NORMAN PLANNING COMMISSION
REGULAR SESSION MINUTES

SEPTEMBER 11, 2014

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in Council Chambers of the Norman Municipal Complex, 201 West Gray Street, on the 11th day of September 2014. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at http://www.normanok.gov/content/boards-commissions at least twenty-four hours prior to the beginning of the meeting.

Chairman Dave Boeck called the meeting to order at 6:30 p.m.

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Item No. 1, being:
ROLL CALL

MEMBERS PRESENT	Andy Sherrer Roberta Pailes Curtis McCarty Sandy Bahan Dave Boeck Jim Gasaway Tom Knotts Chris Lewis Cindy Gordon
MEMBERS ABSENT	None

A quorum was present.

STAFF MEMBERS PRESENT	Susan Connors, Director, Planning & Community Development Jane Hudson, Principal Planner Roné Tromble, Recording Secretary Leah Messner, Asst. City Attorney Larry Knapp, GIS Analyst II Ken Danner, Subdivision Development Manager David Riesland, Traffic Engineer Terry Floyd, Development Coordinator

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CONSENT ITEMS

The Consent Docket is designed to allow the Planning Commission to approve a number of items by one motion and vote. The Consent Docket consisted of the following items:

Item No. 3, being:
APPROVAL OF THE AUGUST 14, 2014 REGULAR SESSION MINUTES

Item No. 4, being:
COS-1415-1 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY EDWIN RULE (GREAT PLAINS SURVEYING CONSULTANTS, INC.) FOR RULE'S EMERALD SPRINGS ADDITION, FORMERLY EMERALD SPRINGS COS GENERALLY LOCATED ON THE SOUTH SIDE OF FRANKLIN ROAD APPROXIMATELY ¼ MILE EAST OF 12TH AVENUE N.W.

Item No. 5, being:
COS-1415-2 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY TERRA VERDE, L.L.C. (CENTERLINE SERVICES, L.L.C.) FOR TERRA VERDE GENERALLY LOCATED ON THE SOUTH SIDE OF POST OAK ROAD APPROXIMATELY ½ MILE EAST OF 60TH AVENUE S.E.

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DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

Jim Gasaway moved to place Item Nos. 3 through 5 on the Consent Docket and approve by one unanimous vote. Chris Lewis seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailes, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Tom Knotts, Chris Lewis, Cindy Gordon
NAYES	None
ABSENT	None

Ms. Tromble announced that the motion, to place Item Nos. 3 through 5 on the Consent Docket and approve by one unanimous vote, passed by a vote of 9-0.

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Item No. 6, being:
COS-1415-3 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY MATT, PAIGE AND BARBARA MUSGRAVE (CENTERLINE SERVICES, L.L.C.) FOR DIEHM ACRES GENERALLY LOCATED ON THE WEST SIDE OF 84TH AVENUE S.E. APPROXIMATELY ½ MILE NORTH OF STATE HIGHWAY NO. 9.

Chairman Boeck announced that the applicants have asked to have this item postponed until the October 9, 2014 Planning Commission meeting.

Chris Lewis moved to postpone Item No. 6, COS-1415-3 for DIEHM ACRES to the October 9, 2014 Planning Commission meeting. Cindy Gordon seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailes, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Tom Knotts, Chris Lewis, Cindy Gordon
NAYES	None
ABSENT	None

Ms. Tromble announced that the motion, to postpone Item No. 6, COS-1415-3 until the October 9, 2014 Planning Commission meeting, passed by a vote of 9-0.

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Item No. 4, being:
COS-1415-1 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY EDWIN RULE (GREAT PLAINS SURVEYING CONSULTANTS, INC.) FOR RULE'S EMERALD SPRINGS ADDITION, FORMERLY EMERALD SPRINGS COS GENERALLY LOCATED ON THE SOUTH SIDE OF FRANKLIN ROAD APPROXIMATELY ¼ MILE EAST OF 12TH AVENUE N.W.

ITEMS SUBMITTED FOR THE RECORD:
1. Location Map
2. Certificate of Survey
3. Staff Report
4. Request for Variance to the Width of the Private Road Paving
5. Greenbelt Commission Comments

This item was approved on the Consent Docket by a vote of 9-0.

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Item No. 5, being:
COS-1415-2 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY TERRA VERDE, L.L.C. (CENTERLINE SERVICES, L.L.C.) FOR TERRA VERDE GENERALLY LOCATED ON THE SOUTH SIDE OF POST OAK ROAD APPROXIMATELY ½ MILE EAST OF 60TH AVENUE S.E.

