

FLOODPLAIN PERMIT COMMITTEE MEETING
201 West Gray, Building A, Conference Room D

Monday, June 20, 2016
3:30 p.m.

Minutes

PRESENT: Shawn O'Leary, Director of Public Works
Susan Connors, Director of Planning/Community Development
Scott Sturtz, City Engineer
Ken Danner, Subdivision Development Manager
Jane Hudson, Principal Planner
Sherri Stansel, Citizen Member
Neil Suneson, Citizen Member

OTHERS PRESENT: Todd McLellan, Development Engineer
Rachel Warila, Staff
David Park, Plains All American Pipeline, L.P.
Kyle Conaway, Sherwood Construction
Russell Kent, Mac Arthur Ass. Consultants
Mary Francis, Citizen
Barrett Waller, Citizen
Cynthia Rogers, Citizen
Aleisha Karjala, City Councilmember
Karen Blasier, Citizen
Jim McCullar, Citizen
Casey Holcomb, Citizen
Judith B. Coker, Citizen
Karen Chapman, Citizen
Sereta Wilson, Citizen
Frank Layito, Citizen
Dana Niblett, Citizen
Karen Chapman, Citizen

The meeting was called to order by O'Leary at 3:40 p.m.

Item No. 1, Approval of Minutes:

O'Leary called for a motion to approve the minutes from the meeting of May 16, 2016. A motion was then made to approve the minutes by Sturtz and seconded by Suneson. Approved 7-0. It was noted that seven members of the committee were present and a quorum was established.

Item No. 2, Flood Plain Permit Application No. 573:

O'Leary then announced the first application of the day, which is Floodplain Permit Application #573 for a proposed 16 inch crude oil pipeline from Cushing, Oklahoma to Gregg County, Texas that will cross the Little River floodplain in East Norman. He then asked staff members if they had any more comments on this item. McLellan introduced David Park, representative from Plains All American Pipeline, L.P. who explained that he was requesting postponement to the July 5th meeting to allow time to provide additional technical data regarding the floodplain stream crossings. O'Leary asked the audience members if they had any questions or comments regarding the request and explained to them that they would not be re-notified by mail about the possible postponement.

Suneson asked if he could request diagrams that were more legible at the scale that they received in their floodplain packets. McLellan responded that when the packets were reprinted for the next meeting they would make the map size 11" x 17" to make them easier to read. O'Leary then asked for a motion to postpone Floodplain Application #573 to July 5th and a motion was made by Sturtz, which was seconded by Connors.

Mary Francis asked to speak to the committee because she said she would be unable to attend the July 5th meeting and wanted her concerns and those from other citizens to be heard at this meeting. O'Leary responded that the committee would be happy to hear their concerns. Francis then explained that she felt like this was a dangerous crossing of Little River, which was a main tributary to our water source at Lake Thunderbird.

Casey Holcomb then asked if an Environmental Impact Statement (EIS) was available for this project and if the Floodplain Committee would review it. O'Leary responded that this was typically not part of the Floodplain Committee process. Parker stated that any questions relating to an EIS can be directed to Plains Pipeline public relations department and that he was not an environmental engineer but rather a right-of-way representative. Holcomb next asked if this project could cause potential threats to wildlife and added that the City of Norman's floodplain ordinance states that it will address concerns of this nature and wants to know if Plains Pipeline has taken this into consideration. O'Leary responded that the Floodplain Committee would address all elements of the floodplain ordinance when the application comes forward as they do with every application. Holcomb then asked if the information from the meeting would be made available to the public and O'Leary responded that everything in the meeting today is an open record and that minutes would be made available for public review online. Holcomb then asked about Plains Pipeline's safety record and O'Leary stated that he did not believe it was relevant to the floodplain ordinance.

Mary Francis then requested that the committee take into consideration that an EIS would be beneficial for this project when they consider this permit application. O'Leary commented

that it was not a requirement of the City's floodplain permit application and referred Francis to look online to view the floodplain permit application process which he noted was a stringent process that requires every applicant to provide sufficient materials.

Cynthia Rogers then asked what grounds could be used for denying this application and O'Leary responded that the floodplain application process is fairly involved but any ordinance sections that the applicant failed to meet would be a basis for denial by the committee. She then asked without an EIS, how would a committee know how to determine if the application meets ordinance requirements? O'Leary responded that he was not aware of a specific submittal in the ordinance that spoke to habitat concerns but he would discuss this with the Legal Department before bringing the application back to the committee. Sturtz responded that the reason for the postponement was to ensure that the committee had adequate information, and the application was complete to evaluate the projects' effect on the floodplain. Francis then requested that the committee send out information regarding the floodplain ordinance. McLellan responded that the information requested was available online on the City of Norman's web site.

O'Leary then asked if there were any questions or comments from the committee. Sturtz responded that the reason for the postponement was to get additional required information to ensure the application is complete

O'Leary then asked for a motion to approve the postponement for Floodplain Permit Application #573 which was approved by a vote of 7-0.

