



THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

APR 18 2024

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

THE CITY OF TULSA, OKLAHOMA,)
an Oklahoma municipal corporation,)

Plaintiff,)

v.)

SOUTH KANSAS AND OKLAHOMA)
RAILROAD, L.L.C., AND CENTENNIAL)
ENERGY, LLC,)

Defendants.)

Case No. CV-2024-00921

Judge

REBECCA NIGHTINGALE

PETITION FOR DECLARATORY JUDGMENT

The City of Tulsa ("City"), by and through its attorneys of record, Kristina L. Gray, Senior Assistant City Attorney, and Caroline Guerra Wolf, Assistant City Attorney, submits the following claims and requests for relief against Defendants South Kansas and Oklahoma Railroad, L.L.C., and Centennial Energy, LLC. In support, the City states and alleges as follows:

PARTIES AND NATURE OF DISPUTE

1. The City of Tulsa is a home-rule charter city and a municipal corporation organized under the constitution and laws of the State of Oklahoma, with its primary *situs* of government within Tulsa County, Oklahoma.

2. South Kansas and Oklahoma Railroad, L.L.C. ("SKOL") is a foreign limited liability company that is registered to do business in Oklahoma.

3. SKOL is the record property owner of real property and right-of-way situated just northeast of downtown Tulsa and west of the intersection of East Independence Street and North Lansing Ave. This real property includes parcel number 90236-02-36-32090 (the "Subject

2024 MAY 18 P 3:13
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Property”), consisting of a total of 28.77 acres located within the boundaries of the corporate limits of Tulsa and within Section 36, Township 20 North, Range 12 East, Tulsa County, Oklahoma.

4. On a segregated 4.4-acre portion of the Subject Property is a special purpose transloading facility, which was designed and built to enable the transfer of hazardous materials commodities from rail to truck (the “Transload Facility”).

5. Upon information and belief, Centennial Energy, LLC (“Centennial”) leases the Transload Facility from SKOL for the purpose of conducting hazardous materials transloading activities.

6. Centennial Energy, LLC is an Oklahoma limited liability company registered with the Oklahoma Secretary of State.

7. The application of Tulsa’s Zoning Code to Defendants’ participation in and current use of the Subject Property for hazardous materials transloading is the principal issue in this case.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction pursuant to Okla. Const. Art. VII, § 7, which provides that “[t]he District Court shall have unlimited jurisdiction of all justiciable matters, except as otherwise provided in this Article”

9. This Court has personal jurisdiction over the parties pursuant to 12 O.S. § 2004(F), which provides that “[a] court of this state may exercise jurisdiction on any basis consistent with the Constitution of this state and the Constitution of the United States.” All Defendants also either reside or conduct regular business in Oklahoma.

10. This Court has the authority to determine the applicability of the Tulsa Zoning Code to Defendants’ participation in and current use of the Subject Property for hazardous materials transloading under 12 O.S. § 1651, *et seq.*

11. Venue is proper against all Defendants under 12 O.S. § 133, which provides that venue is proper in the county where the cause arose. The cause and acts complained of herein have occurred, and continue to occur, in the City of Tulsa, in Tulsa County.

LEGAL BACKGROUND

12. Pursuant to Article I, Section 3 of Tulsa's 1989 Amended Charter, the City of Tulsa has the power to "restrict and regulate the use and subdivision of land, to perform planning and zoning, and to establish by ordinance the procedures therefor." Art. I, § 3(N). The City has exercised this power by establishing the Tulsa Zoning Code, found in Title 42 of the Tulsa Revised Ordinances, and passing Comprehensive Zoning Maps that set the zoning for parcels throughout the corporate limits of the City.

13. The purpose of the Tulsa Zoning Code is to (a) protect and promote "the public health, safety and general welfare" and (b) implement "the policies and goals of the comprehensive [land use] plan and other relevant, officially adopted plans of the city." TRO Title 42, § 1.050.

14. Under the Tulsa Zoning Code, "[l]and may not be used for any purpose other than one that is allowed by the provisions of this zoning code." *Id.* § 1.070-A. The Zoning Code applies to "all public and private use and development of properties within the corporate limits of the City of Tulsa, except as provided by state or federal law or as otherwise expressly stated in this zoning code." *Id.* § 1.040.

