

**COUNTY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 268  
Tuesday, September 17, 2002, 1:30 p.m.  
County Commission Room  
Room 119  
County Administration Building

**MEMBERS PRESENT   MEMBERS ABSENT   STAFF PRESENT   OTHERS PRESENT**

Alberty, Chair	Tyndall	Butler	West, Co. Inspec.
Dillard, Vice Chair		Beach	Blakely, D.A.
Walker			
Hutson			

The notice and agenda of said meeting were posted in the Office of INCOG, 201 W. 5<sup>th</sup> St., Suite 600, Thursday, September 12, 2002 at 10:45 a.m., as well as at the City Clerk's office, City Hall.

After declaring a quorum present, Chair Alberty called the meeting to order at 1:30 p.m.

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**CONTINUANCES and CASES WITHDRAWN**

**Case No. 1988**

**Action Requested:**

Special Exception for a sand extraction plant in an AG district. SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICT – Use Unit 24, located N & W of NW/c E. 141<sup>st</sup> St. & S. Sheridan.

**Presentation:**

Mr. Beach stated that the Bixby Board of Adjustment continued this case to October 7, 2002. The applicant has requested this case to be continued to October 15, 2002. Mr. Beach suggested that if this case is continued to October 15, 2002, then it should be heard on that date because the Board is required to take action within ninety days of the application filing and the ninety days would expire after that meeting date.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **MOTION** of **Walker**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **CONTINUE** Case No. 1988 to the meeting on October 15, 2002, on the following described property:

The portion of Lots 6 and 7 lying N of the Midland Valley Railroad right-of-way, less that part of Lot 7 lying W of Posey Creek; and in that portion of the SE/4 SE/4 lying N of said Midland Valley Railroad right-of-way, all in Section 10, T-17-N, R-13-E, of the IBM, Tulsa County, State of Oklahoma.

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**Case No. 2002**

**Action Requested:**

Special Exception to permit a 190' monopole telecommunications tower in an RE district. SECTION 1204.3. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES, Use Conditions, located 17926 E. 101<sup>st</sup> St.

**Presentation:**

Mr. Beach stated that the City of Broken Arrow annexed this property into their city limits just last night. He added that technically at this time the annexation has not been completed because the ordinance has not been published. The applicant would like for you to hear the case today. If the annexation succeeds, the City of Broken Arrow would have to hear the case. Mr. Beach suggested a continuance of the case.

**Audrey Blank**, 522 Colcord Dr., Oklahoma City, Oklahoma, stated she represented Sprint PCS, the applicant in this case. They requested to be heard on the merits, having applied while the property was under the Board's jurisdiction. She added that Sprint is questioning the annexation.

**Comments and Questions:**

Mr. Alberty asked if Sprint was going to challenge the annexation. Ms. Blank could only say they are looking into it. Mr. Alberty sought counsel from Dick Blakely, from the District Attorney's office. Mr. Blakely responded that the application is still under the Board's jurisdiction. He stated that Board action could possibly cause future legal issues between the City of Broken Arrow and the applicant.

**Interested Parties:**

**Russell Peterson**, 107 W. Commercial, Broken Arrow, Oklahoma, stated he is an attorney for Bob Freeze, a landowner in Broken Arrow. He has been discussing the jurisdictional issue with the City of Broken Arrow. He referred to a letter from Farhad Daroga, the City of Broken Arrow Planning Director to the Tulsa County Board of Adjustment, which states Broken Arrow passed an ordinance annexing all of the land in the area, including the site for the tower.

**Comments and Questions:**

Mr. Walker noted that Mr. Daroga's letter was merely informative and did not ask this Board not to take action. Mr. Alberty offered the Board an opportunity to make a motion regarding not hearing the case. There was no motion.

**Board Action:**

Mr. Alberty stated the item would be heard as listed on the agenda, regarding the following described property:

W 50.00' W 231.75' E 463.50' N 472.00' NW/4 NW/4 AND the S 236.00' N 944.00' E 463.50' NW/4 NW/4 AND the S 376.00' E 463.50' NW/4 NW/4 AND the W 231.75' S 236.00' N 708.00' E 463.50' NW/4 NW/4 of Section 25, T-18-N, R-14-E, of the IBM, Tulsa County, State of Oklahoma.

