



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

OKLAHOMA COUNTY BOARD OF)
COUNTY COMMISSIONERS,)

Petitioner,)

v.)

THE CITY OF OKLAHOMA CITY,)
a municipal corporation,)

Defendant,)

and)

THE CITY OF DEL CITY,)
a municipal corporation,)

Proposed Intervenor.)

JUL - 9 2024

RICK WARREN
COURT CLERK

110 _____

Case No. CV-2024-1659

THE CITY OF DEL CITY'S MOTION FOR INTERVENTION

COMES NOW, Proposed Intervenor, The City of Del City ("Del City"), and respectfully moves the Court for an Order permitting it to intervene in this action pursuant to 12 O.S. § 2024.

In support hereof, Del City states as follows:

1. The Oklahoma Board of County Commissioners ("Commissioners") filed its Petition for Judicial Review ("Petition") on June 18, 2024.

2. The basis of the Commissioners' Petition is that The City of Oklahoma City, in applying zoning ordinances and voting to deny the Special Use Permit, for the subject property at 1901 E. Grant Boulevard, Oklahoma City, OK 73129 ("Subject Property"), has interfered with the Commissioners' statutory duty to provide and maintain a jail facility for citizens of the county.

3. The Petition was filed specifically as a result of infighting between state political subdivisions. In the Commissioners' view, the Petition was brought due to "[The City of Oklahoma

City's] deteriorating respect for [Oklahoma County's] governmental authority and the inability of [The City of Oklahoma City] to recognize the limitations of its own authority." Petition at 1.

4. In light of the potential effect of the Petition, Del City wishes to intervene in the instant litigation. The City of Oklahoma City has no objection to the intervention; however, the Commissioners have advised they object.

5. Oklahoma law permits intervention by two routes, either (1) by right, or (2) by permission. *See Tulsa Rock Co. v. Williams*, 1982 OK 10, 640 P.2d 530, 532. Both routes for intervention are proper grounds for Del City to intervene in the instant action:

A. INTERVENTION OF RIGHT. Upon timely application anyone shall be permitted to intervene in an action:

2. When the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest[.]

B. PERMISSIVE INTERVENTION. Upon timely application anyone may be permitted to intervene in an action:

2. When an applicant's claim or defense and the main action have a question of law or fact in common.

When a party to an action relied for ground of claim or defense upon any statute or executive order administered by a federal or state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

12 O.S. §§ 2024(A)(2) and (B)(2).

6. The statutory procedure for intervening in an action is outlined in 12 O.S. 2024(C):

C. PROCEDURE. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Section 2005 of this title. The motion shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. If the motion to intervene is granted, the plaintiff or defendant, or both, may respond to the pleading of the intervenor within twenty (20)

days after the date that the motion was granted unless the court prescribes a shorter time.

12 O.S. 2024(C).

7. It is well-established under Oklahoma law that “[i]ntervention should be allowed upon proper allegations in the petition showing the party has an interest in the subject of the litigation.” *Grand River Dam Auth. v. Brogna*, 1991 OK CIV APP 104, 827 P.2d 901, 902 (citing *Morton v. Baker*, 1938 OK 409, 82 P.2d 998, 1001); *see also Brown v. Patel*, 2007 OK 16, ¶ 27, 157 P.3d 117, 127 (“Courts favor intervention and joinder of party defendants as a convenient or pragmatic method of settling controversies relating to the same subject matter”).

8. Mandatory intervention is a matter of right when the petitioner claims an interest in specific property within the exclusive jurisdiction of the court and that interest can be protected in no other way. *Deen v. Fruehauf Corp.*, 562 P.2d 505 (Okla. 1977); *see also* 12 O.S. § 2024(A).

