

**TULSA COUNTY BOARD OF ADJUSTMENT**  
**MINUTES of Meeting No. 407**  
Tuesday, April 15, 2014, 1:30 p.m.  
Ray Jordan Tulsa County Administration Building  
500 South Denver, Room 338

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

Charney, Chair  
Dillard  
Hutchinson  
Osborne, Secretary  
Walker, Vice Chair

Back  
Sparger  
Miller  
Hoyt  
Foster

West, Inspector

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 10<sup>th</sup> day of April, 2014 at 9:37 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.

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**MINUTES**

On **MOTION** of **WALKER**, the Board voted 5-0-0 (Charney, Dillard, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the Minutes of March 18, 2014 (No. 406).

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Ms. Back read the rules and procedures for the County Board of Adjustment Public Hearing.

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## NEW APPLICATIONS

### 2495—Robert Myers

#### Action Requested:

Special Exception to allow for a Mining operation (Use Unit 24) in an AG District (Section 310). LOCATION: West of NW/c of Highway 11 and East 176<sup>th</sup> Street North

#### Presentation:

The applicant was not present. Chair Charney moved the case to the end of today's agenda.

#### Interested Parties:

There were no interested parties present.

#### Comments and Questions:

None.

#### Board Action:

No Board action required at this time.

### 2496—Jean-Jacques Perodeau

#### Action Requested:

Special Exception to permit a home occupation of repairing and restoring antique and high grade firearms in an AG District (Section 320.1, Table 2). LOCATION: Directly North of the lot located at 711 South 263<sup>rd</sup> Avenue West

#### Presentation:

**Jean-Jacques Perodeau**, 711 South 263<sup>rd</sup> Avenue West, Sand Springs, OK; stated he wants to relocate a business that is currently located in Enid, Oklahoma. He restores and repairs high-grade antique firearms. He does this work for clients such as The Cowboy Hall of Fame in Oklahoma City and similar institutions nationwide. There will be very little traffic for the location, and the traffic that is there will be clients that have appointments. There will be no advertisement on the building because he does not want the attention.

Mr. Charney asked Mr. Perodeau to elaborate on his statement about his consumer business. Mr. Perodeau stated that his business is mostly business to business, or through the telephone, e-mail, Fed-Ex or UPS because it is nationwide.

Mr. Walker asked Mr. Perodeau if there is going to be an occasion for employees. Mr. Perodeau stated that there will be no employees.

Mr. Charney stated that by looking at the map provided in the agenda packet it does not appear that Mr. Perodeau is surrounded by any neighbors. Mr. Perodeau stated that he is fairly isolated, and the neighbors that are close by he has spoken to and they have no problems with the proposed home occupation.

Mr. Osborne asked if there would be deliveries made daily. Mr. Perodeau stated he would average deliveries every other day. He is thinking about installing a circular driveway for the delivery trucks so they will not need to back onto the street, because the street is on a curve.

Mr. Osborne asked Mr. Perodeau if he was aware of the eight conditions that would need to be met if his Special Exception were approved today. Ms. Back presented Mr. Perodeau with a copy of the conditions so he could read them. Mr. Perodeau read them one by one and agreed to them all. Mr. Perodeau did inform the Board that he would have a couple of pieces of equipment that would make noise but the noise level would be no more than the average table saw in a garage. The last thing he wants to do is have a quonset hut in the middle of the lot. He wants a structure that is pretty creating a nice view. The last thing he wants is an eyesore on the property. The accessory building will be in the color, shape and style of the house itself.

Mr. Hutchinson asked Mr. Perodeau if he fired the guns after they were restored. Mr. Perodeau stated that he does fire the gun, but it usually requires accurate shooting so he goes to a firing range.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **OSBORNE**, the Board voted 5-0-0 (Charney, Dillard, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Special Exception to permit a home occupation of repairing and restoring antique and high grade firearms in an AG District (Section 320.1, Table 2), subject to the conditions listed on page 3.3 of the Board's agenda packet. Finding the Special Exception 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; for the following property:

**BEG 265.14E NWC SW NW SE TH SW115.03 E428.86 N110 W394.86 POB SEC 6 19 10, OF TULSA COUNTY, STATE OF OKLAHOMA**

## **1803-B—Holliday Sand and Gravel**

### **Action Requested:**

**Modification** to a previously approved Special Exception (CBOA-1803) for dredging/classifying system to amend the hours of operation to meet market demand. **LOCATION:** 14253 South 129<sup>th</sup> Avenue East

