

TULSA COUNTY BOARD OF ADJUSTMENT

MINUTES of Meeting No. 383

Tuesday, April 17, 2012, 1:30 p.m.

Aaronson Auditorium

Tulsa Central Library

400 Civic Center

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair

Dillard

Osborne, Secretary

Walker, Vice Chair

Tyndall

Alberty

Sansone

Sparger

Back

West, Tulsa County

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 12th day of April, 2012 at 9:31 a.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

Mr. Sansone explained the rules and procedures for the County Board of Adjustment Public Hearing.

MINUTES

On **MOTION** of **DILLARD**, the Board voted 4-0-0 (Charney, Dillard, Osborne, Walker "aye"; no "nays"; no "abstentions") to **APPROVE** the Minutes of March 20, 2012 (No. 382).

UNFINISHED BUSINESS

Case No. 2424—Phil Frazier

Action Requested:

Special Exception to permit sand extraction within Use Unit 24 – Mining & Mineral Processing – in an AG District (Section 310). **Location:** SE/c of 151st Street South and South Mingo Road

Presentation:

Phil Frazier, Attorney, 1424 Terrace Drive, Tulsa, OK; stated he represents Mr. John Easton, the property owner. The property is bounded on the north side by 151st Street, bounded on the south side by 161st Street, bounded on the east side by the Arkansas River, and bounded on the west side by Mingo Road. The location is approximately a half mile from East 151st Street, approximately a half mile from 161st Street and a half mile east of Mingo Road. The interest in this special exception is that Easton Sod is a sod farm that has been on this land for years. In recent years they have developed a particular type of sod which is called Patriot Sod. Easton Sod is one of five sod companies in the world that has developed this particular sod and producing this sod, thus creating a commercial necessity to continue with the operation. Patriot sod requires a five to six inch sand base. Up to this point the sand has been purchased to produce this sod. Mr. Easton would like to utilize his property on the river, which is presently a sod farm, to mine his own sand and use it in his sod farm operation. This is the basis for the special exception request before the Board of Adjustment today.

Mr. Charney stated that there have been several letters received from surrounding people of the neighborhood stating that if the request were approved, it would be injurious to the neighborhood and not consistent with the agricultural use. They see the sand extraction and mining as a different venue from the sod farming. Mr. Frazier was asked to express his thoughts on that matter and whether he thought there was a distinction between sand extraction and sod farming.

Mr. Frazier stated there is no distinction because it is two different operations but the sand is used as a part of the agricultural use of the sod farming. Sod farming is an agricultural use and the sand is utilized in the production of the sod. This operation will be at least a half mile from any residence. Any reference to the detriment of the neighborhood would not be accelerated because the requirements the sand extraction will have placed upon them will be far more stringent than what exists today. There are several licensing authorities that would be involved, and their regulations are very strict. The roadway would be the only contact with the neighborhood, and there are only a couple of houses in the immediate vicinity. There would be no dust raised from the obtaining of the sand from the river because the sand would be wet. Mr. Frazier stated that he believed there would no adverse effect on the neighborhood.

Mr. Walker asked Mr. Frazier if the half mile distance was measured from the dredging point. Mr. Frazier stated the operation would be a half mile from the residences, because the closest residences are on 151st Street and Mingo. The operation is half mile away from 151st Street and a half mile away from Mingo Road.

Mr. Osborne asked Mr. Frazier if the subject tract was owned by the same person who wants to operate and utilize the sand extraction. Mr. Frazier confirmed that statement. Mr. Osborne asked if the sand would be dredged from the river and taken to the sod plot locations. Mr. Frazier confirmed that was exactly what would happen in the operation.

Mr. Charney stated that he understood the sand extraction operation would be largely in the center of the section, half mile from 151st and 161st Streets, and he wanted to know if the dredging process limited the operation to that particular area or if it will be a broader application allowing it anywhere along the property. Mr. Charney also asked if the Board were inclined to approve this request if the client would be willing to limit the dredging operation to center section not allowing the operation to spread. Mr. Frazier stated that if the Board were to approve this request his client would certainly be willing to operate under the limitation that the operation would be in that particular area, because he does not want to be farther away from the river than necessary. The closer the operation can stay the better, and it will also be necessary to receive approval by the Bureau of Mines and the Corp of Engineers.

