

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 521

By: Easley

AS INTRODUCED

An Act relating to cities and towns; amending 11 O.S. 1991, Section 44-110, which relates to appeals from the board of adjustment; indicating necessary party; allowing necessary party to assert specified grounds for appeal; deleting de novo trying of appeal; deleting redundant language; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 11 O.S. 1991, Section 44-110, is amended to read as follows:

Section 44-110. A. An appeal from any action, decision, ruling, judgment or order of the board of adjustment may be taken by any person or persons, jointly or severally aggrieved, or any taxpayer or any officer, department, board or bureau of the municipality to the district court in the county in which the situs of the municipality is located. In any appeal from any action, decision, ruling, judgment or order of the board of adjustment, the municipal governing body shall be a necessary party. The municipal governing body may assert as grounds for the appeal the improper application by the board of adjustment of the provisions for granting a variance set forth in Section 44-107 of this title.

B. The appeal shall be taken by filing with the municipal clerk and with the clerk of the board of adjustment, within the time limits which may be fixed by ordinance, a notice of appeal. The notice shall specify the grounds for the appeal. No bond or deposit for costs shall be required for such appeal.

C. Upon filing the notice of appeal, the board of adjustment shall forthwith transmit to the court clerk the original, or certified copies, of all papers constituting the record in the case, together with the order, decision or ruling of the board.

D. The appeal shall be heard ~~and tried de novo~~ in the district court in accordance with the applicable provisions of judicial review provided in the Administrative Procedures Act, Section 322 of Title 75 of the Oklahoma Statutes, and not inconsistent with the provisions of this section. All issues in any proceedings under this section shall have preference over all other civil actions and proceedings.

E. An appeal to the district court from the board of adjustment stays all proceedings in furtherance of the action appealed from, unless the ~~chairman~~ chair of the board, from which the appeal is taken, certifies to the court clerk, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would in ~~his~~ the chair's opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the district court upon application or notice to the administrative officer in charge of the enforcement of the terms and provisions of the ordinance, and upon notice to the ~~chairman~~ chair of the board from which the appeal is taken, and upon due cause being shown.

F. ~~The district court may reverse or affirm, wholly or partly, or modify the decision brought up for review.~~ Costs shall not be allowed against the board of adjustment unless it shall appear to the district court that the board acted with gross negligence or in bad faith or with malice in making the decision appealed from. An appeal shall lie from the action of the district court as in all other civil actions.

SECTION 2. This act shall become effective July 1, 2001.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-1-221

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