

BOARD OF ADJUSTMENT MINUTES

MAY 24, 2017

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in Conference Room D of the Norman Municipal Building A, 201 West Gray, at 4:30 p.m., on May 24, 2017. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at www.normanok.gov/content/board-agendas at least 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 4:30 p.m.

* * *

Item No. 2, being:

ROLL CALL

MEMBERS PRESENT

Brad Worster
Curtis McCarty
Nils Gransberg
James Howard
Andrew Seamans

MEMBERS ABSENT

None

A quorum was present.

STAFF PRESENT

Susan Connors, Director, Planning & Community
Development
Wayne Stenis, Planner II
David Woods, Oil & Gas Inspector
Rick Knighton, Asst. City Attorney III
Roné Tromble, Recording Secretary

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Item No. 3, being:

APPROVAL OF MINUTES OF THE APRIL 26, 2017 REGULAR MEETING

Curtis McCarty moved to approve the minutes of the April 26, 2017 Regular Meeting as presented. James Howard seconded the motion.

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

YEAS

Brad Worster, Curtis McCarty, Nils Gransberg, James
Howard

NAYS

None

ABSTAIN

Andrew Seamans

Ms. Tromble announced that the motion to approve the April 26, 2017 Minutes as presented passed by a vote of 4-0-1.

* * *

Item No. 4, being:

BOA-1617-31 – BARON EXPLORATION COMPANY REQUESTS A VARIANCE TO THE REQUIREMENT TO TEST WATER SUPPLY WELLS LOCATED WITHIN A RADIUS OF ONE-QUARTER (1/4) MILE OF ANY NEW OIL WELL FOR THE PRESENCE OF DELETERIOUS SUBSTANCES FOR PROPERTIES LOCATED OUTSIDE THE CITY OF NORMAN JURISDICTION AND FOR ANY NON-FUNCTIONING WATER WELLS WITHIN THE CITY OF NORMAN, FOR PROPERTY ADDRESSED AS 9551 E. ETOWAH ROAD (NEAR THE NORTHWEST CORNER OF 96TH AVENUE S.E. AND ETOWAH ROAD).

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Notification Map (1320 ft. radius)
4. Application with Attachments

PRESENTATION BY STAFF:

Ms. Connors reviewed the staff report, a copy of which is filed with the minutes. Staff does not support this request based on the oil and gas regulations approved by City Council.

PRESENTATION BY THE APPLICANT:

Jack Dake, Baron Exploration Company – In the course of my presentation here, I will refer to a handout here, which I have already provided staff. So to make things more expeditious, I think you're going to find this to be one of the more interesting BOA cases that you've heard in a while. I think you'll just find it's very interesting.

Part of adjudicating this case, the Board must consider some of the legalities that are peculiar and unique to this situation. The staff report gives a brief history of Norman's current ordinances, which were finally effective in August 2015, and of course the staff report on the history of the ordinances can't be that detailed; it has to be very brief, but not discussed in that report is the State law that was passed and signed by the Governor in May of 2015, and which State law changed the legal premise by which a city may regulate oil and gas matters. What I tried to say here, and something that you guys, I believe, need to understand fully, Norman's oil and gas ordinance efforts continued, even those with City Council, after the State law was signed and without regard to the State law. You have the State law in front of you; that was part of our submission to you – Title 52.137.1 is very precise and clear. City regulations are limited to six items only, and NFIP or National Flood Insurance Program eligibility, which is not involved here. The regulation of those six items must be reasonable. They must not be inconsistent with any regulations of Title 52 – that is they cannot go beyond what Title 52 allows, which is those six items. They must not be inconsistent with any regulation of the Oklahoma Corporation Commission. They may not effectually prohibit or ban oil and gas drilling, and they must be reasonably necessary for its citizens and they cannot regulate for others or the benefit of others other than the citizens of Norman, and they must apply within its borders – for its citizens and within its borders are the actual words of the law. Then, finally, all other regulations of oil and gas operations in a city are exclusively the jurisdiction of the Oklahoma Corporation Commission. That's the law. I think it would be very difficult to debate that point. A bad high school student can easily understand this law; it's a very simple law.

But you don't need to take a bad high school student's opinion for that. You have the Attorney General's opinion, which we also submitted to you with this application, and that opinion is clear, precise, specific, and it is the supreme law and supreme legal opinion that you, as Board members, have to give you advice on how to adjudicate this variance request – how to view the State law and how to view Norman's ordinances. Each year an annual report of the Attorney General's opinion is produced by the AG's office, and each annual report since 1991

