

Board of Adjustment
August 23, 2023
BOA-2324-3

STAFF REPORT

GENERAL INFORMATION

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| APPELLANT | NextEra Energy Transmission Southwest, LLC |
| FLOODPLAIN PERMIT APPLICATION NO. | 673 |
| ACTION BEING APPEALED | Denial of a Floodplain Permit on June 20, 2023 |
| SUPPORTING DATA | Floodplain Map NextEra Supplement NextEra Appeal Brief OCC Final Order No. 733782 FPP Staff Report FPP Application & Attachments FPPC Minutes 6/20/23 |

BACKGROUND: This application is an appeal of the administrative decision made by the Floodplain Permit Committee (FPPC). The Zoning Ordinance, Chapter 36, provides in Section 533(f)(7):

Appeals from any decision of the Floodplain Permit Committee may be taken by any person . . . aggrieved by any decision of the Committee, to the Board of Adjustment. The Board of Adjustment shall consider the appeal at a regular or special meeting as soon as practicable and make its decision on the suitability of the proposed use in relation to the flood hazard. Any person or persons aggrieved by the decision of the Board of Adjustment may appeal such decision to a court of competent jurisdiction. At least two members of the Board of Adjustment shall have successfully completed the (8) eight hour basic floodplain training offered by the Oklahoma Water Resource Board or equivalent training or education.

NextEra appeals the denial of its Floodplain Permit Application NO. 673. The appeal application is attached.

Chapter 36, Section 570(c)(1) provides that the BOA has the power to hear and decide appeals where it is alleged there is error in any administrative order, requirement, decision or determination in the enforcement of Chapter 36, the Zoning Ordinance. Section 570 (f) provides that "an administrative official shall forthwith transmit to the [BOA] all papers constituting the record upon which the action appealed from was taken." Staff has therefore attached the packet and minutes of the Floodplain Permit Committee for review by the Board.

STAFF COMMENTS:

Staff Description and Background of NextEra's FP Permit Application

The application concerns proposed construction of an overhead electric transmission line. The alignment will begin at the W boundary of the City limit (approx. 0.45 miles south of W. Robinson St.) and extend to the N boundary of the City limit (approx. 0.15 miles east of 48th Ave. NE). A total of 35 overhead pole structures are proposed for the Special Flood Hazard Areas (SFHA) of Norman. Structure foundations are engineered based on the size of the structure and soil conditions.

Poles will be spun concrete or steel monopoles approximately 4 feet in diameter at ground level. Two will be within Canadian River floodway and the other 33 in the floodplains of Ten-Mile Flat Creek and Little River and its Tributaries. Hydraulic analyses using HEC-RAS modeling was submitted for each location. For the 2 poles in the Canadian River floodway report from February 28, 2023, it was determined that no BFE rise 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. 17 of these are in the Ten-Mile Flat Creek floodplain and will cause no BFE rise. The remaining 16 are in the Little River floodplain or its tributaries. According to the applicant's report, only 2 of these will cause a BFE rise, totaling 0.01 feet.

The applicant provided a chart indicating minimum volume of removed material for each pole location 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 are outside of the regulatory floodplain, but the access and tree clearing to reach the site require crossing the floodplain.

The applicant indicated tree clearing will take place prior to construction to create temporary access roads in places where conditions do not allow overland travel without grading or road construction. Where access roads or road improvements are needed within floodplains, crane mats will be temporarily placed on the access roads and removed following construction. 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. Access roads will be removed and reclaimed, if necessary, to original contours. The applicant has also indicated that revegetation will occur where appropriate.

On June 20, 2023, the Floodplain Permit Committee voted against the application with a vote of 4 in favor, 2 against (with 1 absent). Because of its failure to get the five required favorable votes, the application was denied.

NextEra's Appeal and Arguments

NextEra has standing to file the appeal because they are the floodplain permit applicant which was denied approval. The Board should now consider whether there is an alleged error in any order, requirement, decision or determination made by an administrative official in the enforcement of the ordinance. Attached is the packet provided to the FPPC and the meeting minutes.

In its appeal to the Board of Adjustment, NextEra has set out its positions regarding the basis for overturning the decision of the Floodplain Permit Committee. NextEra argues that its application satisfied the Flood Hazard District Ordinance and should have been approved. NextEra further argues that, even were its application deficient in some way, that instead of denying the application outright, the Floodplain Permit Committee should have voted to table or postpone and given NextEra an opportunity to supplement its application. While NextEra is still currently completing the necessary condemnation actions associated with multiple properties at issue, its permit request is now expressly conditioned upon its obtaining binding legal access to the properties at issue and involved in eminent domain actions.

Finally, in the case that this Board of Adjustment is not ready to approve the requested Floodplain Permit, NextEra has asked that the Board of Adjustment vote to send the permit application back to the Floodplain Permit Committee with instructions to consider the additional information submitted by NextEra since its June 20, 2023 denial.

