

M I N U T E S

OKLAHOMA COUNTY PLANNING COMMISSION

March 16, 2000

1:30 P.M.

The meeting of the Oklahoma County Planning Commission convened and was called to order by Ms. Cheryl Dorrance, at 1:30 P.M., in Room 103, Oklahoma County Office Building, 320 Robert S. Kerr, with the following individuals present:

Ms. Cheryl Dorrance, Chairperson

Mr. Will K. Jones, Member

Mr. Curtis Roberts, Member

Mr. D. Dee Wynn, Member

Mr. Everett Martin, Member

Also in attendance:

Tyler Gammon, Jr., Secretary

Richard Rolison, County Planner

Cassandra Williams, Assistant District Attorney

The Planning Commission Secretary, Mr. Gammon called roll and a quorum was declared.

Mr. Roberts made a motion to approve the minutes of the January 20, 2000 and February 17, 2000 meetings. Mr. Jones seconded the motion. Vote taken: Roberts – Aye; Jones – Aye; Dorrance – Aye; Wynn – Aye; and Martin – Aye. The minutes were unanimously approved.

**Zoning: (Z1 – 00) From: AA – Agricultural and Rural Residential District
To: IU – Urban Industrial District**

Application of:

**DAVID D. KENNEDY atty for:
RAY R. MIZE / CINDY J. MIZE dba ENERGETIX**

The applicants propose re-zoning approximately 320 acres of land from AA - Agricultural and Rural Residential District to IU – Urban Industrial District in order to develop and operate a power plant powered by natural gas. Rezoning the property is the first step in the development process. The following is the legal description of the property:

The Southwest Quarter (SW/4) of Section Seventeen (17) and the Southeast Quarter (SE/4) of Section Eighteen (18), Township Fourteen (14) North, Range One (1) East of the Indian Meridian, in Oklahoma County, Oklahoma.

**Location: North of NE 206th (Covell Rd.), East and West of Triple XXX Rd.
County Highway District #1)**

Mr. Gammon gave the Staff Report: "The applicant is Energetix and have fulfilled all of the requirements for an application to come before the Board. The purpose of this application is to develop a Natural Gas powered electrical plant in Oklahoma County. I have not received any written protests from the mail outs to the landowners who own property within 1000 feet of the

property in question. The staff feels that the plant does not need to have all 320 acres zoned industrial. They could narrow that down to an area where the plant would be and if this project is approved, it would also save the developers money for the road widening requirements. There was some concern in regards to flooding. The Engineering Staff made some calculations and the amount of water increase would be minimal."

Ms. Dorrance stated that there was a representative for the applicant present and he was asked to come forward to speak.

Mr. David Kennedy, an attorney representing the company stated that when he finalized the application, his request covered 320 acres. "The power plant will be in one of the two-quarter sections. He was a little concerned with the scope of the facilities that was being planned. He thought that it was probably going to be in at the more westerly quarter section. He thought that they would limit that area and call it a water pumping station or if it would constitute a water treatment plant. A water pumping station is permitted in the AA district. That would be our concern on the western 160 acres as we move forward."

Ms. Cindy Mize stated that the electric industry is currently being restructured. "This is creating a significant economic development opportunity for this state. The portion of this electric industry that is being restructured is mainly on the generation side. The industry is currently what they call bundled. It is about to be unbundled, and the generation side is going to be open to competition and Energetix hopes that it will be one of the competitors on the generation portion of the industry. Energetix was formed in August 1999. We are a fairly new company, but come with many years of experience. We are currently located in the Bank-One building in downtown Oklahoma City. When I mentioned that we had many years of experience, our primary investor is an Oklahoman, Mr. Gene Rainbolt. The company is managed by Ray Mize and myself. Ray Mize has been in this industry developing electric generation projects for over 20 years within the United States and internationally. Mr. Rainbolt asked him to oversee and run this company. I have been in the oil and gas industry for over 15 years. This is a natural gas fueled plant. My background consists of fuel acquisition. There are many components that came together for why we selected this site. In the handout and display, we are talking about sections 17 and 18 North of Covell Rd. along Triple XXX Rd. quarter sections. It takes a number of components to pull a project like this together. One of the first things you look for is close proximity to high voltage electric lines. There is an aerial photo in your packet and along the top portion in that photo there is a line that runs across. That is the existing OG&E 345 KB line. That is the highest voltage line in the state. We then had to look at fuel supply. ONG has a 26 inch line that runs directly through this property. We will also be using a large amount of water for this facility. Water source is the furthest away from us for this site. We will either secure the water from the N. Canadian Waste Water Treatment Facility or the City of Edmond Waste Water Treatment Facility. The other incentive for this site is that it is east of the Indian Meridian and the Revenue Reconciliation Act provides that any industry that puts a facility into operation by December 2003 is eligible for an accelerated depreciation allowance. There is no facility in Oklahoma with the technology that we are planning to utilize for this facility. We have gone to the manufacturers of the turbines, which is one of the largest expenditure, asked for a rendering or drawing of the referenced plant. It will not be exactly like this but it has the components that our plant will have, which includes, turbines, generators, substation, and