### **Presentation:**

**Michael Odell**, 14900 South Garnett Road, Broken Arrow, OK; stated the request is a flexibility in the hours of production, not the hours of operation for sales or trucking. The need is multi-faceted, but is primarily due to the fact that the construction industry is increasing and the number of sand mines in the area have been shrinking. These two industries are on a collision course with the demand for concrete sand. For concrete construction. The additional hours of operation would be for the dredge, the booster and the processing plant on the bank. During the construction season there would be at least two ten-hour shifts for five days a week, which this would be the minimum request. He would hope to have the ability to run 24/7 if it is needed, but the intentions are not to do that. The reason there is less sand for construction is that there are fewer sites and difficulty in zoning. There are only three production sites currently in the river, which is an all time low. When the river is low two of the three sites have difficulty operating or floating the dredge.

Mr. Charney asked Mr. Odell to state what the existing permit allows, the hours of operation, etc. Mr. Odell stated there were no specific conditions, which is part of the confusion on hours. The application in 2000 stated in the narrative that operating hours of the facility would normally be from 7:00 A.M. to 7:00 P.M., Monday through Friday and a half day on Saturday when necessary. He did not realize that was a condition of the company's special exception, because that verbage only appears in the narrative from the applicant. Mr. Odell stated that Mr. West encouraged him to ask for extended hours and request a modification to the Special Exception since it was never addressed.

Mr. Charney asked if the existing permit stipulates hours. Mr. Odell stated that he was not aware of any hours on the permit. Ms. Back stated that permit does specify the original Special Exception. Mr. Osborne stated referred to page 4.5 and quoted, "... limits operations to 7:00 A.M. to 6:00 P.M., Monday through Friday ...". Mr. West stated that is what the applicant presented to the Board at that time and they approved those conditions.

Mr. Odell after the original filing requesting the additional hours a complaint came in about noise of the operation. Prior to the misunderstanding regarding the hours of operation the company did operate at night and because of that complaint the prior application was withdrawn so a study of the noise could be made. The company did an initial study which was favorable, and performed some modifications. There was a large silencer installed on the dredge, installed a heavy concrete sound barrier around the booster pump, and the back-up alarm was modified with a strobe after receiving permission for the modification. The strobe is used after 4:00 P.M. because there is no

one in the plant except the dredge operator and the plant operator. Mr. Odell presented the Board with some letters showing the need for the product produced by Holliday Sand. Mr. Odell presented pictures of the equipment at the plant and the problems of low water. The company hired Dr. Shadley from the University of Tulsa, he has a Ph.D. in Mechanical Engineering and has a noise consulting business. He measured the noise emissions during the day and at night, and submitted a copy of the report. At this point Mr. Odell deferred to Mr. Terry Fox.

**Terry Fox**, Engineering Geologist, Triad Environmental Services, P. O. Box 1507, Pittsburg, KS.; stated the study performed by Dr. Shadley took place on April 3<sup>rd</sup>. One of the readings was taken from the southern side of the Bentley sub-division, another reading was taken from the Indian Springs Sports Complex, and a third was taken from 129<sup>th</sup> north of Haikey Creek. Dr. Shadley then took readings at night near the plant equipment while it was working. The distances of the multiple readings varied in distance, but ranged from 141 feet up to 6,436 feet away.

Mr. Odell came forward and stated that because of the distances the noise levels are low. The summary of Dr. Shadley's findings state that because of the distance the levels of noise in the residential areas are low and on par with ordinary household sounds, i.e., the refrigerator or air conditioner running. Mr. Odell stated that Dr. Shadley determined what the equivalent sound level would be at night, and he brought in the EPA and other codes for allowable noise levels in a residential area. The noise levels are below a nuisance level and they are also do not deter from health and welfare. Mr. Odell stated that he knows the plant is making noise, and even though the plant is far away the company wants the public to know they are attempting to alleviate the noise problems. The company has taken steps to improve the equipment to reduce the noise pollution, and there is not a lot more that can be done. Part of the issue is to determine what is an acceptable noise level. The company will never get to the point where it can guarantee silence in the middle of the night. The company is providing a product that is in demand in the City. Construction is working at an exceptionally fast pace and making an increase in demands. The company knows it needs additional capacity because of this increased demand. If there is not a demand the company will not be operating.

