

**THE CITY OF NORMAN BOARD OF ADJUSTMENT**

RAVEN INVESTMENTS, LLC,	)	
	)	
Appellant,	)	
	)	
v.	)	BOA Case No.
	)	
CITY OF NORMAN FLOODPLAIN	)	
PERMIT COMMITTEE,	)	
	)	
Appellee,	)	
	)	
and	)	
	)	
NEXTERA ENERGY TRANSMISSION	)	
SOUTHWEST, LLC,	)	
	)	
Permit Applicant.	)	

**PERMIT APPLICANT AND PERMIT HOLDER NEXTERA ENERGY TRANSMISSION  
SOUTHWEST, LLC’S RESPONSE IN OPPOSITION TO APPELLANT RAVEN  
INVESTMENTS, LLC’S APPEAL OF THE CITY OF NORMAN FLOODPLAIN  
PERMIT COMMITTEE’S APPROVAL OF PERMIT NO. 684 AND PERMIT NO. 685**

Permit applicant and permit holder, NextEra Energy Transmission Southwest, LLC (“NEET SW”), submits this Response in Opposition to Appellant Raven Investments, LLC’s (“Appellant”) Appeal of the City of Norman Floodplain Permit Committee’s approval of Permit Nos. 684 and 685. In support, NEET SW states as follows:

**I. INTRODUCTION**

The Floodplain Permit Committee’s decision should be affirmed because: (1) NEET SW has legal access to all parcels subject to its Floodplain Permit (though such access is not a prerequisite to submitting a Floodplain Permit Application), and NEET SW obtaining this access amounted to a substantial and material change affecting the subject properties and thus authorized the Floodplain Permit Committee to accept and approve the New Floodplain Permit Application; (2) NEET SW enjoys present and unqualified access to Appellant’s Properties; (3) Appellant’s

appeal is an abuse of the City's floodplain appeal process because it has nothing to do with floodplain management and instead Appellant is using the appeal as a bargaining chip in unrelated condemnation proceedings; (4) the Floodplain Permit Committee acted within its authority when it assigned two permit numbers to NEET SW's New Floodplain Permit Application; and (5) the Floodplain Permit Committee complied with Oklahoma's Open Meeting Act.

As set forth in detail below, Appellant's actions amount to an abuse of the City's floodplain appeal process, wasting the City's time and resources. This appeal has nothing to do with floodplain management and everything to do with maximizing Appellant's bargaining position in completely unrelated Condemnation Proceedings. Accordingly, this appeal should be rejected.

## **II. FACTUAL BACKGROUND**

1. NEET SW seeks a Floodplain Permit as part of its planned construction of a new 345 kV transmission line in central Oklahoma between the Minco, Pleasant Valley, and Draper substations running through Grady, McClain, and Cleveland Counties (the "Transmission Line Project").

2. NEET SW's Transmission Line Project will increase electric reliability in central Oklahoma, reduce electric transmission congestion, defer electric reliability upgrades, lower costs for electric customers, and move energy from western Oklahoma to the higher population areas in central Oklahoma, including the City of Norman.

3. NEET SW is building the Transmission Line Project on behalf of the Southwest Power Pool ("SPP"), the regional transmission organization that oversees the operation of Oklahoma's electric grid.

4. In April 2023, NEET SW initiated the proper legal actions to obtain legal access to and possession of certain portions of privately owned parcels of land crossed by the Transmission

Line Project (the “Condemnation Proceedings”), including the parcels owned by Appellant (“Appellant’s Properties”).

5. In July 2023, the Court in the Condemnation Proceedings against Appellant appointed Commissioners to inspect Appellant’s Properties and determine the damage Appellant may sustain as a result of the taking of a right-of-way easement for the construction of the Transmission Line Project.

6. In July 2023, NEET SW submitted a Floodplain Permit Application for the portion of the Transmission Line Project that will cross the Canadian River, Ten-Mile Flat Creek, and Little River floodplains, including unnamed streams, in the City of Norman (the “July 2023 Floodplain Permit Application”).

