



Appeal of Administrative Decision  
**BOARD OF ADJUSTMENT**

Case No. BOA \_\_\_\_\_

City of Norman Planning & Community Development - 225 N. Webster Avenue - Norman, OK 73069 — (405) 307-7112 Phone

APPLICANT(S) Raven Investments, LLC	ADDRESS OF APPLICANT c/o Austin L. Hamm 522 Colcord Drive Oklahoma City, OK 73102
NAME AND PHONE NUMBER OF CONTACT PERSON(S) Austin L. Hamm 405-516-6931	EMAIL ADDRESS ahamm@wbfbllaw.com

Legal Description of Property: See attached appeal

**Requests Hearing for:**

APPEAL of Administrative Decision

**Detailed Justification for above appeal** (refer to attached memorandum and justify request according to classification and essential requirements therefor):

See attached appeal

(Attach additional sheets for your justification, as needed.)

SIGNATURE OF PROPERTY OWNER(S):

ADDRESS AND TELEPHONE:

522 Colcord Drive

Oklahoma City, OK 73102

405-516-6931

s/ Austin L. Hamm

OFFICE  
USE  
ONLY

- ☐ Application  
☐ Filing Fee of \$150.00

Date Submitted:

Checked by:

**THE CITY OF OKLAHOMA CITY BOARD OF ADJUSTMENT**

RAVEN INVESTMENTS, LLC,	)	
	)	
	)	BOA Case No. _____
	)	
Appellant.	)	

**APPELLANT RAVEN INVESTMENTS, LLC’S**  
**APPEAL OF THE CITY OF NORMAN FLOODPLAIN**  
**PERMIT COMMITTEE’S APPROVAL OF PERMIT NO. 684 AND PERMIT NO. 685**

Appellant, Raven Investments, LLC, hereby submits its Appeal to the Board of Adjustment for the City of Norman from the decision of the Floodplain Permit Committee of the City of the Norman to grant Permit No. 684 and Permit No. 685 in favor of NextEra Energy Transmission Southwest, LLC. In support, Appellant states as follows:

**I. Factual and Procedural Background.**

1. In early 2023, NextEra Energy Transmission Southwest, LLC (“NextEra”) began condemnation proceedings across several counties, including Cleveland County, to construct a new transmission line across the region.

2. On or about April 28, 2023, NextEra initiated condemnation proceedings against Appellant Raven Investments, LLC (“Raven”) to acquire an interest in property owned by Raven.

3. Several of the properties NextEra has sought to condemn, including the property owned by Raven, in Cleveland County lay within a floodplain necessitating the issuance of a floodplain permit from the City of Norman before NextEra can begin construction of its transmission line in those regions.

4. Accordingly, on July 17, 2023, NextEra submitted its first floodplain permit application to the Floodplain Permit Committee for the City of Norman (the “Committee”). *See*, Ex. “A”, Permit No. 675 Application.

5. On or about July 17, 2023, NextEra's application for Permit No. 675, was heard, and denied, by the Committee. *See* Ex. "B," July 17, 2023 Floodplain Permit Committee for the City of Norman Meeting Minutes.

6. The Committee denied Permit 675 because NextEra failed to submit all the necessary information for consideration by the Committee to address residents' concerns and NextEra did not have an ownership interest in all of the properties included in the permit location. *See* Ex. "B," July 17, 2023 Floodplain Permit Committee for the City of Norman Meeting Minutes; *See also* Ex. "C," July 17, 2023 Permit Denial Letter.

7. NextEra appealed the Committee's denial of Permit 675 to the City of Norman Board of Adjustment (the "BOA"), which upheld the Committee's denial after a public hearing on August 23, 2023. *See* Ex. "D," Aug. 23, 2023 Board of Adjustment Meeting Minutes.

8. As the BOA is aware, at the time of the public hearing on August 23<sup>rd</sup>, NextEra did not have an ownership interest in all the properties subject to the proposed floodplain, including the property owned by Raven.<sup>1</sup>

9. Indeed, the BOA specifically addressed the concern that NextEra was pursuing permits for properties that NextEra had no legal right to enter at the time the permits were sought. *See* Ex. "D," Aug. 23, 2023 Board of Adjustment Meeting Minutes p. 8.

10. NextEra appealed the BOA's decision to the District Court for Cleveland County, Case No. CV-2023-3288 (the "District Court Appeal").

11. The District Court Appeal is still pending determination on the merits.

12. In a clear effort to circumvent the jurisdiction of the District Court, NextEra resubmitted its permit application to the Committee, seeking issuance of Permit No. 684, which

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<sup>1</sup> NextEra did not acquire an ownership interest in Raven's property until October 6, 2023.

sought the same permit requested as part of Permit No. 675. *See* Ex. “E,” NextEra Floodplain Permit Application No. 684.

13. At the time of submission of the application for Permit 684, NextEra **still** did not possess a legal ownership to all of the properties included in the permit location. *See* Ex. “F,” Jan. 2, 2024 Floodplain Permit Committee for the City of Norman Meeting Minutes p. 2.

14. On January 2, 2024, the Committee considered NextEra’s application for Permit 684 and granted not only Permit 684, but an additional permit identified as Permit No. 685. *See* Ex. “F,” Jan. 2, 2024 Floodplain Permit Committee for the City of Norman Meeting Minutes p. 7.

15. There was no application filed for Permit 685 and no reference to such a permit appeared on the Committee agenda. *See*, Ex. “G,” Jan. 2, 2024 Floodplain Committee Agenda.

16. Permit 684 was modified to grant NextEra’s request for a floodplain permit as to 23 of the 37 properties requested. These were properties which the municipal counselor’s office determined NextEra had obtained an ownership interest in. *See* Ex. “F,” Jan. 2, 2024, Floodplain Permit Committee for the City of Norman Meeting Minutes p. 2.

17. Permit 685 was a new permit created by the Committee, without any application submitted for the same, to grant conditional permission for the remaining 14 properties, to which NextEra still did not possess an ownership interest in. The condition for Permit 685 is NextEra must obtain an ownership interest in those 14 properties for the permit to be valid. *See* Ex. “F,” Jan. 2, 2024, Floodplain Permit Committee for the City of Norman Meeting Minutes pp.2 & 7.

## **II. Argument.**

The Committee erred when it granted Permit 684 and Permit 685. First, the Committee lacked jurisdiction to grant the permits as the District Court Appeal is still pending and a stay is in effect. Second, the Committee’s creation and issuance of Permit 685 was improper as it violated



the City of Norman's Municipal Code and the Oklahoma Open Meeting Act. Third, NextEra still lacks an ownership interest in all of the properties covered by its application for Permit 684 and therefore lacks standing to seek permitting for the same. For the foregoing reasons, and as explained below, the Board of Adjustment should reverse the Committee's approval of Permit 684 and Permit 685.

**A. The Pending District Court Appeals Stays these Proceedings.**

After the Committee denied NextEra's application for approval for Permit 675, and the BOA refused to overturn that denial, NextEra appealed the BOA decision to Cleveland County District Court. The District Court Appeal (Case No. CV-2023-3288) is currently pending resolution on the merits and has not been dismissed by NextEra. The Municipal Code for the City of Norman provides that appeals from the Board of Adjustment may be taken to District Court, and that:

**An appeal to the District Court from the Board of Adjustment stays all proceedings and the action appealed from** unless the Chairman of the Board of Adjustment, from which the appeal is taken, certifies to the Court Clerk after the notice of appeal has been filed, that by reason of fact Stated in the certificate a stay would in his opinion cause imminent peril to life or property.

Norman, OK., Municipal Code § 36-570(e)(2) (emphasis added).

Section 36-570(e)(2) operates as an automatic stay on all related proceedings to which an appeal is made from. Here, NextEra appealed after the BOA refused to overturn the Committee's denial of Permit 675. As of September 5, 2023, the date of filing the District Court Appeal, the stay was in effect and the Floodplain Committee no longer had jurisdiction to consider such matter. The only exception to the stay is if the Chairman of the BOA certifies to the District Court Clerk that a stay would "cause imminent peril to life or property." Norman, OK., Municipal Code § 36-570(e)(2). No such certification has occurred which would prevent application of the stay to these

proceedings. Therefore, the BOA should enforce the stay against all proceedings and reverse the approval of Permits 684 and 685.

It is likely NextEra will attempt to assert its application for Permit 684 was a substantially different application due to the fact that NextEra submitted the necessary supporting documentation. This would be disingenuous as the application language for Permit 684 is nearly the exact same as Permit 675 and the information submitted should have been submitted with the application for Permit 675, and one of the reasons for denial of that application. *See* Ex. “H,” Comparison of Application for Permit 675 and Application for Permit 684 and Identification of Modifications in Permit 684 in Highlight and Textbox. If an applicant is allowed to circumvent the stay by resubmitting its application a few months later, the stay provided for in the Municipal Code would be meaningless and have no effect. Section 36-570(e)(2) provides for the stay to grant a District Court time to determine and resolve the dispute on the merits and prevent duplicate proceedings from occurring. If NextEra is allowed to circumvent the ordinances, at its choosing, it puts the entire appeal system at risk of procedural abuse for an applicant to strong arm its way through the process without the checks and balances created by the system. Therefore, the stay should be enforced, and all floodplain permits sought by NextEra should be stayed until the merits are adjudicated by the District Court.

**B. The Floodplain Committee did not Comply with the Municipal Code or the Oklahoma Open Meeting Act.**

The City of Norman’s Municipal Code (the “Code”) provides the process for submittal and consideration of a floodplain permit application. *See* Norman, OK., Municipal Code § 36-570(f). The Code clearly considers that the Committee’s power to issue a floodplain permit is enabled once an application for a permit is submitted to the Committee:

Floodplain permit application forms shall be furnished by the Department of Public Works. **Upon receiving an application for the special permit** involving the use of fill, construction of structures, or storage of materials, the Committee shall, prior to rendering a decision thereon, obtain and study essential information and request technical advice as appropriate. Such information and technical advice becomes a part of the application and is retained with the application.

Norman, OK., Municipal Code § 36-570(f)(2) (emphasis added).

Nothing in the Code contemplates the Committee's ability or power to unilaterally create and approve permits of the Committee's own creation. Indeed, should the Committee have such power, it would be contrary to the Code's requirement that the Committee post public notice of its meetings and the items to be considered. Norman, OK., Municipal Code § 36-570(f)(2) ("The Floodplain Permit Committee shall meet on an as-needed basis the first and third Monday of each month and **shall post public notice accordingly.**") (emphasis added). No such notice of consideration of Permit 685 was provided ahead of the meeting, such that the public was not reasonably informed. *See*, Ex. "G," Jan. 2, 2024 Floodplain Committee Agenda.

Further, the consideration and approval of Permit 685 violates the Oklahoma Open Meeting Act (the "OMA"). All meetings of public bodies, which includes the Committee, "shall be preceded by advance public notice specifying the time and place of each such meeting to be convened as well as the subject matter or matters to be considered at such meeting, as hereinafter provided." 25 O.S. § 303. The advance notice required for regularly scheduled meetings of public bodies shall be provided at least twenty-four (24) hours before such meeting and shall include the agenda of items to be considered at the meeting. 25 O.S. § 311(9). "All agendas required pursuant to the provisions of this section shall **identify all items of business to be transacted by a public body at a meeting....**" 25 O.S. § 311(B)(1) (emphasis added). Willful violations of the Open Meetings Act are invalid. 25 O.S. § 313. The Oklahoma Supreme Court has clarified that in the context of the OMA "willful" means:

Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses conscious, purposeful violations of the law or blatant or deliberate disregard of the law by those who know, or should know the requirements of the Act. Notice of meetings of public bodies which are deceptively vague and likely to mislead constitute a wilful violation.

