

CITY OF NORMAN, OK

FLOODPLAIN PERMIT COMMITTEE MEETING

Development Center, Conference Room B, 225 N. Webster Avenue,
Norman, OK 73069

Tuesday, January 2, 2024 at 3:30 PM

MINUTES

ROLL CALL

The meeting was called to order by Mr. Sturtz at 3:31 p.m. Roll was called and all members were present. Others in attendance included, Beth Muckala, Assistant City Attorney; Todd McLellan, Development Engineer; Jason Murphy, Stormwater Program Manager; Kim Freeman, Staff; Jim Roth, Phillips Murrah; James Greer, Resident; Amanda Carpenter, Williams, Box, Forshee & Bullard; Peter Cocotos, NEE; Kara Wry, BMcD; Megan Carlin, BMcD; Brian Roh, BMcD; Leon Staab, BMcD; Aaron Tifft, Hall Estill; Russ Lloyd, NEET; Manty ReveVolln, NEET; Jackie Blakley, NextEra; Nick Fuhr, NextEra; Richard McKown, Carrington, LLC; Gale Earles, Resident; Eric Davis, Phillips Murrah; Jacob Clouse, BMcD; Kim Austin, NEE; Scott Bethel, Resident.

MINUTES

1. Approval of minutes from the November 6, 2023 meeting

Mr. Sturtz called for a motion to approve the minutes from the meeting of November 6, 2023. The motion was made by Ms. Stansel and seconded by Mr. Scanlon. The minutes were approved 7-0.

ACTION ITEMS

2. Floodplain Permit No. 684

Mr. Sturtz said the Application is for proposed installation of an electrical transmission line across Norman through the Canadian River, Ten-Mile Flat Creek and Little River floodplains. Mr. Sturtz asked Mr. Murphy to present the staff report. Mr. Murphy said the Applicant for Permit 684 is NextEra Energy Transmission Southwest, LLC and the Engineer is Burns and McDonnell Engineering and the proposed Builder is Brink Constructors, Inc. The permit application is for the proposed construction of an overhead electric transmission line. The proposed alignment will begin at the west boundary of the City approx. 0.50 mile south of W. Robinson St. and extend to the north boundary exiting a little east of 48th Ave. NE. A total of 35 overhead electric transmission line pole structures are proposed to be constructed in the flood zone with this project. The pole type and the foundation types vary by location, soil types and different conditions. In addition to the pole structure installation, tree clearing within the 150-foot right-of-way along with temporary access road construction consisting of drive and crushed rock access roads and installation of crane mats as necessary. For all of this work, sediment controls will be installed as needed.

For the 35 poles being installed, 2 of the poles will be in the regulatory floodway of the Canadian River and the other 33 poles will be in the floodplains of Ten-Mile Flat Creek and the Little River and its Tributaries. The applicant has submitted hydraulic analyses using HEC-RAS modeling for each of the locations. For the 2 poles in the Canadian River floodway, the report from

February 28, 2023, states that there will be no rise in the BFE as a result of the installation of those 2 poles. The hydraulic analysis report for the remaining 33 poles was submitted in the HEC-RAS model dated April 21, 2023. 17 of those are in the Ten-Mile Flat Creek floodplain and will cause no rise in the BFE. The remaining 16 are in the Little River floodplain or its tributaries. 2 of the poles in the Little River floodplain will cause a rise of 0.01 feet in the BFE, the others will cause no rise.

Mr. Murphy reviewed documents submitted and aerial maps of the project locations provided to members in their packets. Mr. Murphy confirmed all ordinance requirements have been met.