Mr. Charney asked Mr. Odell to expand on his explanation of how this will not increase the hours of trucking or retail operation, but would increase the operations of the three sources of equipment in or near the river.

Mr. Odell stated the company is open for business from 7:00 A.M. to 4:00 P.M., meaning the gates are open and trucks are coming in, being loaded and weighed, then leaving. The company will not try to load and haul at all hours of the night.

Mr. Charney asked if the 7:00 A.M. to 4:00 P.M. hours would be still the same for loading the trucks, weighing them and sending them on their way, or are you seeking to expand that portion also. Mr. Dillard stated the company currently has approval to operate from 7:00 A.M. to 6:00 P.M.; he asked Mr. Odell if he still wanted those operating hours or if he wanted the hours cut back to 7:00 A.M. to 4:00 P.M. Mr. Odell

stated the contractors would appreciate the company being open later, especially if they have a big pour. Mr. Odell stated the normal hours are 7:00 A.M. to 4:00 P.M., Monday through Friday for loading only, but the plant has been operating 7:00 A.M. to 7:00 P.M. for production and even on weekends to keep up with demand.

Mr. Charney asked Mr. Odell to explain what has been done about the three pieces of equipment that make the noise in the riverbed, and tell the Board when the improvements were done. Mr. Odell stated the improvements have been made in the last 60 to 90 days. The dredge has always had the hospital grade muffler but the booster did not. The loader had the audible back-up alarm which can be annoying. The loader is used for carrying sand and relaying mixing sand. The major changes made in the last 60 days is the improvement on the silencer on the booster pump on the bank, the large 2'-0" x 3'-0" x 4'-0" concrete wall around the booster to absorb the noise and energy from the booster, and the dredge was already quiet.

Mr. Hutchinson asked Mr. Odell if there were any recordings or findings of the noise level before the improvements were made. Mr. Odell stated that he does an initial noise survey that was performed, but the people that performed those surveys were not necessarily experts in that area because they were from a testing lab. Mr. Odell stated there is not much difference between the two reports. The best improvement made was with the back-up alarm. When he went into the neighborhood he could hear the back-up alarm, but he had no way of knowing if the alarm was from his company equipment because the facility cannot be seen from the neighborhood.

Ms. Back stated on page 4.6 in Board's agenda packet, it states there are no hours of operation specified and there is no exhibit to tie the hours of operation to the previous approval. That is why it is very important for the Board members to add the hours to their motions and tie the motion to a specific document. But yet on page 4.12 there are hours of operation specified, which are 7:00 A.M. to 7:00 P.M., Monday through Friday with a half day on Saturday when necessary. Ms. Back strongly encourages the Board, if they are inclined to approve today's request, they would definitely make conditions that will protect the neighborhood, or protect the mining company.

**Interested Parties:**

**Malcolm Rosser**, 321 South Boston, Suite 500, Tulsa, OK; stated he represents two of the affected property owners, Steve Cox and Bessie Gathman. Regardless of the what the noise level is, the applicant is asking to expand the hours in which the noise would be generated. Those hours will from 55 to 60 hours a week to 144 hours a week, which is more than double. There will be more than double the amount of sand production, double the amount of noise, double the amount of dust pollution from the trucks and the loading of the trucks, and more than double the amount of truck traffic. This is being requested for all night six days a week. Mr. Rosser asked staff if the City of Broken Arrow had reviewed this application. Ms. Back stated she will check the case file to see if Broken Arrow was sent notice, and asked Mr. Rosser to continue. Mr. Rosser stated that he understands the business wanting to satisfy customer's demands, but he does not think that demand in itself constitutes any kind of changed condition that would

justify the expansion to additional hours. At this point Mr. Rosser pointed out his clients properties on a map that was plotted by Dr. Shadley and used earlier in the meeting by Mr. Fox.

Ms. Back informed the Board that the City of Bixby, Commissioner Ron Peters, and Tulsa County was notified of the applicant's request, but the City of Broken Arrow was not notified.

Mr. Rosser stated that the protections that were put in place in the initial request are just as necessary today as they were then. There is a provision in the zoning code for Special Exceptions relating to mining, Section 1224.3. It specifically states "that the Board in granting a Mining and Mineral Processing use by Special Exception shall consider potential environmental influences such as dust and vibration, and shall establish in the particular instance appropriate protective conditions such as setbacks, screening, etc. that will mitigate adverse affect on approximate land uses".

