

BOARD OF ADJUSTMENT MINUTES

MAY 27, 2020

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session via Video Conference and in City Council Chambers of the Norman Municipal Complex, 201 West Gray, at 4:30 p.m., on Wednesday, May 27, 2020. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at www.normanok.gov/content/board-agendas in excess of 24 hours prior to the beginning of the meeting.

Item No. 1, being:

CALL TO ORDER

Chairman Andrew Seamans called the meeting to order at 4:31 p.m.

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Item No. 2, being:

ROLL CALL

MEMBERS PRESENT
via Video Conference

Brad Worster
Curtis McCarty
Rick Roberts
Andrew Seamans

MEMBERS ABSENT

Mike Thompson (unable to attend due to technical difficulties)

A quorum was present via video conference.

STAFF PRESENT

Lora Hoggatt, Planner II
Roné Tromble, Recording Secretary
Elisabeth Muckala, Asst. City Attorney (Video)
David Woods, Oil & Gas Inspector
Jane Hudson, Planning Director

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Item No. 3, being:

APPROVAL OF MINUTES OF THE APRIL 22, 2020 REGULAR MEETING

Rick Roberts moved to approve the minutes of the April 22, 2020 Regular Meeting as presented. Brad Worster seconded the motion.

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

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| YEAS | Brad Worster, Curtis McCarty, Rick Roberts, Andrew Seamans |
| NAYS | None |
| ABSENT | Mike Thompson |

Ms. Tromble announced that the motion to approve the April 22, 2020 Board of Adjustment Regular Meeting Minutes as presented passed by a vote of 4-0.

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Item No. 4, being:

BOA-1920-17 – MAGNUM ENERGY, INC. REQUESTS A VARIANCE TO ARTICLE XV, SECTION 13-1502, WHICH REQUIRES A BLANKET BOND, BLANKET IRREVOCABLE LETTER OF CREDIT, OR CASH, FOR THE PATTY #1 WELL, GENERALLY LOCATED SOUTH AND WEST OF THE INTERSECTION OF ROCK CREEK ROAD AND 36TH AVENUE N.W.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Application with Attachments
4. Plat
5. Aerial Photo

PRESENTATION BY STAFF:

Mr. Woods reviewed the staff report, a copy of which is filed with the minutes.

Mr. McCarty – So this was passed in 2015. As I looked through this and read this, it appears that the State already has similar requirements. Do you know why the City of Norman decided they needed to pass an ordinance that's similar or duplicating what the State already has in place?

Mr. Woods – I have no comment to that. That ordinance was put in place by Council. As part of the ordinance, it's my job just to enforce the ordinances.

Mr. McCarty – I thought maybe you had some history – something that happened that created this to be put in place on top of what the State already has in place. I just didn't know if there was past history of why this ordinance was put in in the manner it was.

Mr. Woods – The City has always had an ordinance requiring a bond. It hadn't been changed even since State law was passed; the ordinance has remained the same.

Ms. Muckala – That was going to be my injection. I see that the initial version of this ordinance was on the books as O-8283-69, so since the 80s.

Mr. McCarty – May I ask one more question, Beth? Do you know what was changed from that ordinance to this one?

Ms. Muckala – I do not. I would have to see a version of 1415-7, unless you give me one second.

Mr. Seamans – Have we done anything like this? It seems like I've seen something like this before. We had one well from a company in the area that had different insurance policy. Has the Board of Adjustment set a precedent from anything for this matter?

Mr. Woods – We've only had the one request as far as insurance, and we've had

requests for Board of Adjustment on fencing requirements and some of those issues in the past.

Ms. Muckala – I apologize. I used to have an historical index of the changes to our oil and gas ordinance, but I see I do not have it handy with me, so I won't be able to say what changes were made.

Mr. Woods – In this one section, I will tell you, it was prior to 2015 there was an issue that come back earlier than that that the City used to have a \$5,000 per well bond for all operators. There was so many wells, and with the operators trading wells, swapping wells, trying to keep up with riders to add wells, to take wells off. It was different at that time. They come back through it and said there needs to be a simpler way – or should be a simpler way. At that time there was a City ordinance passed that adopted State requirements, that required operators to carry a \$25,000 bond, and I do not remember what date that was – early 2000s, I think.

Mr. Roberts – I just want to understand that we're being asked to waive the bond and the insurance on this particular well?

Ms. Muckala – It's been brought forth kind of categorized as a variance. Facially, though, it does seem to be an exemption. That's not really within the purview of BOA to grant. On just a baser level, the BOA, under State and local authority, has the right to grant a variance, to grant special exceptions. And so a variance of that requirement would be within the BOA's power. But it does appear that the applicant is asking for a permanent exemption.

Mr. Roberts – Then what's the risk factor to the City or the neighborhood or the addition by waiving that requirement?

Ms. Muckala – I would let David speak to any actual – if you're speaking of safety risks. But, from a legal standpoint, I would say granting an exemption without the authority would risk the decision of the BOA being invalidated. But I'm not sure if that answers your question.

Mr. Roberts – Yes.