Mr. Murphy said a similar application was submitted and denied by the committee on the basis of concerns related to right of access to private property. With this application, the Applicant submitted additional information related to those concerns and the City Legal Team is here to speak to those points. Mr. Murphy turned it over to Ms. Muckala, Assistant City Attorney with the City of Norman. Ms. Muckala said because of similar applications that raised access relating to ownership and eminent domain issues, she was asked to look specifically at all of the properties that were identified within the Floodplain Permit Application. She was asked to analyze the status of the ownership and the status of those eminent domain cases and determine if there was unqualified or unfettered access in NextEra's hands at this time. Ms. Muckala said NextEra in their application provided a lot of that information and she received some additional information providing PIN and OK-CLE numbers so that we could accurately identify each individual parcel. There are 37 total parcels, and of those, she found that 23 are at a stage where NextEra has unqualified access, meaning ready access right now. Ms. Muckala said the list has been provided to Mr. Murphy and will be added to the official file. Ms. Muckala discussed with the committee the documents reviewed and verified to determine unqualified access at this time. Ms. Muckala said we are confident there's access to 23 parcels based on either easement by agreement or litigations that have essentially concluded for the purposes of access. Ms. Muckala indicated there are 14 parcels that are not quite to the same point, which could lead in the future to a loss of access by NextEra under the law. Ms. Muckala said the Legal Team is not comfortable recommending that we grant an unqualified permit to these properties under the circumstances so the properties have been separated out as qualified properties. In the future, once the litigations move to a more mature status, they will eventually likely gain that access. Ms. Muckala said on the record, the Modified Staff Recommendation is listed incorrectly and will be corrected in the official documents. Ms. Muckala said City Staff proposes, including her own recommendations- 23 identified parcels with present and unqualified access, City Staff recommends approval as Permit #684. With respect to the 14 identified parcels where NextEra access is still qualified, City Staff recommends approval of a separate permit, Permit #685, subject to the following conditions- (a) The permit shall only become active for NextEra's utilization upon NextEra establishing to the satisfaction of City Staff, including Legal Staff, that its right of access is no longer qualified by outstanding legal impediments or other objections. This proof of access may be established parcel-by-parcel; and (b) If NextEra should be found to have entered any of these parcels for the purposes of this permit without first having established an unqualified right of access in an agreed-upon manner, Permit #685 (and other wise identified as a separate permit within other administrative City systems) shall be subject to immediate revocation at the discretion of the Chair of the Floodplain Permit Committee.

Ms. Muckala said if this is what the committee wants to recommend, a motion needs to be made based on the City Attorney's recommendations as were read into the record.

Mr. Sturtz asked for comments from NextEra or their representatives. Jim Roth, attorney with Phillips Murrah on behalf of NextEra Energy Transmission Southwest, LLC's Floodplain Permit

Application, said NEET Southwest previously submitted a Floodplain Permit application which this committee heard on July 17, 2023. The previous application was recommended for approval by City of Norman Staff but there were some concerns primarily regarding access and possession of certain affected properties. Since the prior meeting, circumstances surrounding these properties have substantially changed. In particular, NEET Southwest has now obtained easements for private and public land owners on all parcels within floodplains within the City of Norman. With the acquisitions of the easements, NEET Southwest has legal right to access the land. As recommended by the City Attorney's Office, documentation of these easements are included as attachments 6 in the application within the packet. Mr. Roth said we are respectfully requesting approval of this application as described as it's satisfied the requirements of the Norman Flood Hazard District Ordinance. Nick Fuhr, NEET Southwest Project Director, provided background information regarding the project and presented on the documents included in the application.

Mr. Sturtz asked the committee for any comments or questions. Mr. Scanlon made a comment that several of the citizens' concerns last time had to do with wildlife and tribal issues, and appreciated NextEra's specificity in talking about the redemptive measures and would like to see the report given to the City along with any comments from the Tribes. Mr. Scanlon asked about the 23 parcels and will there be access whether it's based on a paid easement or threat of eminent domain. Mr. Roth confirmed those 23 are settled. Mr. Scanlon also asked if he could elaborate a little more on the issues with the 14 and where they are in terms of negotiation. Aaron Tifft, Hall Estill, said of those 14, 10 have currently reached an agreement in principal and anticipate those being closed in the next couple of weeks. The other 4, have at least reached an agreement as to money. 3 of those, filed an exception or objection to our report and their sole argument is that NextEra should be required to obtain a floodplain permit before having access. One other parcel has an objection they are hopeful to reach a negotiated settlement with. Mr. Roth said they would then come back to the City and provide that proof. Ms. Muckala added that she'll be looking for either a statement that's pretty unequivocal from the actual property owner of record or something filed in court showing unequivocally that it's done. Ms. Hudson asked for clarification on permit 685 and Ms. Muckala said it's an administrative designation. Mr. Scanlon asked about open meetings and the announcement of 684 and addressing 685. Ms. Muckala said we are addressing application 684 and it's an administrative suggestion that we divide into a separate permit to treat it administratively. Ms. Stansel asked if there was already a permit 685 and Mr. Sturtz said no.

