

## CITY COUNCIL OVERSIGHT COMMITTEE MINUTES

March 6, 2013

The City Council Oversight Committee of the City of Norman, Cleveland County, State of Oklahoma, met at 5:30 p.m. in the City Council Conference Room on the 6th day of March, 2013, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray 48 hours prior to the beginning of the meeting.

PRESENT:	Councilmembers Castleberry, Lockett, and Chairman Kovach
ABSENT:	Councilmembers Jungman and Spaulding
OTHERS PRESENT:	Councilmember Roger Gallagher, Ward One Mayor Cindy Rosenthal Ms. Joy Hampton, <u>The Norman Transcript</u>
STAFF PRESENT:	Mr. Jeff Bryant, City Attorney Mr. Mark Daniels, Utilities Engineer Mr. Ken Komiske, Director of Utilities Mr. Steve Lewis, City Manager Ms. Kathryn Walker, Assistant City Attorney Ms. Syndi Runyon, Administrative Assistant IV

Item 1, being:

### DISCUSSION REGARDING DOMESTIC WATER WELLS FOR NON-POTABLE USE AND RELATED PERMIT REQUIREMENTS.

Ms. Kathryn Walker, Assistant City Attorney, said with recent conservation measures, Property Owner Associations (POA) and other entities are becoming more interested in drilling their own wells to use non-potable water for irrigation purposes. She said citizens, businesses, and organization's that have a well are not subject to the City's conservation regulations.

Ms. Walker said the Oklahoma Water Resources Board (OWRB) regulates groundwater use and issues permits for beneficial use of groundwater that includes municipal, industrial, agricultural, recreational, fish and wildlife, etc., but they do not issue permits for domestic wells. She said cities can regulate and permit domestic and industrial wells, but cannot forbid domestic wells because that is a property owner's right. She said all public wells have to be built to the Department of Environmental Quality (DEQ) standards.

Ms. Walker said the definition for industrial use is "the use of water in processes designed to convert materials of a lower order of value into forms having greater usability and commercial value" and water quantity is set by the terms of the OWRB permit. She said the Legislative definition of domestic use is "the use of water by an individual/family/household for household purposes; farm and domestic animals (up to normal grazing of land); and irrigation of land not exceeding three acres in area for gardens, orchards, and lawns." State Statute also states that other domestic uses can be approved by OWRB as they see fit. OWRB has specified the use of water by non-household entities for drinking water purposes, restroom use, and watering of lawns up to five acre feet per year (1.6 million gallons).

Ms. Walker said OWRB's well drilling standards are as follows:

Location

- Must be at least ten (10) feet from a close sanitary sewer line, twenty-five (25) feet from above ground sprinkler spray, and fifty (50) feet from above ground sprinkler head
- Must be at least three hundred (300) feet from outside perimeter of waste lagoon for feedlot
- Must be at least fifty (50) feet from other pollution sources

Well Surface Casing

- Must be sealed off from groundwater zones containing water not meeting groundwater quality standards – no well in salt water zones
- Must be at least ten (10) feet below minimum seasonal state of water table
- Must be at least twelve (12) inches above the natural ground level and twenty-four (24) inches above the maximum level if known to flood

Ms. Walker said there are approximately 70,000 domestic wells in Oklahoma. She highlighted reasons the City should regulate domestic wells as 1) State standards for construction do not always adequately protect groundwater, 2) widespread proliferation of domestic wells can ultimately deplete the aquifer, and 3) the City can provide a tool to monitor usage to ensure the character of the use remains *domestic*.

Ms. Walker highlighted the current Code provision that requires permits for all wells; wells must comply with Oklahoma Department of Health rules; domestic wells are limited to *domestic use* as defined under State law; and forbids drilling into the Garber Wellington sandstone formation unless they are not serviced by City water or it is a commercial or industrial well and Council has granted permission.

Ms. Walker said permit fees are currently \$5 and is proposed to be increased to \$50 because some of the proposed reporting requirements will require more Staff time. She highlighted proposed amendments as follows:

- Wells must be constructed by an OWRB certified well driller;
- The OWRB Groundwater Well Completion Report must be submitted to the City upon completion
- An operable totalizing meter must be installed and maintained by the permit applicant;
- At least thirty (30) feet of well surface casing must be installed to reduce the risk of groundwater contamination;
- There must be no cross-connection of the well to the public water supply;
- Water must not be withdrawn in excess of the limits set by law;
- Water withdrawn from the well will be used only for the stated purpose for which the well was installed;
- Water withdrawn from the well must not be applied or discharged to property owned by others; and
- Well user must submit records annually that document the volume of water being withdrawn.