Mr. Charney stated that the Board has been provided many pieces of information from the opponents of the application. There was significant theme among the many objections and that is the poor condition of the roadway of 151st Street along where the trucks will need to exit in front of the homes. Even though the mining operation will be a half mile away from homes the truck traffic will be increased significantly, and the already decimated road will have even more traffic. That traffic is what the neighbors are saying would be detrimental to the neighborhood.

Mr. Frazier stated there would be more traffic but not much more, than and not as many as the sod farm has because there will not be very much sand trucked off the property. Mr. Frazier showed Mr. Charney on a case map where a road could be located. It would be a road that would turn west out of the property and located farther south than 151st Street by a few hundred feet. This proposed road would not impact East 151st Street residences. Mr. Frazier stated that in the one mile section of Mingo Road between 151st and 161st Streets there is only one residence and one office.

Mr. Charney asked Mr. Frazier if there was activity on the property today, i.e., dumping or other non-agricultural uses. Mr. Frazier stated that over the years that his client's father has left broken down equipment on the property. The client is working with his father to clear the property of the useless equipment. Also there has been top soil sold from the property.

Interested Parties:

Yolanda Hiatt, 9723 East 151st Street South, Bixby, OK; stated she lives on the corner of 151st Street and Mingo Road. She is opposed to the special exception request because of the heavy traffic that currently exists. The truck traffic delivers a variety of items to the area and has been heavy for approximately the last five years. The 151st road was once paved and now it is pothole infested due to the heavy traffic. The traffic also creates a large amount of dust. The trucks start at 7:00 A.M., especially the construction trucks for the Bixby Public Schools. Ms. Hiatt stated that recently the truck traffic has been so heavy that her in-ground pool has started cracking. A few years ago a horse was hit by a truck and had to be euthanized because the truck was traveling so fast that it could not stop for the animal. All the trucks travel faster than they should, and this is a dead end street. Ms. Hiatt does not want to have this request approved.

Melinda Stone, 9909 East 151st Street South, Bixby, OK; stated that she is strongly opposed to this request. Ms. Stone stated that she lives in the very last house on a dead end street. Mr. Charney asked Ms. Stone to come forward and point out her house on the case map provided the Board in their agenda packet. She is not against the sod trucks or the sod farm because it is agriculture, but this is more than a sod farm. Since the ice storm of 2007, when the destroyed trees were being hauled away in Tulsa, those trees were dumped on Mr. Easton's property. The large trucks drove up and down the street, 24 hours a day, two and a half minutes apart; she stated timed the trucks. For three weeks the dust was horrendous and they sped up and down the road. The drivers did not care if they hit a pothole. There are pets and children in the area. Ms. Stone stated that she stopped many of the truck drivers and asked them to slow down, and when she did not receive any help from the drivers she called several supervisors to no avail. There are several acres of tree debris, still today, and those huge tree debris mounds catch fire due to instantaneous combustion. They are smoldering today. Last year the fire spread toward her property line, and she was prepared to evacuate her home because the fire was up to her property line. It was that close. Ms. Stone stated that her husband is in very poor health. She also stated that because of the smoldering fires he has developed emphysema, which she can document with medical records. If this request is approved the residents of the neighborhood will not be able to spend time outside and they won't be able to open the windows of their homes due to the dust. She does not object to the sod farm because she enjoys agriculture, but what is proposed today is not agriculture. There is more than tree debris dumped on Mr. Easton's property, and that is his business, but the truck traffic is horrific. Also no one wants to repair the road, not the city, not the county and not Mr. Easton. Ms. Stone stated that if the sand extraction is allowed to go in, the property values will plummet, because no one wants to buy a house across the street from a sandpit. The other sand extraction companies in the area do not have anyone living close to the operation, i.e., Holiday Sand.