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**MINUTES**

On **MOTION** of **Walker**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Hutson "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** the Minutes of July 16, 2002 (No. 266).

On **MOTION** of **Hutson**, the Board voted 4-0-0 (Alberty, Dillard, Walker, Hutson "aye"; no "nays", no "abstentions"; Tyndall "absent") to **APPROVE** the Minutes of August 20, 2002 (No. 267).

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**UNFINISHED BUSINESS**

**Case No. 1976**

**Action Requested:**

Variance of the required 30' frontage on a public street to 0'. SECTION 207. STREET FRONTAGE REQUIRED – Use Unit 6, located 4413 S. 61<sup>st</sup> W. Ave.

**Presentation:**

The applicant was not present.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

The item was tabled to the end of the agenda.

Beg 600' S NE/c SE NW, thence W 884' N 165' W 407.61' N 35' E 1291.61' S 200' POB, Section 29, T-19-N, R-12-E, Tulsa County, State of Oklahoma.

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**Case No. 1984**

**Action Requested:**

Amendment of an approved site plan to permit a 24' x 60' temporary classroom, and a permanent classroom addition, located 13413 E. 106<sup>th</sup> St. N.

**Presentation:**

Mr. Beach stated the item was continued to this hearing for proper notice.

**Charles Horstman**, 8724 N. 120<sup>th</sup> E. Ave., stated he represented Rejoice Christian School. He stated the application request.

**Interested Parties:**

Mr. Alberty mentioned that an interested party, Mr. Larry Loffer, attended the last two hearings. His address is 13227 E. 106<sup>th</sup> St. N., Owasso, Oklahoma. He was concerned that the building would take up more land area and he questioned if the sewage system would be adequate, since there were problems with it previously. Mr. Horstman responded that the problems have been corrected and the water usage has decreased 400,000 gallons per year in the last year. He submitted a report of the water usage (Exhibit A-1).

**Board Action:**

On **MOTION** of **Hutson**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **APPROVE** an Amendment of an approved site plan to permit a 24' x 60' temporary classroom, and a permanent classroom addition, on the following described property:

Lot 1, Block 1, Owasso Freewill Baptist Church, a subdivision in the SE/4 of the SW/4 of Section 9, T-21-N, R-14-E; AND A tract of land that is part of the SE/4 SW/4 of Section 9, T-21-N, R-14-E, of the IBM, starting at the SW/c of the SE/4 SW/4 of said Section 9; thence N 88°44'40" E along the Sly line of said Section 9 for 390.00'; thence N 01°13'58" W and parallel with the Wly line of the SE/4 SW/4 for 71.42' to the POB of said tract of land; thence continuing N 01°13'58" W and parallel with the Wly line of said SE/4 SW/4 for 1002.52'; thence N 88°44'37" E for 593.73'; thence S 11°12'59" W, parallel with and 100.00' Wly of as measured perpendicular to the Wly right-of-way line of US-169 for 372.31' to the NE/c of Lot 1, Block 1, Owasso Freewill Baptist Church, thence S 88°44'37" W along the Nly line of said Lot 1 for 453.47' to the NW/c of Lot 1; thence S 01°13' 58" E along the Wly line of Lot 1 for 633.00' to the SW/c of Lot 1; thence S 83°02'02" W along the Nly right-of-way line of US-169 W exit ramp for 60.30' to the POB of said tract of land; AND a tract of land beg. at the SW/c of the SE/4 SW/4 of said Section; thence N 88°44'40" E and along the S line of said SE/4 SW/4 a distance of 175.93'; thence N 1°15'20" W a distance of 50.00'; thence N 83°01'52" E a distance of 215.16'; thence N 1°13'58" W a distance of 1002.52'; thence S 88°44'37" W a distance of 390.02' to the W line of the SE/4 SW/4; thence S 1°13'58" E a distance of 1073.93' to the POB; AND a tract of land beg. at a point 1073.93' N of the SW/c of the SE/4 SW/4 and on the W line of said SE/4 SW/4



another dirt business on another piece of property for about ten years. He would like to expand the business. They are in the process of reclaiming the land by sloping the banks and re-vegetating it as they go. He added that he has not received any complaints in the ten years of the business. He pointed out they plan to leave a natural greenbelt around the perimeter of the property. The engineering report did not indicate any adverse affects to the surrounding properties.