*Fraternal Order of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman*, 2021 OK 20, ¶ 18, 489 P.3d 20, 26.

*Fraternal Order of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman* is instructive to this matter. In *The City of Norman*, the Oklahoma Supreme Court held the City Council for the City of Norman violated the OMA when the council's agenda failed to sufficiently advise the public of actions the council may take at a special council meeting. *City of Norman*, 2021 OK 20, ¶ 20, 489 P.3d 20, 26. Ahead of a special city council meeting in June, the posted agenda informed the public the council was taking up "[c]onsideration of adoption of the FYE 2021 City of Norman proposed operating and capital budgets...." *Id.* 2021 OK 20, ¶ 4, 489 P.3d 20, 22. At the special meeting, instead of approving or denying the budget, the city council revised the budget multiple times to reallocate a portion of the budget elsewhere. *Id.* 2021 OK 20, ¶ 5, 489 P.3d 20, 23. The Oklahoma Supreme Court held that the agenda failed to inform the public that the council may consider other options outside of strict approval or denial of the budget and such agenda was "deceptively vague and likely to mislead, therefore it was a wilful [sic] violation of the Open Meeting Act." *Id.* 2021 OK 20, ¶ 19, 489 P.3d 20, 26. Accordingly, the actions taken by the City Council at the special meeting were invalid. *Id.*

Here, the Committee violated both the City's own Code and the OMA. The agenda posted before the meeting only provided notice of consideration of Permit 684 and provided no notice whatsoever as to any consideration for Permit 685. *See* Ex. "G," Jan. 2, 2024 Floodplain Committee Agenda. It was well known that the Assistant Municipal Counselor was going to

propose an additional application; in fact a powerpoint presentation identifying the two permits was created and presented at the Committee meeting. The agenda failed to meet the requirements of the OMA by failing to provide sufficient notice of the Committee's consideration of Permit 685. Just as in *The City of Norman*, because the Committee's January 2<sup>nd</sup> agenda failed to reasonably inform the public of the items to be considered by the Committee, the actions taken by the Committee at the January 2<sup>nd</sup> meeting are invalid and should be overturned.

**C. NextEra Still Lacks Standing to Request a Floodplain Permit.**

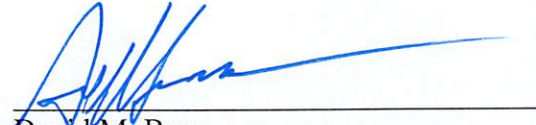
Finally, as the Committee clearly recognized, NextEra still lacks ownership of all the properties covered by NextEra's floodplain permit application. Indeed, the Committee and the Municipal Counselor's office specifically created Permit 685 to circumvent NextEra's lack of ownership interest to all of the properties covered by NextEra's application. It is violative of Oklahoma law that a condemner be allowed to seek permits for properties to which the condemner has no legal right to enter upon. Oklahoma law clearly states "[n]o owner shall be required to surrender possession of real property before the agreed purchase price is paid or deposited with the state court...." 27 O.S. § 13(4).

Fourteen (14) of the thirty-seven (37) properties included as part of NextEra's application for Permit No. 684 are still in condemnation proceedings before the District Court. The Committee's approval of permits as to properties not owned by NextEra violates Oklahoma law and robs landowners of their rights to proceed in District Court on these matters. The Committee's approval must be overturned to protect the landowners' rights until resolution of their respective disputes in District Court.

**III. Conclusion.**

Based on the foregoing, Appellant Raven Investments, LLC respectfully requests this Board overturn the Committee's approval of Permits 684 and 685.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'A. Hamm', is written over a horizontal line.

David M. Box  
Amanda Carpenter  
Austin L. Hamm  
*Attorneys for Appellant*



# City of Norman

## Floodplain Permit Application

Floodplain Permit No. 675

Building Permit No. \_\_\_\_\_

Date 7/17/2023

### FLOODPLAIN PERMIT APPLICATION (\$100.00 Application Fee Required)

#### **SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):**

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Occupancy is issued.
5. The permit will expire if no work is commenced within 2 years of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements and must be included with this floodplain permit application.
7. Applicant hereby gives consent to the City of Norman or his/her representative to access the property to make reasonable inspections required to verify compliance.
8. The following floodplain modifications require approval by the City Council:
  - (a) A modification of the floodplain that results in a change of ten percent (10%) or more in the width of the floodplain.
  - (b) The construction of a pond with a water surface area of 5 acres or more.
  - (c) Any modifications of the stream banks or flow line within the area that would be regulatory floodway whether or not that channel has a regulatory floodplain, unless the work is being done by the City of Norman staff as part of a routine maintenance activity.
9. All supporting documentation required by this application is required along with the permit fee by the submittal deadline. Late or incomplete applications will not be accepted.
10. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

#### **SECTION 2: PROPOSED DEVELOPMENT (To be completed by APPLICANT.)**

APPLICANT: NextEra Energy Transmission Southwest, LLC c/o Kim Austin ADDRESS: 700 University Blvd, Juno Beach FL 33408TELEPHONE: 316-775-8503 SIGNATURE: [Signature]

Natalie F. Smith, Assistant Vice President

BUILDER: TBD ADDRESS: \_\_\_\_\_

TELEPHONE: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

ENGINEER: Burns & McDonnell Engineering Co., Inc. c/o Jacob Clouse ADDRESS: 9400 Ward Parkway, Kansas City, MO 64114TELEPHONE: 816-7 6829 SIGNATURE: [Signature]

EXHIBIT

A

tabbles

## PROJECT LOCATION

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, subdivision addition, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well known landmark. A sketch attached to this application showing the project location would be helpful.

Proposed construction of overhead electric transmission line. Within the city of Norman, Oklahoma, the proposed alignment will begin at the west boundary of the city limit (approx. 0.45 miles south of W. Robinson St.) and extend to the north

boundary of the city limit (approx 0.15 miles east of 48th Ave NE). See attached figure for proposed alignment through the city of Norman, Oklahoma.

A total of 35 overhead electric transmission line pole structures are proposed to be constructed in Special Flood Hazard Areas (SFHA) within the city of Norman, Oklahoma. See attached table for the coordinates of each of these structures.

## DESCRIPTION OF WORK (Check all applicable boxes):

### A. STRUCTURAL DEVELOPMENT

#### ACTIVITY

#### STRUCTURE TYPE

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> New Structure | <input type="checkbox"/> Residential (1-4 Family)  |
| <input type="checkbox"/> Addition                 | <input type="checkbox"/> Residential (More than 4 Family)  |
| <input type="checkbox"/> Alteration               | <input checked="" type="checkbox"/> Non-Residential (Flood proofing? <input type="checkbox"/> Yes) |
| <input type="checkbox"/> Relocation               | <input type="checkbox"/> Combined Use (Residential & Commercial)                                   |
| <input type="checkbox"/> Demolition               | <input type="checkbox"/> Manufactured (Mobile) Home  |
| <input type="checkbox"/> Replacement              | <input type="checkbox"/> In Manufactured Home Park? <input type="checkbox"/> Yes                   |

ESTIMATED COST OF PROJECT \$ 7.9 Million for project in floodplain Work that involves substantial damage/substantial improvement requires detailed cost estimates and an appraisal of the structure that is being improved.

### B. OTHER DEVELOPMENT ACTIVITIES:

- ☒ Fill    ☐ Mining    ☐ Drilling    ☐ Grading
- ☐ Excavation (Beyond the minimum for Structural Development)
- ☐ Watercourse Alteration (Including Dredging and Channel Modifications)
- ☐ Drainage Improvements (Including Culvert Work)    ☐ Road, Street or Bridge Construction
- ☐ Subdivision (New or Expansion)    ☐ Individual Water or Sewer System

In addition to items A. and B. provide a complete and detailed description of proposed work (failure to provide this item will be cause for the application to be rejected by staff). Attach additional sheets if necessary.

Tree clearing within the 150 foot right-of-way along with temporary access road construction consisting of drive and crush access roads or installation of crane mats. Sediment controls will be installed as needed. Installation of overhead

electric transmission poles. Structure foundations are engineered based on the size of the structure and soil conditions encountered. Please refer to plan & profile drawings (MPV-00101sh01 - PVD-00101sh10) and foundations schedules (MNC-FND-001sh01 - MNC-FND-004sh02)

for foundation diameter, depth, and backfill material. (Attachment 2)



### C. ATTACHMENTS WHICH ARE REQUIRED WITH EVERY APPLICATION:

The applicant must submit the documents listed below before the application can be processed. If the requested document is not relevant to the project scope, please check the Not Applicable box and provide explanation.

- A. Plans drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the regulatory flood-protection elevation.

- B. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high-water information.

☐ Not Applicable:

See Attached Plan and Profile (Attachment 2)

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- C. Subdivision or other development plans (If the subdivision or other developments exceeds 50 lots or 5 acres, whichever is the lesser, the applicant **must** provide 100-year flood elevations if they are not otherwise available).

☒ Not Applicable:

Project does not involve a subdivision or other development.

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- D. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types and other pertinent information.

☐ Not Applicable:

See Attached Plan and Profile (Attachment 2)

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- E. A profile showing the slope of the bottom of the channel or flow line of the stream.

☐ Not Applicable:

See Attached Plan and Profile (Attachment 2)

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- F. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures.

☒ Not Applicable:

No occupiable structures are proposed as part of this project.

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- G. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

☒ Not Applicable:

No watercourse or natural drainage will be altered or relocated as a result of this project.

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- H. For proposed development within any flood hazard area (except for those areas designated as regulatory floodways), certification that a rise of no more than five hundredths of a foot (0.05') will occur on any adjacent property in the base flood elevation as a result of the proposed work. For proposed development within a designated regulatory floodway, certification of no increase in flood levels within the community during the occurrence of the base flood discharge as a result of the proposed work. All certifications shall be signed and sealed by a Registered Professional Engineer licensed to practice in the State of Oklahoma.
- I. A certified list of names and addresses of all record property owners within a three hundred fifty (350) foot radius of the exterior boundary of the subject property not to exceed 100 feet laterally from the Special Flood Hazard Area. The radius to be extended by increments of one hundred (100) linear feet until the list of property owners includes not less than fifteen (15) individual property owners of separate parcels or until a maximum radius of one thousand (1,000) feet has been reached.
- J. A copy of all other applicable local, state, and federal permits (i.e. U.S. Army Corps of Engineers 404 permit, etc).

**After completing SECTION 2, APPLICANT should submit form to Permit Staff for review.**

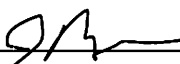
**SECTION 3: FLOODPLAIN DETERMINATION (To be completed by Permit Staff.)**

The proposed development is located on FIRM Panel No.: varies, Dated: varies

The Proposed Development:

- ☐ Is NOT located in a Special Flood Hazard Area  
(Notify the applicant that the application review is complete and NO FLOODPLAIN PERMIT IS REQUIRED).
- ☒ Is located in a Special Flood Hazard Area.
- ☐ The proposed development is located in a floodway.
- ☐ 100-Year flood elevation at the site is \_\_\_\_\_ Ft. NGVD (MSL)      ☐ Unavailable

See Section 4 for additional instructions.

SIGNED:  DATE: 7/13/2023

See attached location list with WSEL values.

**SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by Permit Staff.)**

The applicant must also submit the documents checked below before the application can be processed.