7. The Transmission Line Project’s path in the City of Norman begins at the western boundary of the City of Norman near W. Robinson Street and extends to the northern boundary approximately 0.15 miles east of 48th Avenue N.E. Infrastructure within the floodplain includes 35 overhead electric transmission poles and temporary access roads.

8. On July 17, 2023, the July 2023 Floodplain Permit Application received four votes of approval from the Floodplain Permit Committee, failing to obtain the super majority (five votes) required for a permit to be granted despite the Staff Report’s recommendation for approval.

9. On August 21, 2023, Appellant Raven Investments, LLC requested, and the Floodplain Permit Committee granted, Permit No. 678 for construction of a sewer extension and manhole in the Little River floodplain near the intersection of 36th Ave. NW and Franklin Road, one of Appellant’s Properties that will be crossed by the Transmission Line Project. NEET SW did not object to Appellant’s Floodplain Permit.

10. On August 23, 2023, NEET SW's July 2023 Floodplain Permit Application was denied by the Board of Adjustment by a vote of two to three. The City of Norman has subsequently stated the July 2023 Floodplain Permit Application was "denied by the committee on the basis of concerns related to right of access to private property." *See Floodplain Permit Committee Meeting Minutes from January 2, 2024, at p. 2, attached as Exhibit 1.*

11. Subsequently, NEET SW appealed the Board of Adjustment decision to the district court to preserve its right to challenge the denial.

12. NEET SW continued to pursue legal access to the relevant parcels of land via the Condemnation Proceedings, including Appellant's Properties, to ensure just compensation to the landowners and timely prosecution of the construction plans.

13. On September 1, 2023, the Report of Commissioners was filed with the district court, estimating the just compensation due to Appellant in the amount of \$2,470,000.00. *See Report of Commissioners, attached as Exhibit 2.*

14. On September 5, 2023, Appellant Raven Investments, LLC requested, and the Floodplain Permit Committee granted, Permit No. 681 for the construction of a road across the Little River floodplain between 36th Ave. NW and 48th Ave. NW and between Franklin Road and Indian Hills Road, one of Appellant's Properties that will be crossed by the Transmission Line Project. NEET SW did not object to Appellant's Floodplain Permit.

15. On September 11, 2023, Appellant filed a demand for jury trial in the Condemnation Proceedings against it in order to challenge the amount of compensation awarded to it by the assigned Commissioners. Appellant did not and can no longer challenge NEET SW's authority to exercise eminent domain, meaning NEET SW now has unqualified access to Appellant's Property. *See Demand for Jury Trial, attached as Exhibit 3.*

16. On October 16, 2023, Appellant requested and received the disbursement of the Commissioners' Award, in the amount of \$2,470,000.00. *See* Application and Order Disbursing Commissioners' Award, attached as Exhibit 4. NEET SW did not object to Appellant's request.

17. NEET SW and Appellant continue to negotiate the just compensation for NEET SW's easement on Appellant's Properties, with Appellant requesting more than the \$2,470,000.00 it has already received as a result of the Commissioners' Award.

18. On December 13, 2023, NEET SW submitted a new Floodplain Permit Application to the Floodplain Permit Committee including the substantial changes to NEET SW's legal access to the relevant parcels of land (the "New Floodplain Permit Application"). *See* New Floodplain Permit Application, at p. 7 and Attachment "E".<sup>1</sup>

19. At the January 2, 2024 Floodplain Permit Committee Meeting, counsel for Appellant "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." *See* Ex. 1. at p. 5.

20. Upon consideration of the relevant factors set out in the Flood Hazard District Ordinance and all materials and information presented on January 2, 2024, a supermajority of the Floodplain Permit Committee voted to approve NEET SW's New Floodplain Permit Application, as modified by the Staff recommendation. *See* Ex. 1, at p. 7.

21. On January 15, 2024, prior to filing this appeal, Appellant offered to refrain from filing this appeal should NEET SW pay Appellant \$8,800,000.00 in settlement of the Condemnation Proceedings – significantly more than the \$2,470,000.00 Appellant was awarded by the appointed Commissioners.