contains the statement – the first one that's on page 1 of the handout I just gave you – which is: In 1990, the Oklahoma Supreme Court affirmed that an AG's opinion is binding upon state officials until a court of competent jurisdiction holds otherwise. Again, that opinion is – the 1990 opinion – is not the only guidance that the Attorney General or the Oklahoma Supreme Court has given you, as well as every other Board of Adjustment. There are some other statements on page 1 of that handout. "In this state it has been held such an opinion is binding upon the state official affected by it and it is their duty to follow and not disregard those opinions." "This duty continues until a judgment of a court of competent jurisdiction relieves the public official of the burden of compliance." "It is the duty of local public officers, including county officers, to follow and not disregard the advice of the Attorney General." "Hereafter, any and all state bodies, for example the Corporation Commission, and any and all cities and counties, including those approving subdivision plats and zoning applications and issuing residential building and occupancy permits" – and I would add and including those who issue variances and special exceptions to those – "are on notice that they must abide by this pronouncement." The pronouncement being that state officials, which every Board of Adjustment member is one. "A public officer's failure to heed the A.G.'s advice to perform a duty required by law may result in civil penalties; while one who acts in conformity with the A.G.'s advice is afforded the law's protection from civil liability, as well as from forfeiture of office." Now, the point of all that is that every Board of Adjustment, as you all know, is an adjudicating body. You are the adjudicating body for the City. You inherently judge variances and special exceptions in light of the law, not only to consider those requests, but to either grant or deny them. So, in evaluating the merits of our request, it's clear the Board is bound by the A.G. opinion supplied to you there – 2015-12. Our intent here, in that simple but authoritative review of the legal context for application, is to reaffirm what is the State law governing this variance request, what is the State law governing Norman's oil and gas ordinances. And how do these facts and details pertain to this request? So I hope I've adequately covered that and would now shift to the facts and details.

There's a history of the water well testing ordinance that you have before you. In your staff packet you have that brief discussion. We voiced our concerns and objections at various meetings in 2014 and in 2015, both to staff and to certain City Council members, to the water well testing ordinance as it was finally adopted. We reduced those objections and concerns to writing in a January 13, 2015 letter to the City Manager Steve Lewis, and that's pages 2 and 3 in that handout that I gave you. The easily foreseen defects of the ordinance as drafted, particularly how they would apply to specific properties, such as the property in front of you here, were readily apparent, we thought, and were discussed in that letter. This property has a peculiar condition in that it is located next to 24 or more water wells in another city. In fact, in page 5 of your staff packet, which was a radius map, you can see all these down here, and that clearly is a peculiar condition. Even if it was lawful for the City of Norman to require sampling in Slaughterville, it's unreasonable to sample all those water wells, and it's an undue hardship. This requirement has only one conceivable intent and effect, and this is why – we believe this. The intent of this ordinance, as it is stated to be for public health and safety, but it was really intended to be a prohibition or an effectual ban – it's just unreasonable to do this. And, by the way, this condition is going to be before you again, because there are applications for drilling permits we're going to want to file in Norman where we're going to run into this same water well density issue. As such, this is an effectual prohibition, in our view, which violates 52.137.1, because it's not going to be possible to comply with this.

Consider further that the subsurface science known to the City staff – staff made me aware of 2013 scientific investigations report by the USGS – United States Geological Survey – and the Oklahoma Water Resources Board, and if you'll look at pages 4, 5, 6, and 7 of that handout, you have that there. There are two maps there on pages 6 and 7, and that's where

you find another condition peculiar to this property. The USGS report shows on pages 16 and 17 there – and I'll hold this up. I think there's one of you members may have a black and white version of this instead of a color. But here's the direction of water flow in here, and this is from the 1986-87 study and it shows that the water flows basically from southwest to northeast. Now, as you move closer to where our location is here, if you follow the contour lines, the waterflow is more south to north, as opposed to southwest to northeast as it is a little farther south and east of our location, which is about right in here – if that makes sense, you can see that. But you can see the contour lines. It's definitely pointing south to north, or southwesterly to northeasterly. If you go to the next page on the map, this is 20 years later; it's a survey again of the water table, and you can see very little has changed at all and the water is flowing from south to north. That being the case, there would be no scientific basis for sampling wells upstream of an oil and gas well. You could not possibly have contamination in the extremely unlikely event that could happen from wells that are upstream flowing downstream. An oil and gas well wouldn't be able to do that.

Mr. Seamans – I understand that water can travel uphill.

Mr. Dake – Water can travel uphill with pressure, that is correct.

Mr. Seamans – It can also – if there's no moisture, a saturated area can expand water to it uphill. So what you just said is partially false.

Mr. Dake – Actually, if water were traveling uphill here, then ...

Mr. McCarty – We don't even know where you're pointing to on here.

Mr. Gransberg – The issue would be with a casing – if your casing failed, or if you had an issue where if you punched through a saturated layer and you had a contamination through one of those saturated layers. So it's not impossible to cross-contaminate a saturated layer of an existing – some water up higher above wherever you're drilling.

Mr. Dake – I anticipated that concern. I'm actually quite prepared to address that here a little bit later. If we can make it more concise by letting me get there. Interrupt at any time, please.

But anyhow, the scientific basis for surveying 24 wells that – the only scientific data that we have shows that this water is south to north in its general direction of flow, and there is no evidence of any kind that anybody has that I've found that suggests that there is any other direction of flow of the subsurface water there, often called groundwater. I like to call it subsurface, because some people sometimes misinterpret groundwater as being water on the top of the ground.