9. Del City holds a great interest in the litigation, as this action is one of public interest, and the proposed use of the bordering Subject Property threatens the stability of the homes and land in Del City, as well as the safety, stability, and function of Del City parks, schools, child development centers, and community centers in extremely close proximity to the Subject Property. The rezoning of the Subject Property to permit the jail facility to be located at the proposed location will have a significant impact on Del City’s ability to protect its citizens because the jail facility will be located very near community, residential, and school areas. For example, Trospen Park borders the Subject Property; Little Harvard Learning Center, a daycare facility, is 480 feet away from the Subject Property; Reliant Living Center, a nursing home, is 650 feet away from the Subject Property; a densely populated neighborhood is 775 feet from the Subject Property; a new fieldhouse, track, and new ballfields are located 1275 feet from the Subject Property; and Crooked Oak School and Epperly Heights Elementary School are 2,800 and 3,600 feet away from the

Subject Property, respectively. Moreover, the proposed use of the Subject Property, taken together with the lack of transportation and social services infrastructure, poses a risk to the public at large, and specifically to the residents and businesses of Del City. When inmates are released from the Subject Property, they will be released in an area without any nearby public transportation. These released inmates will then be traversing on foot through the community spaces, residential areas, and school areas. In fact, the shortest route to areas where a released inmate might find a method of transportation would be through the nearby neighborhoods. Moreover, many individuals housed in the jail will, unfortunately, be housed there for charges related to drug dealing, child molestation, rape, murder, child sex trafficking, and other egregious crimes that threaten both the Del City population at large but also the vulnerable children in the nearby proximity of the jail. Oklahoma statutes prohibit child sex offenders from living near a school. Yet, the placement of this jail would essentially permit these offenders close access to their chosen victims. This not only contradicts the purpose of these statutes (to protect our most vulnerable population(s)), but it also threatens Del City's ability to protect its residents. Further, the placement also threatens property values in Del City, including the nearby residential areas. There were multiple potential sites that could have been chosen without any of these threats to the safety and security of nearby residents and innocent children. This site was not one of those. Del City has a stake in protecting these interests and the interests of its residents, and should not be required to rely on the original party-litigants to this action to safeguard its interests.

10. Del City should be permitted to intervene to protect its interests; otherwise, these interests will be greatly impaired. There is no other path for Del City to seek protection of its interests, other than intervening in this action as an interested third party. Accordingly, the Court should permit Del City's request to intervene as a matter of right under 12 O.S. § 2024(A).

11. “Permissive intervention is left to the sound legal discretion of the trial court, based upon the nature of the controversy and the facts and circumstances of each case.” *Tulsa Rock Co.*, 1982 OK 10, 640 P.2d 530, 532.

12. Alternatively, if the Court denies Del City’s request for intervention as a matter of right under 12 O.S. § 2024(A), Del City should be permitted to intervene under 12 O.S. § 2024(B). Del City should be permitted to intervene due to the circumstances and facts surrounding the instant action. *See* ¶ 9 above. Accordingly, Del City should not be made to rely on the original party-litigants to this action to safeguard its interests.

13. While an intervenor may not enlarge issues or compel modification of proceedings already in existence, or include matters not germane to issues presented, but once admitted, an intervenor “becomes a party-litigant in the case with the right to raise and litigate independent issues.” *Teleco, Inc. v. Corporation Com’n of State of Okla.*, 1982 OK 93, 649 P.2d 772, 773 n.2.

14. Del City has met the requirements for intervening in the present action. First, Del City’s Motion to Intervene is timely. Second, Del City claims an interest relating to the Subject Property. Del City officials and the Del City constituency attended and participated in the proceedings concerning the Subject Property prior to filing this Motion to Intervene, when provided notice and an opportunity to do so. Moreover, the proposed use of the bordering Subject Property threatens the stability of the homes and land in Del City, as well as the safety, stability, and function of Del City parks, schools, child development centers, and community centers in extremely close proximity to the Subject Property. Moreover, the proposed use of the Subject Property poses a risk to the public at large, and the residents and businesses of Del City, in particular. As such, Del City should not be required to rely on the original party-litigants to this action to safeguard its interests. Third, the disposition of this action may, as a practical and legal

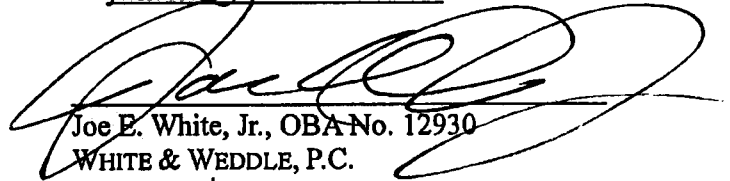
matter, impair or impede Del City's ability to protect those interests. There is no other administrative or judicial proceeding in which Del City's position may be asserted in relation to the instant action. Fourth, the existing party-litigants in this action do not adequately represent Del City's interests. Del City aims to protect property and other pragmatic interests such as property value, community character and safety, along with the educational and community support services of parks, schools, community centers, and child development centers serving the area in which the Subject Property is located. Meanwhile, the Commissioners are simply charged with applying zoning requirements as they perceive them to apply. Neither does the City of Oklahoma City represent the interests of Del City in every respect. Here, neither the Commissioners nor The City of Oklahoma City are charged to consider the interests advanced and defended here by Del City. Accordingly, the interests of Del City and the original party-litigants to this action are not aligned, and Del City should be permitted to intervene rather than be compelled to rely on others to protect and advance its interests.