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<sup>1</sup> In the interest of efficiency, the New Floodplain Permit Application is not attached to this Response as an exhibit, as it is 611 pages and already part of the Record of materials that were before the Floodplain Permit Committee on January 2, 2024.

### III. ARGUMENT AND AUTHORITIES

Appellant challenges the validity of the Floodplain Permit Committee granting the New Floodplain Permit Application arguing that: (1) NEET SW lacks standing to request a floodplain permit; (2) The Floodplain Permit Committee violated the Flood Hazard District Ordinance and Open Meeting Act; and (3) NEET SW's appeal of the Board of Adjustment's denial of the July 2023 Floodplain Permit Application stays these proceedings.

The Floodplain Permit Committee's decision should be affirmed because: (1) NEET SW has legal access to all parcels subject to its Floodplain Permit (though such access is not a prerequisite to submitting a Floodplain Permit Application), and NEET SW obtaining this access amounted to a substantial and material change affecting the subject properties and thus authorized the Floodplain Permit Committee to accept and approve the New Floodplain Permit Application; (2) NEET SW enjoys present and unqualified access to Appellant's Properties; (3) Appellant's appeal is an abuse of the City's floodplain appeal process because it has nothing to do with floodplain management and instead Appellant is using the appeal as a bargaining chip in unrelated condemnation proceedings; (4) the Floodplain Permit Committee acted within its authority when it assigned two permit numbers to NEET SW's New Floodplain Permit Application; and (5) the Floodplain Permit Committee complied with Oklahoma's Open Meeting Act.

**a. NEET SW's New Floodplain Permit Application was properly submitted and approved after substantial and material changes affecting the subject properties.**

Appellant argues that NEET SW's district court appeal of the July 2023 Floodplain Permit Application stays NEET SW's New Floodplain Permit Application. Appellant is incorrect, as NEET SW's New Floodplain Permit Application was filed after a substantial change from the July

2023 Floodplain Permit Application and its related proceedings.<sup>2</sup> It is common practice for local zoning officials to consider a second application after an initial denial where circumstances have substantially changed. *See* 3 Rathkopf's The Law of Zoning & Planning, § 57:73 (4th Ed.) (Apr. 2023) ("After an application for a variance or a special permit has been denied, the board may consider a new application with respect to the same property, and even for the same relief, if either the plans submitted or the conditions affecting the property have substantially changed"); *see e.g. Rosedale-Skinker Imp. Ass'n v. Bd. of Adjustment of City of St. Louis*, 425 S.W.2d 929 (Mo. 1968) (affirming board of adjustment had authority to grant a second hearing on a building permit application where the second application was based on the acquisition of additional property to resolve initial concerns regarding sufficient parking); *Rocchi v. Zoning Bd. of Appeals*, 248 A.2d 922 (Conn. 1968) (granting second application after initial denial where access road was revised in second plan, resolving adjacent landowner concerns); *Fiscal Ct. of Jefferson Cty. v. Ogden*, 556 S.W.2d 899 (Ky. App 1977) (overruled on other grounds in *Kaelin v. City of Louisville*, 643 S.W.2d 590 (Ky. 1982)) (affirming city had authority to accept second application after substantial change in circumstances, which was the adoption of a comprehensive plan); *Bentley v. Valco, Inc.*, 741 P.2d 1266 (Colo. Ct. App., Div III 1987) (substantial changes in second application included applicant's other required permits granted; second application was granted with conditions based upon obtaining the other required permits); *Grasso v. Zoning Bd. of Appeals of Groton Long Point*

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<sup>2</sup> Appellant provided an Exhibit H to its Appeal in support of its proposition that "the application language for Permit 684 [the New Floodplain Permit Application] is nearly the exact same as Permit 675 [the July 2023 Floodplain Permit Application] and the information submitted should have been submitted with the application for Permit 675 [the July 2023 Floodplain Permit Application]. This assertion fails to acknowledge that the substantial change regarded NEET SW's access to the subject properties and not the impact the Transmission Line Project would have on the floodplain. Appellant ignores (and apparently misunderstands) the fact that NEET SW now has legal access to all parcels subject to its Floodplain Permit, constituting a substantial change from the July 2023 Floodplain Permit Application to the New Floodplain Permit Application.