But this would be an extreme hardship to sample those wells. It's expensive and it takes forever to do that and, again, for what purpose? It's really not trying to determine whether or not there's water flowing from north to south. But Norman has 100 years of experience with oil and gas well bores going all the way back to 1917 – 100 years of experience. You've got almost 1,100 well bores in the City – it's like 1,076, something like that. There is not one reported or demonstrated adverse impact to water, either surface or subsurface, from those 1,100 approximately well bores in 100 years. Norman today has over 150 active unplugged well bores with zero subsurface water issues. And keep in mind a lot of those wells were drilled with technology that goes way on back, including all the way back to 1917, but a lot of them were drilled in the 30s, 40s, 50s and 60s, and the protection of water of the typical well – just an

average well drilled today – is superior than what was done back then. It's hardly reasonable to argue that this is for health, welfare and safety of its citizens to test all of these wells in Slaughterville. Now, also in this testing, Norman requires nine substances to be tested, and those are, of course, described on page 2 of your staff report. Only two of those nine are relevant to oil and gas wells – TDS, which is total dissolved solids, and chlorides. The other seven are interesting to know about, but they're not oil and gas well products; they're products that are naturally occurring in the water. The only reason one would ever test for those other seven as it relates to oil and gas is if you got a TDS or a chloride test and it gave you an indicator. Then it would make sense to test for the other seven substances. This level of testing is not for oil and gas, it's for water science. Now, it might be very beneficial – I mean, Dr. Bob Pooles is who recommended these nine substances, and I've talked with him several times. Clearly this was done for science and it was trying to get the oil company to pay for it. But there's no reason to even test for these other seven. Nevertheless, we will test for all nine of them for wells that are in Norman that are active and operable, even though it's four times the cost to test for these nine what it is for just the TDS and the chlorides. All of these substances, except one, if you don't have a TDS and a chloride, none of the other seven items could be possibly related to oil well. Even if you found them, they're related only to the conditions in the rock that the water is flowing through.

So the requirement for us to sample this dense quantity of wells in Slaughterville is unreasonable, it's an extreme hardship, it's peculiar to the property due to its location to the City limit boundary, it's not in compliance with Title 52, and it's not lawful and enforceable in any event. We've asked for the variance as it applies to all the private properties in Slaughterville, but not to the properties in Norman, and we believe the variance should be granted unconditionally.

Now we further ask that the Board – and this is where it may be a little more interesting. We further ask the Board, as the City's adjudicating body for ordinances, to make a determination in your order of the Board that you issue, that the ordinances apply to the properties within the boundaries of Norman, as cited by the law, and as cited by the Supreme Court, and as cited by the Attorney General. That is Norman's regulations cannot extend outside its City boundaries, which is a determination you have to make in order to adjudicate this request. We think it's incumbent on the Board to make that determination in order to make it. It's fully within your rights and purview. I've been before other Boards of Adjustment in other cities and they've made determinations upon the interpretation and/or the application of ordinances that were then to give staff and others guidance for how these would be treated.

We'd like to point out that the Supreme Court, in *Lakeview v. Davidson*, which is on the bottom of page 1 that I handed you there – that the Supreme Court has already ruled on the extra-territorial nature of city ordinances. It says: "ordinances of a municipality do not extend beyond the geographical limits of the municipality unless a specific grant of power to enact such ordinance is granted by the laws of the State." Now that's an interesting theme, but not only is there not a specific grant by the State of Oklahoma to any municipality to extend oil and gas ordinances beyond its boundaries, including setbacks, Title 52.137.1 specifically confines a municipality's oil and gas ordinance to be contained within that municipality's boundaries. The Attorney General opinion 2015-12 also declares that is the law, and that's the legal guidance you have. As such, it seems hard to understand how it would not be within the Board's purview to make that determination so that we're not down here every time we run into this problem, wasting our money and wasting the City of Norman's money and time to readjudicate something you've already done. So we ask that you grant this variance – this as to the first part of our request here – to the extra-territorial water testing, specifically state in the ordinance that the law does not allow for extra-territorial application of this and any other ordinance in that the

ordinance as drafted still must take into account the reasonable number of wells in Norman that it would require to be tested within 1,320 feet.

Now our second request seems to be nothing more than common sense. That is inoperable and inactive wells should not be required to be tested. I still don't understand why that wasn't put into the original ordinance. Norman's ordinance does not distinguish between active and operable wells from those that are inoperable, inactive, or unlocateable at the time of permitting. This defect of the ordinance was recognized in 2014. It was presented again to the City in writing in our January 13, 2015 letter, which is page 2 that we've already referred to. I know of no known rationale for testing inactive or inoperable wells. An inoperable water well can easily have little or no casing. It can have junk in the hole not recoverable – that may be why it's inoperable. It may not have electricity to operate a pump. There's a serious question of liability for asking an applicant for an oil and gas drilling permit to attempt to restore water production from an inoperable well. If an applicant is required to try, but is unsuccessful – that is somebody finds an inoperable well and the person whose property it's on said, yeah, I'll let you test it, then it becomes the legal obligation of the oil company to test that well as the ordinance is currently drafted. That could be 20 years after the well is drilled. So if you go try to get into that well, you're unsuccessful, then could the property owner say, hey, that well was working until you touched it; now you've got to drill me a new well. Who is going to be liable for that? What quantity of water must be produced for a reliable water test from a well that's been inoperable or inactive for decades? What about ancient water wells discovered after drilling? That's possible out here. There were homes on some of these properties within that 1,320 feet that maybe somebody that still owns the property, relative around, but they remember the old farmhouse was up there and there would have been an old well. Somebody could lay behind the log for five years and then show up to do that. If an ancient well is discovered after drilling, there's no time limit on it, even though the testing is five years – that's from when you discover the well. And it makes no premise for wells that are discovered after the fact and, as the operator, you would be in violation. That, of course, would be an undue hardship for which the waiver or the variance is the only relief.