Gloria Cravens, 9723 East 151st Street South, Bixby, OK; stated that she opposes the approval of this special exception. There is sand in the air all the time, because once the wet sand extracted it dries out and blows in the wind. The cement is breaking off her house and around her pool because of the shaking the truck traffic causes. She

has been awakened early in the morning because her house is shaking so much from the uncovered dump trucks going up and down the street so fast. A supervisor from one of the trucking companies came to speak to her about her complaints and he told her to call her county commissioner. The reason she bought her home is because it is located on a dead-end road in what used to be a peaceful area.

Mr. Osborne asked Ms. Cravens to describe what type of trucks leaving the area other than the empty dump trucks. For the past two years there have been trucks with sand using the road to leave. Mr. Osborne asked Ms. Cravens where the blowing sand that has been referred to be coming from; he wanted to know, in particular, if the blowing sand was coming from the sod farm. Ms. Cravens stated that the sand was not coming from the sod farm because they water the sod to keep it moist so it will grow. The blowing sand is coming from the road that the uncovered dump trucks, the cars, and the pickups pulling trailers that are speeding up and down the road.

Rebuttal:

Mr. Frazier stated that the opponents are correct, in that there have been some fires in the area. The City of Bixby, the City of Tulsa, and the County of Tulsa did not have enough space to dispose of all the tree debris from the 2007 ice storm, and Mr. Easton allowed them bring the debris to his property and dump it. Most of the debris has been burned and has burned over the years. There are still some times when the debris mounds flare up, and Mr. Easton is in the process of extinguishing or smothering the fires as best as he can. Mr. Easton intends to grind the debris into mulch to use in his agricultural use. As to the concrete, there have been loads of broken concrete brought in which has been used along the river to alleviate the erosion. As to the dust, it is coming from the river. Because of the extremely dry year last year, the wind picked up dry sand and dirt distributing it everywhere. As to the road repair, Mr. Easton has brought in gravel for the road in an attempt to fix the pothole problem because the city nor the county would do anything about the road. Mr. Easton is willing to move the road down and away from 151st Street in order to receive approval for his special exception request.

John Easton, 11225 South 90th East Avenue, Bixby, OK; stated that if he is allowed to have his mining operation it will be mandated by the State of Oklahoma. The road in front of the homes used to be a good road until the massive amount of timber was hauled in by the City of Tulsa. There was so much timber hauled in that it covered 16 acres and was approximately eight feet deep. Mr. Easton stated that one of the reasons he allowed the tree debris to be dumped on his property was because he wanted the debris to create compost, mix that with sand creating top soil. That was a long-term goal. The people who were hauling in the timber were contracted to repair the road after they were done, but it was not done. Spontaneous combustion does start fires in the area, and there is a man constantly digging out the fires and dousing them with water, especially in the summer.

Mr. Charney asked Mr. Easton if the Board decided it was important to provide an ingress and egress point from his property to the south, would he be willing to provide

that. Also, if the Board decided that it was important to have the area watered for dust control, as part of the mining operation program, would he be willing to do that. Mr. Easton stated that he would, and that it would be mandated by the state.

Mr. Charney stated that it would be important for Mr. Easton and his counsel to hear the Board's standard of review. In granting such an operation, or use by special exception, the Board should consider the environmental influences, such as dust or vibration. The Board should establish, when appropriate, protective conditions such as setbacks, screening, dust control as will mitigate the adverse effects of the nearby uses. This is something the Board is charged to do at this level, given that the roadway operation is one of significant truck traffic immediately in front of their homes is an adverse use.