- ☐ Flood proofing protection level (non-residential only) \_\_\_\_\_ Ft. NGVD (MSL). For flood proofed structures applicant must attach certification from registered engineer.
- ☒ Certification from a registered engineer that the proposed activity in a regulatory floodway will not result in any increase in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.
- ☒ Certification from a registered engineer that the proposed activity in a regulatory flood plain will result in an increase of no more than 0.05 feet in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.
- ☐ All other applicable federal, state, and local permits have been obtained.

Other: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION 5: PERMIT DETERMINATION (To be completed by Floodplain Chairman.)**

The proposed activity: (A) ☐ **Is**; (B) ☐ **Is Not** in conformance with provisions of Norman's City Code Chapter 22, Section 429.1. The permit is issued subject to the conditions attached to and made part of this permit.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

**If BOX A is checked**, the Floodplain committee chairman may issue a Floodplain Permit.

**If BOX B is checked**, the Floodplain committee chairman will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Floodplain committee or may request a hearing from the Board of Adjustment.

APPEALS: Appealed to Board of Adjustment: ☐ Yes ☐ No  
 Hearing date: \_\_\_\_\_

Board of Adjustment Decision - Approved: ☐ Yes ☐ No

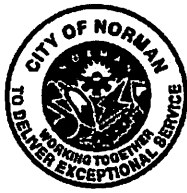
Conditions:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**SECTION 6: AS-BUILT ELEVATIONS (To be submitted by APPLICANT before Certificate of Occupancy is issued.)**

1. FEMA Elevation Certificate  
and/or
2. FEMA Floodproofing Certificate

NOTE: The completed certificate will be reviewed by staff for completeness and accuracy. If any deficiencies are found it will be returned to the applicant for revision. A Certificate of Occupancy for the structure will not be issued until an Elevation and /or Floodproofing Certificate has been accepted by the City.



Item 4.

**CITY OF NORMAN, OK**  
**FLOODPLAIN PERMIT COMMITTEE MEETING**  
Development Center, Conference Room B, 225 N. Webster Avenue,  
Norman, OK 73069  
Monday, July 17, 2023 at 3:30 PM

## MINUTES

### ROLL CALL

The meeting was called to order by Mr. Shawn O'Leary at 3:30 p.m. Roll was called and 6 members were present, one was absent. Mr. Scott Sturtz was absent. Others in attendance included, Jason Murphy, Stormwater Program Manager; Todd McLellan, Development Engineer; Amy Shepard, Staff; Kim Freeman, Staff; Kim Austin, NextEra Energy Transmission Southwest, LLC (NEET Southwest); Megan C., BMed; Mark Banner, Hall Estill; Gunner Joyce, Rieger Law Group; Libby Smith, Rieger Law Group; Nick Fuhr, NextEra Energy Transmission Southwest, LLC (NEET Southwest); Chris Lira, Resident; Leo Calvert, Resident; Paul Snow, Resident; Don Wilkerson, Resident; Lynn Wilkerson, Resident; Shyla Slay, Resident; Charla Bird, Resident; Inger Giuffrida, Resident; Bob Crumrine, Resident; G. Ben, Resident.

### MINUTES

1. Approval of minutes from the June 20, 2023 meeting

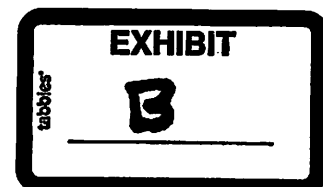
Mr. O'Leary called for a motion to approve the minutes from the meeting of June 20, 2023. Ms. Stansel asked for a correction to page 1 specifying the location as 60<sup>th</sup> Ave NW. The motion was made by Ken Danner and seconded by Bill Scanlon. The minutes were approved 6-0.

### ACTION ITEMS

2. Floodplain Permit No. 675

Mr. O'Leary said this Application is for the proposed installation of an electric transmission line across Norman through the Canadian River, Ten-Mile Flat Creek, and Little River Floodplains. Mr. O'Leary asked Mr. Murphy to present the staff report. Mr. Murphy said the Applicant is NextEra Energy Transmission Southwest and the Engineer is Burns and McDonnell Engineering Company. Mr. Murphy said the application is for proposed construction of an overhead electric transmission line. The proposed alignment will begin at the west boundary of the City limit (approx. 0.45 miles south of W. Robinson St.) and extend to the north boundary of the City limit (approx. 0.15 miles east of 48th Ave. NE). A total of 35 overhead electric transmission line pole structures are proposed to be constructed in the Special Flood Hazard Areas (SFHA) of Norman. Structure foundations for the transmission poles are engineered based on the size of the structure and soil conditions encountered. In addition to the pole structure installation, tree clearing within the 150-foot right-of-way along with temporary access road construction consisting of drives and crushed rock access roads or installation of crane mats will be performed. Sediment controls will be installed as needed.

Mr. Murphy said typical poles will be spun concrete or steel monopoles approximately four feet in diameter at ground level. Two of the poles will be in the regulatory floodway of the Canadian River and the other 33 poles will be in the floodplains of Ten-Mile Flat Creek and the Little



River and its Tributaries. Hydraulic analyses using HEC-RAS modeling was submitted by the Applicant for each of the locations. For the 2 poles in the Canadian River floodway report from February 28, 2023, it was determined that no rise in the BFE would occur. The hydraulic analysis report for the remaining 33 poles was submitted in the HEC-RAS model floodplain analysis report dated April 21, 2023. Of these, 17 are in the Ten-Mile Flat Creek floodplain and will cause no rise in the BFE. The remaining 16 are in the Little River floodplain or its tributaries. 2 of the poles in the Little River floodplain will cause a rise of 0.01 feet in the BFE according the applicant's report, the rest will cause no rise.

Mr. Murphy said the Applicant included in their application a chart indicating a minimum volume of material to be removed from each pole location in the various floodplains in order to meet the compensatory storage requirement of the Flood Hazard Ordinance. Spoils from excavation and compensatory storage creation will be removed from the floodplain and spread in upland areas outside of the floodplain. Some of the installation locations in this application are themselves outside of the regulatory floodplain, but the access and tree clearing to reach the site require crossing the floodplain.

Mr. Murphy said the Applicant has indicated that tree clearing will take place prior to construction to create temporary access roads. Where conditions allow, overland travel will be utilized with no grading or road construction. If temporary construction of access roads or improvements to existing roads are needed within floodplains, crane mats will be temporarily placed on the access roads. Air-bridges will be constructed where underground pipelines are crossed by access roads. The Applicant has also indicated that sediment controls will be installed during construction. Any temporary crane mats that are utilized will be removed following construction. Access roads will be removed and reclaimed, if necessary, to original contours. The Applicant has also indicated that revegetation will occur where appropriate.

Mr. Murphy reviewed plans and aerial maps of the project locations provided to members in their packets.

Mr. Murphy confirmed all ordinance requirements have been met and said staff recommends Floodplain Permit Application No. 675 be approved.

Mr. O'Leary asked for comments or additions from the Applicant. Hearing none, Mr. O'Leary asked for any comments from the public. Mr. Crumrine, resident, has 2 properties close to the line and asked for clarification on the location of the line on the Little River. Mr. Crumrine also asked for a copy of the packet presented by Mr. Murphy. Mr. Murphy offered his business card with his contact information.

Ms. Giuffrida, resident, expressed concern about homeowners being unaware of how they are affected and adequate notification. Ms. Giuffrida asked for a pause on the application for the public to be duly informed. Ms. Giuffrida also expressed concern regarding the runoff and environmental impact to Lake Thunderbird. Additionally, Ms. Giuffrida expressed concern for the impact to migratory birds.

Mr. Lira, resident, is currently in litigation with NextEra and asked for the committee to consider postponing the application to prevent NextEra from entering his property prior to the merits of his case being heard.

Mr. Wilkerson, resident, expressed concern with changing the elevation and how that will affect the drainage. Mr. Wilkerson also expressed concern if the Little River floods and if the poles were to fall, having live wires in the water. Additionally, Mr. Wilkerson expressed concern

about the integrity of NextEra due to a subpoena for eminent domain and requesting underground mineral rights.

Mr. Snow, resident, expressed concern with erosion of the river due to tree clearing. Mr. Snow also expressed concern with lack of notification. Additionally, Mr. Snow expressed concern with the negative impact on the agriculture, animals and his children.

Ms. Wilkerson, resident, asked why the utility easement isn't being utilized. Ms. Wilkerson, expressed concern with receiving a one-time payment for the easement purchase.

Ms. Giuffrida, expressed concern again about the timeline of the notification to the property owners. Ms. Giuffrida asked if the Applicant has consulted any Eagle Aviaries or tribal nations regarding eagle impacts. Ms. Austin, with NextEra Energy Transmission Southwest, LLC (NEET Southwest), responded that a number of studies have been done on the project and they have a tribal relations team who engages with the tribes and she is unable to respond to tribal relations questions but offered to follow up with team members. Ms. Austin spoke about the environmental studies completed to satisfy the need for federal, state and local permits. Ms. Giuffrida encouraged Ms. Austin to consult with the Eagle Aviaries. Mr. Crumrine, indicated he had 2 eagles and babies in eyesight of his acreage. Mr. Snow also indicated they have eagles, falcons, hawks, owls and cranes that live in the trees that would be impacted.

Mr. Wilkerson said he hopes the City will start looking out for the citizens as he stands to lose almost everything between this and the turnpike. Mr. Snow asked why the applicant isn't using an existing easement and if the power lines already in the area could be utilized.

Mr. O'Leary brought the discussion back to the committee. Mr. O'Leary reminded the committee of their role pertaining to the floodplain ordinance. Mr. Wilkerson expressed concern with building a road, even temporary, would impact his property. Ms. Hoggatt asked about the use of the easements acquired from property owners and Mr. O'Leary directed the question to the Applicant and the impact to the land within the floodplain. Ms. Austin responded that all of the impacts associated with this project are temporary impacts except for the poles. Ms. Austin also responded the poles have gone through a number of floodplain studies and engineers have looked at the area and completed the analysis to satisfy floodplain regulations for stabilizing and revegetating the land.

Ms. Stansel inquired if the homeowners would have another meeting prior to approval. Mr. O'Leary responded there have been multiple meetings with City Council regarding easements and access. Mr. O'Leary asked the NextEra representatives who regulates this project from an energy standpoint. Mr. Banner, Hall Estill, responded there have been several meetings and items under consideration with City Council. Mr. Banner said this project is a result of analysis for energy needs in the area from the Southwest Power Pool and could result in lower energy costs for residents. Mr. Banner said the project was advertised by the Southwest Power Pool and NextEra bid on that project. Ms. Stansel expressed her concern for the residents affected by this project and their route to express their concerns. Mr. O'Leary said he believes the Oklahoma Corporation Commission would be the regulatory agency at the state level.

Mr. O'Leary said the majority of the overhead power lines would be located on private property, which is why NextEra is requesting easements from property owners. Mr. O'Leary said as far as he is aware the city or state do not have any regulatory authority over land acquisition or easement agreements on private property. The process is a negotiation between the company and the landowner. Ms. Stansel expressed concern for the residents in attendance who said they are already in lawsuits with the applicant.

Mr. Scanlon said the application answers the technical requirements and inquired about other considerations in the floodplain ordinance. Mr. Scanlon said the committee is allowed to weigh other considerations and he hears lots of unanswered questions that fall into the scope of the other considerations. Mr. Scanlon said he is not prepared to support the application and would like answers to the questions that came up during the meeting. Ms. Stansel inquired who would be responsible if there is flooding in these areas and Mr. O'Leary confirmed it's the landowner's responsibility. Ms. Austin said within a NextEra easement, they are responsible for the operation and maintenance of the easement. Ms. Austin said it is NextEra's intent to disturb the minimum area possible.

