

November 8, 2018  
Guthrie, Oklahoma  
9:00 A.M.

The Board of Logan County Commissioners met in Special Session with Chairman Marvin Goodman present, Member Michael Pearson present and Member Monty Pearcy present and transacted the following:

The Agenda was posted at 12:49 P.M. on November 2, 2018 at the Courthouse and Courthouse Annex.

The meeting was called to order by the Chairman.

The flag salute was given.

There were no citizens to be heard.

Discussion was held pertaining to the requirements, fees and fines of the Temporary and Permanent Road Crossing Permits. Assistant District Attorney (ADA) Lowell Barto said that the law allows the county to issue permits for laying of lines in public right of way (ROW). He said this permit may be granted to public utilities and private citizens. He stated that landowners own the property to the center of the section line and may use the land providing that it doesn't interfere with the county ROW. He said pursuant to A.G. Opinion 1983, No. 1, if an additional servitude (use made that does not benefit the public, rather benefits a private party) is created on the land when a permit is granted to a private citizen, the consent of the landowner must be obtained. Mr. Barto states that the A.G. opinion is clear that consent of the landowner does not have to come prior to the county consent. However, complete consent for use of the ROW is not granted until consent is received by both the county and the landowner.

ADA Barto stated that some public utilities and telephone companies are licensed by the Oklahoma Corporation Commission to use the ROW without obtaining consent as they are not deemed to be creating an additional servitude. He said that there are constitutionally created provisions that allow for companies such as AT&T to use the ROW without consent of the county or landowner.

Commissioner Goodman asked if the county is to ensure that landowner consent has been obtained prior to approving a county permit. Mr. Barto said that by statute the county has the authority to impose regulations and conditions for the permit. He said the county may establish a requirement that proof of landowner consent is obtained prior to the county approving a permit, but that condition is not required by law.

Commissioner Pearcy asked if the public utilities that use the ROW must follow the county regulations. ADA Barto said in a 2013 A.G. opinion it is stated that the public utility does not have to comply with county regulations for use of the ROW. Commissioner Goodman stated that the public utilities not complying is creating a liability for the county. As an example, when the lines are not buried deep enough, the lines are easily hit by road maintenance crews which then costs the county for repairs to the damaged line. He stated that though the public utilities do not have to comply with county regulations, they must still follow national construction standards. Commissioner Pearson stated that he is dealing with a gas service line that is bored under the road, however, he doesn't feel that it is being buried deep enough.

Commissioner Pearcy asked if the county can make it a condition of the county permit to require that landowner consent is prior to seeking a county permit. ADA Barto stated the county may make it a condition of the county permit.

Commissioner Pearson asked if a driveway that extends into and across a ROW is private or public; should it be maintained by the property owner. ADA Barto stated that a private driveway should be maintained by the property owner. Commissioner Pearson asked if a permit could be required so the county would know a proper driveway is being installed. ADA Barto stated he did not believe that possible.

ADA Barto addressed the possibility of multiple landowners abutting the ROW. He said that the private entity seeking the permit is required to obtain consent from all owners.

Commissioner Pearcy asked about the permit fee being actual cost. ADA Barto stated that is addressed in an A.G. opinion. He said the fee should be commensurate to work involved. He said it shouldn't be used as "blue sky" amount. Commissioner Pearcy asked if the Board feels the permit fee is accurate. Commissioner Pearson stated he has heard of other counties charging \$1000 and up for a permit. Clerk Cole stated that the current fee is \$300 per crossing, which is for the mile with an additional permit required for each change/cross of a section line. She said the fee is dispersed \$200 to the

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county highway district and \$100 to General Fund. Commissioner Goodman stated that he believes \$500 to be fair to cover the administrative cost of the permit. Commissioner Pearson stated that the permit also requires the company to apply rock 200 yards each direction from the crossing.

Commissioner Piearcy said he has a situation where a permit line is being installed on Midwest Blvd. He said the permit requires the rock at the cross point but the damage to the road while the work is being done is tremendous. He asked if the county can hold the company liable for the damage done to the road while driving. ADA Barto said they have the right to drive the road, unless another issue such as being overweight is involved. Commissioner Goodman stated they had an overweight situation but the problem is proving exactly what truck was overweight. ADA Barto said the problem is identifying the truck, he said they would have to be "caught in the act".