Mr. Walker asked Mr. Easton about his plans for the mulch or tree limbs. Mr. Easton stated there were a couple of ideas that he would like to implement. One is the mulch that has been composted. He wants to manufacture that and bag it. His business is drifting more into the athletic field with the sod, and it requires 75% to 90% sand base. There is a small amount of mulch mixed with the sand base to grow this specific athletic grass on clay or anything else. Mr. Easton stated that if he cannot grow and harvest his own sod he finds it necessary to bring in sand from an outside supplier. Mr. Walker asked Mr. Easton where the burning tree debris was located and how close it is to the neighbor's property. Mr. Easton stated that he thought there was a portion of the debris that does touch a neighbor's property on one end at the north, but most of the debris is in the center. The drivers who were dumping the debris extended a little beyond their parameters, and it was hard to control because there were approximately 50 trucks an hour coming and going.

Mr. Charney called each of the opponents to the head table to ask them a question. Ms. Melinda Stone was called forward. Mr. Charney stated that currently the egress for the truck traffic is right in front of her home. There has been an offer made to move the egress about a quarter mile to the south. Mr. Charney asked if she would see that as having less of a negative impact on her home. Ms. Stone the proposed egress site is not a quarter of a mile away, and there are several houses in the immediate area of the proposed site. Ms. Yolanda Hiatt and Ms. Gloria Cravens were called forward and asked the same question as was asked of Ms. Stone regarding the proposed egress site. Ms. Hiatt stated there are at least six houses in the immediate vicinity of the egress site, and Ms. Craven concurred.

Mr. Charney asked Mr. Easton to come forward. Mr. Charney stated that the Board has been looking at the case map provided them, and have asked the opponents to locate their properties and explain the area around the proposed egress site. The Board has now been told there are several houses in the proposal site. Mr. Easton stated that he knew there were several houses in the proposed area but the house that would be right on the corner of Mingo is not protesting the project. There are five houses within an eighth of a mile south of the proposed site. The proposed egress site would be closer to one house and about the same distance as it is to the opponent's houses.

Comments and Questions:

Mr. Ron Walker stated that he could support the special exception request if there could be a good relocation of the ingress and egress to the sod farm. If he were to make a motion it would be contingent upon the restoration of 151st Street and the moving of the tree debris away from the neighboring property.

Mr. Gene Dillard stated that Mr. Easton should have been building a relationship with his neighbors before he appeared before the Board, but he could support this request with the condition that the land be cleaned of the "collectibles" that have been allowed to lay deteriorating for years.

Mr. Osborne stated that this is a very difficult case, because he likes to be and wants to be an advocate for the individual to use their property as they wish. But when the individual fails to be a good neighbor that is when it becomes an issue. The Board is being asked if sand extraction is a good use and permitted by-right in an AG district because of potential adverse effect. If the sand extraction is controlled, it is one thing, but when it is not controlled then the sand extraction affects the general welfare; that is something that no longer follows the guidelines of being a good use, and falls outside the spirit of the code. That is why the code exists. Mr. Osborne stated that today he could not support this request because he sees it is a detriment by Mr. Easton's actions.

Mr. Charney stated that the increased truck traffic makes this a difficult request to consider. Mr. Charney stated that he would like to find a way for the land owner to do with their land within the spirit of co-operative efforts, but he does not see a way of arriving to that conclusion so he could not support an approval of this request.

Mr. Charney asked staff if it would be wise to ask the applicant and his counsel to bring the Board a plan on the location of the ingress and egress point, and continue this case to the next meeting in May. There are various issues to be considered in this case. Those issues are past actions, clean up, the mulch that is still burning, and the ingress and egress; but if there were a plan brought to the Board to address those issues a motion could be made to continue this case.

Mr. Alberty agreed with Mr. Charney. There has been a lot of abstract discussion today. Typically whenever there is a request of this magnitude before the Board, there are more specifics presented, not only specifics on how the sand operation is going to operate, but is the sand operation only going to provide sand for Mr. Easton's use or will it be sold and trucked out. The Board can make a motion on one or the other, if the motion for support the Board can list a series of conditions that Mr. Easton would need to comply with. Mr. Alberty thinks Mr. Easton would be better served, because he heard concerns of nearby neighbors and the Board, if the applicant were allowed to come back with a specific plan. The plan should stipulate how the issues will be addressed. If the applicant is not willing to come back then the Board can definitely take action today.