Ms. Stansel asked if any City bridges are impacted by the project. Mr. O'Leary responded that a thorough evaluation has already been done for any road or bridge impacted by the project as part of the Road Use Agreement already authorized by the City Council to protect the integrity of our road system.

Mr. Scanlon asked for a start date and period of performance for the project. Mr. Fuhr, NextEra Energy Transmission Southwest, LLC (NEET Southwest), responded the construction date is set for November 15, 2023 through July of 2024. Mr. Danner inquired if the dates are subject to easement negotiations and Mr. Fuhr confirmed. Ms. Scanlon asked the dates are for Norman construction only and Mr. Fuhr responded the dates are for the entirety of the project.

Mr. Danner inquired about the width of the easement. Mr. Fuhr responded the easement is 150 ft. Mr. Danner also inquired about the area parallel with and north of Franklin Rd and near 48<sup>th</sup> Ave. if any of the easement acquired is in the statutory right of way or future City right of way. Mr. Fuhr responded they would need to review in detail and get back to Mr. Danner. Mr. Danner said he is inquiring related to a proposed future development in the area.

Ms. Hoggatt inquired about how a change in elevation would impact the lake and the effect on possible flooding. Mr. Murphy referred to the packet and the data submitted. Mr. Murphy said after careful review the application meets the requirements and the hydraulic analysis appear to be sound. Mr. O'Leary confirmed with Mr. Murphy that our review of the application is more on the permanent structures. Mr. Murphy said the permit includes locations for the disruption of the floodplain for temporary access for installation of the poles. Mr. Murphy said the Canadian River has a wide floodplain and the impact on the BFE is very minimal.

Ms. Hudson asked about the concerns related to the access road for the project. Mr. Wilkerson confirmed a road is being proposed gate to gate and the area would need to be raised because the ground is too soft to drive on between 36<sup>th</sup> and 48<sup>th</sup>. Ms. Austin responded in cases where the ground is soft, temporary mats would be used and they pay attention to the weather and know their responsibilities while they are out there during construction. Mr. Wilkerson expressed concern about drainage in the area during and after construction due to the fragility of the area. Ms. Hoggatt asked for the applicant's definition of a temporary road. Ms. Austin responded once the poles are in the ground, they will restore everything to the same condition including removing temporary access. Ms. Hudson inquired if temporary access is needed in the future, would a new permit be required. Mr. Murphy responded that a permit is good for 2 years and anything outside of that would require a new Floodplain permit.

Ms. Hoggatt asked if Stormwater permits had been issued for the project. Mr. Murphy confirmed the packet includes Earth Change Permits from the City of Norman and Department of Environmental Quality. Mr. Murphy said the Stormwater Pollution Prevention Plan was reviewed and accepted. Mr. O'Leary confirmed Stormwater Quality division administered the



permit. Ms. Hoggatt inquired if there are issues could Stormwater Quality be contacted and Mr. Murphy confirmed.

Ms. Stansel asked if Mr. Danner's questions had been satisfied. Mr. Danner said his questions are related to a proposed development in the area not regarding the floodplain permit. Ms. Stansel inquired if this permit would be sent to the Planning Commission and Mr. O'Leary responded it would not because there are no other City actions pending.

Mr. Danner inquired if there are any proposed underground utility burials and Mr. Fuhr confirmed it is only above ground poles. Mr. Scanlon inquired about utility lines and pipelines and how that will be mitigated. Mr. Fuhr responded they have conducted multiple utility surveys throughout the project to identify pipelines and overhead and underground utilities and currently finalizing crossing agreements with different entities and working with the owners to make sure they are mitigating per their requirements.

Mr. O'Leary called for a motion or further questions. Mr. Danner motioned to approve Floodplain Application No. 675 on the condition the Applicant acquires all easements according to the route contained in the application. Ms. Hudson seconded the motion. Ms. Hoggatt inquired about the length of the permit, Mr. O'Leary confirmed it's for 2 years. Mr. Murphy confirmed the Applicant must provide proof of all easements acquired prior to the permit being issued. Ms. Stansel inquired about the notification of the Floodplain Permit Committee Meeting to the property owners. Mr. Murphy responded the Floodplain notices were mailed more than a month prior to the meeting. Ms. Stansel asked how many requests for the packet and information about this application were received. Mr. Murphy responded he did not receive any requests for the meeting packet prior to the meeting.

Ms. Stansel said she still had concerns about the application due to the comments from homeowners. The committee discussed the section of the Floodplain Ordinance where other considerations can be cited for health and safety concerns. Mr. O'Leary encouraged the committee to make sure when applying other considerations that they are specifically related to the floodplain. Mr. O'Leary clarified this vote requires supermajority 5 out of 7. Mr. Danner inquired if the permit is not approved, and the Applicant wants to pursue an appeal, where it would go. Ms. Hudson confirmed any appeals from the Floodplain Committee decision by any person can be taken to the Board of Adjustment. Ms. Stansel said at least two members of the Board of Adjustment must be trained on floodplain regulations to hear the appeal and asked if that was available. Ms. Hudson said she believed there are two members trained but would verify. The committee voted to approve the application 4-2; however the motion failed because a super majority of the votes were not received. Mr. O'Leary advised the Applicant of the appeal process if they choose to appeal. Ms. Hudson said the process for Board of Adjustment will include notification of all property owners within 300 feet of the proposed location.

## ADJOURNMENT

Mr. O'Leary called for a motion to adjourn. Mr. Danner motioned to adjourn and was seconded by Ms. Hoggatt. The motion was approved 6-0. The meeting adjourned at 4:31 p.m.

Passed and approved this \_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
City of Norman Floodplain Administrator, Shawn O'Leary



The City of  
**NORMAN**

225 N. Webster  
Norman, Oklahoma 73069

Item 4.

July 17, 2023

NextEra Energy Transmission Southwest, LLC  
c/o Kim Austin  
700 University Blvd.  
Juno Beach, FL 33408

Re: Floodplain Permit Application #675

Dear Ms. Austin:

Floodplain Permit Application #675 was denied by the Floodplain Permit Committee by a vote of 4 for 2 against and 1 absent. The no votes indicated that not enough information was provided by the applicant to properly address the concerns of the property owners whom expressed concern with rights of access and potential negative impacts of installation of the transmission line. Per City of Norman Flood Hazard Ordinance 36-533:(f)2 referenced below, at least five (5) members of the committee are required to approve a floodplain permit application.

*(f) Floodplain permit administration.*

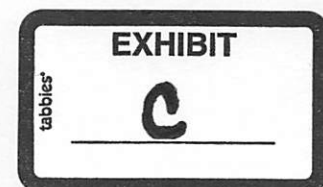
(2) Uses listed above requiring a floodplain permit may be allowed only upon issuance of a special permit by a super majority vote of five or more of the Floodplain Permit Committee composed of the Director of Planning and Community Development, the Director of Public Works, City Engineer, the Subdivision Development Manager, the Planning Services Manager and two citizens appointed by the Mayor with advice and consent of the Council. The citizen members of the Floodplain Permit Committee shall serve staggered three-year terms. All members shall have successfully completed the basic floodplain training offered by the State Water Resource Board or equivalent training or education, and at least one member shall be a Certified Floodplain Manager. The Floodplain Permit Committee shall meet on an as-needed basis the first and third Monday of each month and shall post public notice accordingly. Floodplain permit application forms shall be furnished by the Department of Public Works. Upon receiving an application for the special permit involving the use of fill, construction of structures, or storage of materials, the Committee shall, prior to rendering a decision thereon, obtain and study essential information and request technical advice as appropriate. Such information and technical advice becomes a part of the application and is retained with the application.

You may request a hearing from the City's Board of Adjustment to appeal this decision. Please contact the City's Planning and Community Development Department at (405) 366-5433

If you have further questions about the floodplain permit application or the City's Flood Hazard Ordinance, please contact City Public Works staff at (405) 366-5455.

Respectfully,

Shawn O'Leary, P.E., C.F.M.  
Director of Public Works – Floodplain Administrator



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**cc: Jane Hudson, Director of Planning and Development  
Scott Sturtz, City Engineer  
Ken Danner, Subdivision Development Manager  
Lora Hoggatt, Planning Services Manager  
Bill Scanlon, Citizen Member  
Sheri Stansel, Citizen Member  
Jason Murphy, Stormwater Program Manager  
Todd McLellan, Development Engineer**



**CITY OF NORMAN, OK**  
**BOARD OF ADJUSTMENT MEETING**  
Municipal Building, Council Chambers, 201 West Gray, Norman, OK 73069  
Wednesday, August 23, 2023 at 4:30 PM

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## MINUTES

The Board of Adjustment of the City of Norman, Cleveland County, Oklahoma, met in Regular Session in City Council Chambers of the Norman Municipal Complex, 201 West Gray Street, at 4:30 p.m., on Wednesday, July 26, 2023. Notice and agenda of said meeting were posted in the Municipal Building at the above address and at [Agendas/Minutes | City of Norman Oklahoma Meetings \(municodem meetings.com\)](#) in excess of 24 hours prior to the beginning of the meeting.

Chair Curtis McCarty called the meeting to order at 4:32 p.m.

### ROLL CALL

#### PRESENT

Brad Worster  
Micky Webb  
Ben Bigelow  
James Howard (arrived at 4:40 p.m.)  
Curtis McCarty

A quorum was present.

#### STAFF PRESENT

Lora Hoggatt, Planning Services Manager  
Melissa Navarro, Planner II  
Roné Tromble, Admin. Tech. IV  
Beth Muckala, Assistant City Attorney  
Jason Murphy, Stormwater Program Manager  
Shawn O'Leary, Director of Public Works  
Todd McLellan, Development Engineer

### MINUTES

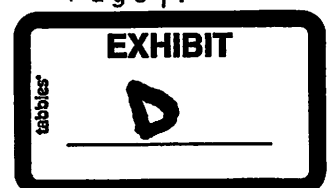
1. Consideration of Approval, Rejection, Amendment, and/or Postponement of the Minutes of the July 26, 2023 Board of Adjustment Meeting.

Motion made by Worster, seconded by Bigelow, to approve the Minutes of the July 26, 2023 Board of Adjustment meeting as presented.

Voting Yea: Worster, Webb, Bigelow, McCarty

The motion to adopt the July 26, 2023 Minutes as presented passed by a vote of 4-0.

\*



## **ACTION ITEMS**

2. Consideration of Approval, Rejection, Amendment, and/or Postponement of BOA-2324-4: Jerry Mowdy and Mikal Eddlemon request a Special Exception to permit a mobile home to serve as a temporary second dwelling to relieve a medical hardship for property located at 6655 Alameda Street.

### **ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Application with Attachments
4. Protest Map and Letter

### **PRESENTATION BY STAFF:**

Mr. McCarty read a letter of support into the record that was received just prior to the meeting from Jeffery and Laura Blosser at 6610 Alameda Street.

Lora Hoggatt reviewed the staff report, a copy of which is filed with the minutes.

### **PRESENTATION BY THE APPLICANT:**

Jerry Mowdy, 6655 Alameda Street, the applicant, provided comments regarding the allegations in the protest letter that was submitted. The mobile home will be a brand new mobile home.

### **AUDIENCE PARTICIPATION:**

Jeffrey Mark Skiba, 6707 Alameda Street, lives next door to the applicant on the east. The Mowdys have been exemplary neighbors. They would not have any problem with the second mobile home. Over the past year Mr. Mowdy has had some health problems with his foot. It would be good for Mr. and Mrs. Mowdy to have their daughter living on the property.