**Comments and Questions:**

Mr. Alberty noted that it should help the flood conditions. He also noted it is creating a detention pond for the county. Mr. West was satisfied if the engineering department has signed off on the project.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On **MOTION** of **Hutson**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **APPROVE** a **Special Exception** to allow mining and mineral processing (dirt and shale) Use Unit 24 in an AG zoned district, finding it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; and a **Use Variance** to allow mining and mineral processing in an RS zoned district (south edge of tract), finding it will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or Comprehensive Plan, on the following described property:

That part of the W/2 NE/4, Section 27, T-18-N, R-12-E, of the IBM, Tulsa County, State of Oklahoma, lying N of Polecat Creek, and being described as follows, to-wit: Beg. at the NW/c NE/4 of said Section 27; thence due E along the N line of said Section 27, a distance of 1,317.72' to the NE/c W/2 NE/4 of said Section 27; thence S 0°15' W along the E line of the W/2 NE/4 of said Section 27, a distance of 622.00' to a point; thence S 85°00' W a distance of 551.00' to a point; thence N 65°00' W a distance of 445.00' to a point; thence N 46°30' W a distance of 234.00' to a point; thence N 78°23'33" W a distance of 198.25' to a point on the W line of the NE/4 of said Section 27; thence N 0°14' W along the W line of the NE/4 of said Section 27, a distance of 281.00' to the POB.

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**NEW APPLICATIONS**

**Case No.1996**

**Action Requested:**

Variance of land area per dwelling unit from 2.1 to 2.01 acres in an AG district. SECTION 330. BULK AND AREA REQUIREMENTS IN THE AGRICULTURE DISTRICTS – Use Unit 9, located 13920 N. 86<sup>th</sup> E. Ave.









PT NE NE Beg. 331.64' W NE/c NE, thence W 990.00' S to PT, thence NE 329.35' N 130.00' E 330.83' S 200.00' NE to POB, Section 18, T-19-N, R-10-E; AND Road Easement: A strip of land in a part of the NE/4 NE/4 of Section 18, T-19-N, R-10-E; for the purpose of a 30' road easement, 15' on each side of the following described centerline; Said centerline is more particularly described as follows, to-wit: Commencing at the NE/c NE/4 of Section 18 T-19-N R-10-E; thence N 89°51'07" W along the N line of said NE/4 a distance of 329.66'; thence along the following Corps of Engineers' boundary line as follows, to-wit: S 45°06'41" W a distance of 465.88'; thence S 00°17'16" W a distance of 764.68' to a point of the N right-of-way line of State Hwy No. 51; thence S 86°36'46" W along said N right-of-way line a distance of 446.92' to the centerline of an existing gravel road and the POB; thence N 19°29'56" E a distance of 54.26'; thence N 20°08'28" E a distance of 53.57'; thence N 11°03'37" E a distance of 53.10'; thence N 03°58'26" E a distance of 53.92'; thence N 02°52'56" E a distance of 53.40'; thence N 05°26'07" E a distance of 55.50'; thence N 13°59'56" E a distance of 43.81' to a point on the S right-of-way line of the Burlington-Northern railroad and the end of road easement; AND Beg. at a point 661.64' W and 260.00' S of the NE/c Section 18, T-19-N R-10-E; thence W a distance of 330.82' to a point; thence S a distance of 166.38' to a point; thence NEly along the N right-of-way line of the St. Louis-San Francisco Railway Company, a distance of 332.62' to a point, thence N a distance of 131.87' to the POB; AND Beg. 661.64' W and 130.00' S NE/c NE, thence W 330.82' S 130.00' E 330.82' N 130.00' POB, Section 18, T-19-N, R-10-E; AND PT NE NE, Beg. 661.64' W 260.00' S 330.20' W NE/c NE, thence S 166.37' SW 339.30' N 185.31' NE 329.35' to POB, Section 18, T-19-N, R-10-E, all of Tulsa County, State of Oklahoma.

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**Case No. 2001**

**Action Requested:**

Use Variance to allow retail sales of produce on an AG tract (some produce is grown on subject tract and some is purchased from other source). SECTION 310. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICT – Use Unit 3 / 14, located 17137 S. Mingo.