Mr. Walker stated that he could support the sand operation because it will not be a problem on the river; the problem is the trucking. That is why he would like to see the ingress and egress moved and 151st Street be restored. Mr. Easton is in the business so he will be trucking the sand in from an outside entity, so by granting the use of his own sand plant it helps the situation by possibly lowering the truck traffic.

Mr. Charney asked Mr. Frazier if he would like to continue this matter to the meeting in May, as opposed to taking a vote today. Mr. Frazier stated that he has not heard anyone complain about the mining proposition but has heard many complaints about the truck traffic. Mr. Frazier welcomed the opportunity to present an alternative to the Board in regards to the truck traffic, but he does have concerns over the conversation regarding restoring 151st Street to its original condition. That street was not in very good condition prior to this, and Mr. Easton has attempted to fix the road a couple of times but it still keeps deteriorating. Mr. Easton would be glad to help in some of the restoration of 151st Street.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Osborne, Walker “aye”; no “nays”; no “abstentions”) to **CONTINUE** the request for a Special Exception to permit sand extraction within Use Unit 24 – Mining & Mineral Processing – in an AG District (Section 310), to the meeting of May 15, 2012; for the following property:

GOV LTS 3 4 6 & 8 & 27AC ACCRETED LAND LESS BEG SWC GOV LT 4 TH N466.69 E466.69 S466.69 W466.69 POB & LESS BEG 1322.52N & 92.15E SWC SE TH NE103.37 NE163.69 E280.39 E255.57 E501.27 ELY572.66 SE157.78 S154.42 W1991.50 TO POB SEC 19 17 14 119.08ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW APPLICATIONS

Case No. 2428—Billy Frazier

Action Requested:

Special Exception to permit dirt extraction (borrow fill pit) within Use Unit 24 – Mining & Mineral Processing – in an AG District. **Location:** South of the SE/c of West 51st Street South & South 85th West Avenue

Presentation:

Billy Frazier, 7798 West 51st Street, Tulsa, OK; stated he wants to develop the property; this is not just a mining proposition. Mr. Frazier stated that he had a meeting with Mr. Terry West about two years ago, because Mr. West had seen him digging out an existing pond to make it deeper and working on the property. At that time Mr. West informed Mr. Frazier that he needed to obtain a development permit, which Mr. Frazier

did obtain. Mr. Frazier continued cleaning up the property. Mr. West then came back and informed Mr. Frazier that he was taking out too much dirt and that he needed to obtain a mining permit to continue the dirt removal, so Mr. Frazier spoke with the mining commission office. Mr. Frazier stated the hillside is beautiful but he wants to enhance it by taking away the edge of the hillside, to clean it to get rid of the debris, dig out the dirt and make the hillside three different levels to either build nice townhouses or complementary homes to take advantage of the view. One of the great benefits for the area landowners is that the Oklahoma Department of Mines started regulating dirt extraction. There is complete dust control, there has to be a water run-off and silt plan; everything is regulated and monitored on a monthly basis. This mining application is a temporary situation. It is basically to develop the property. It will not be a long-term business or something that will take five or six years to complete. This is to develop the property to enhance the area. Mr. Frazier stated that some of the homeowners had expressed concerns over blasting in the area. Mr. Frazier stated that he had the Triad Environmental staff come to the property to test the soil, and he has already dug out two different spots on the property to see if the proposed project was feasible before submitting his application to the Board of Adjustment.

Mr. Walker asked Mr. Frazier what his timeframe is for the proposed project. Mr. Frazier stated he would want the project to be completed as quickly as possible. If he is able to sell dirt from the property, it would be from select fill because there is no top soil; there is only a little dirt mixed with sandstone which is about 12 inches deep. There is also brown shale which is used in the base for Tulsa's streets and buildings, which he would like to sell to the City of Tulsa and Tulsa contractors as quickly as they need it. Once the select fill and brown shale are gone, he can further develop the property to make his return on it. Mr. Frazier stated that he thought it should take no longer than two years to deplete the select fill and brown shale, because it will not be a seven day a week operation but an as-needed process.