15. Through its Zoning Code, the City classifies principal land uses into use categories (e.g., residential, commercial, industrial, agriculture) and subcategories. *Id.* § 35.020. For the industrial use category, the Tulsa Zoning Code defines distinct types of industrial uses and limits where low-, moderate-, and high-impact manufacturing and industry can take place. High-impact manufacturing and industry is defined in the Zoning Code as follows:

Manufacturing and industrial uses that **regularly use hazardous chemicals or procedures or that produce hazardous byproducts or explosive hazards**. Typical examples of high-impact manufacturing and industrial uses include: the manufacture of acetylene, cement, lime, gypsum or plaster-of-Paris, chlorine, corrosive acid or fertilizer, insecticides, disinfectants, poisons, explosives, paint, lacquer, varnish, petroleum products, coal products, plastic and synthetic resins and radioactive materials. This subcategory also includes petrochemical tank farms, gasification plants, smelting, animal slaughtering, oil refining, asphalt and concrete (batch) plants and tanneries.

Id. § 35.070-C (emphasis added).

16. In addition to categorizing industrial *uses*, the Tulsa Zoning Code establishes three types of industrial *zoning districts*, ranging from most intensive (Industrial-Heavy or “IH”), to moderate intensive (Industrial-Moderate or “IM”), to least intensive (Industrial-Light or “IL”). *Id.* § 15.010-A.

17. In contrast to IL and IM districts, Industrial-Heavy or “IH” is intended for “manufacturing and other industrial activities that may constitute substantial adverse land use or environmental impacts or hazards.” *Id.* § 15.010-B(12).

18. High-impact manufacturing and industry is only permitted by right in IH (Industrial-Heavy) districts. *Id.* Table 15-2: O, C, and I District Use Regulations.

19. High-impact manufacturing and industry is only allowed in IM (Industrial-Moderate) zoning districts if a “special exception” is approved by the City of Tulsa Board of Adjustment in accordance with TRO Title 42, § 70.120.

20. It is a violation of the Tulsa Zoning Code “[t]o use land, buildings, or other structures in any way that is not consistent with the requirements of this zoning code,” and “to engage in the use of a building, structure or land . . . or any other activity requiring one or more permits or approvals under this zoning code without obtaining such required permits or approvals.” *Id.* § 85.020(A) and 85.020(D).

21. The Tulsa Zoning Code provides that the City of Tulsa “has all remedies and enforcement powers allowed by law” to address zoning code violations, including but not limited to, issuance of fines, “a court order in the nature of mandamus, abatement, injunction or other action or proceeding to abate or remove a violation,” and other penalties and remedies as are provided by law. *Id.* § 85.040.

22. Persons subject to penalties, remedies, and enforcement actions under the Tulsa Zoning Code include, among others, property owners, property tenants, contractors, or any other person “who commits, participates in, assists in, or maintains such violations.” *Id.* § 85.060.

FACTUAL ALLEGATIONS

23. The Transload Facility consists of an approximately 8.4-acre privately leased site within the Subject Property.

24. The Subject Property is owned by SKOL, a Class III, shortline railroad that operates over 425 miles of railroad lines and interchanges with other railroads, including BNSF Railway Company, Union Pacific Railroad Company, and Kansas City Southern Railway (collectively “Class I Railroads”). The Transload Facility is adjacent to SKOL’s yard track within the Subject Property.

25. The Transload Facility was originally designed and constructed in 2015 as a liquefied petroleum gas transload facility, with the costs of construction shared between the prior tenant of the Transload Facility and SKOL. It consists of two spur tracks extending approximately 1,864 linear feet, with capacity for 26 railcars, a 660-square foot office, and other ancillary improvements.

26. The Transload Facility is in Tulsa’s Historic Greenwood District, an Oklahoma Main Street Community and Destination District. It is immediately adjacent and to the West of

the 12.6-acre site of USA BMX headquarters and Hall of Fame, USA Cycling's Olympic BMX Training Center, and the 125,000 square foot Hardesty National BMX Stadium, and to the East of Oklahoma State University-Tulsa.

27. Upon information and belief, Centennial exclusively possesses the Transload Facility under a lease agreement with SKOL. Centennial uses the Transload Facility exclusively to receive, store, and transload butane, a form of liquified natural gas, owned and shipped by Keyera Energy, Inc. ("Keyera") to the Transload Facility.

28. On information and belief, Keyera enters into transportation arrangements via common carrier tariff or transportation service agreements with Class I carriers to ship butane in approximately 30,000-gallon tank cars, owned or leased by Keyera, from one or more origins to the Transload Facility. SKOL operates under agreement with the connecting Class I carriers as a handling line carrier whereby it switches Keyera's tank cars from nearby interchange to the Transload Facility on behalf of the connecting Class I carriers, and it is paid by the connecting Class I carriers for its switching services.

