

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 326
Tuesday, July 17, 2007, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair
Dillard
Hutson
Tyndall, Vice Chair
Walker, Secretary

Butler
Cuthbertson

West, Co. Inspector
Iski, D.A.

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, Thursday, July 12, 2007 at 1:38 p.m., as well as in the Office of INCOG, 201 W. 5th St., Suite 600.

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

Mr. Cuthbertson read the rules and procedures for the County Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **Walker**, the Board voted 4-0-0 (Walker, Tyndall, Hutson, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **APPROVE** the Minutes of June 19, 2007(No. 325).

REQUEST TO CONTINUE AND CASES TO WITHDRAW

Case No. 2274

Action Requested:

Special Exception to permit a manufactured home in an RS district (Section 410); Special Exception to permit an 8 ft. fence in the required front yard (Section 240.2.C); and a Use Variance to permit a residential accessory structure on a lot not containing the principal use., located: 5324 South 83rd Avenue West.

Presentation:

The case must be continued to August 21, 2007 as per the agenda.

Board Action:

On **Motion** of **Hutson**, the Board voted 4-0-0 (Walker, Tyndall, Hutson, Charney "aye"; no "nays"; no "abstentions"; Dillard "absent") to **CONTINUE** Case No. 2274 to the meeting on August 21, 2007, on the following described property:

PRT SW NE BEG 660W NEC SW NE TH S90 E300 N90 W300POB SEC 36 19 11 0.62AC, BEG. 1130 N. SWC E 1/2 SW NE THE E. 300 N. 100 W.300 S 100 TO BEG. 36 19 11 .7 ACRES Tulsa County, State of Oklahoma

NEW APPLICATIONS

Case No. 2271

Action Requested:

Special Exception to allow a manufactured home in an RS district (Section 410), located: 5540 South 65th West Avenue.

Presentation:

Sherry Ingram, 5540 South 65th West Avenue, proposed to place a mobile home on the subject property.

Mr. Dillard arrived at 1:40 p.m.

Comments and Questions:

Mr. Charney asked about other mobile homes in the area. Ms. Ingram stated there are numerous mobile homes in the area. Mr. Cuthbertson commented there are some transmission wires above the site, which are permitted by a significant easement. Ms. Ingram responded the electric company informed them that it was ok to place the home there as long as it was not permanent. Mr. Cuthbertson noted there were cars parked on grass and dirt. He added that parked cars in the county must be on concrete or asphalt.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Hutson**, the Board voted 4-0-1 (Walker, Tyndall, Hutson, Charney "aye"; no "nays"; Dillard "abstained"; no "absences") to **APPROVE** a Special Exception to allow a manufactured home in an RS district (Section 410), with conditions for all autos on the property be in running order and parked on hard surface, asphalt or concrete paving, access or driveways can be gravel, manufactured home must comply with all of the standard permitting requirements

for septic, skirting, tie-downs, with a lot combination for the south 11 lots, Lots 1-11 Block 46, 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:

LTS 55 - THRU 64 BLK 45 & LTS 1 - 10 INCL. BLK 46 NORTH TANEHA Tulsa County, State of Oklahoma

Case No. 2272

Action Requested:

Variance of maximum permitted 750 sq ft of accessory buildings in an RS district to allow a 1,200 sq ft garage (Section 240.2.E), located: 17250 West 59th Street South.

Presentation:

Brian Burris, 17250 West 59th Street South, proposed to add 15 ft. to an accessory building. The building would match the materials on the exterior of the house. He stated he has a one-acre lot. He planned to put it toward the back of the property and the configuration of his lot on a cul-de-sac and the natural flow of drainage on the back of his property limits where he can place the building. He communicated with his neighbors about the application and one sent a letter of support (Exhibit A-1). He expected another neighbor to come to this hearing in support.