Item No. 3, Flood Plain Permit Application No. 574:

O'Leary announced the second application of the day, Floodplain Permit Application #574 for the placement of roadway and construction debris from the I-35/SH-9 project into an existing borrow pit located in the Canadian River floodplain. He then introduced the applicant, Kyle Conaway from Sherwood Construction and the applicant's engineer, Russell Kent from MacArthur Associated Consultants and asked Todd McLellan to deliver the Staff Report.

McLellan explained that the applicant is currently constructing the new I-35/Hwy 9 interchange project, which requires approximately 140,000 cubic yards of fill material for the new ramps. He said that in 2013, South Canadian Development, LLC and the applicant entered into an agreement to mine the needed fill material from the above referenced property.

He stated that the site of the borrow pit is on the northern edge of the Canadian River, approximately 500 feet east of I-35 and the size of the borrow pit is approximately 9 acres with material being mined to a depth of 7 or 8 feet. McLellan explained that in 2013, the applicant submitted an application (Floodplain Permit #536) to the Floodplain Permit Committee (FPPC) for the borrow pit that was unanimously approved by the FPPC on November 18, 2013 by a 7-0 vote. He said that the floodplain permit was for excavation of the pit and removal of materials only, but the applicant started excavating material from the pit in 2013 and has been filling the pit with debris material from the I-35/Hwy 9 construction project, which requires a floodplain permit.

McLellan explained that the fill will not be placed above the 2013 ground elevations,

therefore the capacity of the pit is approximately 140,000 cubic yards. He said that the fill will consist of soil and concrete (steel and asphalt will not be placed in the pit) and the fill will be topped off with soil and regraded to the 2013 original surface elevations.

He stated that the site is located in the Canadian River floodplain (Zone AE) with a BFE of approximately 1106 to 1107 feet and since no fill, structures or other encroachments will be placed above the 2013 surface grade, the BFE will not increase and cause impediments to water flow. McLellan noted that CC Environmental completed a Potential Jurisdictional Waters & Wetlands Evaluation in 2013 and determined there are no streams or other linear aquatic features at the site and they also determined there are no wetlands or lentic waterbodies in the study area.

McLellan then discussed the Applicable Ordinance Sections:

2(v) Definition of Fill– McLellan explained that the definition of fill is any natural or manmade material originating from offsite and/or onsite that is placed on the ground as a permanent alteration of the surface of the floodplain. He added that since the construction debris is being placed below the surface of the floodplain, the material is not considered fill according to this ordinance section.

4(b)(10(a) Fill Restrictions in the floodplain- McLellan discussed that there would be no debris or fill placed above the 2013 ground surface elevations as part of this project. Therefore, this ordinance section is met and no compensatory storage is required.

5(a)(viii) No Rise Considerations- McLellan stated that for proposed development within any flood hazard area (except those designed as regulatory floodways), certification that a rise of no more than 0.05 ft. will occur in the BFE on any adjacent property as a result of the proposed work is required. He said that the applicant's engineer has certified that the project will not cause a rise in the BFE, which meets the ordinance requirements.

McLellan then stated that it was Staff's recommendation that Floodplain Permit Application #574 be approved.

O'Leary asked if there were any additional comments from Mr. Conaway or Mr. Kent and there were none. He then asked if there were any comments from the committee. Suneson asked if they started to refill the pit without the permit and O'Leary said that this was correct. Suneson then asked if we had a map that showed the 2013 topography. Conaway responded that they had a Global Positioning System (GPS) surface model. Suneson asked if they would be able to regrade the surface to what it was prior to removing the fill and Kent responded that they would. Suneson asked Kent and Conaway if they would be revegetating the area to the same as it was prior to removing the fill. Conaway said they would be happy to seed the area

but it was previously a 4-wheeler park/motorcycle area. Suneson supplied a photograph and stated that he saw motorcycle tracks but that the area was still vegetated. Conaway responded that if it is something required by the committee then it would be something they can discuss further.

Suneson then stated that he was concerned that this pond had started to be refilled without a permit and now the committee is being asked to approve a project that is already underway and already partially complete. Suneson added that the applicants have stated that no asphalt or steel would be included in the material added to the pond, yet he questioned whether or not there would be any rebar in the slabs of concrete. Conaway said that there would be small amounts of rebar but that they were in compliance with what the Army Corps of Engineers requires such as no protruding rebar that could become a hazard. He said that as they are removing the pavement they are removing any rebar encountered but that it was impossible to get all of it removed without turning the concrete into rubble.

Stansel commented that the permit issued in 2013 was to dig out fill material and not to add material. Conaway stated that this was correct and added that in 2013 they picked up the South Hwy 9 and I-35 Interchange that required borrow of 140,000 yards. He said that subsequent to that project they picked up the Lindsey Street and the north half of Hwy 9 project that had about 150,000 yards of waste. He added that when they filed for the original permit they were not aware that they would have this much waste to dispose of and that the majority of the material that needed disposal is earthen material.

Suneson responded that there is a gentleman downstream from this property that bottles and sells water that may be concerned of what is going into the floodplain. He commented that the applicant states the concrete and rebar will be below the water level and that he felt a concern that the steel in the concrete could rust.