Mr. Sturtz asked for public comments or questions. Amanda Carpenter, Williams, Box, Forshee & Bullard, said there is currently a pending appeal of this specific application. The application being heard today is the same exact application as was heard by the committee and denied and appealed to the Board of Adjustment and also denied and appealed by NextEra to the district court. The matter is pending appeal and has not been dismissed. There are 10 parties that are admitted into that litigation as property owners and are on the list of 23 and 14. Those parties that have a pending appeal should be on your list of 14. Specifically asking that Raven Investments be moved to the list of 14. Ms. Carpenter discussed the easements in negotiation. Ms. Carpenter asked for the committee to not consider and table this matter because it is already in pending litigation before the district court. She also asked that the 10 interveners in the pending litigation be moved from the list of 23 to the list of 14 to require specific approval as was discussed today.

Mr. Sturtz asked staff to respond regarding the application. Ms. Muckala said this application was presented with litigation at very different stages than it was previously and NextEra presented additional information regarding the status of ownership and easements,

environmental work and discussion with tribes. This was submitted and accepted as a separate application. It is going through the system as a separate application through the City of Norman. Any outcome of this application is subject to the same appeal rights as any others. It can be appealed to the BOA and the district court. As for the other recommendations, if the committee wants to consider any of their requests to move lists around, it should be made clear on the record what is what. Ms. Carpenter said the language of the application that was submitted with the public record does appear to be the same. Ms. Carpenter said she brought the one from July and it does appear to be the exact same. We would ask if you're going to move forward and not honor our request to be moved from one list to the other, that you specifically state the substantial differences in the application.

James Greer, resident, said the first problem I have with the application is, we've never been allowed to tie properties together using GPS. You can't cross 3 basins with BFE's and tie those together. The second thing is, has anybody looked at this data from the survey for cross sections for bringing the data back to the floodplain. There's no way this data could have been done from the office and get these numbers.

Richard McKown, Carrington, LLC, stated that this transmission line is going to take out all the trees that have grown up over the past 60-70 years over the channelized creek. The vegetation is being removed and all of these things really matter in terms of having a floodplain that functions. I would like you to deny the permit.

Kara Wry, BMcD, reviewed to maps in the committee's packet showing the tree clearing. Ms. Wry said one of the things that we looked at in the routing was tree clearing and trying to minimize tree clearing where we could.

Mr. Scanlon asked for clarification on a comment made about an agreement for tree replacement. Mr. Tifft, said in general there are clearance requirements for the power line. Mr. Tifft said he's not sure of what conversations took place, they didn't take place with me I don't believe with regard to any such agreement, but if you have any more information I'm happy to get back to you. Ms. Carpenter said they made agreements with some property owners to change the terms of their easement and that has not been done with Raven Investments and Franklin Business Park. Aaron Tifft, said if a landowner requests specific items in the agreement, we employ the services of the engineers to investigate whether or not that is workable.

Ms. Hudson, asked for clarification on one of the maps and the tree clearing indicated. Kim Austin, NEE, said access is also driven by landowners so we try to utilize existing access to the extent possible. Mr. Tifft and Mr. Fuhr went into further detail regarding how easements and access are determined.

Mr. Sturtz said he'd like to direct everyone back to the reason why we are here. Mr. Sturtz said he is not here to arbitrate and to fix land owner deals and easements and right of way discussions. Nowhere in our floodplain ordinance does it say that's part of a floodplain permit application. We try to do what we think is best to protect all parties by restricting permit application approval on those that our legal office has found are not currently totally resolved. Ms. Muckala said she wanted to make a comment on the request to move owners between lists. Ms. Muckala said the lists are of her creation based strictly on her review of the ownership status. Moving one from the list of 23 to the list of 14 really doesn't change anything. Ms. Muckala said she has already looked at them and established for legal purposes the access is there. It doesn't mean you can't consider their request, I'm just saying that if you wanted to consider that, you would need to do it another way to address their concerns. Mr. Roth said they concur with the

Municipal Counselor's decision and think it's fair that this committee would consider a qualified permit which actually strengthens those 14 land owners' hands in negotiation.