### **DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:**

Motion made by Worster, seconded by Bigelow, to approve BOA-2324-4 as presented.

Voting Yea: Worster, Bigelow, Howard, McCarty

Voting Nay: Webb

The motion to approve BOA-2324-4 as presented passed by a vote of 4-1.

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

\*

3. Consideration of Approval, Rejection, Amendment, and/or Postponement of BOA-2324-5: Brenda Tommey Dean LLC Five requests a Variance to 36-514(c)(4) of 5' to the 50' lot width requirement, and a Variance to 36-544(e) of 6' to the 20' side setback, for property located at 820 S. Pickard Avenue.

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Application with Attachments
4. Protest Map and Letter

**PRESENTATION BY STAFF:**

Lora Hoggatt reviewed the staff report, a copy of which is filed with the minutes.

**PRESENTATION BY THE APPLICANT:**

Michael Dean, 1128 Caddell Lane, the applicant, stated that the new buildings that are being proposed will be more in compliance than the existing buildings. It will be a single family home, replacing a single family home.

**AUDIENCE PARTICIPATION:**

Milton Castillo, 1002 McFarland Street, lives across the street from the property. He objects to the variance because they have trouble getting up and down the street. There are no sidewalks on the street, which is a dead end.

Rudy Castillo said the new construction will not be more in compliance than the existing house. The old house is not in compliance, but it's there and it's solid. The new house will be too close to the street on a too narrow lot.

Mr. Dean acknowledged that there may be a little more restricted access on McFarland, but there will be a garage with a driveway, which is not currently existing.

Ms. Castillo commented that there is currently a garage, but they don't use it.

**DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:**

Motion made by Worster, seconded by Howard, to approve BOA-2324-5 as presented.

Voting Yea: Worster, Webb, Bigelow, Howard, McCarty

The motion to approve BOA-2324-5 as presented passed by a vote of 5-0.

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

\*

4. Consideration of Approval, Rejection, Amendment, and/or Postponement of BOA-2324-3: NextEra Energy Transmission Southwest, L.L.C. appeals the denial of a Floodplain Permit (Floodplain Permit Application No. 675) on July 17, 2023.

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. NextEra Transmission Line Rejection Letter
4. 7-17-2023 Floodplain Permit Committee Meeting Minutes
5. Floodplain Permit Committee Staff Report
6. NEET SW Appeal Form
7. Board of Adjustment Appeal
8. Attachment 1 – NEET SW Supplement
9. Attachment 2 – July 17, 2023 Agenda Packet
10. Attachment 3 – OCC Final Order No. 733782
11. Attachment 4 – SPP 2020 ITP Recommendations
12. Protest Maps and Letters

**PRESENTATION BY STAFF:**

Lora Hoggatt reviewed the staff report, a copy of which is filed with the minutes.

Jason Murphy reviewed the Floodplain permit application process. The Committee entertained a motion to approve the permit application with the condition that the permit would not be released until the applicant provided proof that they had legal right to perform the work on the properties in the floodplain, i.e., that the lawsuits were settled between NextEra and individual property owners. The motion failed.

Mr. Bigelow asked why the appeal is coming to the Board of Adjustment rather than back to the Floodplain Permit Committee. Mr. Murphy responded that the ordinance says a decision can be appealed to the Board of Adjustment. Ms. Muckala further explained that appeals from administrative decisions are directly within the Board's purview. It is written in the Floodplain ordinance that appeals come to the Board, but that's because they're considered an administrative decision that would come to the Board anyway.

Mr. Bigelow asked if the Board can vote to send it back to the Floodplain Permit Committee. Ms. Muckala responded that is a request that has been made by the applicant, that if the Board opts not to vote on the substance, that it be sent back to them with instructions. That is an appellate mechanism that you typically see in a court when there is a written opinion issued with instructions. She has not seen it done by the Board; it is not specifically within the powers allotted to the Board, but the BOA, because it acts on motions, and under Robert's Rules they are drafting their own motions, could technically and theoretically make that motion.

Mr. Howard asked whether there was a record showing that NextEra had made the proper applications to other governing agencies, such as State and County. Mr. Murphy responded that question was brought up in the Floodplain Permit Committee, and the applicant indicated they had reached out to Fish and Wildlife and the Tribes, etc.

#### **PRESENTATION BY THE APPLICANT:**

Jim Roth, Phillips Murrah Law Firm in Oklahoma City, representing the applicant NextEra Energy Transmission Southwest, L.L.C., introduced the appeal and the project. They asked that the Board assess the application solely on its responsiveness to the specific requirements of the City of Norman's ordinance. They ask that the Board approve the application because NEET SW's application satisfied the requirements per the ordinance. The NEET SW team has provided detailed information, supported by extensive analyses, demonstrating that the transmission line is a suitable use in relation to the flood hazard. It will be built to industry standards to withstand floods, to not adversely affect the floodplain, and to meet the requirements of Norman's floodplain ordinance. In developing this application, the NEET SW team communicated with City staff, and are thankful for the original recommendation for approval at the committee meeting and for the four committee votes approving the project, which did constitute a majority, but not sufficient under the ordinance. Other jurisdictions along the route where floodplains are impacted, including Cleveland County and Newcastle, have already issued floodplain permits for the line.

When the Board of Adjustment hears appeals it must make its decision based upon the suitability of the proposed use in relation to the flood hazard (36-533(f)(7)). The Board of Adjustment has the power to reverse or affirm the decision below, wholly or in part, or to modify it, and otherwise can make such decisions as "ought to be made" in conformity with the City of Norman's zoning law and "to that end shall have the powers of an administrative official from whom the appeal is taken." (36-570(d)) This board is not required to give deference to the decision of the committee below.

The NEET SW team will further introduce you to the company, this project, the project's background, routing considerations, floodplain analyses undertaken, and minimal impacts of the project on the floodplain.

Nick Fuhr, NEET SW, introduced the company, the Southwest Power Pool (SPP) and their goals, the project from the Minco substation to the Draper substation, project benefits, and routing considerations.

Leon Staub, Burns McDonnell Engineering Company, Kansas City, Missouri, worked on the floodplain analysis for the transmission line. There were 7 different streams and rivers that had to be crossed. They use standard engineering procedures to quantify for risks. They also make sure the project is going to meet the City's ordinance for development in the floodplain. They must address compensatory storage, and they have to make sure the poles will remain in place. Part of the overall design is to address erosion and sediment control during construction, and to make sure that during a flood event the scour, by water moving around the poles, doesn't erode the foundation.

Jim Roth spoke regarding some of the benefits that will come with this transmission line. He asked that audience members who speak provide their name, address, and relation to the application.

Mr. Bigelow asked for more explanation of the compensatory storage. Mr. Staub explained further.



Mr. Howard asked about maintenance of the compensatory storage areas. Kim Austin, NextEra, responded that no maintenance is required for those areas. The scour analysis determines how the pole has to be specifically put in the foundation to keep scour from causing any additional removal or deposition.

Mr. Bigelow asked the reason for the funny jog in the alignment at 48<sup>th</sup> and Franklin. Mr. McCarty said that is where the OG&E substation is going in.

#### **AUDIENCE PARTICIPATION:**

Sean Rieger, 136 Thompson Drive, is representing many property owners. The letter sent to NextEra by City staff said "The no votes indicated that not enough information was provided by the applicant to properly address the concerns of the property owners whom expressed concern" about various functions. NextEra applied for one permit to do work in all of the flood plains across all of the properties; nothing property specific, nothing soil specific, nothing water flow specific, velocity specific, contour specific. What they've told the City is not what they've told the Court or the property owners. They said the spoils from excavation will be spread in upland areas outside the floodplain, but they have not negotiated that with any of his clients. They told the Courts that they're going to take the property for the construction and installation of "transformers, overhead and underground electrical transmission lines, interconnection facilities, guys, anchors, wires, towers ... and other structures." They also said "The width of the Easement shall not exceed 150 feet in width except in the area of appurtenances (e.g. guy wires), in which case the easement area may be extended up to an additional 50 feet". They only applied for 150 feet but they're going to put guy wires and other facilities beyond the 150 feet. To the Courts they said "the right of vehicular and pedestrian ingress and egress over, across and along the property". Property is a defined term of the entire property. And "routes as shown on the easement tract". They go on and say the "construction and installation of the facilities and the storage of material and equipment during construction of the facilities." Then they say they're going to put in access gates. I've sat in front of the Flood Committee before when they've said that if you're going to put any kind of a fence, you better have a swing gate and significant provisions for that. So which is it? What did they apply for? They tell you they're doing three things. In Court they tell the Court they're going to do a whole host of things. And it's absolutely going to obstruct flood water, absolutely going to obstruct the flow of water through this area. The Floodplain Committee was right in denying this, because they didn't have enough information. NextEra's documents even say that all of their work is preliminary, it's not for construction, not a final sealed document. They don't know what they're building yet. They are way premature in their efforts to do this. They've made a representation that they own all of these properties or have title to them or have ownership rights of some kind to them. That is false. There are multiple properties here, and condemnation is a very specific thing, but you don't actually gain all of those rights. You don't have standing until you have reached a particular point in the process of condemnation. Some of these tracts they have, but not all of them. They have left out significant information across the board on this application. Deny the permit; it's premature. Wait until they have all the properties at the right time, at the right procedure, and then come back to us with real information on what they're going to do on these properties. How are they going to put an access gate up that doesn't flood my client's property when the rain waters come? How are they going to put guy wires out there that don't affect the flood waters when the trees come down with the flood? We request that you deny their permit.

Jake Calvert, 4100 48<sup>th</sup> Avenue N.W., asked if anybody on the Board resides in the areas affected? Has anybody on the Board walked a hay field in rubber boots with a shovel so that water will drain? You can imagine my amusement at an engineering firm out of Kansas City telling me how water runs across my place. A half inch rise in that particular area changes everything. To remove the spoils from the hole is about a 1600 foot trek across an area that is not in their easement to get those spoils back onto my land upland out of the floodplain. This is an SPP approved project, and there is no doubt in my mind that we cannot stop this. What we want is to make sure that we are left whole when the process is over. Per the contract they presented, there will be future leases and sublets. If you talk to the attorneys, we don't have any plans for that now but that temporary road becomes very permanent when you add 5 or 6 telecommunication companies as underbuild, as well as an OG&E underbuild, and whatever else they see fit to lease their poles to. That road changes the water on my place. Fortunately for them, I don't farm hay anymore, but my cows don't like wearing floaties, either. We ask that you postpone this permit until we have a chance to negotiate and settle with them so that we can be made whole on this process.

Don Wilkerson, 4200 E. Indian Hills Road. The engineer said that the poles will be at the edge of the floodplain where at most there will be 1' of water. I have pictures to show you 3 times in the last 20 years that water down there has been 7' deep. They say this is for power lines. In the document I got to go to the Courts, they talk more about the oil lines, gas lines, pipelines, and so forth, so at some point they have plans for doing something else that goes along with those subleases. The engineering reports are not correct.

Richard McKown, 4409 Cannon Drive, representing Raven Investments and West Franklin Sod Farm. I've got a lot of experience working with water, particularly in Norman. I'd like to start off by talking about the issue around vertical rise. It's not really about the displacement by each pole that's being installed; it's really about the clear-cutting of the trees. The land that Raven Investments has represents the mile between Robinson Street to Rock Creek Road between 48<sup>th</sup> and 60<sup>th</sup> and West Franklin Sod has another ¼ mile further to the north all along the stream channel that was channelized in the 1940s. There are mature cottonwood trees all along that route that do multiple things. A tree that size will evapotranspire about 40,000 gallons of water a year. There are probably more than 1,000 trees along 10 Mile Flats. Grass really can't evapotranspire much and it can't do much to slow the flow of water down. Once all of this gets transformed, the concentration and vertical rise at Robinson Street is going to be tremendous, and it's really hard to calculate.