Suneson asked the applicant if any more material would be going into the pit such as tires or petroleum products? Conaway responded that if he knew it was a requirement then he wouldn't have refilled the pond and it was just overlooked. Suneson stated that he felt that the applicant should remove all of the material that was placed in the pond and leave the area as a pond as the committee had originally approved, or that some kind of groundwater monitoring be done downgradient from where the material is placed. He said he also thought that some acceptance of liability should be taken if part of the Canadian River floods and the other side of the river is washed out because the committee assumed there was a pond in this location. Conaway remarked that he did not understand Suneson's statement and that they were putting the surface elevation back to the original contours.

Suneson commented that the committee had an understanding that the area would be left a pond and now the applicant wants to change that. Kent responded that the FEMA flood maps did not account for the pond and as it stands now there is additional volume for the fill material. Suneson then said that he understands there would be no rise in the BFE due to this project but wants to know if a flood comes and damages property downstream, because the committee had approved filling a pond on the floodplain, who is liable for damages that could

occur? Conaway said that the material added would be earthen material and some concrete. Suneson commented that the applicant overlooked the City of Norman's Floodplain Ordinance and then asked if they could also trust them to ensure that there is nothing else in the concrete that the committee should be concerned about.

Stansel remarked that she believed there was asphalt mixed in with the concrete that was removed from the Lindsey Street project. Conaway responded that the asphalt was removed from the concrete and hauled off but that there was an underlayment of asphalt bonded to the concrete that they could not separate. Stansel asked if there were two large piles of this material at the site currently and Conaway responded that this was correct.

Suneson remarked that in the Floodplain Permit Application, it states that steel and asphalt will not be placed in the pit but the applicant now states that a small amount will be added. Conaway said that he wanted to be completely honest and that small amounts of asphalt are bonded to the concrete and small amounts of rebar will also be added into the pit. McLellan stated the the Army Corps of Engineers does allow small amounts of rebar in the concrete. O'Leary commented the difference is that the rebar needs to be cut off to the face of the concrete slab because it is a safety hazard and not a pollution hazard.

O'Leary asked if there were any other questions and Sturtz said that he felt concerned and shocked that Sherwood got a permit with MacArthur Engineering to build a pond and leave a

pond, then the second a new highway project began they wanted to fill the pond in with waste material. Conaway responded that he felt it was a way to return the pond to its original state. Sturtz commented that he saw it as a reversal of a prior decision by the committee.

O'Leary then opened the discussion up to the general public for any questions or comments. Francis said that concrete usually has oil residue and when it is removed there is usually a lot of trash and pieces of tires and debris that is not removed from the fill material. She added that the soil underneath the concrete also contains asphalt and other toxic materials that would all be leaching into the Canadian River and that it was very disturbing to her. Holcomb then asked when the previous floodplain permit was issued by the Floodplain Committee and McLellan responded that it was November 18, 2013. Holcomb asked how this application was brought back to the committee and O'Leary explained that he had heard a report that filling was occurring in the floodplain and the City immediately contacted the contractor to halt operations and either remove the material or reapply for another floodplain permit.

Rogers asked if this application was only for a fill permit, would this be something allowed by the committee? O'Leary responded that if the applicant could prove that they were fulfilling the floodplain ordinance and could meet the ordinance requirements and get committee approval, that while it is rare to get a permit to fill in the floodplain, it is possible. If this application had come through as a cut and fill application in 2013, O'Leary believes that the committee would have looked at it very differently.

Suneson said that if the committee granted the floodplain permit for this application, he would request that the pond be recontoured to prior conditions, the area revegetated, and groundwater downgradient from the area monitored for pollutants that could get into the Canadian River watershed and that all of this should be done by an independent agency. Sturtz responded that the revegetation is already a requirement of the state permit. Francis asked who is liable for any damages. Messner responded that if the Floodplain Committee looks at this application and does its best to apply the requirements then it is something that is certainly legally defensible in case of litigation against the City of Norman. She added that as far as the liability of the construction company, residents would have to contact a private attorney. O'Leary added that if the committee chooses to deny the application, they also mandate the removal of the fill material that has already been placed and to restore the pond to the conditions of the previous application that was approved.

Connors then asked what was the benefits of keeping a pond at this site. Conaway commented that he had received calls from the City of Norman Police Department that vehicles had entered the property and got stuck in the pond. O'Leary said that part of the value was the additional storage in the floodplain. He added that since it is a known fact that rivers move, he is concerned that someday the chunks of concrete could become exposed. O'Leary then asked for a motion on Floodplain Application #574 and Suneson made a motion to deny the application, which was seconded by Stansel. Denied 5-2 (Danner & Connors voted against the motion).

Item No. 4, Miscellaneous Discussion

O'Leary then stated that the next meeting was scheduled for Tuesday, July 5th and the July 18th meeting is still pending. A motion to adjourn the meeting was given by Sturtz, which was seconded by Suneson. Approved 7-0.