ITEMS SUBMITTED FOR THE RECORD:
1. Location Map
2. Certificate of Survey
3. Staff Report
4. Greenbelt Commission Comments

This item was approved on the Consent Docket by a vote of 9-0.

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Item No. 6, being:
COS-1415-3 – CONSIDERATION OF A NORMAN RURAL CERTIFICATE OF SURVEY SUBMITTED BY MATT, PAIGE AND BARBARA MUSGRAVE (CENTERLINE SERVICES, L.L.C.) FOR DIEHM ACRES GENERALLY LOCATED ON THE WEST SIDE OF 84TH AVENUE S.E. APPROXIMATELY ½ MILE NORTH OF STATE HIGHWAY NO. 9.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Certificate of Survey
3. Staff Report
4. Request for Variance in the 10-acre minimum requirement
5. Request for Variance in the Width of the Private Road
6. Greenbelt Commission Comments

This item was postponed to the October 9, 2014 Planning Commission meeting at the request of the applicant by a vote of 9-0.

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NON-CONSENT ITEMS

Item No. 7, being: **CLASSEN CROSSINGS, L.L.C.**

7A. R-1415-4 – CLASSEN CROSSINGS, L.L.C. REQUESTS AMENDMENT OF THE NORMAN 2025 LAND USE AND TRANSPORTATION PLAN FROM COMMERCIAL DESIGNATION TO MIXED USE DESIGNATION FOR PROPERTY GENERALLY LOCATED SOUTH OF EAST CONSTITUTION STREET AND ON THE WEST SIDE OF SOUTH CLASSEN BOULEVARD.

7B. O-1415-3 – CLASSEN CROSSINGS, L.L.C. REQUESTS REZONING FROM A-2, RURAL AGRICULTURAL DISTRICT, AND I-2, HEAVY INDUSTRIAL DISTRICT, TO PUD, PLANNED UNIT DEVELOPMENT, FOR PROPERTY GENERALLY LOCATED SOUTH OF EAST CONSTITUTION STREET AND ON THE WEST SIDE OF SOUTH CLASSEN BOULEVARD.

7C. PP-1415-1 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY CLASSEN CROSSINGS, L.L.C. (OKLAHOMA SURVEY COMPANY) FOR CLASSEN CROSSINGS APARTMENTS & RETAIL ADDITION, A PLANNED UNIT DEVELOPMENT, FOR PROPERTY GENERALLY LOCATED SOUTH OF EAST CONSTITUTION STREET AND ON THE WEST SIDE OF SOUTH CLASSEN BOULEVARD.

ITEMS SUBMITTED FOR THE RECORD:

1. Location Map
2. Staff Memo
3. Excerpt of Planning Commission Minutes – August 14, 2014

Chairman Boeck announced that the applicant has requested postponement of this item until the October 9, 2014 Planning Commission meeting.

DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

Chris Lewis moved to postpone Resolution No. R-1415-4, Ordinance No. O-1415-3, and PP-1415-1, the Preliminary Plat for CLASSEN CROSSINGS APARTMENTS & RETAIL ADDITION, A Planned Unit Development, to the Planning Commission meeting of October 9, 2014. Curtis McCarty seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailes, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Tom Knotts, Chris Lewis, Cindy Gordon
NAYES	None
ABSENT	None

Ms. Tromble announced that the motion to postpone Resolution No. R-1415-4, Ordinance No. O-1415-3, and PP-1415-1 to the October 9, 2014 Planning Commission meeting passed by a vote of 9-0.

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Item No. 8, being: **MARK COCHRAN & ELIZABETH GEORGE**

8A. O-1415-6 – MARK COCHRAN AND ELIZABETH GEORGE REQUEST REZONING FROM A-2, RURAL AGRICULTURAL DISTRICT, TO RE, RESIDENTIAL ESTATES DWELLING DISTRICT, FOR PROPERTY GENERALLY LOCATED NORTH OF FRANKLIN ROAD EAST OF 24TH AVENUE N.W. AT 2013 WEST FRANKLIN ROAD.

ITEMS SUBMITTED FOR THE RECORD:
1. Location Map
2. Staff Report
3. Preliminary Plat

8B. PP-1415-3 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY MARK COCHRAN AND ELIZABETH GEORGE (CARDINAL ENGINEERING) FOR BOX ACRES ADDITION, FORMERLY TRACT B OF ALEXANDER ACRES CERTIFICATE OF SURVEY, GENERALLY LOCATED ON THE NORTH SIDE OF WEST FRANKLIN ROAD APPROXIMATELY 1/3 MILE EAST OF 24TH AVENUE N.W.