Clerk Cole asked ADA Barto if an affidavit or attestation could be part of the county permit where the private entity attests that all landowner consent has been obtained. She said this would put the responsibility of obtain and verifying landowner consent of the permit seeker and the county would not have to do any verification. ADA Barto said he believes this will accomplish what the Board seeks to do. He said this will also provide notice to the permit applicant of their duty to obtain landowner consent.

The Board discussed increasing the fee to \$500 per permit, with the funds being dispersed \$300 to the highway district and \$200 to General Fund.

Commissioner Goodman asked if the county can require the public utility to furnish the county with the standards they are using to install lines. ADA Barto said the issue is the public utility is not required to come to the county so it would be difficult to enforce such requirement. Commissioner Goodman said that the current permit requires a depth of six feet. ADA Barto said that the current permit has the minimum standards; which the Board has the right to deviate from as the Board has the right to issue conditions on a particular permit.

Commissioner Goodman asked who would receive any fines assessed. ADA Barto stated that it could be dispersed to county highway district. He said fines are in place to act as a punishment for breaking the rules. Commissioner Goodman asked what the maximum fine should be to be reasonable and punitive.

Commissioner Piearcy stated that for a temporary permit which includes installing a culvert pipe as a conduit for the temporary line that a requirement be put in place for the permit applicant shall apply a minimum of fifty tons of 1.5" crushed rock or TBSC fifty feet each direction from center of the pipeline crossing.

Commissioner Goodman suggested increasing fines to \$5000 per occurrence. ADA Barto said the AG opinion allows for issuance of fines, they may not be excessive or arbitrary. He said the purpose of the fine is to exact compliance with the regulations. Commissioner Piearcy asked exactly who issues the fines. ADA Barto said the Commissioner of the District would issue a notice of fine, secondly a demand letter from the District Attorney and finally a civil cause of action for collection.

Clerk Cole said that there the length of time for the duration of a temporary permit conflicts. In one place it is 45 days in another it is 90 days. Commissioner Piearcy stated the temporary permit should have a duration of 45 days. The Board agreed.

Commissioner Goodman discussed the fine for failure to label a temporary line at each ingress/egress point. The current fine is \$250 per occurrence. The Board stated that the \$250 per occurrence fine will remain.

**MOTION ADOPTED TO CHANGE REQUIREMENTS, FEES AND FINES OF TEMPORARY AND PERMANENT ROAD CROSSING PERMITS EFFECTIVE DECEMBER 1, 2019**

Monty Piearcy made the motion which was duly seconded by Michael Pearson with the voting as follows: Piearcy-AYE, Pearson-AYE, and Goodman-AYE;

THAT, the following changes to the requirements, fees and fines of Temporary and Permanent Road Crossing Permits be made effective December 1, 2019:

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#### Temporary Road Crossing Permits

An attestation form be included with the Temporary Road Crossing Permit application which requires the applicant to attest that they have received the consent of all abutting landowners. Attestation must be completed prior to Board considering the application.

Permit fee increases to \$500 per permit.

All fines, except for fine attached to the labeling of line requirement, be increased to \$5000

Duration of Temporary Road Crossing Permit be a period of 45 days.

Failure to remove line within the required time will incur a fine of \$50 per day up to 14 days. If the line remains after the 14 day period it will be considered abandoned and removed by the County. A fine of \$5000 will be assessed for county having to remove line.

A fine of \$5000 will be assessed for failing to maintain ROA and tin horns while temporary line is in place.

No verbal authorizations will be issued.

#### Permanent Road Crossing Permits

An attestation form be included with the Temporary Road Crossing Permit application which requires the applicant to attest that they have received the consent of all abutting landowners.

All fines, except for fine attached to the labeling of line requirement, be increased to \$5000 per occurrence.

#### **MOTION TO ADJOURN**

Monty Piearcy made the motion which was duly seconded by Michael Pearson with the voting as follows: Piearcy-AYE, Pearson-AYE, and Goodman-AYE;

THAT, there being no further business to come before the board the meeting was adjourned until 9:00 A.M., November 15, 2018.

ATTEST: \_\_\_\_\_  
Logan County Clerk

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Chairman, Board of Logan County Commissioners