Mr. McCarty – We're diving into weeds already a little bit. So, Beth, I've read through all this and it appears to me that the State already has this requirement as a well operator you have to have this already in place. It appears that the applicant does through the State. But he's asking just for it to be waived through the City requirements, the way I read this. Then I read the Attorney General's Opinion, and it doesn't appear that the City had the right, from what I can see, to ask for bonding or similar things that the State already has. I read through this; it talks about road noise, odor, incidental, setback requirements, fencing – all these things that we're allowed to and that we're not allowed to based on this Act and the Attorney General's Opinion that was issued in November of

2015. I'm not an attorney, but reading through this, from what I can tell, he already has it in place with the State. He's just asking to not have to have additional bonding with the City.

Ms. Muckala – Well, I wouldn't speak for the applicant on what he's asking for. I will say that there is a state requirement for a bond. I couldn't tell you that it's identical to ours; I doubt that it is, because it just rarely happens that way. So I don't know that it's an identical requirement. Second, 809 – we call it 809; it's actually been codified for quite some time now as, I think, 63OS137.1. It is state law. It does have a list of powers in there and it has been interpreted by the AG Opinion, which I've also read. Even though it's been in place now for a few years, there's scant case law on it. What we do know is that the AG's Opinion doesn't appear to address every corner of it – is because, obviously, the cities have some police power. We couldn't work as a city and protect public safety if we didn't. That goes to a lot of different things. We've been here before on insurance requirements, and I know that the applicant attached the order in that other case, which is not binding here because it was dealing with a completely different provision in our ordinance. But it's the same situation. The City does have police power; it's unclear, based on this statute, where the Legislature sees that power as beginning or ending. And part of that police power is to provide safety and assurance, financial or otherwise, for the City when it comes to the operation of businesses within the municipal boundaries. Now, these oil and gas ordinances are before the BOA, but they are in the business licensing section of our code, which I know that you're all aware. Other businesses have insurance requirements. In fact, we require a \$5 million umbrella policy for scooter operations. I'm not sure if others are aware of that, but we do. So it's not just oil and gas. This is a police power issue. So I would say no, 137.1 is not clear on this issue.

PRESENTATION BY THE APPLICANT:

Bob Campbell, the applicant – Really what I'm asking for here is we're making a confusion between insurance and – basically, this bond is a performance bond. The City is entitled to ask for insurance to protect from liabilities. The bond that you're demanding here is a plugging bond. It just says if the well was abandoned that they could call this bond or letter of credit and use the money to plug the well. That's all it is. It's not insurance. But it's a performance bond where the City has no liability whatsoever for an abandoned well. I think that the comments made about insurance are applicable where the City could be a defendant or named in a lawsuit. The City will never be named in a lawsuit for an abandoned well. I gave you guys some material just for some background. But I did this to highlight it. The Act, bill 809, which whatever the codification is – specifically says – I think I highlighted it for you guys – is that "A municipality or other political subdivision may enact reasonable ordinances, rules and regulations concerning road use, traffic, noise and odors incidental to oil and gas operations". It further says, "may also establish reasonable setbacks and fencing requirements". Then on that second page of that Bill 809 I gave you, I highlighted says, "All other regulations" -- Period. This is not ambiguous. – "of oil and gas operations shall be subject to the exclusive jurisdiction of the Corporation Commission." Unambiguous language. The Attorney General's Opinion, I think, one of you went through. I

highlighted it for you. It just reiterates that, saying that, basically, this is what the State law is, the powers that the municipalities have. I also included an order, which is case law, irregardless of what you were told, where the Kingfisher people were trying to limit salt water flow lines to bar ditches of the roads. That was appealed to the Supreme Court; the Supreme Court ruled, as you can see, it says the Oklahoma Corporation Commission has the exclusive jurisdiction to regulate oil and gas operations as provided there, and statutes vesting the Commission with the exclusive authority to regulate the transportation and disposal of produced water. There is case law. It basically says you're limited to noise, odor, and traffic, and other issues. Lastly, I included a Summary Judgment – it'll be rare that you get a Summary Judgment, by the way, folks. It was the appellant in the insurance case. Insurance is a function of the Corporation Commission. It's not odor, noise, traffic, or fencing. And Judge Virgin, who is the most liberal judge in Cleveland County, granted a Summary Judgment. I understand it's still under appeal by the City. The bottom line is this is incredibly onerous. It costs \$1,000 a year for me to pay for this bond. Oklahoma Corporation Commission requires me to maintain a \$50,000 plugging bond. The purpose of that – and, David, if I say something wrong, feel free to correct me – is for the exclusive purpose of plugging wells that are [indiscernible]. And what that means is, let's say we may see some of this – let's say I have a well in Norman or Oklahoma City, wherever, and I go bankrupt, and the well needs to be plugged. Those bonds are there for the State to plug the well. Now, I know the Corporation Commission rules pretty well; I've testified at the Corporation Commission for almost 50 years now. I know the rules pretty well. What would happen if I, or somebody else in the City of Norman, had a well and I died, company went bankrupt, whatever, and the City wanted to get rid of the well? David would just simply file a complaint with the Oklahoma Corporation Commission. The Commission would then try to contact the operator, if they can. If they can't be contacted, they will call their bond or their letter of credit or whatever it is, and they will use that money to plug the well. The City has no liability. It has no financial exposure. It would never have to come up with the money to plug a well. Now, correct me, David, but I think Norman has had oil and gas wells for years and this has never been an issue in 100 years. There's never been – it's never come up. The City has never had to – I think David probably has asked the Commission to look into whether a well should be plugged or not, and they have tremendous powers to get us operators to be in compliance with the law and they can be a little bit brutal. I don't think it's ever come up. So really it's redundant, it's expensive. I can tell you right now, the price of oil being maybe \$30 – it's duplicative, it's redundant, it's just an expense that, in my opinion, the City is in violation of Oklahoma law. To me, the charter – the State granted the City of Norman's charter, and the charter basically says you can do whatever you want to as long as you comply with the laws of the State of Oklahoma. All I'm trying to do is get the Council and whoever the powers might be to follow the law. It's redundant, it's expensive. I don't think any of the rest you would like to put out \$1,000 a month for every one of your properties because the City decides they just wanted to, and there's no reason for it. You have no liability. You have no financial exposure. There's never been an incident in 100 years. This is really just unfair and it's against the law. That's really the summary of it, if you have questions, I'd be happy to answer them for you. Or, if I've misspoke, David, in any way, please feel free to add to that.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Worster – So the State requires \$50,000 and then the City requires a \$25,000 separate bond. Is that what has been presented?