ITEMS SUBMITTED FOR THE RECORD:
1. Location Map
2. Preliminary Plat
3. Staff Report
4. Transportation Impacts
5. Pre-Development Summary
6. Greenbelt Commission Comments

PRESENTATION BY STAFF:
1. Jane Hudson – The application is to rezone and replat this 10-acre tract from A-2, Rural Agricultural District, to RE, Residential Estate Dwelling District. The existing zoning in the area is A-2 to the west, north, and east. There is also some Residential Estate Dwelling District to the south of Franklin Road. The existing land use in the area consists mainly of single-family residential. On the east side of the subject tract there is an existing oil well site. They are proposing four single-family lots. There is access from Franklin Road by way of Cochran Circle. There is public water along Franklin, which they will be bringing in to each of the four lots. Each of the lots will have individual sanitary sewer services. Staff did receive a protest from within the notice area, which brought it to 18.2%. Staff does support this rezoning request and recommends approval of Ordinance No. O-1415-6 and PP-1415-3. Staff is available for questions. The applicants are here with some comments for you as well.

PRESENTATION BY THE APPLICANT:
1. Mark Cochran, 1509 Baycharter Street, the applicant – I think really all that we want to say is that this property has been in our family for probably close to 100 years and we've just decided – we lost our homes in the tornado last year and we've decided that now is as good a time as ever to develop this and actually build homes on it. So our families just decided to try to put together all the funds that are necessary to meet all the requirements to put in the road and do this platting so that we can build homes to obviously continue our lives with our family. There are obviously some concerns that we've had with the oil company next door, and I'll let them speak to those objections. But, really, we're just looking forward to moving ahead with building our homes.

2. Elizabeth George, 917 Heather Lane, Moore, an applicant – Was present but did not make any comments.

AUDIENCE PARTICIPATION:
1. Buddy Behrens, 4608 Summerfield Court – My office is in Oklahoma City. I'm an attorney. I represent the oil and gas interests and I represent, in this case, the owner of the property immediately east of this tract, which is Finley Resources, Inc. is the surface owner of that property. Some time ago, Finley Resources, Inc. elected to pursue the development of some oil

and gas properties in and around Norman – the north part of Norman. One of the areas was this area along Franklin Road. In discussing their plans with the staff in an effort to attempt to reduce their impact on the area, they proposed to establish a drill site in this 10-acre tract that adjoins this property to the east and use that drill site to drill four wells, instead of one – to drill four wells: two down into Section 12 – horizontal wells – and two into Section 1. They have oil and gas interests in both. Between the two sections there are somewhere in the neighborhood of 300 mineral owners, royalty interest owners – people who would ultimately benefit from development of those two sections. And, in fact, a well has been drilled from that multiple well location south into Section 12 per a permit that was granted by the City and that is the Little River 1-12H well. It is drilled from that location – a horizontal well drilled to the south from that location. Our concern is not what Mr. Cochran and Ms. George want to accomplish. We don't have any real objections to what they want to do.

The concern is what the impact of that is going to be on the planned future development from that same drill site. The concern results from a provision in the ordinances that, in summary, provides that you cannot use an internal combustion engine to drill a well within the city limits of Norman if a party who owns a dwelling or a business structure within 600 feet objects. You have to have the waiver of this provision from an owner who owns a dwelling or a business structure within 600 feet of the well if you're going to drill any kind of well that requires an internal combustion engine for the drilling process. Well, it's impossible to drill a horizontal well, as a practical matter, in this part of the state -- it's nearly impossible to drill any well -- without an internal combustion engine. These horizontal well rigs all have internal combustion engines.