Mr. Osborne asked Mr. Frazier about the entry to his property from 51st Street and if there would be any related traffic for his proposal on South 85th West Avenue. Mr. Frazier stated that all traffic would ingress and egress from 51st Street and no traffic would be on 85th West Avenue. Mr. Frazier stated that in accordance with the Oklahoma Mining Commission, it will be necessary to have a paved area along the edge of the road with an additional rock area to keep the trucks tracking dirt out on to the street. All the roads must be kept watered down to keep the dust down.

Mr. Charney asked Mr. Frazier to come forward and presented him page 3.7 from the Board's agenda packet, and he asked Mr. Frazier to point out where the activity on his 30-acre tract would be occurring. Mr. Frazier stated the work be across the ridge, then drop back approximately 150 feet and come back across the ridge one more time with two separate tiers where houses with a walk-out basement could be built along the edge and allowing for an area for a nice yard. Mr. Charney asked Mr. Frazier if that was where the select fill is located, and Mr. Frazier gave affirmation. Mr. Charney asked Mr. Frazier how close he would be to the 60-foot buffer zone on either 51st Street or South 85th West Avenue. Mr. Frazier stated there would be a buffer zone all the way around

the proposed project. Mr. Charney asked Mr. Frazier if the Board were to require more than a 60-foot buffer zone, would that create a problem, and Mr. Frazier stated that would not present any problem because there is an existing pond approximately 200 feet from the 51st Street that is to be made into a sediment trap. A road will eventually come out to Skyline Drive with a 40-foot entrance up to the property line.

Mr. Charney asked Mr. Frazier how far he would be from 85th West Avenue while the mining process is going on. Mr. Frazier stated that at the closest point it would be about 200 feet.

Mr. Charney asked Mr. Frazier if there were currently a lot of trees on the subject property. Mr. Frazier stated there were trees on the first proposed cut but very few because most of the foliage is over the edge of the hill.

Interested Parties:

Bill Powell, 5405 East 13th Street, Tulsa, OK; stated he and his wife purchased 20 acres of land adjacent to the subject tract a few years ago because they wanted to get away from the city. They are planning to build a house near the area of the proposed project area. Mr. Powell stated he does not have anything against business because he, too, is a business owner, but he bought the land to get away from commercial settings of the city. The access road to his property comes in from 61st Street and dead ends at his property, which is the only entrance for his property. Mr. Frazier wants to start digging very close to his property on the north side. With the digging there would be a lot of noise, a lot of trucks, and a lot of dust. In the description provided it was quoted "up to 30 trucks a day, Monday through Friday, 7:00 a.m. to 5:00 p.m.". What guarantee do the neighbors have that this project will be a complement to the neighborhood when the proposed project is complete? Currently the area is very scenic and that is why he purchased his 20 acres. His desire is to build home within the next year on his acreage and if the proposed project ended up being unsightly, then he and his wife would not want to build a home.

Beate Powell, 5405 East 13th Street, Tulsa, OK; stated she is not against the development of homes in the area; however, when she and her husband chose this area it was because it is wide open with homes on large tracts. The idea of having townhouses, many of them in one area, is not a congenial setting. Townhouses would not fit into the area, even if they are beautiful. This is country with nice single-family homes on large tracts of land. She does not want to build in an area that has the look and feel of the city. She is also concerned with the dust because some of her children have asthma, and there is always dust with trucks no matter how hard workers try to keep the dust to a minimum.

Mr. Charney told Mrs. Powell that a decision to allow someone to mine or shape the land does not speak to allowing a townhouse use on the land. As a matter of fact, the current zoning does even permit it. Mr. Frazier is a long way from being able to achieve that sort of density. There is agricultural land all around the subject property. Even if the Board were to allow a mining operation, an entirely different application is required

by the county from the land owner for a townhouse project. Generally there are not dense uses in formerly agricultural settings.