Comments and Questions:

Mr. Charney asked about the waterline at the rear of the property. Mr. Burris pointed out the path of stormwater drainage from the neighboring properties that flow across the back of his land. Mr. West commented the variance will have to address placing the building in the side yard rather than the rear yard, as well as the size of the building.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Walker**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Variance of maximum permitted 750 sq ft of accessory buildings in an RS district to allow a 1,200 sq ft garage (Section 240.2.E), finding the oversized lot and the drainage across the rear yard, to allow an accessory building in the side yard, on the following described property:

LT 8 BLK 2 PLEASANT OAKS III, Tulsa County, State of Oklahoma

Case No. 2275

Action Requested:

Variance of the minimum 30 ft. of frontage required on a public road in order to permit a residential use (Section 207), located: 19804 South Garnett Road East.

Presentation:

Thomasin Goyer, 19804 South Garnett Road East, stated they purchased the property in 1971. They sold eight and one-half acres in 1984 to Steve and Connie Wells. She and her husband put their mobile home on the existing site and she pointed out the driveway they used for access. The Wells did not use the Garnett entrance but continued to use the Goyer's driveway. There are three oil companies that have continued to use the driveway, four mobile homes were moved in and out and the occupants used her drive. The current occupant on the oil property brought in five loads of gravel to improve it last February. Another family desires to purchase five acres of her property along the driveway. She planned to include a permanent access easement with the deed. She intends to sell her home site property in the future.

Comments and Questions:

Mr. Charney clarified the information Ms. Goyer presented. He found that they began with 79 $\frac{3}{4}$ acres, and sold 8 $\frac{1}{2}$ acres, 12 $\frac{1}{2}$ acres, and 5 acres. Three families access their property by her drive.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On **Motion** of **Hutson** to **DENY** Case No. 2275, Mr. Charney called for discussion. He stated that when a large piece of land is sold off in smaller lots, three, four or five times; the Board would be allowing someone to subdivide without going through the more formal process to ensure appropriate ingress/egress, stormwater drainage, and utility access. Mr. Hutson commented it requires engineering to provide for street frontage. Mr. Walker pointed out that if the property was located on a County road or dedicated road the applicant could have sold individual tracts and there would have been no consequence to the Board.

On **Motion** of **Hutson**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **DENY** Case No. 2275, for the reasons listed above, on the following described property:

N/2 SE LESS .25AC FOR CEMETARY & LESS S374 E990 N/2 SE & LESS S336 W660 N/2 SE & LESS BEG NEC SE THS862.48 W18.63 SW137.30 W459.10 N912.81 E597.57 TO POB SEC 7 16 14 53.633ACS Tulsa County, State of Oklahoma

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Case No. 2273

Action Requested:

Special Exception to permit sand and gravel mining in the AG district (Section 301), located: Southeast of 161st Street and South Garnett Road.

Presentation:

Mike O'Dell, 9660 Lakewood Road, Lenexa, Kansas, submitted applicant exhibits (Exhibit B-1). They proposed to mine sand and gravel from the Arkansas river and the adjacent floodplain at the location indicated by the submitted plans. He informed the Board that the demand is growing and the local supply has diminished. The site has not been earmarked for any development in the county land use plan; it has been identified as an agricultural reserve.

Comments and Questions:

Mr. Charney asked for clarification of Mr. O'Dell's last statement. Mr. Cuthbertson responded that he is probably referring to the Arkansas River Corridor Master Plan, which was provided to the Board. He added it covers the river from the Keystone Dam all the way to Wagner County.

Mr. O'Dell continued, stating the site is close to the existing users, within a mile to the main haul-route, Highway 64 to the south on Garnett Road. They have a written agreement and some verbal agreements with the County that Holliday Sand & Gravel would supply the materials and the County would supply the labor. It would be a cost share for the Garnett Road widening and improvements. He explained that the property cannot be developed for other uses than AG because the bulk of the property is in the floodplain. There would be a minimal clearing of habitat vegetation. They propose the operation to run from 7:00 a.m. to 7:00 p.m., Monday through Friday and 8:00 a.m. to 12:00 p.m. on Saturdays, mainly during construction season. The projected life of the project is 15 years. Environmental impacts are supplied in the exhibits. There are about five homes nearby, one within ¼ mile west of the Garnett frontage of the subject property and four within ½ mile west off of 161st Street. There are approximately another 24 residences about one mile away. Local schools are 1 ½ to 2 miles away and not on the haul-route. They estimate 100 trucks per day but there could be up to 200 trucks per day equaling 400 trips per day. They would contract for a traffic study. They are planning for dust control of the plant roads with recycled asphalt. The primary operation would be river dredging on approximately 105 acres. They would use silencers on the dredgers. Mr. O'Dell stated the plant would be on twelve acres in the northwest corner and screened to the east and south by the treed corridors on Snake Creek and Snake Creek tributary. They would agree to plant evergreens along Garnett. He submitted photographs (Exhibit B-2). They talked with the neighbor across the street and he did not have any objection. They would direct