So, ultimately, the plan is for my client, Finley Resources, to drill three more wells from that location; one more into Section 12 and two into Section 1. All those will be horizontal wells. All those wells will require a rig that is powered by an internal combustion engine. If this ordinance is approved – and, again, we don't have any problem with what they're trying to do. We don't have any problem with them building their homes out there. It's probably a fine place to build a home. The problem we have is that, once a house is in place on any of those lots that they're proposing to develop, once a house is in place the owners of interest in Section 12 and in Section 1 are not going to be able to develop that interest without a waiver from the owners of any dwellings in that ordinance area waiving this requirement that you not use internal combustion engine to drill a well. Typically, at least in my experience, the restriction about an internal combustion engine is because of the noise; it's a noise concern. And, as a matter of fact, it's a little bit inconsistent in the ordinances because later in the ordinance it provides that the Planning Commission can, if they elect, require an electric motor to be placed on a pumping unit. Well, we're going to have electric motors on the pumping unit, but that would imply that the Planning Commission has the authority to issue an ordinance that would allow a combustion engine on a pumping unit. That's not the case. That's not what this other ordinance provides. So we've got three more wells to drill. At this point, today, if we submit a permit today, there would be no problem with the ordinance because there are no homes there. And, as the ordinance is drawn, it doesn't matter if the homes are inhabited or even if they're inhabitable. The illogical conclusion – the ugly illogical conclusion to this is that an owner with an uninhabitable house or business structure that happened to be within 600 feet of a proposed horizontal well site could essentially veto that drilling of that well by failing to agree – or failing to waive the requirement – or the objection to an internal combustion unit for the drilling process. So that's what brings us here. We have interest owners whose interests, at this point, in Section 1 have not been developed and the reality of today in this drilling business is that the Little River 1-12H has just been completed and is waiting for electricity to be run to the location so they can put the electric pump on the well and find out essentially what kind of well they have. That factor means that it may not be – it may be months before it's determined whether they're going to drill another well and which well it will be and to the point where they can submit a permit. It may be three years before they get all three of them drilled, just because the nature of this business and the way these wells are drilled it takes us a few months, generally, to figure out if you've got a decent well or not and then you start looking at the further

development. If at such time as one of these future wells that were contemplated when my client decided to commit to drilling four wells from this one location – one footprint, if you will – if at such time as one of those wells – a permit is applied for and there is a house in this development that's within 600 feet of the well site, which there will be based on the fact that we've got relatively two small tracts here, then, in essence, the owner of that home, which may be one of the applicants and may not, but the owner of that home is going to have the ability to veto or block any further development of the oil and gas interests in either Section 12 or Section 1 by virtue of this statute – this ordinance.

Now I believe maybe the ordinance wasn't intended to reach that ultimate result – that it wasn't intended to provide one owner the authority to essentially block development for the benefit of hundreds of other owners. I don't think that necessarily was the intent of it, but the pure reading of the ordinance would have you believe that, again, to its extreme conclusion, an owner who had a house that was uninhabitable and happened to be within 600 feet of this drilling site could block and veto any further drilling on this location, even though when this permit was proposed it was proposed under the theory that we would be drilling four wells because that saves three other surface locations, obviously. We didn't have to build three other surface locations and interrupt anybody else's use of their property. And to do this, again, the client bought this – actually bought the surface of this tract. We attended the pre Planning Commission meeting on Monday, and at that meeting – we've had discussions with Mr. Cochran and Ms. George and I'm satisfied that our issue is not really with them; our issue is with the ultimate possibility that what they're going to do is going to restrict what we can do in terms of further drilling on this location. I believe that Mr. Cochran, Ms. George and my client can work out their issues.

The problem is will the City – one of the ways to resolve this is for the City to agree at this point to recognize a waiver, if we can negotiate with them a waiver – a present day waiver that would apply to the future drilling of these three wells so that at such time as the application was needed for a permit for one of these additional three wells we'd have a waiver in hand that we could submit with the permit application and that would solve the problem of this particular ordinance. I think that ultimately we could agree to some sort of arrangement with them. At the pre Planning Commission there were a couple of representatives of the City Attorney's office there. We asked them to inquire whether they could provide any assurances that the City legally could, in the future, recognize and honor these essentially pre-dated waivers if and when a permit was applied for down the line for one of these wells and there was a house within 600 feet – if those two circumstances occurred. If we had a waiver today from the people who own the property today and who are developing the property, will the City recognize that a year from now, two years from now, when the applications and permits are applied for for these additional wells? The response was that they were going to get with the City Attorney and get back with us. Well, we haven't heard anything. Of course, it's only been three days. I believe that if we had that assurance from the City Attorney's office, that the City could legally recognize essentially a waiver dated today submitted in the future in connection with an application for a permit a year from now, or two years from now – that the City could legally recognize that, then we will resolve the issues we have with Mr. Cochran and Ms. George because we're not trying to interfere with their ability to develop their property. We just don't want to sit by at this point and allow circumstances to occur which, ultimately would absolutely block us – bar us – allow one person or two people to block or bar or veto any further development that would benefit the owners of Section 1 or the owners of Section 12.