Now, as we pointed out, it's clear the water well testing ordinance is not lawful, it's unlawful and unenforceable in total. But, again, we will test all the water wells that are in Norman that are active and operable because, first of all, there's two that we've identified and two is a very reasonable number. They are east and west of the location, which would give a good test if you had a leak. So we're willing to do that. We're not seeking a variance for that. We're seeking the minimum necessary to make this work. We could seek a variance for all water well testing based on 52.137.1. We're seeking the minimum necessary to make this happen. We ask, though, that the Board put in its order that a reason for granting this variance is that the density and number of wells to be tested in Norman is reasonable.

Just to show you a little bit more here about the nature of our request. There are numerous requirements in Norman's oil and gas ordinances that are neither enforceable or lawful, as they are beyond the six items of Title 52. We have voluntarily elected, and have already provided all of those items to Norman, except for the things that have to come later in the process of drilling, and we'll provide those. We've elected to do that, not as a requirement, but as an effort to cooperate to everyone's mutual benefit. We think it's a good thing for you guys if we do that, instead of try to throw out everything, and we think it's a good thing for us and we think it helps us with you and helps you with us. And we believe we've demonstrated good faith prior to this hearing and we've already gone beyond what is required by the law, and in view of all that, we believe the Board should grant our request. We think you should make the determinations that we've asked for. So we hope you'll do that.

Now, to go to the casing – the question there, which is a very pertinent question – I didn't

put that in my original remarks because – I put a diagram here for you on the last page. I think you guys probably know about this. There's a 40 foot conductor that's drilled; it's cemented in with a polymer cement. It seals anything that it can seal to – seals the pipe. Then there's a 1,200 foot depth pipe. We generally go 200 feet below what is required by the Corporation Commission. In this case it will be 1,200 feet, and that's what Norman's ordinance calls for. And that is cemented in, top to bottom, all the way down. So there is cement, steel, cement, steel for every water-bearing strata. Now the deepest water-bearing strata in this area of our location, according to the Oklahoma Corporation Commission surveys, is 480 feet, using a cutoff of 10,000 parts per million of TDS, but the actual water table in the area is probably closer, and no deeper than, 300 feet. But, in any event, we will have 700 feet of additional casing sealed below, and then of course have two strings of steel and two layers of casing certainly for the first 40 feet and then of course for other. Now inside the casing, of course, is your production pipe. So everything that's produced or handled in the oil and gas well is inside the third pipe. So even over the water-bearing stratas there's two layers of steel and a layer of cement. With 1,100 well bores, which don't have the technology – didn't have the kind of sealing, gripping concretes that we have today, and arguably the pipe quality – you know, we're better protected today when you drill an oil and gas well. The threat is so negligible – it's just done correctly – and it's so negligible it's not a significant threat. Again, that we believe hopefully will address the issues we've put before you and hope this has been interesting.

Mr. Gransberg – My point was that when you put things in zero possibility – zero chance. When you get underground and you get in a strata, zero goes away. When you start going down 600, 800, 1200 feet in the ground, there is no such thing as zero chance. I'm just saying this because – I'm not an expert, but I've got a master's degree in geological engineering. It just is what it is. For you to say that there's zero chance that there can be any sort of contamination – that's not realistic. There's great protection. The new technology is really good. The old stuff that's in the ground – you know, it is what it is. There's old casing that's been found back in the day that's wood casing, clay, you name it. So that's my point, saying that it's impossible for there to be any type of contamination – it is possible. It may not be likely, but we can't say it's impossible. That's not a reasonable statement.

Mr. Dake – I think when I used the word zero a while ago, I said zero experience. Norman has had zero experience with subsurface oil and gas based adverse effects. There have been zero experience there, not that there's zero risk. But the fact is, we're at 99% probability that there's nothing going to happen. It's going to be very high, and you've got 100 years of it. You've got new technology. You've got wells drilled all across the State of Oklahoma – we're at 600,000 plus wells – something like that – now. We don't have these issues. There's a lot more chance that something is going to happen with a gasoline truck dumping gas into a gas tank at a service station than there is a chance that you're going to have something happen from an oil and gas well that adversely affects a water supply. It's very, very small that chance – not zero, but it's very tiny.

Secondly, if it is, it's certainly treatable. You have a casing, you have the tests, everything like that is very treatable. The damage was not wanted – nobody wants that, certainly not the oil company, but the damage of that is treatable. So it's very tiny – the risk. You're correct, it's not zero. But it's certainly highly unlikely. I think in Norman's own experience, combined with that of the State of Oklahoma, demonstrates that, I believe.