Genie Shannon, 7801 West Skyline Drive, Tulsa, OK; stated the proposed project is approximately a quarter mile from her house. Mr. Frazier is a neighbor and he does have a beautiful piece of land. Her concerns are the traffic at the intersection. That particular intersection is dangerous and always has been. It has been improved with bond money but it is worse now than it was before when looking to the west. There is currently a mining operation about one and half miles to the east, and there is another mining operation at Highway 97 and 51st Street, which is about a mile and half in the opposite direction. They are mining operations. They are not sculpting the land. The amount of traffic, the size of the trucks, the noise, and with the prevailing southwest winds the dust is floating in the air. She lives on Skyline Drive because it is a beautiful, fabulous area to be in the country with the wildlife. If the Board were to grant Mr. Frazier's request she would ask the Board to limit the hours to operation to business hours, not 7:00 a.m. with any operation on Saturday.

Carol Doss, 9220 West 51st Street, Tulsa, OK; stated she lives west approximately three-fourths of a mile from the proposed project. She moved to the area to be in the solitude and quietness of the country. It is quiet until the trucks start driving in and out on 51st Street. There are already two pits in the neighborhood and a third one is just more than the area should have to have.

Denny Bullington, 5633 South 89th West Avenue, Tulsa, OK; stated he has property adjoining Mr. Frazier's property on the southeast corner. Mr. Frazier has stated there are many rules and regulations that he must meet to protect the area, but there are times when there is a lot of rain. That rain run-off comes off Mr. Frazier's property onto his property because of the way the land sheds the water. Mr. Bullington stated that he raises cattle on his property and there is an existing pond for the cattle. What protects the cattle and the pond? Mr. Bullington also wanted to know if, after the proposed project was complete, is Mr. Frazier going to fill the area back in or leave the shale exposed to the elements. Once you start denuding the hillside and just leave it, it will destroy the property values of all the neighbors around the subject property. Mr. Bullington stated that Mr. Frazier has suggested townhouses for the area but there is no sewer system for the area. And if townhouses are allowed to be built, how is a sewer system going to be installed in shale?

Doug Bullington, 5607 South 81st West Avenue, Tulsa, OK; stated he lives south and east of the proposed mining operation. He does not want to look at a barren hillside. That is not why he bought his land in that area. Mr. Bullington stated that he did not think townhouses would ever be built on the subject property because the infrastructure is not there. Also, he understands that any house in the area must have two and half acres before construction, given the existing zoning. If Mr. Frazier is given permission to operate the mining and completes his project, what happens when he cannot receive permits to complete the rest of his overall plan? Will the neighbors be left with a big brown shale view instead the picturesque hillside that exists today? If this proposal is

approved but homes are not built will Mr. Frazier be required to reconstitute the land, lay some sod, and replant some of the trees? Or will this neighborhood be stuck with another eyesore like the two that exist today?

James Hart, 5106 South 85th West Avenue, Tulsa, OK; stated his family has lived here for 35 years which is directly west of the proposed mining site. His major concern is the dust. There is a flea market adjacent to one of the existing sites, and he has been at the flea market on a windy weekend and the place is covered in dust, and there is one working at the existing mining site because no one is watering down the area attempting to maintain the dust level. He thinks the same thing will happen with the proposed project. His father, who lives a few hundred feet from the proposed project, has COPD and dust is not conducive to his health. Mr. Hart thinks the whole plan is askew because there are two maps depicting the project. One map shows the proposed dig site starting directly across from his father's property line, while the other map shows the proposed dig site starting at 51st Street. Mr. Hart came forward and pointed to an aerial view on page 3.2 from the Board's agenda packet to show the location of the proposed dig site and his father's house. Mr. Hart stated that he has been all over the subject hillside and there is a lot of rock.

Terry Flick, 8500 West 51st Street, Tulsa, OK; stated he lives directly west and across the street from Mr. Frazier's property on 1.6 acres, and has lived there since 1953. Mr. Flick gave a photograph to the Board showing his location. In the 1960s his grandfather bought two homes through the Urban Renewal project and moved them to the property. The rock had to be removed to build foundations, lateral lines and septic systems. Since then Mr. Flick has had three truckloads of top soil hauled in, and hired a backhoe operator to take out rock. When Mr. Frazier starts digging what is going to happen to all the rock that he inadvertently going to hit, because there is going to be a massive amount of stone.