**Presentation:**

**Don Carmichael**, 13102 E. 171<sup>st</sup> St. S., proposes to sell produce on his property, and build a barn for storage. He has obtained a permit to build the barn. A site plan (Exhibit D-1) was provided.

**Comments and Questions:**

Mr. Alberty stated the Board has received a letter from the Woodland Acres Homeowners' Association (Exhibit D-2). They specified conditions to have the barn to the north of the Baptist Church, and no disposal of unused or rotting produce on the land. Mr. Carmichael responded that the barn would be to the

north and they dispose of any unsold produce in a dumpster. He added that they feed the cattle some produce occasionally.

**Interested Parties:**

**Bud Waldron**, 9608 E. 175<sup>th</sup> St., stated he was representing the homeowners in Woodland Acres. The homeowners are not opposed to the retail sales on the north side of the property. A petition was provided (Exhibit D-3).

**Board Action:**

On **MOTION** of **Hutson**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **APPROVE** a **Use Variance** to allow retail sales of produce on an AG tract (some produce is grown on subject tract and some is purchased from other sources), limited to area indicated on site plan, per plan, on the following described property:

W/2 NW and SE NW less Beg. NW/c, thence S 65.00' E 1155.30' SE 20.60' E 130.00' N 70.00' W to POB and less W 24.75' for road, Section 31, T-17-N, R-14-E, Tulsa County, State of Oklahoma.

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**Case No. 2002**

**Action Requested:**

Special Exception to permit a 190' monopole telecommunications tower in an RE district. SECTION 1204.3. USE UNIT 4. PUBLIC PROTECTION AND UTILITY FACILITIES, Use Conditions, located 17926 E. 101<sup>st</sup> St.

**Presentation:**

**Audrey Blank**, 522 Colcord Dr., Oklahoma City, Oklahoma, representing Sprint PCS submitted a packet of information to the Board (Exhibit E-1). She reviewed the eleven factors the Board must consider for a communications tower and gave the information regarding this tower, as it was available in the agenda packet. She stated the tower would provide better services to the customers in this area. The proposed tower would be a galvanized monopole-type tower, 190' plus the height of the foundation relief, antenna mounting structures and lightning rod. It meets the 110% requirement. The nearest residential structure would be 767.49' to the north, which is the property owner's residence. The primary use of the parent tract and surrounding tracts is agricultural. The area is zoned RE. The topography consists of relatively flat terrain gradually sloping upward toward the northwest. There is heavy tree cover to the east, southeast, and south.

Mr. Alberty called a brief recess at 2:35 p.m. and called the meeting to order again at 2:47 p.m.

Ms. Blank continued her presentation:

The remainder of the area is pastureland. The compound would be 38' x 38', fenced, and contain three refrigerator-sized cabinets. There will be room for two additional telecommunications carriers to collocate. The ground equipment would not be visible from the street. There is a 228' access easement, and telephone and electric easements. The nearest existing tower for collocation purposes is 1.8 miles to the east, well outside the intended service area of this site.

**Interested Parties:**

**Dick Slemaker**, 18010 E. 101<sup>st</sup> St. S., Broken Arrow, Oklahoma, submitted information (Exhibits E-2 and E-4) to the Board. He stated that he and the surrounding neighbors are opposed to the tower. He added that it would be very visible to the surrounding properties. He referred to the meeting of the Broken Arrow City Council on September 17, 2002 where they annexed this area into the city limits. He informed the Board that the City of Broken Arrow has suggested two other locations for the tower. He added that the City of Broken Arrow has not approved this tower site.

**Peggy Slemaker**, 18010 E. 101<sup>st</sup> St. S., stated this tower would be injurious to the surrounding properties, decreasing the value of their properties, and would have a devastating visual impact on the area. She submitted photographs (Exhibit E-3) to the Board. She mentioned that the new ordinance for annexing this area would be published in the paper on September 19, 2002.

**Russell Peterson**, 107 W. Commercial, Broken Arrow, Oklahoma, stated he represented Bob Freese, a property owner in the southwest quadrant, adjoining the subject property. Mr. Freese was prepared to sell his property and was informed of the value of his property, but that it would decrease to approximately one-half the value if the tower were placed on this site.