Mr. Charney asked if this section was more specific than other Special Exception language in other use units. Mr. Rosser stated that he has not seen anything in the other use units that applies to a particular use for granting a Special Exception. Obviously there is still the general requirements for the granting of a Special Exception, which does have to be satisfied.

Ms. Back stated that for a Special Exception the appropriate protective conditions are still looked at, such as, setbacks, screening, method of operation, etc. All of that is still with any Special Exception requested.

Mr. Rosser this Special Exception still needs to be considered on its merits separate from the previous application. The question is, is it injurious to the neighborhood, is it detrimental to the public welfare, and it is clear that there will be more trucks. Even if the trucks do not run at night, they still need to remove all the extra sand that was dredged during the night. A few years ago there was an application, CBOA-2056, on the property south of the subject property, and it involved even more stringent protections than what is being discussed today.

Ms. Back stated the meeting minutes from that case are on page 4.24 in the Board's agenda packet.

**Ron Clayton**, 13717 South 125<sup>th</sup> East Avenue, Broken Arrow, OK; stated he finds it interesting that the hours of operation conflict, as on page 4.5 in the Board's agenda packet. He will be joining the local law enforcement agency in May and so will his neighbor. In the past week the neighbor was following one of the trucks at 5:30 A.M. that just left the facility. He observed the truck driver to be on his mobile phone. The driver lost control and went off the road near Sunrise Stables and almost struck the drainage culvert. It is interesting that an incident such as this can happen if the company is only open 7:00 to 6:00. Mr. Clayton stated that he saw a truck leave the subject facility on Friday evening at 10:30 P.M., so something is taking place outside of

business hours. He asked, if the Board is to approve today's request, specify a trucking route and that route not allow the trucks to use Olive. There is a safety concern because of the hill and the traffic that comes and goes from the stables. There are also school buses that use Olive. He has seen trucks come very close to striking the Bixby school buses, and he has filmed trucks speeding in the area. His wife and son have almost been hit by one of the trucks. He has seen two young boys jump off their bikes to keep from being struck by a truck. Therefore, he asks the Board to define a truck route prohibiting the use of Olive. As recently as last week he could hear the front loader back-up alarm going off as late as 10:00 P.M. Mr. Clayton referred to page 4.12 in the Board's agenda packet which states the applicant is to maintain dust and debris, and there is sand covering the intersection of 141<sup>st</sup> Street and Olive which is a traffic hazard. He would request that a working telephone number be provided to the residents of the area, so when there is a concern they company can be reached. The telephone number he calls he hears a recording. He would also like to have signs posted along Olive informing truck drivers they are prohibited from crossing the area from 131<sup>st</sup> Street South, that they must detour to Mingo or Garnett coming back up 121<sup>st</sup> Street. That route would be safer and less hazardous.

Mr. Walker asked Mr. Clayton where he was when he heard the loader at night. Mr. Clayton states he lives off 138<sup>th</sup> Street South, which is north of the levy on Haikey Creek, in Hickory Hills. His family must sleep with fans on at night because of the beeping of alarm on the equipment, and it is louder than a running refrigerator.

**Damon Martin**, 12715 East 138<sup>th</sup> Street South, Broken Arrow, OK; stated he lives in Hickory Hills, and has lived there for seven years. Holliday Sand is not always operated at the prescribed hours, because they use to operate earlier than 7:00 A.M. One morning as he was going to work he had a problem with a truck driver because the driver tried to run him off the road twice. His wife, with two children in the car, had a problem with a truck driver running a red light and making a right turn on red. He has seen trucks coming to the plant 5:00 P.M. or later. As for the loader, he hears it at his house late at night. He purposely purchased his house because he knew no one could build south of him because it is a flood zone and there would not be a lot of traffic not realizing the amount of truck traffic in the area. He does think Holliday Sand is responsible for the truck drivers they contract with, but the truck drivers are a major concern. His daughter attends Bixby school and when there is a snow route the school buses are to pick up the kids at 129<sup>th</sup> Street. He would never have his daughter stand on 129<sup>th</sup> to ride a school bus because it is extremely dangerous. To expand Holliday Sand's hours will be a nightmare for anyone living in Hickory Hills, and he hopes the Board will not approve today's request.