BOA Authority and Standard of Review

The Board of Adjustment's authority for review in this instance is broad:

In exercising the above-mentioned powers, the Board of Adjustment shall reverse or affirm, wholly or in part, shall modify the order, requirement, decision, or determination appealed from, shall make such order, requirement, decision, or determination as ought to be made, so long as such action is in conformity with the terms of this chapter, and to that end shall have the powers of an administrative official from whom the appeal is taken.

Chapter 36, Section 570(d)(1) of the Norman Municipal Code.

In the case that the Board of Adjustment, considering NextEra's arguments, finds that there was "an alleged error in any order, requirement, decision or determination" of the Floodplain Permit Committee's review of Floodplain Permit application 673, the Board of Adjustment may make and vote upon such motion as "ought to be made" in conformity with the Zoning Ordinance, to provide the applicant redress. The BOA's authority on appeal is broad, and the BOA has and may exercise the "powers of [the] administrative [body] from whom the appeal is taken."

In determining whether to approve or deny a floodplain permit request, the following relevant factors should be considered:

1. The danger to life and property due to flooding or erosion damage;
2. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
3. The danger that materials may be swept onto other lands to the injury of others;
4. The compatibility of the proposed use with existing and anticipated development;
5. The safety of access to the property in times of flood for ordinary and emergency vehicles;
6. The costs of providing governmental services during and after flood conditions including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical and water systems;
7. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
8. The necessity to the facility of a waterfront location, where applicable;
9. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
10. The relationship of the proposed use to the City's adopted land use plan for that area.

In considering a floodplain permit request, the Floodplain Permit Committee also has the power to "attach such conditions ... as it deems necessary to further the purposes of the chapter." Such conditions include:

- a. Modification of waste disposal and water supply facilities.
- b. Limitations on periods of use and operation.
- c. Imposition of operational controls, sureties, and deed restrictions.
- d. Requirements for construction of channel modifications, dikes, levees, and other protective measures.
- e. Floodproofing measures such as the following shall be designed consistent with the flood protection elevation for the particular area, flood velocities, durations, rate of rise, hydrostatic and hydrodynamic forces, and other factors associated with the base flood. The following floodproofing measures, among others, may be required:
 1. Anchorage to resist flotation and lateral movement;
 2. Installation of watertight doors, bulkheads, and shutters, or similar methods of construction;
 3. Reinforcement of walls to resist water pressures;
 4. Use of paints, membranes, or mortars to reduce seepage of water through walls;
 5. Addition of mass or weight to structures to resist flotation;
 6. Installation of pumps to lower water levels in structures;

7. Construction of water supply and waste-treatment systems so as to prevent the entrance of floodwaters;
8. Installation of pumping facilities or comparable practices for subsurface drainage systems for buildings to relieve external foundation wall and basement flood pressures;
9. Construction to resist rupture or collapse caused by water pressure or floating debris;
10. Installation of valves or controls on sanitary and storm drains which will permit the drains to be closed to prevent back-up of sewage and stormwaters into the buildings or structures. Gravity draining of basements may be eliminated by mechanical devices;
11. Location of all electrical equipment, circuits, and installed electrical appliances in a manner which will ensure they are not subject to flooding and to provide protection from inundation by the regulatory flood;
12. Location of any structural storage facilities for chemicals, explosives, buoyant materials, flammable liquids, or other toxic materials which could be hazardous to public health, safety, and welfare in a manner which will ensure that the facilities are situated at elevations above the height associated with the base flood elevation or are adequately floodproofed to prevent flotation of storage containers, or damage to storage containers which could result in the escape of toxic materials into floodwaters.

The purposes of the City of Norman's Flood Hazard District are stated as follows:

Statutory Authorization. Description and purpose. The Legislature of the State of Oklahoma has in the Oklahoma Floodplain Management Act, Sections 1601 through 1620.1 of Title 82 of the Oklahoma Statutes, delegated the responsibility, and authorized local governments, to adopt and enforce regulations designed to minimize flood losses within this Flood Hazard District . . . The City thus declares that it is the purpose of this Flood Hazard District to exercise this delegated authority, to promote the public health, safety and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

1. Protect human life and health;
2. Minimize expenditure of public money for costly flood control projects;
3. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
4. Minimize prolonged business interruptions;
5. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in floodplains;
6. Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas;
7. Control in special flood hazard areas, uses such as fill dumping, storage of materials, structures, buildings and any other works which, acting alone or

- in combination with other existing or future uses, would cause damaging flood heights or erosive velocities by obstructing flows and reducing floodplain storage;
8. Ensure that potential buyers are notified that property is in a floodprone area;
 9. Meet the needs of the streams to carry floodwaters and protect the creek channels and floodplains from encroachment so that flood heights and flood damage will not be increased;
 10. Enhance existing protections for residents, structures, and public facilities from flood damage;
 11. Preserve floodplain areas for their open space and natural habitat values; and
 12. Establish provisions and procedures that will provide additional protections for floodplain areas with no net loss of allowable density on affected lots and parcels.

City Staff will be present to provide any additional information the BOA may require in evaluating the attached application.

CONCLUSION: Staff forwards NextEra's appeal, BOA-2324-3, to the Board of Adjustment for consideration.