Ms. Carpenter asked the Chairman to consider a permit 686 with the 10 property owners who are subject to the current litigation that is pending on the first permit.

Mr. Scanlon asked why we should consider this at all with pending litigation.

Ms. Hoggatt asked what the radius is for tree clearance. Ms. Austin said its 150 feet wide. Ms. Hudson asked if the trees in the area were tall enough to fall on the lines. Ms. Austin said yes, there are some trees out there that are tall enough they would fall on the line. Ms. Hoggatt asked how tall the line is. Jacob Clouse, BMcD, responded the minimum ground clearance is 25 feet. Ms. Hoggatt asked about revegetation. Ms. Wry responded it's typically a native seed mix but it depends on what's there.

Mr. Sturtz asked for comments from the committee. Mr. Scanlon asked how 686 would be worded. Ms. Muckala said Ms. Carpenter would need to identify these 10 so they could be taken out of these respective lists and create a 3rd list. That can be done if the committee wishes to do that but we would need to know what's the nature of this permit. Ms. Carpenter said she happy to provide suggestive language if you all would like to give us the time to do that. Ms. Muckala said the reason Raven is on the 23 parcel list is because there were no objections except to the amount filed in the court and so legally there appears there has been an acquisition and how does 686 treated like 685 would be different for Raven. Ms. Carpenter said Raven Investments did file litigation and there is pending litigation in state court specifically related to this floodplain and the interest that Raven Investments has. Ms. Carpenter said the legal rights that we would have had the opportunity to present to the state court who would have jurisdiction of this matter, that is being taken away from us by you presenting a new application. Specifically, we would ask to be put on a separate list in order to address the legal rights that we have as part of that appeal. Ms. Muckala said at this point we need committee discussion to determine if that is a direction that the majority of the committee wishes to go in. Mr. Tifft said he does not believe Ms. Carpenter represents all or the majority of these 14. We have reached agreements in principal with many of those and they are not here, I don't believe, making objection and I don't believe Ms. Carpenter represents them and to the extent she's seeking some relief. These are folks we've already reached agreements with and we're working to get documents together to finalize those. We do not think it would be proper to move them to separate list given the circumstances. Ms. Carpenter said she represents Raven Investments, move them to a separate list please.

Mr. Scanlon said can we table this, I'll make a motion. Ms. Muckala said she'd like to make an overarching point, today we are not granting any land rights, if there are pending issues in court, if they don't actually have the legal access they say they have, there's nothing about this permit that actually gives them that legal right. If my legal review was wrong and I made a mistake about who should be included on which list, they would still have the legal right to protest and keep them off their property if they don't in fact have legal access. If we were to move Raven, whom appears to be legally concluded in court, to the other list, I'm not sure what that would entail but we would need to have support to create a separate application for them and know the terms.

Ms. Hoggatt asked if this is something we typically consider with a floodplain permit. Mr. Roth said the answer is no. It's rather unprecedented from our experience. We are here because this committee last July, raised concerns about access and so this is an application before you attempting to honor that sensitivity. We agree with the staff's time and recommendations. We

agree with the Municipal Counselor's approach to this. This application, if I can be clear for the record, meets the City of Norman's ordinance for approval today. We've gone additional steps of protections in respect for your land owners to suggest a conditioned permit for those 14. I appreciate the desire to push this off but this is right before you with the conditions you asked for last July and it is a timely request before you and meets the law and this does nothing to take away the rights of landowners.

Ms. Carpenter said that you currently have litigation pending for an appeal of this exact application and therefore are thwarting the system. Mr. Roth said the permit had a limited period of time under Oklahoma law for which the denied permit had to seek legal redress. This application is ready for your approval today.

