



City of Broken Arrow

Request for Action

File #: 17-1768, Version: 1

**Broken Arrow City Council
Meeting of: 02-07-17**

To: Mayor and City Council
From: Development Services Department
Title:

Consideration, discussion, and possible approval of an exemption for an 11.48 acre conservation area reserve of FedEx from Section 24-705, Excess Capacity Sewer Fee charge, quarter mile east of 9th Street and north of Houston Street

Background:

Representatives of FedEx have requested that an 11.48-acre portion of the overall site located along the east property line be exempt from Section 24-705, the excess capacity sewer charge, for developments. This area has been placed in a Reserve and labeled a Conservation District. More importantly, this area as a Deed Restriction that runs in perpetuity with the property and, therefore, must remain in an undeveloped state.

This area has a small stream that runs north to south before connecting with the main branch of Broken Arrow Creek. This small stream is shown as a blue line on the United States Geological Survey Maps (USGS). The fact that it is a blue line places it as a jurisdictional water body of the United States, more specifically of the State of Oklahoma, and therefore is subject to the regulations of Section 10 of the Rivers and Harbors Act (1899) and Sections 401 and 404 of the Clean Water Act (1974).

The area in question has been permitted by the United States Army Corps of Engineers (COE) in accordance with the above federal regulations. In order to obtain the 404 Permit, the property owner mitigated the unavoidable impacts to aquatic resources effects of its proposed work within the stream area by placing the existing riparian corridors and abutting wetlands in a preserve area. To safeguard this preserve, the property owner elected to place it in a Conservation Easement coupled with a Deed Restriction in order to protect the natural elements of the land from future disturbance. In cooperation with the COE and City of Broken Arrow Engineering and Construction Stormwater division, FedEx placed this small stream and the treed area adjacent to it in a conservation district reserve.

City ordinance requires each acre of development to be included in a calculation directly associated with the computation of the excess capacity sewer fee charge, except for two (2) specified exemptions. These exemptions include: (1) area contained in the 100-year regulatory floodplain and (2) land used specifically for a golf course. Although the land in question is restricted by the Conservation Easement, it is not contained within either the Federal Emergency Management Agency (FEMA) 100-year floodplain or the City Broken Arrow Regulatory 100-year floodplain. Likewise, the land is not nor will be used

specifically for the purposes of a golf course. Therefore, neither exemption identified by ordinance directly applies to the land in question.

The excess capacity sewer fee is \$700 per acre, which would generate a fee directly associated with this 11.48-acre area of \$8,036.00. The remainder of the property is 27.14 acres, which is subject to the excess capacity sewer fee charge and will generate a fee of \$18,998.00 that will be collected at the time of the final plat.

City staff has reviewed the request and based upon the facts associated with this property, specifically the Deed Restriction that runs in perpetuity with the property requiring the area to be left and maintained in an undeveloped and natural state, recommends granting an exemption for this conservation district reserve from the excess sewer capacity charge since it complies with the intent of the ordinance.

Cost: \$0

Prepared By: Michael Skates, Development Services Director

Reviewed By: Development Services Department
Finance Department
Assistant City Manager - Operations
Legal Department

Approved By: Michael L. Spurgeon, City Manager

Attachments: Request from FedEx
Excess sewer capacity charge ordinance
Plat
Site Plan
FEMA Firm Map
Public Notice SWT-2015-319
Deed Restriction

Recommendation:

Approve an excess sewer capacity charge exemption for the 11.48-acre conservation district reserve associated with the FedEx development.