cooling tower area. Those will be the primary equipment that will be located at this site, which will consume up to approximately 30 acres. We have 160 acres on each side and plan to locate this facility in the central portion of quarter section of section 17. When we started the process of selecting this site and placed an option with the landowner, we talked to various landowners around the proposed facility, and called a town meeting on March 7th. I feel like we addressed all of the issues or concerns that the landowners had. The primary issues that came up were environmental. Many think of these plants as the older coal/fire plants that consume a large amount of acreage, put out black smoke, and are somewhat noisy. The EPA now has standards that are very strict for air and water quality. Technology is well below the limits that the EPA does set. We have selected technology that is more expensive and way below the limits that are set. It is anticipated, that the EPA will continue to lower their standard and make them stricter. With this equipment we are in compliance with air and water quality standards that are monitored by DEQ. I was amazed at the application we had to go through for our air quality permit. We have a shell application that has been filed and is now eight pages long and will end up being probably 360 pages long. It will cost us approximately \$70,000 to have that permit prepared and filed; if that gives you any indication of the extent it takes and the modeling that is required. DEQ and EPA combined will not let this project go forward if we are not within the quality standards they have set for the Clean Water and Clean Air Acts. The other impact of this project is what I touched on initially, which is the economic impact. This project, we expect it will be in operation, assuming we start this project at the end of this year, by the first quarter of 2003. It takes a couple of years to construct this facility. A large portion is constructed off site. There is a tremendous ripple effect on the economy when you put in place a facility of this magnitude. We are talking about approximately a \$400,000,000.00 investment. The tangible assets of this project are about \$330,000,000.00. The benefit to the Town of Luther and to the school district will be the Ad Valorem Taxes assessed. Luther will also benefit with additional jobs. This facility is not something that is going to come and bring a tremendous amount of jobs, I want to be forthright about that, but it will bring in approximately sixty new jobs including, maintenance, administration, safety technicians, plant managers, etc. We want to be a good neighbor here. We hopefully have done all that is expected by the residents of the area as well as those that are here today to informing them of being forthright about the project. We have had a lot of support. I have been really impressed with the phone calls that have come to me without solicitation on our part. We know we can do this project right and truly want to be a good neighbor.”

Ms. Dorrance asked if there were there any questions?

An attendee asked if the roads would support the weight?

Ms. Mize stated that she had been informed by Mr. Gammon that there is a problem, specifically at one point. “There is an existing bridge on Triple XXX that has been rebuilt, just north of that there is a bridge over a dry creek area. That will have to be enhanced; we will have to improve that area. According to Mr. Gammon we will have to improve the roads. That is a requirement for zoning approval.”

An attendee asked if it would be at the County's expense?

Ms. Mize stated that she would like to negotiate that.

Ms. Dorrance asked Ms. Mize if there was anyone else in her group that was going to address the public.

Ms. Mize stated that Mr. Bob Demeyer has an engineering background and has been a manager of project development for many years. "If the questions get too technical, Bob will be our person to answer those questions."

Ms. Dorrance asked if anyone in the audience would like to speak on this item.

Mr. Jack Cox from Cordell, OK stated that they owned a section of land that is directly across the fence that adjoins it, east. They came over to listen, didn't know whether they came over as protesters or applauding the project. What they would say would not be something that deals with the whole community. They are concerned about their land. They had hoped that it would one day be valuable and wonder who is going to buy the land right next to an electric plant. They are afraid that it will destroy the value of their land. The other side of the story would be that it could make it more valuable. They were not sure but thought they would bring it before the Board and it could be considered.