Mr. Ken Komiske, Director of Utilities, said with a domestic well you can use three acre feet (980,000 gallons) of water year for household purposes and five acre feet (1,630,000 gallons) for non-household purposes. He said costs vary depending on the depth of the well as a 100 foot well will cost approximately \$6,500 and a 650 foot well will cost approximately \$45,000.

Mr. Komiske said a POA would be able to produce five acre feet of water (1.63 million gallons) per year. Councilmember Castleberry asked if a POA would be subject to water conservation rules and Mr. Komiske said anyone with their own well would not be subject to water conservation rules, but POA's would be subject to the *volume* of water they use. They would only be allowed to use 1.6 million gallons per year and highlighted two scenarios of how POA's could allocate the use of 1.63 million gallons per year.

Mr. Komiske said the State has always classified domestic use as *De minimis* and not worth caring about; however, when States start getting into drought conditions, everyone wants to drill their own well and when you have tens of thousands of wells in the aquifer it is no longer *De minimis*. He said some States are beginning to realize this and are considering permitting and monitoring domestic wells differently. He said every hole in aquifer is a potential source for pollution. He said surface water is pretty forgiving and can be straightened out easily, but if you pollute an aquifer it takes tens of years to straighten out.

Mr. Komiske said the City cannot prevent someone from drilling into the Garber Wellington so domestic wells will be competing with the City for water. Mayor Rosenthal asked if that could be avoided by limiting the depth of domestic wells and Mr. Komiske said, according to the OWRB, a homeowner can do what they want on their property. Ms. Walker said the City has the ability to regulate, but it is not clear how far those regulations can be structured planned because it is a property right. Councilmember Gallagher said municipalities can make laws less severe than State laws, but cannot be more severe and Mr. Jeff Bryant, City Attorney, said municipalities can regulate a little bit beyond what the States does, but property rights are different and State laws would preempt the City's ability to regulate that.

Mr. Komiske said the City needs to consider what message they are sending to their customers. Will citizens and POA's with domestic wells be able to water their yards as much as they like no matter what is happening to citizens around them that do not have domestic wells and are subject to water conservation rules? He said these are also potential customers for highly treated effluent from the Wastewater Treatment Plant if the City ever gets reuse permission. Chairman Kovach said a constituent contacted him regarding concerns about domestic well users overwatering and that is a legitimate concern. Ms. Walker said that is why a meter requirement is being proposed so the customer and the City are aware of how much water is being used.

Chairman Kovach said the Association of Central Oklahoma Government (ACOG) is recommending well casings be cement for thirty (30) feet with gravel below that. He said this is important because there are a lot of pre-1980 oil wells and whenever there is a water well near a pre-1980 oil well, there is a high risk of salt polluting the water, which affects everyone's water.

Councilmember Gallagher asked how many POA's have applied for a permit and Ms. Walker said the City has not received any permit applications, but there has been a lot of inquiry. Mr. Mark Daniels, Utilities Engineer, said five to ten permits are obtained on an annual basis, but not everyone that drills a well gets a permit like they should or informs the City.

Mayor Rosenthal said the POA's want domestic wells to water common areas, but felt OWRB regulations already rule that out because of the distance requirement from sewer lines. Mr. Komiske said many of the POA's have a park in their area so it could be possible to drill a well near the park. Mayor Rosenthal asked if the City should be more aggressive in drilling wells for the parks embedded in developments. She said that way the City could control the water usage and protect the water supply. Mr. Komiske said Westwood and Griffin Parks have wells due to the golf course and/or having sports fields. He said if the area is a park with playground equipment and nothing else, the City should not care whether the park is green or not. Mr. Steve Lewis, City Manager, said a majority of parks are not irrigated. Mayor Rosenthal said watering the parks is a public benefit, but raises the question again of what message the City is sending to citizens.

Chairman Kovach asked if non-potable water can be used at the splash pads and Mr. Daniels said no, there are too many variables for water contamination.