**Bob Freese**, Rt. 2, Wagoner, Oklahoma, repeated the same concerns already stated, plus concern that red flashing lights would be placed on the tower.

**Applicant's Rebuttal:**

Ms. Blank responded there are no lights proposed for the tower, as it is less than 200' in height. She reminded the Board that devaluation of property is speculative and not a valid objection. She added that studies have shown there is not a substantial impact on property value. Ms. Blank pointed out that valuation of property and visual impact are not elements for the Board's consideration.

**Comments and Questions:**

Mr. Walker asked if they considered the alternate sites suggested to them.

**Michael Thompson**, 1341 W. Mockingbird Lane, Ste. 1200E, Dallas, Texas, stated he is a Real Estate Specialist for Sprint PCS. He stated they have met with the City of Broken Arrow Planning Staff in confidential discussions, regarding several possible site locations. He informed the Board they have gone through

about six different sites in the area. He was concerned that confidential proprietary information was given out without their permission. The application is a result of six months of diligent search and study of all the elements involved to find the best site to meet the standards of customer service. The airspace analysis confirmed there is no lighting or marking requirement for the tower.

During a Board review Mr. Hutson noted the applicant has found a piece of property that fits all of the County requirements in Sections 420 and 1204, and he found no reason to deny it.

**Board Action:**

On **MOTION** of **Walker**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **APPROVE** a **Special Exception** to permit a 190' monopole telecommunications tower in an RE district, as presented, finding it meets all of the eleven elements the Board is required to consider as listed in the presentation and agenda packet, thus finding it will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare, on the following described property:

W 50.00' W 231.75' E 463.50' N 472.00' NW/4 NW/4 AND the S 236.00' N 944.00' E 463.50' NW/4 NW/4 AND the S 376.00' E 463.50' NW/4 NW/4 AND the W 231.75' S 236.00' N 708.00' E 463.50' NW/4 NW/4 of Section 25, T-18-N, R-14-E, of the IBM, Tulsa County, State of Oklahoma.

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**Case No. 1976**

**Action Requested:**

Mr. Beach stated this case was tabled at the beginning of this meeting, as applicant was not present. The applicant is still not present. This case was continued from July 16, 2002. The applicant was to meet with the neighbors and obtain a legal mutual access agreement.

**Board Action:**

On **MOTION** of **Walker**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **DENY** without prejudice, a **Variance** of the required 30' frontage on a public street to 0', due to a lack of specific performance, on the following described property:

Beg 600' S NE/c SE NW, thence W 884' N 165' W 407.61' N 35' E 1291.61' S 200' POB, Section 29, T-19-N, R-12-E, Tulsa County, State of Oklahoma.

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**Case No. 1985**

**Action Requested:**

Mr. Beach stated the applicant for this case was not present when it was previously on an agenda. He has not arrived for this meeting.

**Board Action:**

On **MOTION** of **Dillard**, to **CONTINUE** Case No. 1985 to the meeting of October 15, 2002 died for lack of a second after Mr. Beach explained that the ninety-day limit for Board action on an application would be up in three days. Mr. Beach offered to call the applicant to see if he is still interested and wants to re-advertise.

The **MOTION** of **Walker**, to **DENY** Case No. 1985, died for lack of a second.

The **MOTION** of **Hutson**, to **APPROVE** Case No. 1985, died for lack of a second.

On **MOTION** of **Walker**, **Seconded** by **Dillard**, the Board voted 4-0-0 (Alberty, Walker, Dillard, Hutson "aye"; no "nays"; no "abstentions"; Tyndall "absent") to **DENY** a **Special Exception** to allow an outdoor activity (Use Unit 2) fireworks stand in a CH zoned district, from June 15, 2003 through July 5, 2003, on the following described property:

Part N/2 SE Beg. 505.10' E SW/c NW SE, thence E 1131.80' NE 134.77' NE 74.44' NW 489.87' SWly curve right 1036.77' POB, less Beg. 1407.4' E SW/c N/2 SE, thence NW 64.51' NE 29.66' NE 225.21' SE 139.69' SW 13.51' SW 134.77' W 229.50' POB, Tulsa County, State of Oklahoma.

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There being no further business, the meeting was adjourned at 3:20 p.m.

Date approved: 10/15/02

Wayne Alberty  
Chair