Mr. Charles De Furia stated that he owns 15 acres in Coffee Creek Farms. He was here about two years ago when there was another landowner that had applied for a rezoning permit for a motorcycle track. At that time he testified that he believed that type of facility would devalue his land. He built a 2,500 sq. ft. home, he has neighbors that recently moved in that built a 3,000 sq. ft. home. The reason he located in Luther was for the beauty of the area along with other landowners. His concern was that when he looks out the front window that he will see two 180 ft smoke stacks poking up out of the trees. If it is rezoned industrial, his concern was that it might be the beginning of more industry moving in. If there is cheap power there, it might encourage other industries to move in and before you know it their property wouldn't be worth that much monetarily and lose the beauty of the environment. He stated that he didn't get notice of the change being proposed.

Ms. Dorrance asked if Mr. De Furia lived within 1,000 ft. Mr. De Furia stated, no. She then stated that mailings were required for those within 1,000 ft. Mr. De Furia acknowledged her, and ended his statement.

Mr. Bruce Wilson, Superintendent of Luther Schools, stated that he was there as a resident. He owns the property south. In the 60's his High School teacher and coach took them to see the OG&E plant of Harrah. It was clean burning gas. He thinks everyone knows what it had done for Harrah schools. Since then, there have been at least 50 homes built north of that OG&E plant, one called the Horseshoe addition. They are still building houses today. He stated that the decision that the board members had to make would be, "does Luther get their chance" or "does Luther get passed by again".

Mr. John Tytenicz stated that he was born and raised in Luther and owns property across the road from the site (NE quarter of section 19). Having lived there for 54 years he'd seen some things

changed out of that part of the county. "In the Early 60's, there were farmers and ranchers that did not want to see properties sold and split up to see people moving out to cause traffic problems, dogs chasing livestock, and there's been some of that. Over the years we've all managed to survive it. A lot of homes have gone up and a lot of nice families have moved out there." He said that in the 60's they had two (2) grain elevators in Luther that took in 50,000 bushels of wheat each every summer. "In the summer of '98 there was one (1) grain elevator that took in less than 10,000 bushels. We've gone from an agricultural community, which was zoned agricultural property to something else. There are less cattle, one dairy farmer left where there used be to eight. The complexion of the district is changing and the planning commission that makes sure it changes in the right direction." He served on the school board for twenty years. "In the school business, Konawa, Harrah, Red Rock, Oologah, and Ft. Gibson there are schools that are envied by every one in the state. They all have power plants. Nowhere have we heard of any complaints about the plants, and this is state-of-the-art. It would be a plus for the school district, and the jobs. They have a good community. It takes several things to make the community, good schools, good churches, organizations, industry, and services. They have everything except industry. In the 70's they fought a prison, a girls home not too long ago, and a dirt-bike race track, things that didn't generate taxes, or create jobs, and we didn't need. This project does all of the above. He talked to John Canada who owns the property to the west (160 acres) and Kendall Roberts who owns the property to the north (80 acres), we all adjoin this property and all agree that we can be neighbors and work together on the project." He had rather see the long-term effects for the schools, the community, and the jobs. He would support the recommendation for this project.

Mr. David McCorkle, representing Land Valley Inc. and Forrest Rogers, adjacent property owners. He was also there as a citizen of Luther, born and raised there. When they were approached about this project the land was not for sale. "The thought process was, an opportunity for economic development for Luther that had been slow to develop from a farm with an oil-based community to anything that would even resemble economic development". He married a girl from Harrah and moved there and educated their children in Harrah schools with the benefit of the tax from this kind of project. He lived within 3/4 of a mile of the Horseshoe Lake plant since 1962 and had never heard any complaints about any of the things you might fear from a generator plant. The thought process continued. "If it is good for Luther, good for economic development, and if the principals involved are good business people, then we should consider it." "We certainly urge you to approve this. We think it's good for businesses of Luther, the citizens of Luther and the property owners. Even if this property is sold, we will still feel like citizens of Luther and will have a concern for Luther."

Ms. Beverly White stated that her husband and she live just 1/2 mile north of this project. Pat Patterson, the realtor that is handling the purchase of the property, first informed her about this project. She felt like she had a good investment just a 1/2 mile away from the proposed site and needed to do some research. She found out that she doesn't have to fear for the health of her 6 grandchildren that live on the 160-acre tract with her. She doesn't have to fear the investment that they have on that tract. She said that they probably have the biggest investment around due to the fact that they have a 6,000+ sq. ft. home; their daughter's house on the same tract is 4,000 sq. ft. Her other daughter is building at this time a 3,000 sq. ft. home. The largest investment is the six grandchildren. "We have done a lot of checking and it will be very beneficial, better

schools and will attract better families and some of the new people coming into Luther will be looking for the better school system for their children.” They also felt that it would enhance the value of the properties rather than depreciate the value. She stated that they are solidly supporting the project.