Kathleen Hart, 5106 South 85th West Avenue, Tulsa, OK; stated she lives right across the street from the project site. Her concern is the blasting that will be necessary, and she knows this because when she had a septic tank installed, the laborers had to blast just to be able to install the septic tank. Another concern is the water runoff when it rains. Her yard floods when it rains heavily because it comes from the hillside, so if Mr. Frazier starts terracing the hillside how much will that change things. Ms. Hart stated that she has tried speaking to and working with Mr. Frazier on other issues in the past, and he is not easy to get along with because he has no concern for other people's welfare.

Rebuttal:

Mr. Frazier stated that he has stopped riding his four-wheeler on the hillside after neighbors told him of the noise issue. Since then he has smoothed off the hilltop with a road grader and removed the track so it cannot be ridden on any longer. Mr. Frazier stated that he has to post a bond with the State Mining Commission so that if the hillside is not restored the state keeps the bond money. He has approximately \$400,000.00 invested into this property and the one next to it, so he is not going to do something that

will destroy that investment. Yes there are rock and soil issues. The hillside will need to be excavated to develop it for a future aerobic system for sewage. There is an existing water tower which could and would supply future homes. As an investor, if he is allowed to terrace the hillside into four beautiful ten-acre tracts he could sell them to future home builders.

Comments and Questions:

Mr. Walker stated that he has not seen a development plan on this proposed project, so he asked Mr. West what the normal process is for such a project. Does a person just start moving dirt then start the required paperwork? Mr. West stated that in this case, that is what happened. The County Inspector saw Mr. Frazier moving the dirt and told him that he was required to obtain a development permit, which Mr. Frazier did. That is when it was discovered that the project was more than a development plan, so Mr. Frazier was told that he was required to obtain a permit for a mining operation.

Mr. Osborne asked Mr. West if Mr. Frazier were going to develop the land for townhouses, if it were not for the amount of dirt being moved would be necessary for Mr. Frazier to be in front of the Board of Adjustment. Mr. West stated to develop townhouses on the property would require rezoning of the property, which in turn would trigger the plat process. This project was presented as moving dirt, digging a pond, or removing dirt for a basement; the amount of dirt being moved was excessive. That is when Mr. Frazier was told he needed mining permit.

Mr. Charney stated that Mr. Alberty has stated that when a person begins to move dirt or have a dirt moving operation for resale to third parties, it is now a mining operation because it is mineral processing.

Mr. Alberty stated that at this point this project can be looked at as a principal operation for mining. This may something else in the future but what Mr. Frazier is doing today would not be conducive to the type of development that would be permitted on this property at the current time.

Mr. Charney stated that is very important for the applicant to know that it is required of the Board to find a specific finding, that the project would not be injurious to the neighborhood or have an adverse or negative impact on the area. That is a difficult finding when there are homes around such a project.

Board Action:

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Charney, Dillard, Osborne, Walker “aye”; no “nays”; no “abstentions”) to **DENY** the request for a Special Exception to permit dirt extraction (borrow fill pit) within Use Unit 24 – Mining & Mineral Processing – in an AG District, finding that the mining operation would be injurious and detrimental to the surrounding area and neighbors; for the following property:

W/2 NE NE & W/2 E/2 NE NE SEC 36 19 11 30.00ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

None.

OTHER BUSINESS

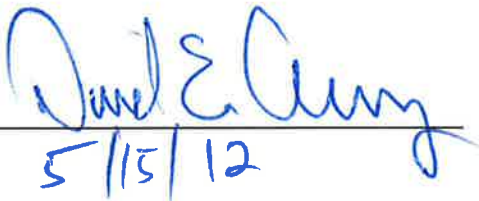
None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 3:35 p.m.

Date approved:


5/15/12

Chair