Mr. Hutchinson asked Mr. Martin if he could hear other equipment operating other than the loader. Mr. Martin stated that he can hear the motor of the loader while it is going forward or backs up. Mr. Hutchinson asked if he had heard the loader within the last 60 or 90 days. Mr. Martin answered affirmatively.



Mr. Osborne asked Mr. Martin at what times he could hear the loader operating. Mr. Martin stated that he used to hear it after 11:00 at night. But the company must have switched the operation hours because he no longer has to deal with their trucks on his way to work in the morning, other than the trucks coming down 129<sup>th</sup> to be loaded. The trucks start coming down at 6:00 A.M., even though they cannot load until 7:00 they line up on 129<sup>th</sup> to wait.

Mr. Charney asked Mr. Martin if he still heard the loader back-up alarm past 4:00 P.M. Mr. Martin stated the trucks are loaded past 4:00 P.M., and yes he has heard the beeping past 4:00 P.M. Mr. Charney asked Mr. Martin if he had heard the beeping in the last few weeks. Mr. Martin answered affirmatively.

**Steve Friebus**, 2501 West Natchez Street, Broken Arrow, OK; stated he lives at the corner of Dogwood and Natchez where one of the sound readings was recorded. Mr. Charney asked if this was in Bentley. Mr. Friebus stated technically it is Willow Springs. A Special Exception states that everything must be done in the harmony and spirit of code, and he does think that Holliday has maintained that harmony and spirit. Mr. Odell stated that it is unreasonable to expect silence. We had silence before all of this started. He has lived in the neighborhood for 15 years and never had an issue with any of the previous sand companies, Watkins or Anchor. Yes, you can hear the beeping and the buckets of loader dropping and clanging, but the dredger sounds like a diesel truck idling on the next block because it is so loud. Noise is an unwanted sound and it does not matter what the noise is. If the noise bothers you it is unwanted noise. The beeping starts with the first shift, usually at 6:00 A.M., and that is what wakes him up in the morning. When he lets his dog out at 6:10 A.M. the dredger can be heard and at night it is a lot worse because everything else becomes quieter. There is also a high pitched whine, sounds like a running ice cream maker. These are not natural normal neighborhood sounds. It was said that the company has implemented mufflers in the last 60 to 90 days and he has not noticed any decrease in the noise level. He knows that technically Holliday Sand is not responsible for the truck traffic, but one morning at 7:10 A.M. he was behind two sand trucks and in a one and a half mile stretch there were ten trucks coming south as he was driving toward the Creek Turnpike. In the time span of two and a half minutes there were 12 trucks on the road that is not designed to handle that type of traffic. He has called the Broken Arrow Police Department and the Police stated it was not their jurisdiction after a few runs in the area. He called the Bixby Police Department and they said it was not their jurisdiction. No one wanted to take jurisdiction over the problem. He and his wife chose to drive one night after midnight to track down the noise, and the pinpointed it to the processing of the sand. Holliday Sand has said they do not anticipate operating 24/7 but yet they operated 24/7 all last summer. The sound barriers are not working and the muffler is not working. He spoke to the Oklahoma Department of Mines and they sent someone to take sound readings, but their sound readings were taken on a day when the dredger was not operating. So sound readings are subjective. He finally spoke with Mr. Ron Peters, his County Commissioner. He looked up the permit and went to Holliday Sand telling them what the permitted hours of operation are and informing them they cannot operate outside the stipulated hours. He purchased his home in an agricultural area because he

wanted quiet and now it has become an industrial area. Mr. Friebus stated that he has submitted a petition with over 100 signatures of residents in the Bentley Village and Willow Springs neighborhoods that oppose today's request.

**Joe Smith**, 13705 South 129<sup>th</sup> East Avenue, Broken Arrow, OK; Mr. Smith pointed out his house on the map that was provided by Mr. Fox. He gets his newspaper about 6:15 A.M. and see trucks at that time. He has to be especially careful when retrieving the newspaper in the morning or the mail in the afternoon because the trucks are going by so fast. Today Channel 6 visited with him at his house, and as long as the Channel 6 van was out of sight the trucks were speeding by his house in both directions. When the Channel 6 van was moved into sight of the road to take pictures the trucks crawled by the house. When it is said that the dredger is no worse than a refrigerator or air conditioner is wrong. The sound is a lot louder than a refrigerator or air conditioner while a person is standing inside my house. There are children in the neighborhood that ride bicycles and walk in the neighborhood. It is dangerous for them. He would like to know why Holliday Sand waited to make equipment improvements until they asked for the Special Exception.