WHEREFORE, in light of the foregoing, Del City respectfully requests this Court grant its Motion to Intervene and enter an Order allowing Del City to intervene pursuant to 12 O.S. § 2024 in the above-captioned action.

Respectfully submitted,



R. Blaine Nice, OBA No. 11944
Joseph G. Wheeler, OBA No. 35770
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-9211
T: (405) 232-0621
F: (405) 232-9659
E: bnice@fellerssnider.com
jwheeler@fellerssnider.com



Joe E. White, Jr., OBA No. 12930
WHITE & WEDDLE, P.C.
630 NE 63rd Street
Oklahoma City, OK 73105
T: (405) 858-8899
C: (405) 630-0438
F: (405) 858-8844
E: joe@whiteandweddle.com

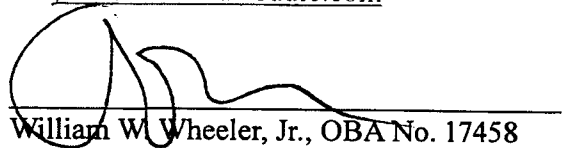
William W. Wheeler, Jr., OBA No. 17458
Sheri L. Mueller, OBA No. 18784
MUELLER, WHEELER & ASSOCIATES, PLLC
202 East Harrison Avenue
P. O. Box 1201
Guthrie, OK 73044
T: (405) 282-7677
F: (405) 708-5356
E: wwheeler@oktitleattorney.com
smueller@oktitleattorney.com

*Attorneys for Proposed Intervenor
The City of Del City*

Respectfully submitted,

R. Blaine Nice, OBA No. 11944
Joseph G. Wheeler, OBA No. 35770
FELLERS, SNIDER, BLANKENSHIP,
BAILEY & TIPPENS, P.C.
100 North Broadway, Suite 1700
Oklahoma City, OK 73102-9211
T: (405) 232-0621
F: (405) 232-9659
E: bnice@fellerssnider.com
jwheeler@fellerssnider.com

Joe E. White, Jr., OBA No. 12930
WHITE & WEDDLE, P.C.
630 NE 63rd Street
Oklahoma City, OK 73105
T: (405) 858-8899
C: (405) 630-0438
F: (405) 858-8844
E: joe@whiteandweddle.com



William W. Wheeler, Jr., OBA No. 17458
Sheri L. Mueller, OBA No. 18784
MUELLER, WHEELER & ASSOCIATES, PLLC
202 East Harrison Avenue
P. O. Box 1201
Guthrie, OK 73044
T: (405) 282-7677
F: (405) 708-5356
E: wwheeler@oktitleattorney.com
smueller@oktitleattorney.com

***Attorneys for Proposed Intervenor
The City of Del City***

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of July 2024, a true and correct copy of the above and foregoing document was served by U.S. Mail, postage prepaid () Electronic Mail () Overnight Delivery () Certified Mail, Return Receipt Requested () Hand-Delivery to the following:

Lisa Erickson Endres
Aaron Etherington
Rodney J. Heggy
Carri A. Remillard
Assistant District Attorneys-Civil Division
211 N. Robinson, Suite 700 N
Oklahoma City, OK 73102
E: lisa.endres@oklahomacounty.org
Aaron.etherington@oklahomacounty.org
Rod.heggy@oklahomacounty.org
Carrie.remillard@oklahomacounty.org

*Attorneys for Oklahoma County
Board of Commissioners*

City of Oklahoma City
c/o Amy K. Simson, City Clerk
200 N. Walker Ave., 2nd Floor
Oklahoma City, OK 73102

City of Oklahoma City
Municipal Counselor's Office
200 N. Walker Ave.
Oklahoma City, OK 73102



R. Blaine Nice