Mr. McCarty – So this is your oil site, right? You said there's two within the City of Norman's purview in this radius. Correct?

Mr. Dake – Correct.

Mr. McCarty – And you're willing to test those?

Mr. Dake – Yes, sir.

Mr. McCarty – So across this line all these parcels are all in Slaughterville?

Mr. Dake – Yes, sir.

Mr. McCarty – How many wells are in that area? We don't have anything showing us where all the water wells are that you keep speaking of.

Mr. Dake – That's correct. There's no public water supply there, so presumably all of those properties have water wells. I have been on some of those lots, because we were looking at trying to drill there. Our well is going to drill from Norman, but it's going to bottom hole underneath those lots. We were hoping to find something there that we could utilize. People were more than happy to – the topography just wasn't possible. It's just not possible. We saw some water wells that are out there. Some are inactive, because some of those lots are vacant.

Mr. McCarty – So what does Slaughterville's regulation say?

Mr. Dake – I don't know. I don't know about that. I don't believe that Slaughterville has a water well testing provision, but I don't know about that.

Mr. McCarty – So this will have, I assume, collector lines and storage tanks. Right?

Mr. Dake – Yes.

Mr. McCarty – So your collector lines and your storage tanks are where from your site?

Mr. Dake – Okay. By collector lines, you mean gas lines?

Mr. McCarty – Well, whenever you're bringing up, you're taking in lines and putting it in storage tanks above ground, I suppose, right?

Mr. Dake – Right. The line going to the tank battery – the tank battery would be on-site.

Mr. McCarty – How far from this well?

Mr. Dake – The tank battery would probably be 50' – 70'.

Mr. McCarty – Are you familiar with any leaks from tank batteries or collector lines that would affect any water wells?

Mr. Dake – We haven't ever had that experience, and the – if you're having that problem, then that means you're losing oil, which would not be – and normally people today like to line the well sites – and the tank battery site.

Mr. McCarty – You're not familiar with any leaks or anything that's ever happened – salt water, or anything like that, from those particular types of ...

Mr. Dake – You mean in the industry? Yeah, there's been some – there's some leaks.

Mr. McCarty – So that salt water, oil, whatever, that leaks at the surface level that then leaches into the subsurface water wells that people are using to drink water out of. So is that not a concern? When you're talking about trying to get a provision – so I'm not so worried about the hole in the ground, because I know how they're cased today and the provisions with that. I am very familiar with lines that have leaked and ruined personal water wells in Norman.

Mr. Dake – Really?

Mr. McCarty – And I know a whole neighborhood in Moore that it ruined all – the whole ground and the grass and everything in the whole community – that was leaching saltwater out of some collector lines.

Mr. Dake – That's interesting. I'm familiar with where some of those claims have been made, but further studies found that it wasn't the oil and gas wells, and it wasn't their lines. It was actually the freshwater wells themselves. They were drilled through several stratas that contained water. They were not sealed, as water wells are hardly ever sealed – they're just drilled as a hole and then put the pipe in it, and the water that was containing these constituents above came down the back side of the pipe into the zone that had the good, fresh water. And so it was assumed, because there were chlorides in the water, it had to be that dastardly oil well.

Mr. McCarty – I guess my point is, it's not the hole in the ground – it's the other parts of this that potentially have problems that can contaminate personal water wells. That is probably a bigger concern of mine than it may be against the whole ...

Mr. Dake – At Baron, we have wells all over municipal areas. Our first well we drilled in 1958 on North Pennsylvania Avenue in Oklahoma City. We've probably drilled 75-100 wells in the metropolitan area. We've never run across that. But today you line your tank battery. The lines are put into the ground properly and stuff like that – it's just hard to – it could happen, I suppose, but it's not common.

But three years ago Oklahoma State University did a study of oil and gas drilling mud, which was widely published. They used oil-based drilling mud, which is, if you know anything about oil-based drilling mud, it's grody stuff. That's a lot worse than crude in a tank. It's grody junk. They went out and studied a soil farming application, where the drilling mud was put on top of the ground, farmed in the soil. What they found was after 7 days, about 70% of the petroleum was biodegraded, and after – I want to say it's 180 days, 92% of it was biodegraded, and then after like a year it was 98% biodegraded. And that's the grody junk. We all understand nobody wants saltwater or oil on the ground at all – or any other thing. But you probably are like me – you used to pour your oil, when you changed your oil in your car, in the fence line to kill the grass growing up in the chain-link fence and it worked for about three weeks.

Mr. McCarty – So moving off that. This is my question for staff. The Attorney General's opinion states that we don't have purview of the area outside of our City limits. So how does the staff, City Attorney's office ...

Mr. Knighton – Which Attorney General opinion do you think said that?

Mr. Dake – A copy is in your report there. It's the 2015-12.

Mr. McCarty – I'm just going off what he said. I haven't read this line for line, but what he just stated is we don't have purview, according to the Attorney General's opinion, to regulate outside of our City ...