Mr. Osborne asked Mr. Smith if he was referring to the sound of trucks and/or the equipment that he was hearing at night. Mr. Smith stated he hears the beeper after 4:00 P.M. He hears the sound of metal hitting metal all the time.

**Dan Koehling**, 2404 West Pensacola Street, Broken Arrow, OK; stated he lives in Bentley Village. He lives between Mr. Friebus and the sand pit. He hand the Board a couple of flyers that he had found in his mailbox. He runs in the morning and walks in the evening with his wife. On occasion he will hear the dredging, but he also hear soccer games being played at Indian Springs. He hears air conditioners. He hears dogs barking. He does not think that Holliday Sand controls the trucks, he thinks they are probably contracted. He uses 131<sup>st</sup> Street to drive to the Creek Turnpike and he does not see a lot of trucks. He has not heard any operating noises since last summer. He believes the operation helps control flooding in the area. He supports today's request.

Mr. Hutchinson asked Mr. Koehling if he had heard any beeping or anything late at night lately. Mr. Koehling stated that he had not.

**Rebuttal:**

Mr. Odell came forward. He stated that he takes any call or complaint seriously. The problem is that he has not received any. One gentleman asked why the noise issues were just being addressed, and Mr. Odell stated they were addressed as soon as it was discovered that the neighbors were being disturbed by noise. When a complaint was received that noise abatement was started. Mr. Odell stated that it took quite awhile to get the strobe equipment in for the loader, and that strobe has only been operational for a few days so that would explain the recent beeping noise being heard by the neighbors. The loader is moving sand into stockpiles, and the thunk being heard is the bucket of the loader. The thumping noise can probably be improved, because the

operator does not need to slam the bucket. Mr. Odell assured the Board that the gates to Holliday Sand are locked at 4:00 P.M., and the gates are opened at 7:00 A.M. Trucks do arrive early. He has not received any complaints about trucks. He did expect trucking to be the big issue today because they could not locate a lot of noise. The trucks are not Holliday Sand's but that does not matter, if a truck can be identified the company will basically refuse to use that truck. But in order to refuse a truck the truck must be identified. Mr. Odell wanted the Board to take note that there two other operations in the area that run trucks, and those operations run just as many or more trucks that Holliday Sand runs. Holliday Sand does require the trucks to run legal and they are weighed. Holliday Sand enforces the tarping of the trucks, and they do not haul rock so there should not be an issue there. Mr. Odell firmly believes this issue should be further addressed, and he requested the neighbors give them help in identifying the trucks so the problems can be followed up. A 50% increase in production for the company does not necessarily mean a 50% increase in tonage in trucking. The dredging has gotten farther from the plant and as the dredging moves away from the plant the production rate goes down. It is not a one-to-one ratio as far as increasing hours to increasing trucks, but there will be some more trucks. Mr. Odell stated that he is concerned over the neighbors to the south, but the Holliday Sand trucks do not haul by their homes but possibly Holliday Sand competitors do. Mr. Odell stated that Holliday Sand's competitors are on board with all of this. They realize that everyone has to do a better job, especially when the companies hear things like being said today. Mr. Odell said if someone would the company regarding the sand at the intersection his company will attempt to keep the sand removed. He wishes he could get the Police to handle the problems, but that is not an excuse. He must be contacted and keep following up so he will provide a working telephone number to the people that would like to have it.

#### **Mr. Dillard left the meeting at 3:14 P.M.**

Mr. Charney asked Mr. Odell to address the issue that was raised by a opponent to a prescribed truck route for the ingress and egress. Mr. Odell deferred to Mr. Terry Fox.

Mr. Fox came forward. In the year 2000 Watkins Sand was before the Board of Adjustment and the truck route was to be 129<sup>th</sup> East Avenue because the Creek Turnpike was just opening and it is an entrance onto the Creek Turnpike. Later there was discussion of using Garnett Road as a haul route. As far he knows, though, the trucks have always used 129<sup>th</sup>.