29. Upon information and belief, Keyera's tank cars are stored in place by Centennial on Centennial's two leased tracks, sometimes for several days or longer, and butane ultimately transloaded by Centennial from each tank car to 9,200-gallon tanker trucks, which Keyera arranges through agreement with Groendyke Transport Inc. ("Groendyke"), and perhaps other companies. The butane is then transported by tanker truck (3-4 trucks per railcar) by Groendyke through the City of Tulsa approximately 16 miles south to Keyera's Oklahoma Liquids Terminal, in Glenpool, Oklahoma.

30. Upon information and belief, SKOL has arranged for Centennial to transload butane from Keyera's railroad tank cars to tank trucks. However, Centennial operates the Transloading

Facility and performs its transload services as an independent contractor. Centennial is responsible for, and the butane tank cars are under its sole care, custody, and control upon delivery by SKOL to Centennial's leased tracks at the Transload Facility.

31. Upon information and belief, Centennial carries its own insurance, and is required to carry particular amounts and types of insurance coverage covering its tank car storage and transloading operations at its leased Transload Facility.

32. Upon information and belief, SKOL does not engage in transloading itself and has never engaged in transloading itself at the leased Transload Facility site since the Transload Facility was constructed in 2015.

33. Butane is a hazardous substance and an extremely flammable gas and dangerous fire hazard and can cause a major explosion if ignited. It is heavier than air and may travel long distances to a point to cause a fire or explosion far from the source and flash back. A fire from a tank car can create the conditions for a Boiling Liquid Expanding Vapor Explosion ("BLEVE"), that could launch fragments of the vessel for hundreds of yards, causing catastrophic injuries and harm to the public. For these reasons, transloading butane is a high-impact industrial use under the Tulsa Zoning Code, TRO Title 42, § 35.070-C.

34. The Transload Facility on the Subject Property, leased by Defendant Centennial for its transloading activities, has been zoned IM (Industrial-Moderate) since 1970, when the City passed Ordinance No. 11918. This ordinance established Comprehensive Zoning Map No. 28, which includes Section 36, Township 20 North, Range 13 East—where the Subject Property is located.

35. The Subject Property has not been rezoned and, instead, remains IM. As such, high-impact manufacturing and industry is not permitted by right on the Subject Property.

36. No special exception has been applied for or approved by the Board of Adjustment to allow for high-impact manufacturing and industry at the Subject Property.

37. The City believes that the ongoing and continuous transloading operations taking place at the Transload Facility on the Subject Property violate the Tulsa Zoning Code, but Defendant SKOL, even though it conducts no transloading of hazardous commodities at the Transloading Facility itself, and has never conducted transloading at the Facility itself, has taken the position that the Tulsa Zoning Code is preempted by federal railroad law, 49 U.S.C. § 10501(b) from applying its Zoning Code to these operations.

COUNT 1 – DECLARATORY JUDGMENT

38. An actual, justiciable, present, and continuing dispute and controversy exists between the City and one or more of the Defendants regarding the applicability of the Tulsa Zoning Code to Defendants' participation in and current use of the Transload Facility on the Subject Property for hazardous materials transloading.

39. Upon information and belief, the hazardous materials transloading at the Transload Facility is continuous and ongoing, and there is no intention by the Defendants to cease operations.

40. The need for a declaratory judgment is particularly acute given the special hazards that the subject activities present to the public, and the consequence of a fire at the site, including but not limited to the potential for widespread exposure of an accidental butane release and catastrophic injuries and harm to nearby communities and the public, the threat of a widespread BLEVE incident from an exploding tank car(s), and the potential need for widespread public evacuations and the closing of nearby U.S. 75 and I-244.

41. This Court is vested with the power and obligation to declare the applicability of the Tulsa Zoning Code to such activities, after consideration of any preemption or other defenses that might be raised, and to give such further and other relief as may be necessary.

42. The City is entitled to a finding and declaration that the Tulsa Zoning Code is applicable and enforceable against the current use of the Transload Facility on the Subject Property for hazardous materials transloading.

REQUEST FOR RELIEF

Pursuant to the Oklahoma Declaratory Judgment Act, 12 O.S. § 1651, *et seq.*, the City requests this Court issue a declaratory judgment declaring that Defendants' participation in and current use of the Transload Facility on the Subject Property for hazardous materials transloading violates the Tulsa Zoning Code's provisions regulating the allowed uses for IM-zoned property, along with such other and further relief in equity and law to which the Court deems the parties to be entitled.

Respectfully submitted,

CITY OF TULSA, OKLAHOMA,

a municipal corporation

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