I noticed Jane listed what we filed as a protest; we're not really protesting, because we don't have any objection to what they want to do. Our concern is the ultimate effect – the long-term effect of it – the impact. And I understand this is the forum where those issues are to be flushed out – the long-term impact of the ordinance requests. So what we've asked – in the letter I submitted, we've asked to have some time to have the City Attorney's office mull this over and get back with us and take this up again when we know what the City's position is on whether these waivers would ultimately be honored in some future filing. We've not been able to agree on that with the applicant, so we're here today. My sense of it is that if we had the

City's assurances this would move forward quickly. We don't have the City's assurances so we're in a position where we don't really have any alternative but to continue to object or at least voice our concerns until such time as we know what, either one, we're not going to have the ability to drill any more wells, or, number two, the City's going to recognize our ability to do that. So we're here today, not to interfere with what they want to do. The fact is timing is such that we needed more time to get the City Attorney's response on this and timing is an issue for them as well. I understand that. So we leave it in your wisdom to determine how to skin the cat. But the problem is for us we cannot stand by and let something happen that would ultimately render us unable to use the multiple well pad that we've already agreed with the City that we would use to reduce the impact on this area. So I ask you to consider that. If you agree that maybe we should – we could wait – postpone this one time and let the City get back to us on that issue, then that's what we would ask for you to do. If that's not something that appeals to the panel, then we'll go forward with the City Council. But that's what we're here today to do and, to make it clear, we're not here to protest or interfere with what they want to do. That's never been our intention. Any questions?

2. Mr. McCarty – So you currently have one well on this site?

Mr. Behrens – Yes, sir.

Mr. McCarty – And you plan to drill three more?

Mr. Behrens – Well, the original plan was to drill three. I don't think you have my letter. I attached to the very back of the letter is the plat that shows the potential locations for stacking three more wells on there. That was the original intent. Now, again, until we know the full capability of the Little River 1-12H, whether we drill one more or three more, I don't know. But that's what the plan was, to use this one location for the well you see on that exhibit.

Mr. McCarty – So two more potential wells in the same location and you have one?

Mr. Behrens – Yeah. Maybe – possibly three more. But certainly two more. Because we have to drill a well in One because, at this point, One hasn't been developed and we have leasehold and we have interests that we need to develop One, so we know we're going to have to drill a well into One. The well in 12 – originally there was going to be two sort of V-shaped laterals into One and two V-shaped laterals into 12.

Mr. McCarty – So is your real issue just with the combustion engine?

Mr. Behrens – Yes. That's the whole issue. The whole issue is if there's a house out there at such point in time that we submit these applications down the line, because we're not going to submit in the next six months probably. They're going to develop. If they build a house, can they block us from using that location?

Mr. McCarty – The combustion engine issue is really with you and the owners.

Mr. Behrens – Well, that and the fact that – if the City truly intends that that be the way that ordinance is intended to be enforced – that one person can effectively ...

Mr. McCarty – Let's not talk about intent. I just want to know is the combustion engine issue – is that really the issue? You and the owners. You think they're going to block you from drilling?

Mr. Behrens – Well, at this point, we don't know. We don't have any way of knowing. Today, I don't think so.

Mr. McCarty – The ordinance says that the owners have the right. And my other question is, to do further drilling, do you have surface rights already to do that?

Mr. Behrens – We own the property.

Mr. McCarty – You own that corner?

Mr. Behrens – We own the 10-acre tract.

Mr. McCarty – So that's not in the plat at all?

Mr. Behrens – No. We are the owners of the surface of that tract.

Mr. McCarty – So that's – you keep speaking of Lot 12 and Lot 1. I don't know – I don't have anything that shows that.

Mr. Behrens – Section 1 and Section 12.

Mr. Boeck – He's not talking lots.

Mr. Behrens – The surface – the location is in Section 1. Across the street south is Section 12. The first well was drilled from that location in Section 1 under the road on a horizontal basis and drilled into Section 12. If I said lot, I meant Section 12.

Mr. McCarty – And my other question is, let's just say they do develop this and they build their houses. What does our ordinances in the City – can an oil well be drilled right next to a house if it's allowed?