Mr. Walker asked Mr. Fox why the sound readings were taken after a resident informed them the equipment was not operating. Mr. Fox stated the equipment was running. When the resident told them about the equipment he immediately went down to the area and all three pieces of equipment was operating all morning. The person that was taking the sound recordings wanted to make sure the equipment was operating. Mr. Walker asked if it was possible there was another source of noise. Mr. Fox stated that

he did not know. All he knows is that when he went into the Indian Springs Sports Complex there were four different construction projects operating that required the use of three backhoes, dump trucks, diesel equipment, etc. There was also lawn maintenance happening at the same time.

Mr. Hutchinson asked Mr. Fox about the other sand companies not hearing any sounds. Mr. Fox stated the entrance to Holliday Sand operation there is an entrance to the sand operation to the south. So all those trucks all lined up in the morning, they go in and down to the river southward before they load. The dredges are probably less than a 1,000 feet away from each other, so he does not know how a person could identify which dredge is exactly making the sound. That is one of the reasons Dr. Shadley took ambient sound readings.

Ms. Back stated that on page 4.12 in the Board's agenda packet there is a statement regarding the proposed truck route in the original case CBOA-1803. On page 4.27 a Board action regarding Anchor Stone states several conditions but there is no route specified.

Mr. West stated, for clarification only, routing was taken up with the County Engineer and due to this area being public streets the Board cannot stipulate that a truck can or cannot use a specific street. That is why the routing can be imposed, because these are public streets.

Mr. Walker stated that he was on the Board for the original case, and Ms. Back had stated that the Board's motion had not tagged various comments or things presented, but almost every motion the Board made they said "per presentation" which would include all the information that was presented even though it was not stipulated page 4.7 or some other way of delineating that at the time. Ms. Back stated that when staff goes back to look at previous meeting minutes that is how it is seen what conditions were attached to a case. It does not give staff a lot of guidance when the motion is vague. Mr. Charney stated that he understands the need for more specificity in every motion. Ms. Back stated that Mr. West is correct in that the Board cannot say a street can or cannot be used, but the Board can encourage the applicant to provide a truck route.

Mr. Odell came forward and reiterated that the company was not aware of lot of the things discussed today. The things the company had been made aware of has been addressed and will continue to address any problems. They also want to address the truck issues, not only the driving practices but when the arrival and departure, and the route used. Holliday Sand will continue to work with Anchor Stone, a neighboring company, and inform them of the problems voiced today. Mr. Odell stated that Holliday Sand will continue to work on the noise pollution, and he would invite any one to come to the site. He hopes the company is given the opportunity to repair the problems presented.

### **Comments and Questions:**

Mr. Walker stated that Mr. Odell mentioned a field trip and since he has offered to hold a field trip he would suggest a continuation on this case, thus giving him an opportunity to resolve some of the issues with the neighbors. Whatever decision that is made by the Board the neighbors or the company is going to be impacted. Mr. Odell stated that the noise abatement had taken place within the last 60 to 90 days but then it was brought out that the back-up beeper had only been taken care of in the last few days.

Mr. Hutchinson stated that he has the same thoughts as Mr. Walker. He is sure the operation is a learning process for the operator to use the strobe instead of the beeper.

Mr. Osborne stated that part of the conditions from the previous case, and will be in this case, that the action not be injurious to the neighborhood or otherwise detrimental to the public welfare. What he is hearing today, and seeing 120 signatures of citizens, indicates there has been substantial detriment to the public welfare and it has been injurious to the neighborhood. Obviously an operation such as this cannot be a silent operation, there is machinery and things that are running so he finds this case a little difficult. The operation still impacts the neighborhood and the level of noise is certainly is agitating that live in the neighborhood. There are two operations that are close in proximity, so how can one operation be distinguished from the other. The entire trucking issue disturbs him greatly on a number of levels. The road usage. The quantity of trucks. The safety factor. But not all the trucks go to Holliday Sand, and they cannot be held responsible for all the trucks that are traveling the area streets. Obviously Holliday Sand has done some things but there are still 100 people willing to sign a petition to show their concern.

Mr. Charney stated that he does know if the Board is allowed to factor an increase in market demand as a test in whether it is injurious or in the spirit of the code. There is a test in granting a Special Exception. He understands the need to increase the hours but that isn't the test that the Board is asked. He likes good economic activity because it is good for everyone. He also sense that a lot of complaints is a trucking component that Holliday Sand has no control over because they're contractors. Forget the hours of operation, there is an existing problem even if the Board rejects the requested modification. There are ways of getting the truckers attention but it takes a cooperative group coming together. It takes the sand companies, the operators, takes law enforcement, and County departments. That may solve the majority of the complaints voiced today. Mr. Charney suggested Mr. Odell have a meeting with the neighborhoods to see if a resolution could be reached regarding the truckers, then there may be a leeway for the hours of operation. The larger problem for the company seems to be the trucking.