David Box, 522 Colcord Drive, represents OG&E across the state. They condemned approximately 786 miles of transmission line from 2007 to present. NextEra is not telling us what's really happening here. I can't imagine any company as sophisticated as NextEra would come before a committee without physical and legal access rights to the tracts that they're seeking permits for. They have absolutely no rights whatsoever to the Raven Investments property. Through the Court process there is a point in time when you have those rights. They have no rights on his clients' property to seek any permit. I don't know what standing they have to be here on the appeal for any tracts for which they don't have legal access rights. This Board of Adjustment needs to defer this, perhaps indefinitely, until they actually have all the access rights needed to submit for a permit.

Robert Gum, 406 N. Gregory Rd., Tuttle, represents about 20 families on this line. I support what Sean and David have said. I think everyone assumes this is a fait accompli, that it's going to go through. We have challenges filed in the Court that haven't been heard yet to challenge the right of this company to take this by condemnation because they haven't met the precondition of fair and reasonable negotiation prior to the time they tried to take it by condemnation.

Jim Roth thanked the citizens that took time to appear. Sadly, three citizens spoke and you heard as many attorneys. I share that with you because the distinction happening with this floodplain permit is that people in District Court are attempting to contaminate this administrative request with their litigation. We are not doing that. In fact, NextEra has separated those issues so significantly that their condemnation issues in District Court are handled by another attorney, Mark Banner, who is here if you have questions for him. I regret that Mr. Rieger didn't describe the parcels at issue within the quotes that he was comparing the differences, but I want to clarify that, since it felt like we were accused of lying to this Board of Adjustment and we certainly are not. Secondly, we are only seeking what the permit application seeks of you. The allegations of what District Court is contested over is not what we're asking for, nor what we could do legally if we were to obtain your permit. It is those limited purposes. Thirdly, access rights was a condition that the committee had suggested, which we have agreed to, and even added in our appeal to you. We are not asking to go on any private land without permission. We wouldn't do that. I wanted to clarify that point. Also, your ordinance does not require easement in hand before seeking administrative approval to get the permit required ultimately of the project, which is why Cleveland County granted the flood permit, and Newcastle, while there are also condemnation actions within those jurisdictions. Those points I think are important.

Mr. Howard asked for verification on statements made regarding our ordinance and having the easements in hand before or after. Ms. Muckala stated that we expect an applicant to have a legal right to execute the actions with which they are requesting that permit. Before action could be taken on a floodplain permit that was granted, they would have to have it, which is why at the floodplain level it is not uncommon, and it has happened before on other applications, that our Floodplain Permit Committee has conditioned their approval upon the obtaining of proof of that legal access and that legal right. There is a point in eminent domain where you get to move forward with the project even though there may be some legal issues outstanding in the case. That point is the earlier of two things: either a filed journal entry of judgment that completely concludes that case; or a commissioner's report that has been taken from the Court records and then filed in the County land records. With regard to an easement in hand, without the legal right to enter the property, they would not be able to act upon any permit that is given in a legal manner.

Mr. Bigelow asked if the Board's decision would have any impact on the other proceedings; would it give an advantage to one side or the other. Ms. Muckala responded that the proceedings here are entirely separate from the proceedings in District Court. Here today we're referencing the floodplain ordinance in particular which, outside of making sure that they do have the legal right to execute their plans within the floodplain, actually doesn't enter onto the concerns regarding just compensation or any of those matters addressed there.

Mr. Bigelow asked about Mr. Rieger's questions of good faith, whether we have been presented with all of the information as a Board. Ms. Muckala responded that to some extent we do accept all applications on the basis of good faith. There are requirements in the condemnation action to engage in good faith negotiations prior to completing that. That's an issue for the eminent domain that they're addressing. The other part about presenting different facts to Floodplain versus the Court, you are only giving permission for literally what is in this floodplain permit application. If they want to do more, you're not saying yes to that; you're only saying yes or no to whatever is in that application. If they want to do something later, they would have to come seek that separate permission later.

Mr. McCarty asked, in choosing the path of the lines, why not look at less habitable area, like Western and 60<sup>th</sup> all the way to Indian Hills, potentially where there could be a turnpike some day, versus adversely affecting all these landowners. Kim Austin responded routing is hundreds, thousands of different constraints that they're up against: distances, existing utilities (underground, above, overhead), numerous land ownerships and jurisdictions. They try to find a route that is the least impactful path between Point A and Point B. We try to avoid impact to the greatest extent possible across all of these constraints. Where can we find ways to minimize the impacts? And for those impacts that could not be avoided or minimized, how do we mitigate for those impacts? Is that mitigation through various things for the environment, or for landowners, or further negotiations? When we shift the line in routing, it's not as easy as just shifting a pole; every time you make an angle change or a turn, that complicates the engineering behind the pole structure. We try very hard to keep it as linear as we can for the shortest route.

Mr. Bigelow asked what happens if the Board says no. Ms. Muckala responded that our ordinance provides that any decision of the Board can be appealed to District Court.

#### **DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:**

Motion made by Howard, seconded by Worster, to approve the appeal in BOA-2324-3 as presented.

Mr. Worster commented that this application is somewhat unique for the Board. From the right of ownership perspective, if they don't get one they can't build it. They can't starting building it until they have all of the easements.

Voting Yea: Worster, Howard

Voting Nay: Webb, Bigelow, McCarty

The motion to approve the appeal as presented failed by a vote of 2-3.

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

\*

RECESS 6:05 to 6:12 p.m.

Mr. McCarty asked to be allowed to recuse for Item 5, BOA-2324-1, and Item 6, BOA-2324-2.

Motion made by Howard, seconded by Bigelow, to allow Mr. McCarty to recuse for BOA-2324-1 and BOA-2324-2.

Voting Yea: Worster, Webb, Bigelow, Howard, McCarty

- The motion to allow Mr. McCarty to recused passed by a vote of 5-0.

Mr. McCarty vacated his seat.

\*

5. Consideration of Approval, Rejection, Amendment, and/or Postponement of BOA-2324-1:  
Rhonda and David Hermanski request a Variance to 36-514(c)(2)(c) of 4'5" on the west edge of the garage, tapering to 1/2" on the east edge of the garage door, for property located at 2023 Ithaca Drive.

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Application with Attachments
4. Protest Maps and Letters

**PRESENTATION BY STAFF:**

Melissa Navarro reviewed the staff report, a copy of which is filed with the minutes.

**PRESENTATION BY THE APPLICANT:**

Curtis McCarty, C.A. McCarty Construction at 717 26<sup>th</sup> Avenue N.W., presented the project. The subject lot in Section 4 of Hallbrooke Addition shows a platted 15' building line on the north along Burning Tree. The property to the east has a platted 20' building line on the north. The lot is pretty heavily wooded. The protest letters indicate the house is too big for the lot. The house is 2,600 sq. ft., single story, average size for the community. Houses adjacent, both north and east, are both larger in square footage than the one proposed. The lot is 10,794 sq. ft.; the coverage with house and impervious surface area is 44.19%. Mr. Hermanski wanted the house to be architecturally pleasing to both street frontages. He wants to leave as many trees as possible, and the back yard view is important to them.

Mr. Bigelow asked if the garage door extends in front of the storage area in the garage. Mr. McCarty said it does, and the concrete area beyond the garage door is all in compliance.

David Hermanski, currently residing in Dallas, but future resident at 2023 Ithaca Drive. He is from Enid and his wife is from Tulsa; they met at OU. Both of their kids also graduated from OU. They both have elderly parents in Oklahoma, so they are moving back to retire. They are building on a corner lot and it's very important to them that the driveway side on Burning Tree looks like a front elevation from an architectural perspective, with brick and stone. He wanted to be able to meet any neighbors that might be protesting.

Mr. Bigelow asked what kind of cars they drive. Mr. Hermanski responded he drives a Tundra and his wife drives a Mini, so she will be on the short side. They have a dog and walk the neighborhood and use the sidewalks. He doesn't want his neighbors parking across the sidewalk. They won't do that, and keep the cars in the garage.

**AUDIENCE PARTICIPATION:**

Steve Ingels, 2020 Hallbrooke Drive, lives on the corner of Hallbrooke Drive and Burning Tree just to the east of the Hermanski property. It looks like it will be a nice house, and he thinks he would enjoy having them as neighbors. He was really unclear about what was being proposed, and the distinction between setback lines and building lines. His concern was that there be more room for trees on the street side of the house, and that there not be parking across the sidewalk.

**DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:**

Motion made by Webb, seconded by Worster, to approve BOA-2324-1 as presented.

Voting Yea: Worster, Webb, Bigelow, Howard

The motion to approve BOA-2324-1 as presented passed by a vote of 4-0.

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

\*

6. Consideration of Approval, Rejection, Amendment, and/or Postponement of BOA-2324-2: Heather and Mike Beckham request a Variance to 36-514(c)(1) of 5' to the 25' front yard setback for property located at 4415 Bellingham Lane.

**ITEMS SUBMITTED FOR THE RECORD:**

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

**PRESENTATION BY STAFF:**

Melissa Navarro reviewed the staff report, a copy of which is filed with the minutes.

**PRESENTATION BY THE APPLICANT:**

Curtis McCarty, C.A. McCarty Construction at 717 26<sup>th</sup> Avenue N.W., presented the project. This is a corner lot, with a funny shape. The house will be facing the corner (west). They either can't meet the front yard setback or they can't meet the rear yard setback. The house is within the building lines. The driveway meets all the requirements. They are just asking for a variance to the front yard setback from 25' to 20'.

Mr. Bigelow asked if they had to get approval from the HOA. Mr. McCarty responded that they approved it.

**AUDIENCE PARTICIPATION:** None

**DISCUSSION AND ACTION BY THE BOARD OF ADJUSTMENT:**

Motion made by Webb, seconded by Bigelow, to approve BOA-2324-2 as presented.

Voting Yea: Worster, Webb, Bigelow, Howard

The motion to approve BOA-2324-2 as presented passed by a vote of 4-0.

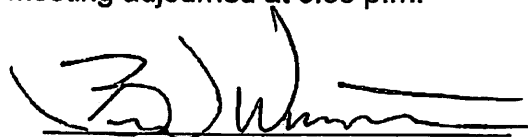
Mr. Howard noted that there is a 10-day appeal period before the decision is final.

\*

**MISCELLANEOUS COMMENTS** - None

**ADJOURNMENT**

There being no further business and no objection, the meeting adjourned at 6:36 p.m.