3. Ms. Messner – Just as a point of clarification, Chapter 13 is our Licenses and Occupations chapter. It regulates all different kinds of activities within the City of Norman – soliciting and peddling, beer sales. It also regulates oil and gas drilling. We require an oil and gas permit to drill any well within the City limits. Mr. Behrens is correct that we do have a prohibition in the ordinance for operating an internal combustion engine in conjunction with an oil well within 600 feet of a home. We also have a separate provision that limits the location of well storage tanks within 600 feet of a home, unless you get a waiver from the property owner. So I think that would be an additional issue here on this property because I think they have some tanks right now along the west boundary of their property and, I assume, with the drilling additional wells they would need to locate more there so they would also need a waiver for that from any property owners within 600 feet. And we draw that radius just like you've seen on our zoning maps.

4. Mr. Boeck – Who issues that waiver? Is it the City?

Ms. Messner – The property owner within 600 feet signs a waiver that would allow. It's a property owner that has a home on the property. They don't have one now, so the oil company could get a permit and drill these additional wells now. But they're saying we're not really sure when we're going to drill them; it may be several years down the road and Mr. Cochran and Ms. George may have built their homes out there by then and then they would need a waiver for those additional wells. The well they have now is not an issue.

Mr. Boeck – And the homes that you're building out there are for other people to buy. You're developing this land. Right?

Ms. Messner – I think for them to live in.

Mr. Boeck – Oh. Just for you. Okay.

5. Mr. McCarty – So the ordinance is clear that with a waiver from the owner they could drill a well?

Ms. Messner – Absolutely.

Mr. McCarty – So it's really between the owners and the oil well company, not us, for a waiver.

Ms. Messner – That would be my position. Yes. That they need to work out the terms of the waiver.

6. Mr. Behrens – The issue is not that we can't negotiate a waiver. The issue is – the concern is that will the City recognize that waiver if it's signed in 2014 and the permit application is submitted in 2016? Will the City recognize that waiver that we negotiate today to resolve these issues? Will the City recognize it? And that was the question we asked the City Attorney's office to address was would that be viewed as a valid waiver if it's used a year from now or two years from now – whenever those houses are present and a permit application is filed.

Mr. McCarty – If I understand what you're trying to do is get the owners to go ahead and sign a waiver now for something in the future.

Mr. Behrens – Sure. We've talked to them about that. I think we could probably negotiate something along those lines, but it's useless to us if it's not …

Mr. McCarty – If you have that agreement with the owners, then why would we need a waiver today?

Mr. Behrens – Well, you don't need a waiver today.

Mr. McCarty – You're asking to present one signed in '14 for something in the future. Wouldn't that be between them and the owner? Why are we even discussing this?

Mr. Boeck – Well, no. It's whether the City approves.

Mr. Behrens – Whether the City would accept it.

Mr. McCarty – But the waiver could be signed by them in 2016 and that could be an agreement outside of us.

Mr. Boeck – But the City might not approve of that waiver. That's what he's asking, is for that kind of clarification.

Mr. McCarty – The ordinance says, though, if there's a waiver signed that the City will allow it, right?

Ms. Messner – Commissioners, what we've discussed in my office is, for example, if Ms. George and Mr. Cochran signed a waiver now in 2014 and then Council in 2015 amended the ordinance to prohibit wells within 600 feet of an existing home flat, without a waiver. As you all know, Council amends the ordinance on all different topics at every meeting. There are also some issues of if they were to sell the property and the new owners weren't aware of the waiver; that poses some concerns for the City. There is no specific requirement in the ordinance for how the waiver has to be signed within 30 days of permit application or anything like that. But there are some practical concerns that our office has about a waiver now that might not be used until 2018 or 2020 for this fourth well that they want to drill.

Mr. Boeck – This happens all the time. Building codes go through this. What's legal now might not be legal in the new code. And what's done under that old code is done under the old code. So if you have an ordinance gets rid of a waiver, don't you have to honor all the waivers that were done prior to the time of that?

Ms. Messner – Well, the same token, if the building code changes and you haven't applied for your building permit and you come in and apply for your building permit after the code changes, you have to conform to the new code, which would be the situation. They're not applying for the permit now and not being issued the permit. They want a waiver – a 2014 waiver and to apply for a permit in 2016 or 2018.

7. Ms. Gordon – So when you guys originally bought that and you always intended to drill three or four wells, is that correct?

Mr. Behrens – Yes. It was bought for that purpose.

Ms. Gordon – Okay. And it's my understanding from reading the staff report that that area is considered like a residential growth region or something. Is that correct?

Mr. Behrens – It is zoned agricultural at this point.