*Ass’n*, 794 A.2d 1016 (Conn. App. Ct. 2002) (explaining the board of adjustment may grant a permit based on a second application that “bring[s] a prior application into compliance with applicable regulations[.]”).

Moreover, ongoing collateral proceedings in district court do not prevent a municipality from considering a new request for development permission when a substantial change has occurred. *See* 4 Rathkopf’s *The Law of Zoning and Planning* §§ 68:9, 15 (4th ed.) (citing cases). A change in circumstances may be deemed particularly substantial where, as here, the change is directly related to the reason for the previous denial. *Id.* (noting courts that have “held that the change in circumstances must be a change in the particular circumstances that induced the prior denial”). The municipal board need not wait for a district court to determine if a substantial change has occurred. 4 Rathkopf’s *The Law of Zoning and Planning* § 68:10 (4th ed.) (“it is up to the board to determine” whether principles of res judicata prevent the filing of a new application). A zoning board’s ability to determine if a substantial change has occurred aligns with common sense, given it would be wasteful to require an applicant and zoning officials to litigate the denial of a previous permit application when the reasons for the denial no longer exist.

NEET SW’s July 2023 Floodplain Permit Application was denied based on the Floodplain Permit Committee’s (and the Board of Adjustment’s) concerns that NEET SW lacked access to the subject parcels. This is so even though Norman’s Flood Hazard District Ordinance does not list present property access as a condition precedent for receipt of a permit. In any case, since the denial of the July 2023 Floodplain Permit Application, NEET SW secured easements with private and public landowners across *all* parcels within Norman’s floodplains. *See* Attachment 6 to NEET SW’s New Floodplain Permit Application. As described below, with the acquisition of the



easements, NEET SW secured legal right to access the land and construct the Project. 66 O.S. §§ 53, 55.

Notably, easements for some of the tracts in the Norman floodplain were acquired through NEET SW's exercise of eminent domain, as the company has the right of eminent domain under Oklahoma law. *See, e.g.,* 27 Okla. Stat. § 7(A) (granting the power of eminent domain to companies who furnish electricity for public use). The statute that prescribes the process for eminent domain, 66 O.S. § 53, provides that the county district court, upon petition, will appoint three disinterested freeholders of the county to be commissioners to determine the just compensation for the taking of the easement. Those commissioners inspect the property and file with the district court a report stating the amount of just compensation for the easement. *Id.* The statute further provides that those Commissioner Reports can then be recorded in the land records of the county. *Id.* Copies of the recorded Commissioner Reports for the tracts in the Norman floodplain are included within Attachment 6 of the New Floodplain Permit Application. Upon payment of the amount of just compensation in each of the Commissioner Reports to the district court clerk, NEET SW, as the condemning party, is allowed to take possession of (i.e., access) the easements and begin construction. 66 O.S. § 53(C); *see State ex rel. Dept. of Transp. v. Cole*, 2009 OK 40, ¶ 11, 236 P.3d 49, 52 (“Upon the payment of the amount assessed by the commissioners, the taking occurs, and the condemnor is entitled to enter upon the land.” (internal citations omitted)). NEET SW deposited with the clerk of the district court the amount in the Commissioner Reports for each of the tracts in the Norman floodplain where eminent domain was exercised. As a result, NEET SW obtained access to all parcels. Given the July 2023 Floodplain Permit Application was denied due to NEET SW's purported lack of access, NEET SW obtaining access

to all parcels amounted to a substantial change, thereby allowing NEET SW to file a new application.

Two ways a condemnee may challenge aspects of a condemnation proceeding include: (1) a challenge to the amount of just compensation and (2) a challenge to the condemnor's underlying use of eminent domain. *See* 66 O.S. § 55 (distinguishing a demand for a jury trial to challenge the amount of compensation from written exceptions to challenge the underlying validity of the taking). Notably, a challenge to the amount of just compensation, alone, ultimately will not impact the condemnor's authority to use eminent domain or its right of legal access upon depositing the Commissioners' Award with the district court clerk. *See Blankenship v. Bone*, 1974 OK CIV APP 54, ¶ 5, 350 P.2d 578-79 (finding condemnee waived any constitutional or other challenge to condemnor's right of condemnation by failing to include any such objections as a written exception to the commissioners' report). On the other hand, a challenge to the condemnor's underlying use of eminent domain may *potentially* impact the condemnor's authority to access the property *at some point in the future* if the condemnee is able to successfully prosecute the objection.