  
Secretary, Board of Adjustment



## City of Norman

### Floodplain Permit Application

Floodplain Permit No. 684

Building Permit No. \_\_\_\_\_

Date 1/2/2024

#### FLOODPLAIN PERMIT APPLICATION (\$100.00 Application Fee Required)

##### **SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):**

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Occupancy is issued.
5. The permit will expire if no work is commenced within 2 years of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements and must be included with this floodplain permit application.
7. Applicant hereby gives consent to the City of Norman or his/her representative to access the property to make reasonable inspections required to verify compliance.
8. The following floodplain modifications require approval by the City Council:
  - (a) A modification of the floodplain that results in a change of ten percent (10%) or more in the width of the floodplain.
  - (b) The construction of a pond with a water surface area of 5 acres or more.
  - (c) Any modifications of the stream banks or flow line within the area that would be regulatory floodway whether or not that channel has a regulatory floodplain, unless the work is being done by the City of Norman staff as part of a routine maintenance activity.
9. All supporting documentation required by this application is required along with the permit fee by the submittal deadline. Late or incomplete applications will not be accepted.
10. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

##### **SECTION 2: PROPOSED DEVELOPMENT (To be completed by APPLICANT.)**

APPLICANT: NextEra Energy Transmission Southwest, LLC ADDRESS: 700 University Blvd, Juno Beach FL 33408  
TELEPHONE: 561-427-4308 SIGNATURE: [Signature]  
Natalie F. Smith, Assistant Vice President

BUILDER: Brink Constructors, Inc. ADDRESS: 2950 N Plaza Drive, Rapid City, South Dakota 57702  
TELEPHONE: 605-342-6966 SIGNATURE: [Signature]  
Paul L. Lennox, Senior Project Manager

ENGINEER: Burns & McDonnell Engineering Co., Inc. c/o Jacob Crouse ADDRESS: 9400 Ward Parkway, Kansas City, MO 64114  
TELEPHONE: 816-780-2409 SIGNATURE: [Signature]

EXHIBIT

E

tabbles



## PROJECT LOCATION

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, subdivision addition, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well known landmark. A sketch attached to this application showing the project location would be helpful.

Proposed construction of overhead electric transmission line. Within the City of Norman, Oklahoma, the proposed alignment will begin at the west boundary of the city limit (approx. 0.45 miles south of W. Robinson St.) and extend to the north boundary of the City limit (approx 0.15 miles east of 48th Ave NE). See attached figure for proposed alignment through the City of Norman, Oklahoma. A total of 35 overhead electric transmission line poles are proposed to be constructed in Special Flood Hazard Areas (SFHA) within the City of Norman, Oklahoma. See attached table for the coordinates of each of these poles.

## DESCRIPTION OF WORK (Check all applicable boxes):

### A. STRUCTURAL DEVELOPMENT

#### ACTIVITY

#### STRUCTURE TYPE

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> New Structure | <input type="checkbox"/> Residential (1-4 Family)  |
| <input type="checkbox"/> Addition                 | <input type="checkbox"/> Residential (More than 4 Family)  |
| <input type="checkbox"/> Alteration               | <input checked="" type="checkbox"/> Non-Residential (Flood proofing? <input type="checkbox"/> Yes) |
| <input type="checkbox"/> Relocation               | <input type="checkbox"/> Combined Use (Residential & Commercial)                                   |
| <input type="checkbox"/> Demolition               | <input type="checkbox"/> Manufactured (Mobile) Home  |
| <input type="checkbox"/> Replacement              | <input type="checkbox"/> In Manufactured Home Park? <input type="checkbox"/> Yes                   |

ESTIMATED COST OF PROJECT \$ 7.9 million Work that involves substantial damage/substantial improvement requires detailed cost estimates and an appraisal of the structure that is being improved.

### B. OTHER DEVELOPMENT ACTIVITIES:

- |  |                                 |   |                                  |  |
|--|---------------------------------|---|----------------------------------|--|
| <input checked="" type="checkbox"/> Fill   | <input type="checkbox"/> Mining | <input type="checkbox"/> Drilling                         | <input type="checkbox"/> Grading |  |
| <input type="checkbox"/> Excavation (Beyond the minimum for Structural Development)            |                                 |   |                                  |  |
| <input type="checkbox"/> Watercourse Alteration (Including Dredging and Channel Modifications) |                                 |   |                                  |  |
| <input type="checkbox"/> Drainage Improvements (Including Culvert Work)                        |                                 |   |                                  | <input type="checkbox"/> Road, Street or Bridge Construction |
| <input type="checkbox"/> Subdivision (New or Expansion)  |                                 | <input type="checkbox"/> Individual Water or Sewer System |                                  |  |

In addition to items A. and B. provide a complete and detailed description of proposed work (failure to provide this item will be cause for the application to be rejected by staff). Attach additional sheets if necessary.

Tree clearing within the right-of-way along with temporary access road construction consisting of drive and crush access roads or installation of construction mats. Sediment controls will be installed as needed. Installation of overhead electric transmission poles. Pole foundations are engineered based on the size of the pole and the soil conditions encountered. Please refer to the plan & profile drawings (MPV-00101sh21-25 - PVD00101sh1-6) in Attachment 2 and foundations schedules (MNC-FND-001sh01 - MNC-FND-004sh02) for foundation diameter, depth and backfill material in Attachments 4 and 5.

**C. ATTACHMENTS WHICH ARE REQUIRED WITH EVERY APPLICATION:**

The applicant must submit the documents listed below before the application can be processed. If the requested document is not relevant to the project scope, please check the Not Applicable box and provide explanation.

- A. Plans drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the regulatory flood-protection elevation.
- B. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high-water information.

☐ Not Applicable:

See attached plan and profile.

---

- C. Subdivision or other development plans (If the subdivision or other developments exceeds 50 lots or 5 acres, whichever is the lesser, the applicant **must** provide 100-year flood elevations if they are not otherwise available).

☒ Not Applicable:

Project does not involve a subdivision or other development.

---

- D. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types and other pertinent information.

☐ Not Applicable:

See attached plan and profile.

---

- E. A profile showing the slope of the bottom of the channel or flow line of the stream.

☐ Not Applicable:

See attached plan and profile.

---

- F. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures.

☒ Not Applicable:

No occupiable structures are proposed as part of this project.

---

- G. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

☒ Not Applicable:

No watercourse or natural drainage will be altered or relocated as a result of this project.

---

- H. For proposed development within any flood hazard area (except for those areas designated as regulatory floodways), certification that a rise of no more than five hundredths of a foot (0.05') will occur on any adjacent property in the base flood elevation as a result of the proposed work. For proposed development within a designated regulatory floodway, certification of no increase in flood levels within the community during the occurrence of the base flood discharge as a result of the proposed work. All certifications shall be signed and sealed by a Registered Professional Engineer licensed to practice in the State of Oklahoma.
- I. A certified list of names and addresses of all record property owners within a three hundred fifty (350) foot radius of the exterior boundary of the subject property not to exceed 100 feet laterally from the Special Flood Hazard Area. The radius to be extended by increments of one hundred (100) linear feet until the list of property owners includes not less than fifteen (15) individual property owners of separate parcels or until a maximum radius of one thousand (1,000) feet has been reached.
- J. A copy of all other applicable local, state, and federal permits (i.e. U.S. Army Corps of Engineers 404 permit, etc).

After completing SECTION 2, APPLICANT should submit form to Permit Staff for review.

**SECTION 3: FLOODPLAIN DETERMINATION (To be completed by Permit Staff.)**

The proposed development is located on FIRM Panel No.: X, Dated: \_\_\_\_\_

The Proposed Development:

☐ Is NOT located in a Special Flood Hazard Area  
(Notify the applicant that the application review is complete and NO FLOODPLAIN PERMIT IS REQUIRED).

☒ Is located in a Special Flood Hazard Area.

☒ The proposed development is located in a floodway.

☐ 100-Year flood elevation at the site is \_\_\_\_\_ Ft. NGVD (MSL) ☐ Unavailable

See Section 4 for additional instructions.

SIGNED: \_\_\_\_\_

DATE: 12/14/2023

\* see attachment 3 of application for each pole location and respective floodplain information

**SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by Permit Staff.)**

The applicant must also submit the documents checked below before the application can be processed.

- ☐ Flood proofing protection level (non-residential only) \_\_\_\_\_ Ft. NGVD (MSL). For flood proofed structures applicant must attach certification from registered engineer.
- ☐ Certification from a registered engineer that the proposed activity in a regulatory floodway will not result in any increase in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.
- ☐ Certification from a registered engineer that the proposed activity in a regulatory flood plain will result in an increase of no more than 0.05 feet in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.
- ☐ All other applicable federal, state, and local permits have been obtained.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 5: PERMIT DETERMINATION (To be completed by Floodplain Chairman.)**

The proposed activity: (A) ☐ **Is**; (B) ☐ **Is Not** in conformance with provisions of Norman's City Code Chapter 22, Section 429.1. The permit is issued subject to the conditions attached to and made part of this permit.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

If **BOX A** is checked, the Floodplain committee chairman may issue a Floodplain Permit.

If **BOX B** is checked, the Floodplain committee chairman will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Floodplain committee or may request a hearing from the Board of Adjustment.

APPEALS: Appealed to Board of Adjustment: ☐ Yes ☐ No  
Hearing date: \_\_\_\_\_

Board of Adjustment Decision - Approved: ☐ Yes ☐ No

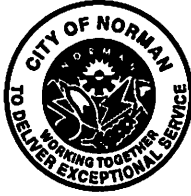
Conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 6: AS-BUILT ELEVATIONS (To be submitted by APPLICANT before Certificate of Occupancy is issued.)**

1. FEMA Elevation Certificate  
and/or
2. FEMA Floodproofing Certificate

**NOTE:** The completed certificate will be reviewed by staff for completeness and accuracy. If any deficiencies are found it will be returned to the applicant for revision. A Certificate of Occupancy for the structure will not be issued until an Elevation and /or Floodproofing Certificate has been accepted by the City.



## CITY OF NORMAN, OK

### FLOODPLAIN PERMIT COMMITTEE MEETING

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

Tuesday, January 2, 2024 at 3:30 PM

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## MINUTES

### ROLL CALL

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

### MINUTES

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

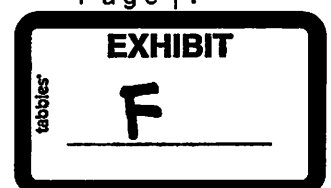
Mr. Sturtz called for a motion to approve the minutes from the meeting of November 6, 2023. The motion was made by Ms. Stansel and seconded by Mr. Scanlon. The minutes were approved 7-0.

### ACTION ITEMS

2. Floodplain Permit No. 684

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The committee voted to approve the application 5-2.

### **MISCELLANEOUS COMMENTS**

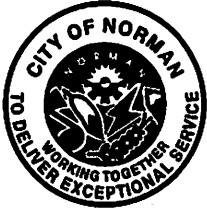
Ms. Hoggatt asked about the next meeting and Mr. Murphy said there is 1 application for the January 16<sup>th</sup> meeting. Ms. Hoggatt asked if the meeting would also be on a Tuesday and Mr. Murphy confirmed.

### **ADJOURNMENT**

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

Passed and approved this \_\_\_\_\_ day of \_\_\_\_\_, 2024

\_\_\_\_\_  
City of Norman Floodplain Administrator, Scott Sturtz



**CITY OF NORMAN, OK**  
**FLOODPLAIN PERMIT COMMITTEE MEETING**  
Development Center, Room B, 225 N. Webster Ave., Norman, OK 73069  
Tuesday, January 02, 2024 at 3:30 PM

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## AGENDA

*It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, relation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.*

### ROLL CALL

### MINUTES

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

### ACTION ITEMS

2. **Floodplain Permit Application No. 684** - This permit application is for the proposed installation of an electric transmission line across Norman through the Canadian River, Ten-Mile Flat Creek and Little River floodplains.

