Wagoner County, Oklahoma
Filed
In District Court

IN THE DISTRICT COURT OF WAGONER COUNTY
STATE OF OKLAHOMA

JUN 26 2025
James E. Hight
Court Clerk
At 1112 o'clock A M

PERSICA SOLAR, LLC	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CASE NO.** CV-25-111
	§	
BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF WAGONER	§	
	§	
Defendant.	§	

PETITION FOR JUDICIAL REVIEW

Persica Solar, LLC ("Persica"), respectfully petitions the Court for judicial review of the June 16, 2025 determination by the Board of County Commissioners of the County of Wagoner to deny Persica's Application for Conditional Use Permit. In support thereof, Persica alleges and states as follows:

1. Persica Solar, LLC ("Persica") is a Delaware limited liability company.

2. The City of Wagoner-Wagoner County Metropolitan Area Planning Commission ("Wagoner MAPC") was formed pursuant to the authority granted by the Legislature of the State of Oklahoma in OKLA. STAT. tit. 11, §§ 401-410 and OKLA. STAT. tit. 19, §§ 866.1-866.36.

3. The Wagoner MAPC functions as an advisory, consultative and coordinating agency. *See* OKLA. STAT. tit. 19, § 866.1.

4. In September of 2024, Persica submitted an Application for Conditional Use Permit to the Wagoner MAPC for the purpose of operating a solar facility (the "Persica Solar Energy Center Project").

5. Persica's Application for Conditional Use Permit and the Persica Solar Energy Center Project comply with the requirements set out in the Wagoner MAPC Zoning Code.

6. Persica's Application for Conditional Use Permit was on the Wagoner MAPC Planning & Zoning meeting agenda for January 28, 2025.

7. The Wagoner County Planning & Zoning Department provided a Staff Report to the Wagoner MAPC recommending approval of Persica's Conditional Use Permit. However, the Wagoner MAPC ultimately recommended the Wagoner County Board of County Commissioners ("BOCC") deny Persica's Application for Conditional Use Permit.

8. Persica timely appealed the Wagoner MAPC's recommendation to deny Persica's Application for Conditional Use Permit to the BOCC and the matter was set on the BOCC agenda for February 3, 2025, wherein it was discussed and then deferred to February 10, 2025. At the February 10, 2025 meeting, BOCC tabled a decision on Persica's Conditional Use Permit until March 10, 2025. At the March 10, 2025 meeting, BOCC tabled a decision on Persica's Conditional Use Permit until June 9, 2025. On June 9, 2025, BOCC again tabled a decision on Persica's Conditional Use Permit until June 16, 2025.

9. On February 3, February 10, March 10, June 9, and June 16, 2025, at the BOCC regularly scheduled meetings, Persica appeared before the BOCC regarding Persica's Application for Conditional Use Permit. While some attended for the purpose of objecting, numerous supporters, including encouraging landowners, attended these meetings to communicate their backing of the development of the Persica Solar Energy Center Project.

10. At each of the five public Board of County Commissioners meetings, the BOCC allowed protesters to make claims and statements without being sworn under oath or providing evidence to support the claims and statements.

11. The BOCC ultimately denied Persica's Application for Conditional Use Permit on June 16, 2025.

12. Persica appeals the BOCC's June 16, 2025 denial of its Application for Conditional Use Permit pursuant to OKLA. STAT. tit. 19, § 431.

13. OKLA. STAT. tit. 19, § 431 permits appeals "[f]rom all decisions of the board of commissioners."

14. Article 1.7.1 of the Wagoner MAPC Zoning Code identifies the County Board of Adjustment as the proper body to address a conditional use permit, "in accordance with the provisions of Article 6. "

15. Article 6.3.3 of the Wagoner MAPC Zoning Code provides "appeal[s] to the District Court shall be in accordance with Oklahoma Statute Title 19, Section 866.24.

16. OKLA. STAT. tit. 19, § 866.24 appears to limit appeals to the District Court to "decision[s], ruling[s], judgment[s], or order[s] of said county board of adjustment."

> *An appeal to the district court from any decision, ruling, judgment, or order of said county board of adjustment* may be taken by any person or persons, firm or corporation, jointly or severally, aggrieved thereby, or any department, board or official of government by filing with the clerk of said board within ten (10) days a notice of such appeal. No bond shall be required for such appeal, but costs may be required in the district court as in other cases. Upon filing of such notice, the clerk of said board shall forthwith transmit to the clerk of the district court the originals or certified copies of all papers constituting the record in such case, together with the order, judgment or decisions of said board. Said cause shall be tried de novo in the district court and said court shall have the same power and authority as the county board of adjustment, together with all other powers of the district court in law or in equity. An appeal to the Supreme Court from the decision of the district court shall be allowed as in other cases. (emphasis added).

17. However, OKLA. STAT. tit. 19, § 866.23 limits appeals to the county board of adjustment to "any person aggrieved or by a public officer, department, board or bureau *affected by any decision of the county inspecting officer in administering the county zoning regulations or building line and setback regulations*." (emphasis added).

18. Persica does not appeal any decision of a Wagoner County inspecting officer.

19. Because OKLA. STAT. tit. 19, § 866.24 could be construed to require an appeal to the District Court be taken from "any decision, ruling, judgment, or order of said county board of adjustment," Persica has confirmed with Wagoner County, through the Planning and Zoning Department, that Persica is not required to file an appeal of the BOCC's June 16, 2025 decision with the Wagoner County Board of Adjustment. Further, Wagoner County, through the Planning and Zoning Department, has confirmed the proper process is filing this appeal in the District Court of Wagoner County. Nevertheless, Persica is filing this appeal in the District Court of Wagoner County within ten (10) days of the BOCC's June 16, 2025 decision, as set out in OKLA. STAT. tit. 19, § 866.24.

20. OKLA. STAT. tit. 19, §§ 431 and 866.24 both require a *de novo* review of the BOCC denial of its Conditional Use Permit.

21. The BOCC improperly denied Persica's Application for Conditional Use Permit.

22. The BOCC's denial of Persica's Application for Conditional Use Permit was unfounded under the facts and circumstances and the Conditional Use Permit should be properly issued to Persica.

23. Persica therefore requests *de novo* review of the BOCC's improper denial.

WHEREFORE, Plaintiff Persica Solar, LLC respectfully requests the Court find that Persica's Application for Conditional Use Permit was improperly denied by the Board of County Commissioners of the County of Wagoner.

Respectfully submitted,

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