Here, the Floodplain Permit Committee identified 23 parcels where NEET SW enjoys present, *unqualified* access. This group of 23 parcels was inclusive of parcels where condemnation actions were filed, but landowners only challenged the amount of just compensation, not the validity of the underlying taking. Meaning landowners did not, and now cannot, challenge NEET SW's access to the property. Appellant's Properties fell into this group of 23 parcels.

The Floodplain Permit Committee also identified 14 parcels where it determined that NEET SW enjoys present, *qualified* access. These 14 parcels included ones where condemnation actions were filed, and NEET SW deposited the amount of the Commissioners' awards with the district court clerk, but the landowners filed objections challenging the underlying use of eminent

domain, meaning it is possible at some point in the future, should a landowner successfully prosecute the objection, that NEET SW will be required to restart the condemnation process with respect to the challenged parcel.

While NEET SW now enjoys present access to all floodplain parcels, the Floodplain Permit Committee decided to divide the permit into two categories. For the 23 parcels over which NEET SW has unqualified legal access, the Floodplain Permit Committee approved Permit No. 684. For the remaining 14 parcels where landowners filed exceptions in the condemnation proceedings that function as objections to NEET SW's use of eminent domain, the Norman Floodplain Permit Committee, out of an abundance of consideration for the rights of property owners, approved a separate Permit No. 685, which permit is conditioned on NEET SW resolving outstanding objections and verifying the resolution of those objections with the City of Norman. *See* Floodplain Permit Committee Minutes from January 2, 2024, at p. 2, attached as Exhibit 1.

**b. NEET SW enjoys unqualified access to Appellant's Properties**

Appellant's assertion that NEET SW "lacks standing" to request a floodplain permit because it does not have "ownership of all the properties covered by [NEET SW's] floodplain permit application" is incorrect. As described above, NEET SW now enjoys access across *all* parcels in the floodplain. The access is *unqualified* in 23 of the parcels, meaning no landowner objections can take away NEET SW's access pursuant to the condemnation statutes. Appellant's Property falls within these 23 parcels, meaning NEET SW's legal access to Appellant's Properties is not subject to challenge pursuant to the condemnation statutes. *See* CV-2023-1529 filed in the District Court of Cleveland County, Oklahoma, on April 27, 2023. Appellant did not contest the validity of NEET SW's authority to exercise the power of eminent domain, or NEET SW's right to access and possess the relevant portion of Appellant's Properties. Appellant only challenged the

fair market value determined by the appointed Commissioners. *See* Ex. 3. Moreover, Appellant has already requested and received the disbursement of the Commissioners' Award in the condemnation proceedings. *See* Ex. 4, citing 66 O.S. § 54 ("When possession is taken of property condemned, as provided herein, the owner shall be entitled to the immediate receipt of the compensation awarded, without prejudice to the right of either party to prosecute further proceedings for the judicial determination of the sufficiency or insufficiency of said compensation." ).<sup>3</sup>

NEET SW gained lawful access to Appellant's Properties months before filing its New Floodplain Permit Application, and Appellant's Properties are subject to Permit No. 684.<sup>4</sup> There is no legal or factual question regarding NEET SW's right to access Appellant's Properties. To the extent that Appellant seeks to present challenges on behalf of other property owners (i.e., the 14 parcels covered by Permit No. 685 to which NEET SW enjoys present but *qualified* access), Appellant lacks "standing" to do so. The proper standard for appealing a Floodplain Permit Committee decision is set out in the Norman Municipal Code – any person "aggrieved" by a decision, may submit an appeal to the Board of Adjustment. Norman Municipal Code Section 36-533(f)(7). Aggrieved means "having suffered loss or injury[.]" Black's Law Dictionary (2d. Ed.). Appellant has made no argument that it may be injured by the issuance of floodplain permits as they relate to parcels Appellant does not own.<sup>5</sup>

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<sup>3</sup> Appellant, quoting 27 O.S. § 13(4), states "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....'" without acknowledging that NEET SW deposited the Commissioners' Award with the state court and Appellant has already received those funds, in the amount of \$2,470,000.00.