Councilmember Castleberry said he did not like the requirement that a POA or citizen annually report how much water they use. He said he does not mind that information being made available upon request, but it should not be required. He asked what would happen if someone went over their amount of water and Mr. Komiske said that has not been determined. Chairman Kovach said OWRB regulates how much water you can use, but they do not seem to have enough teeth to regulate what happens when someone goes over the amount. Ms. Walker said she assumes that if the City permits wells, Staff would be put in the position of having to notify OWRB of over usage. Councilmember Gallagher felt there will be more requests for wells the longer the drought continues and Chairman Kovach agreed and said it is his understanding that water well diggers have a three month backlog.

Councilmember Castleberry asked what was wrong with someone drilling a well on their own property and Chairman Kovach said the problem is the aquifer is not something located under a single person's parcel of land it is under everyone's parcel of land. Councilmember Kovach said New Mexico is very strict on how many water wells can be in a certain area and they make owners plug old wells before digging new ones. He said they understand there is a certain amount of subsurface water that has to be shared. Mayor Rosenthal said the City has a public obligation in terms of pollution issues of the aquifer so the City should protect all customers who rely on that aquifer. Councilmember Gallagher said pollution should not be a problem if proper casing is used. Councilmember Castleberry said the City needs to be responsible and conscious of property rights and Ms. Walker said Staff tried to find a balance between protecting the water and property owners rights.

Mayor Rosenthal said the Code needs to be updated and she likes the proposed revisions; however, she would like more discussion on required reporting versus requesting usage and what will be done if someone goes over the amount allowed by law.

Councilmember Castleberry said the current Code provision requires wells comply with Oklahoma Department of Health rules, but what would happen if that agency merged into the Oklahoma Water Board, for example. Ms. Walker said that is a good point since there is a lot of talk about merging different State agencies so Staff will change language to reflect appropriate State agencies.

Mr. Daniels asked if existing wells will be grandfathered in and Chairman Kovach said wells have a shelf life and new wells have to be dug so that seems to be a natural solution. He did not believe the City could make people report whether or not they have a well. Mayor Rosenthal asked if water well diggers will be required to report wells to the City and Mr. Daniels said most do that already. Councilmember Gallagher asked if there is a list of wells and Mr. Daniels said there is only a list of permitted wells.

Councilmember Gallagher suggested giving developers guidelines for domestic wells and Chairman Kovach said developers in Edmond are being sued for water contamination. He felt citizens needed to be better educated on the value of water.

Ms. Joy Hampton, The Norman Transcript, said the City needs to lead by example. She noticed a leaky faucet at Reaves Park, but nothing was done about it until she reported it to Mr. Jud Foster, Director of Parks and Recreation. She said the leak was repaired after she reported it, but the City needs to be more proactive on these issues instead of waiting for someone to complain. She said the University of Oklahoma (OU) has their own wells, but they do not seem to be too conservative in their use and asked if the City could talk to them about that. Mr. Lewis said the City has communicated with OU and OU has changed internal practices and are saving 10% on water usage. Ms. Walker said OU has been very aggressive in water savings by removing knobs on spigots so students cannot use them to wash cars, changing to waterless urinals, they have stopped using lunch trays that had to be washed, etc. Councilmember Lockett said she has seen a lot less water running down Elm Street from OU property.

Councilmember Gallagher said Parking Officers and Code Enforcement Inspectors could talk to violators especially if water is seen running into the streets and Mr. Lewis said Parking Officers do report violations to Code Enforcement, but Parking Officers only patrol certain areas of the City. He said Code Enforcement Officers patrol throughout the City and make contact with violators when violations are reported and/or when witnessed. Mayor Rosenthal suggested cross training other departments such as sanitation, line maintenance, and police to watch for violations since these employees are out every day in neighborhoods. She said they could carry information with them to place on the doors of citizens in violation to let them know the City is under moderate mandatory conservation and what the rules are.

Chairman Kovach said there seems to be a consensus on most of the requirements and he would like to move the recommended amendments forward to the full Council.

Items submitted for the record

1. Memorandum dated February 27, 2013, from Kathryn L. Walker, Assistant City Attorney, through Jeff H. Bryant, City Attorney, to Members of the Council Oversight Committee
2. Draft ordinance
3. PowerPoint presentation entitled, "Domestic Wells," City Council Oversight Committee, March 6, 2013

Item 2, being:

MISCELLANEOUS DISCUSSION.

Chairman Kovach said the Open Meetings Act and storage of e-mails will be discussed at the next meeting.

ADJOURNMENT.

The meeting adjourned at 6:28 p.m.

ATTEST:

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City Clerk

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Mayor