Mr. Campbell – That's correct. We have to put up a \$50,000 with the State for the purpose of plugging any abandoned well.

Mr. Roberts -- It's been a long time since I've done it, but what's the average cost now of plugging a well? And reclaiming the property.

Mr. Campbell – Rick, it's tough to say. If it's a well that's a wellbore construction, it could be as little as \$20-30,000. Get some of these deeper wells that have multiple zones with production casing and things like that, it could be double or triple that. Any insurance policy, they have multiple exposures, so they OERB in place for plugged wells.

Mr. McCarty – David, have we ever run into a scenario in Norman where the well operator has abandoned a well or can't be found and the State has to step in and plug a well and there's not enough money there within the State or the letter of credit to plug a well and clean up the site?

Mr. Woods – I have never had a well in Norman that had an operator of record that the State could find that didn't plug a well. There is some that we have found some old abandoned wells in the past that there was no operator of record and the State has come in and plugged these wells and restored these locations. That has happened in the past. But as far as an operator here that went bankrupt and the State had to come in and plug the well, that has not yet happened.

Mr. McCarty – David, do you agree that the \$50,000 that he puts up with the State is in the same purpose of what our ordinance says for the \$25,000? Is the money there for the same thing, I guess is what I'm getting to?

Mr. Woods – Well, let me put it this way – I have seen wells that do have \$50,000 put up and it has cost \$70,000 to plug the wells. Operators have paid them, and they do their due diligence to plug the well. The only time this would come up is if an operator just goes belly up broke, doesn't have the money, the State would pull the security bonds, they'll put him out of business for life. I have seen that happen before, that some people operated wells and have had issues like that and the State has taken all their wells away from them and now those wells become the property of the State. The issue with that is the wells may sit there unattended until they become an issue – of some environmental issue to where there's an issue, and then the State will plug basically on a case-by-case basis if they become a problem. Does that kind of answer your question?

Mr. McCarty – Yes, sir. I believe there's a separate insurance requirement for spillage, right? That the State has.

Mr. Woods – Yes. We have that – the pollution coverage. General liability basically takes care of any spilling, pollution issues that happen may arise out of that. In all the years I have done this, I have never seen an insurance policy filed from a leak or a spill. Typically the clean-up that has taken place is less than what their deductible would cost them if they turned it in to their insurance.

Mr. Campbell – Let me add, if I might, on that question. You cannot confuse insurance and liability versus a performance bond. All the bond is for is saying if for some reason you will plug the well.

Mr. Woods – The bond requirement we have is that you plug – make sure that the operator plugs a well, restores the property to as close to current conditions as agreed with the surface owner, repair any damage that may come – to sidewalks, streets, curbs, if there are any. That's the requirements of our bond. They kind of go out a little bit further to make sure that, if there's anything that happens out of that – but, again, a lot of that goes back to the surface owner requirements that he has for the restoration.

Curtis McCarty moved to approve BOA-1920-17 as requested, to Article XV, Section 13-1502. Brad Worster seconded the motion.

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

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| YEAS | Brad Worster, Curtis McCarty, Rick Roberts, Andrew Seamans |
| NAYS | None |
| ABSENT | Mike Thompson |

Ms. Tromble announced that the motion, to approve the variance as requested, passed by a vote of 4-0.

Mr. Seamans noted that there is a 10-day appeal period before the decision is final.

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Item No. 5, being:

MISCELLANEOUS COMMENTS OF THE BOARD OF ADJUSTMENT AND STAFF

None

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Item No. 6, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:03 p.m.

PASSED and ADOPTED this 24th day of June, 2020.

A handwritten signature in blue ink, appearing to be "B. W. ...", written over a horizontal line.

Board of Adjustment