Ms. Gordon – I know, but it's in a low density residential growth region. Is that correct? Based on the Land Use Plan or something. Does that make sense? Did anybody else read that, or am I just having a pipe dream here?

Ms. Connors – It is in a low density area.

Ms. Gordon – Provide for a low population density in a Suburban Residential Growth Area as the NORMAN 2025. Is that right?

Ms. Connors – Yes.

Ms. Gordon – So there was always the potential for this to go residential – low density residential. Is that correct?

Ms. Connors – Yes.

Ms. Gordon – Okay. So when you guys bought it and then here it also states that you wanted to drill originally on a different place on the land but the City told you where you had to put the tanks.

Mr. Behrens – No, not drill, but put the tanks. The plan was originally – the City Attorney referenced the fact that the tanks have been moved to one side of the tank battery. Originally the plan was – the permit was approved to have the tanks in a different location. The problem is this property drops off dramatically in the back side to the Little River. Once the location was built, the City looked and said we don't feel comfortable having the tanks on the back of the location because of the possibility that a leak could find its way into the Little River. We want you to move the tanks to the front. That was just in compliance with the City. We didn't move

them there because we wanted to. We moved them there because the City was not comfortable having them back in the location.

Ms. Gordon – Okay. So, but when you bought the land, there was always the possibility that this land that's agricultural could be redeveloped at some point as residential.

Mr. Behrens – Sure.

Ms. Gordon – Would that have changed anything? I mean, if it's a problem now, did you guys not foresee that that would be a problem when you originally bought the land and you wanted to put these wells and tanks there?

Mr. Behrens – The problem is that, now that there's been a proposal to develop this and place houses within 600 feet of the location is what's triggered all this, because the ordinance that is triggered on the – essentially this veto power for one owner to stop ...

Ms. Gordon – I understand that. But I guess my point is, if you knew that potentially in the future it could have been developed, you knew that ahead of time that this could potentially be a problem when the land was purchased.

Mr. Behrens – I'm sure they did. I wasn't involved with purchasing the land; I don't know. But I'm sure they did. I'm sure when they applied for the permit, the City advised them what the status of the land was. We're not claiming that we've been duped by the City.

8. Mr. Lewis – One quick question – clarification. So from everything I understand today, what you're trying to do is protect your vested interest in a piece of property that had every available opportunity when you purchased it to produce four wells and be drilled on it without any type of issue. Today what I think – help me understand – you're asking us to do is insure your vested interest so that the property next to you now can be developed such that you can continue to drill your four wells unencumbered by anything else. Is that pretty much my understanding?

Mr. Behrens – Well, I'm not concerned about the encumbrance of what they want to do construction-wise.

Mr. Lewis – Right. But that does make an impact on your piece of property.

Mr. Behrens – You have to remember, when this all started, the proposal was we want to use this same drill site to drill these four wells so that we don't have to interfere with anybody's use in Section 12 and some other locations to drill these other wells. And so, at the time this was initially proposed, it was contemplated that it would be a multiple well drill site.

Mr. Lewis – You planned on four; you have three more to go.

Mr. Behrens – Right.

Mr. Lewis – So if the property adjacent to you to the east is developed with homes, then, yes, your site would be encumbered upon to receive waivers from developed piece of property. So I'll go back to my original question – what you're asking us to do today is to ensure your vested interest so that you can continue to drill the additional three wells on your property without being encumbered by the development of the adjacent property to the east of you.

Mr. Behrens – If you want to describe it that way, I guess so. The way I see it is, if this ordinance is really intended by the City to allow one owner of even an inhabitable house that is within 600 feet of a well site to block further development from that well site, then, number one, I don't believe that ordinance is enforceable under that format. We may find that out. But the issue is not that they're somehow impinging on our vested interest. The issue is we approached the City with the idea of using this for four locations. In other words to reduce our footprint. And now it appears that if this ordinance is approved, these houses are built, and they're within 600 feet, which at least certainly one will be, that we may not get the benefit of what we proposed to the City. That's all. Assuming we can't negotiate a waiver.

Mr. Lewis – What I was trying to do is understand your intent for coming forward in the opposal. I mean, Leah and her office does an amazing job in interpreting the law. I am certainly not an attorney. So what I am asking is what is your intent in coming forward, and that was my question. And I appreciate your answer. All you want to do is secure your invested interest. Perfect.