lighting down. They plan for a hydrology study for the project and permits. The sand pond and pit is on about eighty-three acres.

Mr. Hutson asked how many permits they must obtain before they build a plant and begin operations. Mr. O'Dell estimated there are about six permits from DEQ, State of Oklahoma, the County, and Corp of Engineers. Mr. Hutson wanted the interested parties to understand they have to meet many requirements for these permits. Mr. Cuthbertson also mentioned that once this project is over it does not open up the way for commercial development, as the land is zoned agricultural.

Interested Parties:

Joe Davidson, P.O. Box 686, Bixby, Oklahoma, stated his land adjoins on the east side along Snake Creek. He owns 50 acres with a residence. He asked if the trucks run seven to seven or are those hours for the dredging or is that 24 hours per day. He expressed concern about the widening of Garnett and the bridge as a big project. He added this is a school bus route. Mr. Davidson stated he made phone calls randomly to 15 of the 27 sand supply companies listed in the phonebook and everyone of them informed him they had excess capacity in sand at that time. He indicated that the Department of Mining does not do a lot of engineering review once the County gives approval. The Army Corp of Engineers informed him today that because of a Supreme Court ruling they no longer have authority to issue a 404 Permit.

Teresa McLain, 16614 South 128th East Avenue, stated a family member owns property on east Snake Creek. She opposed because before the 1986 flood the creek was cutting off the family property. She informed the Board that if the flow of the river is changed it would take out a small wood culvert at 129th that would cut off eight people from their properties. She also asked if the culvert washes out, who would they call. She asked if they planned to use the cutterhead in the river or on the banks.

Jerry Martin, 12926 East 161st Street South, expressed concern of the river washing out the banks and culvert. He complained of dust and truck traffic from such a plant.

George Roberts, P.O. Box 905, Bixby, Oklahoma, stated he owns property east of the subject property. He was concerned that not all of the neighbors were notified of this case. He also mentioned that it would devalue their property.

Glenn Koenig, 16312 South 128th East Avenue, stated opposition of such a project on the river that could cause loss of land.

Ray Bowen, Mayor of the City of Bixby, stated that Holliday Sand and Gravel has been a good corporate citizen.

(name inaudible), 12925 East 161st Street South, opposed the application for the noise of the proposed plant.

Teresa McLain-Bean, asked if this plant would mine silica sand, which is a very fine sand.

Applicant Rebuttal:

Mr. O'Dell stated that Holliday Sand and Gravel is an employee-owned property. He responded to neighbor's concerns that they plan to do a hydrology study. They will not proceed if they believe it will do damage to streets or anyone's property downstream. Mr. Charney asked about the hours of operation mentioned, if that was for the trucking and/or the mining. Mr. O'Dell replied that the hours of seven to seven would be the hours they would be open, loading trucks. He added there will be times when they would need to dredge 24 hours per day. Mr. Charney asked if they could agree to the Board imposing certain hours of operation. He replied that they could if they built a larger production rate plan. Mr. Hutson assumed that would mean more noise and larger equipment. Mr. O'Dell replied that he did not know that it would be noisier, but a little more of a presence. He stated they are aware a bus goes by the proposed plant, but the trucks would not haul past the school on residential streets. He informed the Board that river dredging is not regulated if there is only incidental fall-back into the river, with an EPA 404 permit. The Corp of Engineers are very involved with this site and have jurisdiction there. He commented that the dredge is about 20 ft. x 40 ft. in size and might be used in the pit if there was enough water. The cutter-head is about 24 inches in diameter and is like a rotating head with teeth on it that loosens the sand. They would not want to dredge within 50-100 ft. of the bank and cave the bank. They could post a quarter million dollar bond payable to a homeowners' association or the county, in the case of unforeseen erosion. Mr. Charney asked if other Departments and/or agencies that do more technical studies and reviews after a Board of Adjustment approval.