Mr. Knighton – My understanding is a little bit different.

Mr. McCarty – Okay. That's why I asked.

Mr. Knighton – Attorney General opinions are binding on state officials. That would be state government. We're not state government. We're a political subdivision of the state. From a litigation perspective, Attorney General opinions are not binding on a court; they're merely persuasive. Now, again, they are binding on state officials until a court of competent jurisdiction rules otherwise. But, again, as far as you're concerned, while you could consider it to be persuasive, it's not binding.

Mr. McCarty – Because of home rule? City of Norman's charter?

Mr. Knighton – No. That is statewide. I'm looking a little bit at some of these citations, and one, in particular, really is a bit misleading. It's the one that says "It is the duty of local public officers, including county officers, to follow and not disregard the advice of the A.G." and that citation is 1919 OK 231. When I pull up the case, I do not find that quote. The quote that I get from that case is a little bit different from what ...

Mr. Howard – Could I rephrase our discussion on that? Maybe another question would be does the City of Norman want the responsibility? Because once we start to make a decision on areas outside of our City limits, is there potential that we assume responsibility for any actions in those areas? That would be my next question.

Mr. Knighton – From the perspective of responsibility, there is a specific tort claim exemption with regard to the enforcement of any sort of a City ordinance. There is a specific Charter provision – the Charter provision that governs the City's power with regard to Planning and Zoning has a specific statement that the City does have power to exercise their zoning powers outside of its City limits. But the difficulty here is it doesn't appear as though we're really talking about what this Board is chartered with with regard to whether or not enforcement of this ordinance – whether a literal interpretation of the provision in this article would effectively ban the applicant from accessing subsurface minerals. It almost sounds as though the request is being made for this Board to make a determination that the ordinance isn't enforceable, and this really isn't the forum for that type of an issue.

Mr. McCarty – We don't have the authority to do that.

Mr. Knighton – Correct. The forum for that type of issue would be District Court.

Mr. McCarty – Which is his second request. We don't have any – we can't even address that

from the Board of Adjustment.

Mr. Knighton – My understanding with the A.G.'s opinion is that they are not binding on you. You can consider them to be persuasive. Obviously, the chief law enforcement officer for the State kind of giving you his understanding of what the law is, but even, again, if a municipality were to go challenge that at District Court it's very possible that the Court could agree with the municipality and not the Attorney General.

Mr. Dake – Can I direct your attention to page 12 of the Attorney General's opinion? It's page 12 in the staff packet. The provisions of Title 52 which limit municipal regulation of oil and gas operations apply equally to charter municipalities and non-charter municipalities. Clearly, that would say that it applies to cities. So those all talk about those things, what the Attorney General has said there. A municipal ordinance that conflicts with 52 is invalid and unenforceable regardless of when the ordinance was adopted. You know, it's invalid if it violates any provision of the opinion.

Mr. Howard – Can I ask another question? So it says they can enact reasonable ordinances, rules and regulations concerning those items. Where does it say they can't reasonably – as I'm reading through this ...

Mr. Dake – The opinion says that. The opinion says it's limited to those six items only and the law says that.

Mr. Howard – Because then it goes on to say other items in addition to that. So maybe I'm looking at this incorrectly. Page 1 of 3 where it's quoted. And the reason why I say this is that, in the very next sentence, it says a municipality, county, or other political subdivision may establish reasonable setbacks and fencing requirements, so forth and so on. So there's an example of items beyond the six that you're talking about.

Mr. Dake – No. Setbacks and fencing are two of the six. It's road use, noise, odors, traffic, fencing and setbacks.

Mr. McCarty – You're looking at Baron Exploration's report, right?

Mr. Dake – And, again, keep in mind with our variance, we're asking just for the minimum necessary, which is probably extraterritorial issues, and the inactive and inoperable – which would include later discovered, obviously – if it's inactive today and later discovered, it would have been inactive. We're just asking for that. We're not asking for all that we could ask, and we've already complied with stuff that is clearly arguable as to whether or not we have to.

Mr. Howard – That was my next question. Why are we even arguing about this? If the outcome that you want to ask for is whether or not you have to test inoperable wells or inactive wells, then why are we discussing the other issues?

Ms. Connors – He wanted to bring it up. I believe the City Attorney has advised you otherwise.

Mr. Howard – I feel like I'm getting beat over the head, though, right now. That's my only point. I'd rather just focus on the issues that we want to address and what you're willing to accomplish.

Mr. Gransberg – And what's germane to the argument.

Mr. Howard – Exactly. Thank you.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Mr. Gransberg – I think, as far as their request, it seems pretty clear to me that this is just – the way I understand it is that they'll comply with the ordinance within the City limits is what we would be requiring them to do is to comply with the ordinance within the City limits for water well testing for active wells.

Mr. McCarty – I guess my concern is – I mean they're stepping up and willing to test the two wells within Norman city limits, but they don't want to go into Slaughterville and it's in the same radius. So I'm not sure why a company that's got great, I'm sure, background and history that you've got that you'll say okay we'll do the two that are within Norman but not Slaughterville. That doesn't make any sense to me. I mean ethically it sounds like you're a great company, but why would you say we'll do these two but we don't want to go do those two even though they're – or the rest of them, even though they're in the same thousand foot radius. That just doesn't make any sense to me.