9. Ms. Connors – Mr. Chairman, I would just like to clarify one point. This property is currently zoned A-2 and they have the right at this time under the current zoning to build a house on this property – on this ten acres. Therefore, if they built a house on the A-2 property as it is today, they would still have the right, or the responsibility, to grant a waiver for another well to be drilled. So the rezoning from A-2 doesn't change really, because this entire property is within 600 feet of the current property. Even under its current zoning, there is that restriction of if a house was built the waiver would have to be granted.

10. Mr. Lewis – I have one for the applicant. Having heard everything you've heard here today, do you have any opposition to giving Mr. Behrens a waiver to drill within 600 feet of your property?

Mr. Cochran – The short answer is yes, in the sense that the way he presents it is not exactly how it was presented to us. Early on when this whole project started with Finley, they wanted to buy our property. We refused to sell because we had intentions of always living on the property – developing it, building houses. A couple of dinner meetings with Finley we refused to do this. It then went into can we purchase your mineral rights to put a well on the property next to you – purchase the site next to us. But we want to put one well. And Elizabeth, maybe you can speak to this as well, since you were present at the dinners. It was presented that we want to put a well; we want to purchase your mineral rights. It was a back and forth – a tough decision for her because it's where she grew up and, obviously, her dream was to build a house on it. And the idea of having a well next door with tank batteries and all of those things – there was hesitation. Finally, she relinquished with the idea that there's going to be a well there. It was presented as a single well. This multi-well thing is brand new. The first we've heard of it was at our meeting a few weeks back – just a couple weeks back when we first met Mr. Behrens. Our goal is obviously just to build homes. The idea of having a bunch of tank batteries sitting right outside our back door is not really what we envisioned, but it also – with what they've told us they're going to do and the promises they made of where the well would set and where the tank batteries would be placed – they have not followed through with those things. If you look at the property as the picture showed, the tank batteries are right up against our property, which it was promised to us those would be in the center of the property. And I don't know what dealings went on with the City or how that changed, but it's not what our intentions or what we thought was going to happen. So, up to this point, the same with the engine that's running the well. It was supposed to be a silent electric pump; it's not. So those are concerns for us. It's not that we're absolutely against what it is that they're trying to do. We want to be good neighbors, but we also want them to respect what it is that our intentions were and the whole reason why we were so hesitant in the beginning to allow them to put in the single well. I don't know where the additional wells came from. They say it was their intentions all along. When I look at those drawings and things that have been presented to us, those dates are within the last couple of weeks when those drawing were made. So I don't know – I think maybe their progression of getting this well in place and then seeing the potential of what they could do past that, but I think they certainly need to involve us in what their future plans are and let us agree to those before they just side-step us and do what they want.

11. Mr. Gasaway – And for City staff, how does the placement of the current storage tanks along the property line impact the applicants' ability to place houses? Is that 600 foot?

Ms. Messner – In the law, you would call an oil well site and oil well tanks a nuisance. It's the legal term for it. And so when a nuisance comes to you, you usually have some rights to say – you'd ask for a waiver, for example. But when you come to the nuisance, for example, where they build a house near the existing tanks, we don't require that 600 foot buffer because we assume that you building your home within 600 feet know the tanks are there and are agreeable to being near them.

12. Mr. McCarty – So would the 45 foot radius rule fall into effect for that – that we have for a plugged well?

Ms. Connors – No.

Mr. McCarty – So they could build right up against it if they wanted to? To the tanks – to the house?

Ms. Connors – A house could be right adjacent to their property line where the tanks are close nearby.

Mr. Boeck – With whatever given setback.

Ms. Connors – They have to have the setback for the house appropriate to the zoning.

DISCUSSION AND ACTION BY THE PLANNING COMMISSION:

Curtis McCarty moved to recommend adoption of Ordinance No. O-1415-6 and PP-1415-3, the Preliminary Plat for BOX ACRES ADDITION, to City Council. Jim Gasaway seconded the motion.

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Andy Sherrer, Roberta Pailes, Curtis McCarty, Sandy Bahan, Dave Boeck, Jim Gasaway, Cindy Gordon
NAYES	Tom Knotts, Chris Lewis
ABSENT	None

Ms. Tromble announced that the motion to recommend adoption of Ordinance No. O-1415-6 and PP-1415-3 to City Council, passed by a vote of 7-2.

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Item No. 7, being:
MISCELLANEOUS DISCUSSION
None

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Item No. 8, being:
ADJOURNMENT
Chris Lewis moved to adjourn. There being no further comments from Commissioners or staff, and no further business, the meeting adjourned at 7:15 p.m.

Norman Planning Commission