Mr. Greer said if you go look at already done work, they built a pond in the floodplain at 48th and Franklin Road. Look at their work, and look at this permit data. There's no way to get to a thousandth of foot from a map. I wish you guys would run out there one day before you accept this permit and look at their work.

Mr. Roth said as a reminder the approvals of permits 684 and 685 can be appealed by landowners who are dissatisfied. NextEra would withdraw the appeal in district court if they can receive this permit conditioned as it is presented today.

Scott Bethel, Louis Jean Farms, I was on the list of some of the ones that you said you have an agreement in principal. I'm not sure what that means, is that truly an agreement, can you speak to that. Mr. Tiff, said he has been in communication with the attorney for Louis Jean Farms, I believe we've reached an agreement as to language and to compensation.

Mr. Sturtz brought it back to the committee. Ms. Hudson said going back to erosion control and removal of trees, in the ordinance it specifically says that we are to look at the concerns and our approval or denial is based on these factors. 5 years from now what is your guarantee that the flow of this flood has not changed substantially that will negatively impact the people downstream. A representative for NextEra said we provide the best engineering analysis that we can do as prescribed by your ordinance with FEMA. We did get the regulatory models from FEMA and we developed them in the manner that is prescribed by FEMA and National Flood Insurance Program to ensure that relatively speaking there's not going to be an adverse impact on the property owners. Ms. Hudson asked if a property owner contacts NextEra and says we've got erosion or something like that, you guys go out and check, you're reviewing your lines, and you'll go out and fix it. Ms. Austin said yes, we have operations and management protocols that we follow and inspections that are followed and if they find something that was part of our project, we work with landowners to figure out how we're going to address it. Mr. Murphy said Mr. Scanlon asked if the new Engineering Design Criteria that we adopted in February would apply here. Mr. Sturtz said the detention pond that was constructed was submitted and accepted by the Public Works Engineering department. Mr. Sturtz said he doesn't know how the Engineering Design Criteria would apply to this specific situation since it's not new development. Mr. Danner referenced a petroleum pipeline in east side Norman through the floodplain, and there was clearing for that pipeline. I don't know how you get out of it.

Ms. Hudson asked Mr. Sturtz if the committee wanted to consider moving property owners from one list to the other. Mr. Scanlon said I think we do but I'm not prepared to sit here on 20 minutes contemplation. I advocate we rework this and come back in 2 weeks. Ms. Hoggatt asked if she could make a motion to approve. Mr. Sturtz asked if Mr. Scanlon had made a motion and Mr. Scanlon confirmed he had made a motion. Mr. Sturtz asked for a motion to table permits 684 &

685 for 2 weeks for consideration. Ms. Stansel asked if Mr. Sturtz was looking for a second to the motion. Mr. Sturtz confirmed. Mr. Sturtz said the motion dies for a lack of second.

Ms. Hoggatt made a motion to approve with modified staff recommendation for Permit 684 & 685 as presented during the meeting by Ms. Muckala. Mr. Danner seconded the motion. Mr. Sturtz asked for any comments from the committee. Ms. Hudson asked for clarification on if the approval today does not negate someone's access rights regardless of the list they are on. Ms. Muckala said if NextEra does not actually have the right to enter on the 23 properties for 684, property owners would have legal rights to take them to court and keep them off the properties.

The committee voted to approve the application 5-2.

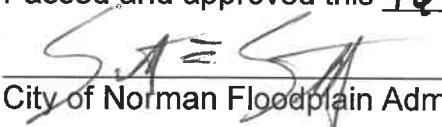
MISCELLANEOUS COMMENTS

Ms. Hoggatt asked about the next meeting and Mr. Murphy said there is 1 application for the January 16th meeting. Ms. Hoggatt asked if the meeting would also be on a Tuesday and Mr. Murphy confirmed.

ADJOURNMENT

Mr. Sturtz called for a motion to adjourn. Ms. Hudson motioned to adjourn and was seconded by Ms. Stansel. The meeting adjourned at 5:06 p.m.

Passed and approved this 16th day of January, 2024



City of Norman Floodplain Administrator, Scott Sturtz