Mr. Dake – We're willing to test the wells in Norman because it is just going to establish the baseline. It will protect us in the future from bogus adverse claims. We plan to test one or two wells in Slaughterville, but what we don't want is to have a conditional variance issued, where it's like you gotta test 22 wells instead of 24 or something, because that then runs us afoul of the extraterritorial issue that we don't want to have to face again. So we plan to do that. I didn't want to offer that as a condition. We do not want to see that as a condition. And I'm not sure what our response would be to that.

Mr. McCarty -- So you're not even sure how many other wells are there for certain?

Mr. Dake – There could be more than 24 insofar as the properties actually in Slaughterville that are touched by that radius. As far as the actual well bores – I'm sorry – I kind of didn't state that correctly. I believe there's 27 properties in Slaughterville that are incorporated within that radius. Using the best aerial photos I can, plus from stuff we've driven around out there, it looks like there's probably 24 well bores within that radius. Just the time – you couldn't possibly have a benefit from a well bore by Etowah Road and be 700 feet of that and testing that well bore and seeing that there's some basis here – you know, like the water is going to go around the one and come to the other. There's no reason for ...

Mr. McCarty – So what you're saying is you're going to do more of a sampling to see if you have problems more so than every well.

Mr. Dake – We want to establish a baseline. If there were a well north of us, we would definitely do that one, too. We'd like to have a baseline on all four sides, even though the water flow is clearly – or at least we're convinced it's from south to north. But if you got the test – you take the test, you store it, it's about \$375-400. You have to go through the training. It takes a lot of time to do these. These are difficult tests, particularly the methane test is a challenge. And

under the ordinance, the City oil and gas inspector is required to be afforded an opportunity to be there. So now you've got to coordinate all that with the property owner, who wants to be there likely, with the City oil and gas inspector, and you're trying to do 24 of them and trying to get those people on the same page. And then you've got to work things out with the testing company, because you've got so long after you do the test to get it to them in the ice bucket and all that to keep the temperature levels where they need to be. It's just – it's not reasonable.

Mr. Gransberg – Can we get back to the Board discussion here?

Mr. Howard – Where I'm having some difficulty, and I want to get my head wrapped around it and see where you guys stand on this particular issue – is the discussion about inactive, inoperable wells versus active wells. On one hand, a comment was made that assuming liability of an inactive well being a concern. And all of us being in the world of construction and understanding how liabilities can shift really quickly when someone starts to take part in an activity on a particular piece of equipment that may be, or may not be, within their realm of expertise or work can cause issues. I'm tending to lean that way to understand that that's the case. But not having any real history from when this ordinance was written, was there another intent there in not clarifying whether they were active versus inactive wells? I don't know that.

Ms. Connors – I'm thinking it may have been an oversight, but I don't remember ever discussing active versus inactive water wells. We certainly discussed active/inactive oil and gas wells.

Mr. Howard – The ordinance – it gives a timeline for these things to happen. So someone could come back in five years after this well is drilled and drill a new water well – it won't have to be tested ever. So I'm starting to feel like it probably does lean toward active wells. It's ensuring that, as we've mentioned before, that there's a baseline there that everybody understanding what's going on subsurface and can use it as a baseline for any future issues.

Mr. Gransberg – I tend to agree with you, James. I think that the argument was pretty compelling that to have to try to find or test an inactive well is really not very reasonable. So, as far as fitting one of our requirements for variances, that's something that I think we should definitely consider as an unreasonable requirement.

Mr. Worster – I think the overall comment that I have is that, by going across Etowah Road, we're crossing into another jurisdiction, obviously. We're holding the applicants responsible for – that many houses couldn't be built in Norman in that area. Because you go over on the other side of the road, you now have 24 people, because in Norman you would have to have 10 or 20 acre parcel. And these are 1 acre or less. So if we're saying we go across the street and have to test everything over there, we're saying you've got to be held by the density that Slaughterville allowed and the ordinance that Norman allowed. I don't like crossing the lines on who will be responsible.

Mr. Howard – I don't think we'd be happy if Slaughterville started to make decisions about how we ...

Mr. Gransberg – No, I agree. I think when it comes to telling Slaughterville how to manage Slaughterville, I think we need to let Slaughterville make their own rules.

Mr. Worster – I'm assuming that everyone was noticed in the radius area, including the

Slaughterville. Is anybody here from Slaughterville?

Mr. Seamans – Did you all notify Slaughterville for this?

Ms. Tromble – Yes.

James Howard moved to grant the variance for no testing of the properties in the Slaughterville jurisdiction, and only testing the operable water wells within the City limits of Norman, as requested. Brad Worster seconded the motion.

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

YEAS	Brad Worster, Curtis McCarty, Nils Gransberg, James Howard, Andrew Seamans
NAYS	None
ABSENT	None

Ms. Tromble announced that the motion, to grant the variance as requested, passed by a vote of 5-0.

Mr. Seamans noted that there is a 10-day appeal period.