Ms. Dorrance gave thanks to all who spoke.

Mr. Jones asked Mr. Gammon if the staff report has concluded that the entire block of land did not need to be rezoned?

Mr. Gammon stated that was correct, basically they would put their plant in section 17, the other part of the property was proposed for a water reservoir, and that doesn't necessarily need to be industrial. It could be narrowed down to 160 acres and be more economical for them as well.

Mr. Jones asked if Energetix had a response for that?

Ms. Mize stated that they were made aware of that when they met with Mr. Gammon. They asked for the total acreage to be rezoned because we went to the landowner and that was the requirement for acquiring the acreage was to purchase the quarter sections 17 & 18 so they submitted the application as a whole. They just want to be assured that if they are putting this retention pond in, whether it is for backup water purposes or for fire and safety usage, since it is interval part of the business. And that they don't find out down the road that with all the equipment and pumping units required that it was supposed to be industrial and have to go through all of this again. “It is primarily a flood zone in this area and it is a logical fit to put this retention pond there. Talking with the insurance people as well, since it is an industrial function, it has to be industrial. We request that this be considered with the rezoning of section 17 now.

Ms. Dorrance stated that a caller had a concern of the millions of gallons of water that would be returned to Coon Creek, is that the case?

Ms. Mize stated that they have two options, either pump it back to the facility that we purchase the water from or discharge it back into the creek. “We cannot do that unless DEQ says they can and they have a lengthy permitting process to go through on that issue. It would be a better economic decision to discharge the water, but if DEQ says no, then it will have to be pumped back.”

Ms. Dorrance asked what the chemical makeup of the water was that comes off of the plant?

Ms. Mize stated that the water is effluent, which is treated three times and is actually drinkable. “It is then processed in a closed processing system and then goes through a filtering system before it is discharged. The water quality is not containing a large amount of pollutants or heavy minerals. It will be filtered to the point of where it will meet or be below the limits that DEQ will specify in the way of content of various minerals.

Mr. Jones asked if they were in the position to make any kind of requirements that could soften the visual effect of this plant from the roads and the neighbor's properties?

Mr. Gammon stated yes, that there had to be some sense of separation.

Ms. Mize stated the stacks are approximately 125-150 ft tall. It will depend on a number of engineering issues. "Assuming the average between that, 135-140 ft, the existing transmission lines are 140 ft. There is already an existing structure that has been seen by the neighbors of that height.

Mr. Jones stated that the issue was the rest of the visual effect.

Ms. Mize stated that they had 160 acres; they are clearing 30 acres for the plant. The balance of that acreage will maintain the existing trees that are there. "We are required by the Planning Commission, for a 6 ft site-proof screening and we will be maintaining much more than that. Many of the trees have been there for years, and to get a visual height that I estimate them to being 60 - 70 ft., or taller. I understood the concern about the visual effects, the stacks will not be hidden, but the rest of the equipment will fall below the height of the trees. We anticipate putting it up in the NE corner. We were required to do what's called an archeological dig, to be assured that it is not a burial ground. It has been confirmed that it is not. In doing that, every one involved has told us that the better position of the facility would be to centrally locate it. We will be even further within the acreage and the depths of the trees."

Ms. Dorrance asked Ms. Mize, if she was agreeable to the idea of the reduced size of the zoning acreage?

Ms. Mize stated that she was.

Ms. Dorrance stated that when they look at this, it would be better if you almost take the project out of it (section 18). "Our responsibility is to look at the appropriateness of putting 320 acres of industrial zoning on that location. Once that is zoned, and for some reason they decided not to do the project, there will still be 320 acres of industrial zoning for all eternity. We are to decide what is needed from the standpoint of the county and the community and not to over zone huge amounts of land prematurely. If they want to come back with something later, something to fit, then that will be considered on its merits. She then asked if that would be sufficient.

Mr. Kennedy, Attorney for Energetix stated that they would like to have the Western 160 acres withdrawn from the application, leaving the zoning request with respect to the Eastern 160 acres.

Mr. Jones made motion to approve the rezoning request for the Southeast Quarter of Section 18 from AA - Agricultural and Rural Residential to IU - Urban Industrial District. Mr. Roberts seconded the motion. Vote taken: Roberts - Aye; Jones - Aye; Dorrance - Aye; Wynn - Aye; and Martin - Aye. The motion was unanimously approved.

