

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 SENATE BILL 1341

By: Treat

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5
6 AS INTRODUCED

7 An Act relating to municipal boards of adjustment;
8 amending 11 O.S. 2011, Section 44-110, which relates
9 to appeals from the board of adjustment; providing
10 for challenge to certain automatic stay in appeals
11 from decisions of the board of adjustment; stating
12 procedures; providing criteria for district court
13 review; making language gender neutral; and declaring
14 an emergency.

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

16 SECTION 1. AMENDATORY 11 O.S. 2011, Section 44-110, is
17 amended to read as follows:

18 Section 44-110. A. An appeal from any action, decision,
19 ruling, judgment or order of the board of adjustment may be taken by
20 any person or persons, jointly or severally aggrieved, or any
21 taxpayer or any officer, department, board or bureau of the
22 municipality to the district court in the county in which the situs
23 of the municipality is located.

24 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

1 notice shall specify the grounds for the appeal. No bond or deposit
2 for costs shall be required for such appeal.

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

7 D. The appeal shall be heard and tried de novo in the district
8 court. All issues in any proceedings under this section shall have
9 preference over all other civil actions and proceedings.

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

22 F. At any time during the pendency of an automatic stay as
23 provided for by subsection E of this section or a similar provision
24 of municipal law, any party to a proceeding before the board of

1 adjustment may object to the maintenance of the stay by filing an
2 application with the district court to lift the stay. If no parties
3 object to the application, the court shall lift the stay. If any
4 parties oppose the application to lift the stay, the court shall
5 consider and resolve the matter no later than sixty (60) days
6 following the filing of the application. The court shall determine
7 whether the stay should remain in effect by considering the
8 following criteria:

9 1. The likelihood of success on the merits by the party seeking
10 to maintain the stay;

11 2. Irreparable harm to the party seeking to maintain the stay
12 if the stay is lifted;

13 3. Relative effect on the other interested parties; and

14 4. Public policy concerns arising out of the preservation of
15 the stay.

16 The court may lift or preserve the stay on such terms as to bond
17 or otherwise as it considers proper for the security of the rights
18 of the parties.

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

3 SECTION 2. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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