Janet Meshack, with Meshack Associates, replied that Holliday Sand and Gravel contacted them in advance to see if this was even possible. It is nearly all in a floodway. She stated Snake Creek actually overflows around 181st Street. They advised the Holliday company that they would have to lower some of the areas affected in order to have compensatory floodplain storage and conveyance not to cause any rise in the water surface or floodway. Mr. Charney asked if there is a process to follow to prevent erosion of the bank. She did not think there was any real process that would eliminate the possibility of erosion. The Keystone Dam has a big impact on the water level.

Mr. Hutson asked how they selected this site. Mr. O'Dell replied they selected this site because it is convenient, close to the market. Less transportation time decreases the cost of delivery. The distance from residential homes makes this a good site and they will not be hauling past houses.

David Iski, Assistant District Attorney, encouraged the Board to address the concerns within Section 1224.3 and Section 1680.3 in their findings.

In discussion, Mr. Walker had concerns for possible occurrences of erosion. Mr. Charney was relieved to know that the dredging site, which might be around the clock, is farther away from residences. Mr. Hutson noted that sod farms are all over the area and recognized dust as a characteristic of a farming area during certain seasons. Mr. Tyndall found the proposal to be appropriate subject to the hours and road usage. Mr. Charney stated the Board has considered dust, vibration, traffic and the applicant's offer to do watering to control dust. Their road improvement plan would assist the vibration. The haul route seems to be the best and shortest distance to users. The applicant would have significant setbacks and berming. They have addressed the hours of operations.

Board Action:

On **Motion of Hutson**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** a Special Exception to permit sand and gravel mining in the AG district (Section 301), as submitted by the applicant, in accordance with the data submitted and the plan of operation, subject to all of the permitting required, including environmental and quality, mining; hours of operation: truck traffic and pit operations from 7:00 a.m. to 7:00 p.m. and dredging as needed; with conditions provided by the applicant to stay away from the banks in excavation; to take necessary steps to minimize erosion, specifically, dredging no closer than 50 ft. from the shore, except when the equipment is moved to the working site; placement of rip rap in areas that appear to be adversely affected from erosion by the operation; the applicant to contribute to the cost and upkeep of Garnett Road south to Highway 164; a watering plan that is consistently administered, authored by the applicant and posted for the inspector should they wish to see it; and the applicant to provide a \$250,000 bond to be posted in the event that certain remedial cure to public works is deemed necessary by the inspector's office for actions inconsistent with various permits; 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; finding the Board has made an effort to address the issues raised in Section 1608; on the following described property:

"That portion of the Arkansas River lying South of the centerline, upstream of the confluence of Snake Creek, in the South ½ of Section 20, and in the North ½ of Section 29 all in Township 17N, Range 14E of the Indian Base and Meridian, in Tulsa County, Oklahoma, and more particularly the South half of the Arkansas River, beginning at the extension of S. Garnett Road, easterly and downstream along the south bank of the Arkansas River approximately 4600 feet to the mouth of Snake Creek, containing 105 acres more or less; AND certain real property in Tulsa County, Oklahoma, in the North ½ of Section 29, Township 17 North, Range 14 East of the Indian Base and Meridian and lying north of Little Snake

Creek, less the south 1000 feet (containing 23.6 acres), containing 160 acres, more or less."

NEW BUSINESS

There was no new business.

OTHER BUSINESS

Interpretation of the Zoning Code to determine the classification of a pond in a platted residential district.

BOARD ACTION:

On **Motion of Charney**, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **CONTINUE** this business to the meeting on August 21, 2007.

There being no further business, the meeting adjourned at 3:49 p.m.

Date approved: 8/21/07

David E. Charney
Chair