### MISCELLANEOUS COMMENTS

### ADJOURNMENT







## City of Norman

### Floodplain Permit Application

Floodplain Permit No. 684

Building Permit No. \_\_\_\_\_

Date 1/2/2024

#### FLOODPLAIN PERMIT APPLICATION (\$100.00 Application Fee Required)

##### **SECTION 1: GENERAL PROVISIONS (APPLICANT to read and sign):**

1. No work may start until a permit is issued.
2. The permit may be revoked if any false statements are made herein.
3. If revoked, all work must cease until permit is re-issued.
4. Development shall not be used or occupied until a Certificate of Occupancy is issued.
5. The permit will expire if no work is commenced within 2 years of issuance.
6. Applicant is hereby informed that other permits may be required to fulfill local, state and federal regulatory requirements and must be included with this floodplain permit application.
7. Applicant hereby gives consent to the City of Norman or his/her representative to access the property to make reasonable inspections required to verify compliance.
8. The following floodplain modifications require approval by the City Council:
  - (a) A modification of the floodplain that results in a change of ten percent (10%) or more in the width of the floodplain.
  - (b) The construction of a pond with a water surface area of 5 acres or more.
  - (c) Any modifications of the stream banks or flow line within the area that would be regulatory floodway whether or not that channel has a regulatory floodplain, unless the work is being done by the City of Norman staff as part of a routine maintenance activity.
9. All supporting documentation required by this application is required along with the permit fee by the submittal deadline. Late or incomplete applications will not be accepted.
10. I, THE APPLICANT, CERTIFY THAT ALL STATEMENTS HEREIN AND IN ATTACHMENTS TO THIS APPLICATION ARE, TO THE BEST OF MY KNOWLEDGE, TRUE AND ACCURATE.

##### **SECTION 2: PROPOSED DEVELOPMENT (To be completed by APPLICANT.)**

APPLICANT: NextEra Energy Transmission Southwest, LLC ADDRESS: 700 University Blvd, Juno Beach FL 33408  
TELEPHONE: 561-427-4308 SIGNATURE: [Signature]  
Natalie F. Smith, Assistant Vice President

BUILDER: Brink Constructors, Inc. ADDRESS: 2950 N Plaza Drive, Rapid City, South Dakota 57702  
TELEPHONE: 605-342-69 66 SIGNATURE: [Signature]  
Paul L. Lennox, Senior Project Manager

NextEra added Builder information.

ENGINEER: Burns & McDonnell Engineering Co., Inc. c/o Jacob Clouse ADDRESS: 9400 Ward Parkway, Kansas City, MO 64114  
TELEPHONE: 816- 882 408 SIGNATURE: [Signature]

EXHIBIT

H

tabbies



## PROJECT LOCATION

To avoid delay in processing the application, please provide enough information to easily identify the project location. Provide the street address, subdivision addition, lot number or legal description (attach) and, outside urban areas, the distance to the nearest intersecting road or well known landmark. A sketch attached to this application showing the project location would be helpful.

Proposed construction of overhead electric transmission line. Within the City of Norman, Oklahoma, the proposed alignment will begin at the west boundary of the city limit (approx. 0.45 miles south of W. Robinson St.) and extend to the north boundary of the City limit (approx 0.15 miles east of 48th Ave NE). See attached figure for proposed alignment through the City of Norman, Oklahoma. A total of 35 overhead electric transmission line poles are proposed to be constructed in Special Flood Hazard Areas (SFHA) within the City of Norman, Oklahoma. See attached table for the coordinates of each of these poles.

In the previous application the word was "structures" instead of "poles".

DESCRIPTION OF WORK (Check all applicable boxes):

### A. STRUCTURAL DEVELOPMENT

#### ACTIVITY

#### STRUCTURE TYPE

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> New Structure | <input type="checkbox"/> Residential (1-4 Family)  |
| <input type="checkbox"/> Addition                 | <input type="checkbox"/> Residential (More than 4 Family)  |
| <input type="checkbox"/> Alteration               | <input checked="" type="checkbox"/> Non-Residential (Flood proofing? <input type="checkbox"/> Yes) |
| <input type="checkbox"/> Relocation               | <input type="checkbox"/> Combined Use (Residential & Commercial)                                   |
| <input type="checkbox"/> Demolition               | <input type="checkbox"/> Manufactured (Mobile) Home  |
| <input type="checkbox"/> Replacement              | <input type="checkbox"/> In Manufactured Home Park? <input type="checkbox"/> Yes                   |

ESTIMATED COST OF PROJECT \$ 7.9 million Work that involves substantial damage/substantial improvement requires detailed cost estimates and an appraisal of the structure that is being improved.

### B. OTHER DEVELOPMENT ACTIVITIES:

- |  |                                 |  |                                  |
|--|---------------------------------|--|----------------------------------|
| <input checked="" type="checkbox"/> Fill   | <input type="checkbox"/> Mining | <input type="checkbox"/> Drilling                            | <input type="checkbox"/> Grading |
| <input type="checkbox"/> Excavation (Beyond the minimum for Structural Development)            |                                 |  |                                  |
| <input type="checkbox"/> Watercourse Alteration (Including Dredging and Channel Modifications) |                                 |  |                                  |
| <input type="checkbox"/> Drainage Improvements (Including Culvert Work)                        |                                 | <input type="checkbox"/> Road, Street or Bridge Construction |                                  |
| <input type="checkbox"/> Subdivision (New or Expansion)  |                                 | <input type="checkbox"/> Individual Water or Sewer System    |                                  |

In addition to items A. and B. provide a complete and detailed description of proposed work (failure to provide this item will be cause for the application to be rejected by staff). Attach additional sheets if necessary.

Tree clearing within the right-of-way along with temporary access road construction consisting of drive and crush access roads or installation of construction mats. Sediment controls will be installed as needed. Installation of overhead electric transmission poles. Pole foundations are engineered based on the size of the pole and the soil conditions encountered. Please refer to the plan & profile drawings (MPV-00101sh21-25 - PVD00101sh1-6) in Attachment 2 and foundations schedules (MNC-FND-001sh01 - MNC-FND-004sh02) for foundation diameter, depth and backfill material in Attachments 4 and 5.

NextEra removed the reference to the width of the right-of-way and refers to "construction" mats rather than "crane" mats. NextEra uses the term "pole" in place of "structures". Lastly, the first application refers to "Attachment 2" and the second application refers to "Attachments 4 and 5".



**C. ATTACHMENTS WHICH ARE REQUIRED WITH EVERY APPLICATION:**

The applicant must submit the documents listed below before the application can be processed. If the requested document is not relevant to the project scope, please check the Not Applicable box and provide explanation.

- A. Plans drawn to scale showing the nature, location, dimensions, and elevation of the lot, existing or proposed structures, fill, storage of materials, flood proofing measures, and the relationship of the above to the location of the channel, floodway, and the regulatory flood-protection elevation.

- B. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, cross-sectional areas to be occupied by the proposed development, and high-water information.

The first application referred to  
Attachment 2 in Sections B, D, and E.

☐ Not Applicable:

See attached plan and profile.

- C. Subdivision or other development plans (If the subdivision or other developments exceeds 50 lots or 5 acres, whichever is the lesser, the applicant must provide 100-year flood elevations if they are not otherwise available).

☒ Not Applicable:

Project does not involve a subdivision or other development.

- D. Plans (surface view) showing elevations or contours of the ground; pertinent structure, fill, or storage elevations; size, location, and spatial arrangement of all proposed and existing structures on the site; location and elevations of streets, water supply, sanitary facilities; photographs showing existing land uses and vegetation upstream and downstream, soil types and other pertinent information.

☐ Not Applicable:

See attached plan and profile.

- E. A profile showing the slope of the bottom of the channel or flow line of the stream.

☐ Not Applicable:

See attached plan and profile.

- F. Elevation (in relation to mean sea level) of the lowest floor (including basement) of all new and substantially improved structures.

☒ Not Applicable:

No occupiable structures are proposed as part of this project.

- G. Description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development.

☒ Not Applicable:

No watercourse or natural drainage will be altered or relocated as a result of this project.



- H. For proposed development within any flood hazard area (except for those areas designated as regulatory floodways), certification that a rise of no more than five hundredths of a foot (0.05') will occur on any adjacent property in the base flood elevation as a result of the proposed work. For proposed development within a designated regulatory floodway, certification of no increase in flood levels within the community during the occurrence of the base flood discharge as a result of the proposed work. All certifications shall be signed and sealed by a Registered Professional Engineer licensed to practice in the State of Oklahoma.
- I. A certified list of names and addresses of all record property owners within a three hundred fifty (350) foot radius of the exterior boundary of the subject property not to exceed 100 feet laterally from the Special Flood Hazard Area. The radius to be extended by increments of one hundred (100) linear feet until the list of property owners includes not less than fifteen (15) individual property owners of separate parcels or until a maximum radius of one thousand (1,000) feet has been reached.
- J. A copy of all other applicable local, state, and federal permits (i.e. U.S. Army Corps of Engineers 404 permit, etc).

After completing SECTION 2, APPLICANT should submit form to Permit Staff for review.

**SECTION 3: FLOODPLAIN DETERMINATION (To be completed by Permit Staff.)**

The proposed development is located on FIRM Panel No.: X, Dated:

The Proposed Development:

The first application included the word "varies" in these spaces.

☐ Is NOT located in a Special Flood Hazard Area  
(Notify the applicant that the application review is complete and NO FLOODPLAIN PERMIT IS REQUIRED).

☒ Is located in a Special Flood Hazard Area.

☒ The proposed development is located in a floodway.

This box was not previously marked.

☐ 100-Year flood elevation at the site is \_\_\_\_\_ Ft. NGVD (MSL) ☐ Unavailable

See Section 4 for additional instructions.

SIGNED: [Signature]

DATE: 12/14/2023

\* see attachment 3 of application for each pole location and respective floodplain information

The first application referred to a "location list with WSEL values".

**SECTION 4: ADDITIONAL INFORMATION REQUIRED (To be completed by Permit Staff.)**

The applicant must also submit the documents checked below before the application can be processed.

☐ Flood proofing protection level (non-residential only) \_\_\_\_\_ Ft. NGVD (MSL). For flood proofed structures applicant must attach certification from registered engineer.

☐ Certification from a registered engineer that the proposed activity in a regulatory floodway will not result in any increase in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.

These boxes were  
previously marked

☐ Certification from a registered engineer that the proposed activity in a regulatory flood plain will result in an increase of no more than 0.05 feet in the height of the 100-year flood (Base Flood Elevation). A copy of all data and calculations supporting this finding must also be submitted.

☐ All other applicable federal, state, and local permits have been obtained.

Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 5: PERMIT DETERMINATION (To be completed by Floodplain Chairman.)**

The proposed activity: (A) ☐ **Is**; (B) ☐ **Is Not** in conformance with provisions of Norman's City Code Chapter 22, Section 429.1. The permit is issued subject to the conditions attached to and made part of this permit.

SIGNED: \_\_\_\_\_ DATE: \_\_\_\_\_

If BOX A is checked, the Floodplain committee chairman may issue a Floodplain Permit.

If BOX B is checked, the Floodplain committee chairman will provide a written summary of deficiencies. Applicant may revise and resubmit an application to the Floodplain committee or may request a hearing from the Board of Adjustment.

APPEALS: Appealed to Board of Adjustment: ☐ Yes ☐ No  
Hearing date: \_\_\_\_\_

Board of Adjustment Decision - Approved: ☐ Yes ☐ No

Conditions:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**SECTION 6: AS-BUILT ELEVATIONS (To be submitted by APPLICANT before Certificate of Occupancy is issued.)**

1. FEMA Elevation Certificate  
and/or
2. FEMA Floodproofing Certificate

**NOTE:** The completed certificate will be reviewed by staff for completeness and accuracy. If any deficiencies are found it will be returned to the applicant for revision. A Certificate of Occupancy for the structure will not be issued until an Elevation and /or Floodproofing Certificate has been accepted by the City.