* * *

Item No. 5, being:

BOA-1617-32 – QUENTIN BOMGARDNER REQUESTS A VARIANCE OF APPROXIMATELY 5% TO THE ALLOWED BUILDING COVERAGE OF 40% FOR PROPERTY ZONED R-1, SINGLE FAMILY DWELLING DISTRICT, LOCATED AT 717 WEST BOYD STREET.

ITEMS SUBMITTED FOR THE RECORD:

1. Staff Report
2. Location Map
3. Application with Attachments

PRESENTATION BY STAFF:

Mr. Stenis reviewed the staff report, a copy of which is filed with the minutes. Staff supports the variance of 5% to accommodate a 2-car carport. We did not receive any protests.

PRESENTATION BY THE APPLICANT:

Barrett Williamson – Thank you very much. I'll try to make this brief. We do have the applicant – this is Quentin Bomgardner, the owner of the property. I also brought along for educational purposes Mandy Edwards who is interning with us this year; next year will be a graduate of the College of Architecture with a master's degree.

I brought a very whittled down version of our presentation from last time, with some updated images, and we'll go through those very quickly. This is the existing structure, and it shows some of the fencing and the landscaping that's been done around the perimeter in the years since Quentin purchased it. Our goal is basically to provide security and protection from hail and whatnot. This is the existing conditions. Some additional fencing and landscaping. Then back where the blue polycart is, you can see this is the area where the carport would sit. This is a birds-eye view of what we're proposing, and what's different than what is in your packet. Since we prepared our information for the Historic District Commission to meet, Quentin asked if we could add a pergola. I've spoken with Planning about this. It doesn't increase the built area or the lot coverage or anything like that, so we wanted to go ahead and, just in the interest of being open and forthright, show you these revised images. This is kind of a front view, so the two panels on the right are actually constructed like sectional overhead door panels with sectional overhead door hardware. They don't extend all the way up to the bottom of the beam to give the appearance of the fence. The section underneath where the pergola is shown would actually be a fencing section and then we've got a pair of gates which will be used to bring polycarts out into the alley for dumpster day and then would not be left out on the street, and then there's a person gate all the way to the left of the photo. This is a view looking down the alley, and as you notice we did go to a low-slope roof. Another view kind of from Newman Hall. There should be one more view looking from the north to the south – I don't know what happened to the colors on that. This would be from the north property line and our privacy fence would extend there to the north corner. Then the next slide I think shows more of a colorized version that shows where the carport would be located. This is the detail of the carport. This drawing #6 at the bottom left shows how the operable sectional overhead fence will work.

I think, with that, I'd be happy to answer any questions.

Mr. Howard – Can we go back two slides? I think I saw on the plans that you're removing some of the existing paving. Is that correct? Can you show us where that is?

Mr. Williamson – Correct. All of that tan up there between the existing workshop and the addition is going to be removed.

Mr. Howard – Okay. Thanks.

Mr. McCarty – I think – between the existing church and the new proposed carport – the green area – that's all gravel right now, right?

Mr. Williamson – Yes.

Mr. McCarty – Will that be removed?

Mr. Williamson – That's all going to become pervious surface.

Mr. Stenis – This new idea of the pergola attached to the carport – when we review building coverage, we talk about roof coverage, so as long as there's not a roof over that part of it, it's not counted against the 40% roof.

AUDIENCE PARTICIPATION:

None

DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:

Nils Gransberg moved to grant the variance as requested. Curtis McCarty seconded the motion.

Mr. Worster – I just wanted to maybe comment that it's a popular building and people know it. The pergola looks an awful lot like a third parking space. So just wouldn't recommend doing that.

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

YEAS	Brad Worster, Curtis McCarty, Nils Gransberg, James Howard, Andrew Seamans
NAYS	None
ABSENT	None

Ms. Tromble announced that the motion, to grant the variance as requested, passed by a vote of 5-0.

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

* * *

Item No. 6, being:

MISCELLANEOUS COMMENTS

Ms. Connors – I just wanted to mention to the Board that Stephens & Johnson has appealed your decision last month to court. You had put a timeframe on their fencing in the middle of that subdivision. This was the one up in Montecito.

Mr. McCarty – What did they appeal?

Ms. Connors – They appealed your decision to limit the time before they'd have to add new fencing. They wanted to keep that fencing indefinitely and you put a time limit on it.

Mr. McCarty – Which was the end of next year.

Ms. Connors – I actually haven't read the court case. I don't know if you have. I don't know exactly what they appealed.

Mr. McCarty – So the neighbor didn't do it; the oil and gas company did?

Ms. Connors – Yes, the oil and gas company appealed it.

Mr. Knighton – I don't think they filed it right.

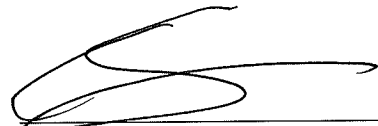
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Item No. 7, being:

ADJOURNMENT

There being no further business and no objection, the meeting adjourned at 5:37 p.m.

PASSED and ADOPTED this 28th day of June, 2017.



Secretary, Board of Adjustment

Chairman