey. The motion was seconded by Councilwoman Cranney, motion carried.

Council went in to Closed Executive Session in Accordance with the Open Meetings Act TEX. GOV'T CODE 551.071 – To receive general legal advice on agenda item #5.

Council went in to closed executive session at 7:20 p.m.

Council reconvened in to open session at 7:41 p.m.

Mayor Tyson asked Mr. Smith if he had any questions.

Mr. Smith stated in this transaction he did not use his real estate license, even though he is a licensed realtor. On the contract itself he did not use his brokerage to facilitate the contract. And once again, if the substantial damage letter would have been made a public record.

Councilman Kroll stated someone got the letter and whoever got the letter should have shared that information.

The motion to proceed with the penalty phase, for non-compliance with flood Ordinance 302-2021, Article 5, specifically Section B, Part 1, and a citation should be issued to the owner to carry a fine of \$500.00 for each violation, was made by Councilman Pouncey. The motion was seconded by Councilwoman Cranney, motion carried.

Mr. Smith asked about obtaining permits. City Administrator, Charlotte Smith stated permits could be issued after the completion of the 1316 process.

Mr. Smith stated the property was in excellent condition and the work had already been done and he would be willing to work with the building inspector and have them perform a walkthrough.

Mrs. Smith stated once the permit has been issued and a permit number has been assigned, in the Bureau Veritas system, he could call in for inspections.

Councilman Kroll asked how the city could issue permits if the structure was not in compliance.

Mrs. Smith stated the permits were going to be issued for substantial improvements and asked Mr. Tinsley for his comments.

Mr. Tinsley stated the flood ordinance required permits for all types of improvement, new expansions and even carpet.

Councilwoman Cranney stated she felt like Mr. Smith had intentions to pull permits for more projects at the house.

Councilman Pouncey stated he understood where Councilman Kroll was coming from. Since the City is filing non-compliance would it just be a \$500.00 fine and then issue a permit.

Mr. Schneider stated the discussion was off topic.

Councilwoman Mulhern stated she thought it was \$500.00, per violation, and the violation would exist if he did not

elevate the structure. That is the only violation he is being charged with.

Mr. Schneider stated that in the future, depending on the ownership transitions, and what not, there are additional penalties and it can always be amended.

Mr. Tinsley reiterated the action simply removed the structure from the requirements of the ordinance. The property would still have to comply with any other ordinance or regulation the city may have.

#6. Mayor's comments on infrastructure, city budget and grant opportunities (Mike Tyson, Mayor)

No announcements were made.

#7. Items of Community Interest - (Hear announcements concerning items of community interest from the Mayor, Councilmembers and City Staff for which no action will be discussed or taken.)

No announcements were made.

#8. Adjourn

The motion to adjourn the meeting at 7:47 p.m. was made by Councilman Pouncey. The motion was seconded by Councilwoman Porter, motion carried.