<sup>4</sup> *See* Section III(a), *above*, explaining NEET SW's condemnation proceedings.

<sup>5</sup> The doctrine of standing does not operate to prevent an applicant from filing a new permit application in the event of a substantial change in circumstances which brought about the initial

The material facts upon which the Board of Adjustment affirmed the denial of NEET SW's July 2023 Floodplain Permit Application in August 2023 have changed significantly in that NEET SW presently has access across all parcels;<sup>6</sup> and accordingly, the Floodplain Permit Committee has the authority to consider and grant NEET SW's separate New Floodplain Permit Application.

**c. Appellant is abusing the City's floodplain permit appeal process.**

Appellant argues the City's floodplain permit process is being misused by NEET SW by virtue of NEET SW filing the New Floodplain Permit Application when the July 2023 Permit Application remains on appeal. In fact, the opposite is true. NEET SW is conserving resources, including the City's, by not litigating a permit application that was denied for reasons that are now moot – in that NEET SW now has access to all subject parcels. To litigate a permit application that was denied for reasons that no longer exist is nonsensical and illustrates why municipalities are authorized to consider new applications based on changed circumstances in the first place.

Ironically, it is Appellant whose cynical use of the Board of Adjustment's floodplain appeal process is wasting the City and NEET SW's time and resources. Indeed, prior to filing this appeal, Appellant offered to refrain from filing the appeal should NEET SW pay Appellant \$8,800,000.00 in settlement of the condemnation action – \$6,330,000.00 more than Appellant was awarded for its property by the appointed Commissioners. NEET SW did not accept Appellant's demand, and sought instead to negotiate the merits of the Condemnation Proceedings alone. Appellant then filed

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denial. Otherwise, parties could never bring new applications following changed circumstances. Appellant's argument that NEET SW lacked "standing" to submit the New Floodplain Permit Application is meritless.

<sup>6</sup> The 14 parcels subject to Permit No. 685 have filed objections in the Condemnation Proceedings that have not been set for hearing by the objecting landowner. NEET SW is in ongoing negotiations with these landowners to resolve the objections; however, NEET SW has legal access to these 14 parcels at this time.

this appeal. Appellant's appeal has nothing to do with floodplain management in the City of Norman and everything to do with maximizing Appellant's bargaining power in unrelated condemnation proceedings.<sup>7</sup>

**d. The Floodplain Permit Committee acted well within its authority when it assigned two permit numbers to NEET SW's New Floodplain Permit Application.**

Oklahoma law delegates the authority to manage floodplain permit programs to municipalities. 82 O.S. § 1604(A); Norman Municipal Code Section 36-533(a). The City of Norman's "police power... is comprehensive and is exercised to promote the health, comfort, safety or welfare of society. In the enactment of ordinances and regulations much must be left to the discretion of municipal authorities." *Utility Supply Co., Inc. v. City of Broken Arrow*, 1975 OK 106, ¶ 14, 1975 OK 740, 743. The City of Norman created its Floodplain Permit Committee to enforce its Flood Hazard District Ordinance through a permitting process. Norman Municipal Code Section 36-533(f). In addition to the comprehensive plan adopted in the Norman Municipal Code, the Floodplain Permit Committee or the Board of Adjustment has "discretion to impose reasonable conditions in addition to those created by the relevant ordinances." *Mustang Run Wind Project, LLC v. Osage Cty. Bd. of Adjustment*, 2016 OK 113, ¶¶ 36-38, 387 P.3d 333, 347; Norman Municipal Code Section 36-533(6).