January 2000 and February 2000 Planning Commission Fee Fund Report

Mr. Gammon reported that the fees collected for January 2000 was \$5,264.55 and February 2000 was \$6,882.70. Mr. Roberts made a motion to accept the report. Mr. Martin seconded the motion. Vote Taken: Dorrance - Aye; Jones - Aye; Roberts - Aye; Martin - Aye; Richey - Aye. The motion was approved unanimously.

Other Business:

Mr. Martin stated that in January we had discussed and put on the agenda about all the trash, etc. that is located in Northeast Oklahoma County. "It is becoming a trash dump." He had numerous pictures that were taken on March 15th of this year where abandoned cars have been sited all over that part of the County. Some of the pictures were taken within 1-½ miles of 150th and Harrah Rd. "From the road you can count twenty cars with trees growing up through them that have been there twenty years or longer. "There are trash dumps that are being commercially used, which they are not allowed to make commercial trash dumps, yet they bring in trash by the truckloads and burn it. I believe that something needs to be done about it."

Mr. Fenton asked if anyone had called DEQ.

Ms. Dorrance stated that she believed that it was asked that this item be placed on the agenda at the last meeting. She asked if it was shown in the minutes?

Mr. Rolison stated that he believed that it was asked at the end of the meeting for Cassandra Williams to bring something back in February. "She does not have anything ready at this time, beyond the special meeting that you had."

Ms. Dorrance stated that several times that there are requests made and items don't get put on the agenda. I remember Mr. Martin asking for this item, we need to be addressing this. What current ordinances are there in place today that addresses these issues?

Mr. Martin stated that he called the "trash cop" and asked that something be done. "He ignored me. Nothing has been done about it yet."

Mr. Fenton asked if a particular picture was taken at Memorial and Midwest Blvd?

Mr. Martin stated that it was.

Mr. Fenton then replied that it was in Oklahoma City.

Mr. Martin stated that there is one location that is about one block West of Luther Rd. on Memorial Rd. that has started a trash dump. "They call it a yard sale but it has been there for 5 years and continues to add to it and now it looks like a huge dump."

Mr. Gammon stated that unfortunately there aren't any Oklahoma County Rules or Regulations that allow us to go out there.

Mr. Martin stated that he thought that's what was to be done (Develop the Regulations).

Mr. Gammon stated "No". The Regulations were never developed or forwarded to the Commissioners and we don't have that authority yet. "I apologized for the item not being on the agenda and I will make sure they are on next month's agenda.

Discussion over definitions of junkyards and scrap operations continued.

Ms. Dorrance stated that it needed to be known that if someone is operating a junkyard or scrap operation and it is not zoned IU; then they are in violation of our zoning regulations.

Mr. Fenton stated that a complaint can be made and Mr. Frey can go out, take pictures, and they will send them a letter.

Mr. Gammon stated that "we" don't have the prosecuting authority. When a citizen has a complaint, all we can do is send Mr. Frey out to investigate. If he finds that they are in violation of our regulations, we take that information to the County Engineer who in turn forwards it to the DA's office for further action.

Ms. Dorrance asked if the DA's office would do anything? No answer was given.

Mr. Rolison stated that you could ask but there is no resolution that allows us to write fines or anything.

Ms. Dorrance stated that what we needed to be done is to be able to write a ticket.

Mr. Rolison stated that the state law actually says that any violations of the zoning regulations falls under the enforcement of the County Engineer as a misdemeanor and can be punishable by imprisonment, or fined, or both. "There has been no resolution ever developed and backed up by the DA. The DA says that we can't unless it is written into law. But the way we read the state law, it looks like we could adopt a resolution and set fines."

Ms. Dorrance asked that it be put on the agenda and asked Mr. Gammon to write a memo asking the DA to provide us with what procedure should be taken to enforce nuisance abatement in rural areas of the county. Mr. Gammon agreed. Mr. Martin stated that he could understand those vehicles that still had valid tags and may have just broken down, but not the ones that have been there for twenty years.

Adjournment: Mr. Roberts motioned for adjournment. Ms. Dorrance seconded the motion. Vote taken: Dorrance - Aye; Jones - Aye; Roberts - Aye; Martin - Aye; Richey - Aye. The being no further business to discuss the meeting was adjourned at 3:00 P.M.