Not only did the Legislature delegate the management of floodplain permit programs to municipalities, the State also authorized municipal boards of adjustment to adopt their own rules to carry out each city's enacted floodplain ordinance. 11 O.S. § 44-102. The City of Norman has

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<sup>7</sup> Indeed, Appellant has obtained permits from the Floodplain Committee to construct infrastructure, including sewer infrastructure, within the same floodplain. *See, e.g.*, Permit Nos. 678, 681.

discretion in carrying out these administrative and quasi-judicial tasks. *See* MCQUILLIN MUN. CORP. § 25:343 (3d Ed.) (June 2023); *see also* *Mustang Run Wind Project, LLC*, 2016 at ¶ 23, 387 P.3d at 343 (“an adjudication in equity values substance over form”). Moreover, local floodplain boards are required to take into account the needs of industries, such as long-distance transmission companies, whose business necessitates crossing floodplains. 82 O.S. § 1614 (local floodplain boards must give “due consideration” to the needs of an industry whose business requires that it be located within a floodplain”). Where the New Floodplain Permit Application included all the substance necessary for the Floodplain Permit Committee to adjudicate NEET SW’s request, Appellant’s position that the Committee lacked the authority to assign two permit numbers to Appellant’s request, as opposed to one permit number, is nonsensical. The Floodplain Permit Committee, acting within its authority, carved out 14 parcels subject to NEET SW’s New Floodplain Permit Application to which it chose to attach additional requirements regarding NEET SW providing final documentation evidencing its *unqualified* access to such parcels. *See* Floodplain Permit Committee Meeting Minutes from January 2, 2024, attached as Exhibit 1. The Floodplain Permit Committee acted well within its authority when it assigned a separate permit number to these 14 parcels.

Nonetheless, Appellant points to the following bolded language in the Floodplain Hazard District Ordinance to argue that the Floodplain Permit Committee was limited to only assigning one permit number:

**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 Municipal Code Section 36-533(f)(2). Appellant argues this language demonstrates that the Floodplain Permit Committee is without jurisdiction “to unilaterally create and approve permits of the Committee’s own creation.” Appellant mischaracterizes the Floodplain Permit Committee’s actions.

The Floodplain Permit Committee acted within its authority when it issued its relief in the form of Permit Nos. 684 and 685. First, all relief granted by the Floodplain Permit Committee was requested in the underlying application; no new relief was created. Second, nothing in the Flood Hazard District Ordinance language highlighted by Appellant purports to limit the Floodplain Permit Committee from assigning two permit numbers. If Appellant is arguing that the Flood Hazard District Ordinance language speaks to a singular “permit,” instead of multiple “permits,” then Appellant’s semantical argument is undone simply by looking elsewhere in the Flood Hazard District Ordinance. *See, e.g.*, Norman Municipal Code Section 36-533(f)(6):

Upon consideration of the factors of the specific floodplain permit use and the purposes of this chapter, the Floodplain Permit Committee may attach such conditions to the granting of such **permits** as it deems necessary to further the purposes of this chapter.”)

(emphasis added). Appellant’s attempt to artificially limit the authority of Norman’s Floodplain Permit Committee to functionally administer its floodplain program is wrongheaded. The Floodplain Permit Committee acted well within its authority when it assigned two permit numbers to NEET SW’s New Floodplain Permit Application.<sup>8</sup>

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<sup>8</sup> Appellant’s argument that the Floodplain Permit Committee lacked authority to assign two permit numbers is rich given Appellant’s counsel requested that the Floodplain Permit Committee should assign *three* numbers during the January 2, 2024 meeting. *See* Meeting Minutes of the Floodplain Permit Committee (Jan. 2, 2023), Ex. 1 at p. 5 (counsel for Appellant “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”).



**e. The City of Norman Floodplain Permit Committee complied with Oklahoma's Open Meeting Act**

The Floodplain Permit Committee's issuance of Permit Nos. 684 and 685, in connection with its posted agenda, complied with the Open Meeting Act. The Open Meeting Act requires a public body's agenda to "identify all items of business to be transacted by [the] public body at a meeting . . . ." 25 O.S. § 311(B)(1). Such notice ensures the public can be informed of the government's business. 25 O.S. § 302.<sup>9</sup> The language in a public body's agenda should be worded in "plain language, directly stating the purpose of the meeting . . . [and] the language used should be simple, direct and comprehensible to a person of ordinary education and intelligence." *Fraternal Ord. of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman*, 2021 OK 20, ¶ 9, 489 P.3d 20, 24 (quoting *Andrews v. Indep. Sch. Dist. No. 29 of Cleveland Cty.*, 1987 OK 40, ¶ 7, 737 P.2d 929, 931). The Open Meeting Act is to be construed liberally in favor of the public (*id.*), however its requirements should not be interpreted to be so exacting "as to interfere with the ability of public bodies to freely conduct business. *Fraternal Ord. of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman*, 2021 OK 20, ¶ 7, 489 P.3d 20, 27 (Rowe, V.C.J., concurring).

Appellant takes issue with the fact that the permit was divided into two permit numbers – Permit Nos. 684 and 685. Appellant does not challenge notice as to the underlying relief granted by the Floodplain Permit Committee within the permits, or as to the conditions imposed on NEET SW. Instead, without alleging any resulting harm, Appellant argues that the Committee's

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<sup>9</sup> Notably, Appellant has brought its Open Meeting Act challenge in the wrong forum. The Open Meeting Act contemplates citizen challenges in district court, not before a municipal board of adjustment. See 25 O.S. § 314. The Legislature has not conferred upon the City of Norman, in its administration of the floodplain permit program, judicial authority to hear and decide claims under the Open Meeting Act.

administrative assignment of two permit numbers, instead of one, somehow offended notice. Appellant is wrong. No reading of the Open Meeting Act requires such a rigid and absurd elevation of form over substance.

Appellant's reliance on *Fraternal Order of Police, Bratcher/Miner Mem'l Lodge, Lodge No. 122 v. City of Norman* illustrates its confusion. In *Fraternal Order of Police*, the agenda failed to provide notice of a substantive action in that the agenda stated that Council would either *adopt* or *reject* the city's proposed budget, which budget was available in the City's agenda packet. *Id.* at ¶ 5. However, Council instead voted to *amend* the budget, thus creating a different budget altogether by allocating funding differently. *Id.* at ¶ 10. Council proceeded to approve the amended budget, contrary to the notice provided. *Id.* This amended budget was not included in the agenda packet. *Id.* at ¶ 11. As a result, the public lacked notice that Council would ultimately reallocate \$865,000 of funding in three amendments, as opposed to simply approving or disapproving the original budget to which the public had access. *See id.* at ¶ 5.

Here, the Agenda for the Floodplain Permit Committee Meeting on January 2, 2024 stated: "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." *See* Ex. 5 at p. 1. The City of Norman Staff Report and NEET SW's New Floodplain Permit Application (in part) were included as Item 2. *Id.* at pp. 5-63. The City of Norman Staff Report expressly stated its recommendation to the Floodplain Permit Committee that "Floodplain Permit Application No. 684 be considered in separate parts: consideration of included parcels to which NextEra has established a present and unqualified access right AND a consideration of included parcels to which NextEra's access is still qualified with outstanding legal objections or other impediments...." *Id.* at pp. 6-7.

The Floodplain Permit Committee Agenda, clearly and in plain language, stated all items of business to be transacted at the meeting. The Agenda was simple, direct, and comprehensible to any person – and the Floodplain Permit Committee’s actions were foreseeable based on the recommendations set out in the Staff Report. The Floodplain Permit Committee’s assignment of two permit numbers, instead of one, had no impact whatsoever on the rights granted to NEET SW under the City of Norman’s floodplain program. Indeed, there would have been no difference had all relief granted in Permit Nos. 684 and 685 been combined into Permit No. 684. There is no doubt the Floodplain Permit Committee complied with the Open Meeting Act and gave proper notice, notwithstanding Appellant’s quibbling with the Floodplain Permit Committee’s administrative assignment of two permit numbers.

#### IV. CONCLUSION

For the foregoing reasons, NextEra Energy Transmission Southwest, LLC respectfully requests the Board of Adjustment affirm the Floodplain Permit Committee’s decision to grant Floodplain Permit Nos. 684 and 685.

Respectfully submitted,



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