Ms. Back stated that before the Board, and all the input is very good for consideration toward a decision, today is the modification to a previously approved Special Exception for dredging.classifying system to amend the hours of operation to meet market demand. That is all that is before the Board today.

Mr. Charney agreed that is what before the Board, but in order to properly address the request the Board can forward right now or the Board can see if there is a cooperative spirit. The Board can vote yes or no on the request today but there will still be a trucking issue. Ms. Back stated the trucking issue is not before the Board today. Mr. Charney is trying to say that the wisest thing for the Board to do is consider a 30 day continuance. Mr. Charney stated there is a request before the Board whether to grant an increase in hours of operation, and it is the Board's decision whether it will be injurious to the neighborhood.

Ms. Back stated that the Board gave a lot of latitude and the transportation comments that came in is good to know. However that is not what is before the Board. She, as staff, is trying to remind you what is before the Board.

Mr. walker stated that is what is before the Board, because the company is going to increase the number of trucks by 50%. Ms. Back stated the 50% is before the Board.

Mr. Charney suggested that there be a discussion, and let the issue come back before the Board in 30 days. There is a chance that a compromise can be achieved that would allow the Board to speak to the issue. He might feel it is less injurious to the public welfare if he felt there were issues that were addressed.

Mr. Osborne stated there have absolutely been issues and complaints about the noise levels surrounding the dredging/classification system. What the Board needs to do is to specify the hours of operation. If there is an agreed hours of operation between the company and the residents that is the type of input the Board would like to have. The Board needs to consider the needs of the business and the community.

Mr. Walker stated that if he must vote today his vote will be no. If the applicant will continue the case, and reach a compromise with the neighborhood, then would be open to hearing it. He does not want to see a company shut down. That is the reason he initially suggested a continuance.

Mr. Charney stated that he would entertain a motion. Mr. Odell asked permission to address the Board. Mr. Charney granted the request.

Mr. Odell came forward. He does not think it is their responsibility to get the truckers to operate their vehicles properly, that is the companies responsibility. He needs to get a consensus with the other operators in the area, and the Holliday Sand will work on that. With the conflicting testimonies before the Board today, he thinks Holliday Sand needs more time to prove themselves before the case proceeds and solve the problems. Mr. Odell requested a continuance to the June Board of Adjustment hearing.

**Board Action:**

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Charney, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Dillard "absent") to **CONTINUE** the request for a **Modification** to a previously approved Special Exception (CBOA-1803) for

dredging/classifying system to amend the hours of operation to meet market demand to the June 17, 2014 County Board of Adjustment meeting; for the following property:

**NE NW LESS E1/2 E1/2 E1/2 NE NW & NW NW & W.10 A. OF E.20 A. LT 2-W.20 A. LT 2 SEC 16-17-14, OF TULSA COUNTY, STATE OF OKLAHOMA**

**0690-B—New Life Tabernacle – Dan Switzer**

**Action Requested:**

Modification of a previously approved plan for a church in an RE District to add a porch that extends 5'-3" from building and to replace the green belt with a screening fence along the west property line. **LOCATION:** 13107 West 41<sup>st</sup> Street South

**Presentation:**

**Dan Switzer**, New Life Tabernacle, 13107 West 41<sup>st</sup> Street, Sand Springs, OK; stated the church wants to extend the porch on the existing building by 5'-3" to allow a covering for rain. They also want to replace a green belt that has been removed a long time ago with a fence. There is an existing fence but is barbed wire. The green belt had been removed several years ago with the neighbors permission, and now the neighbors would like to have a fence installed.

Mr. Charney asked staff to explain the green belt concept. Mr. West stated that originally there was a green belt, in 1996, on the original case's site plan. In 2011 it changed.

Mr. Walker stated that when the original application came before the Board the neighbors did not want the original area to turn into a concrete area. Therefore, they requested to have a green belt area between them and the church. Later the neighbors decided they did not need the green belt area. Mr. Switzer stated the church has a great relationship with the neighbors.

**Interested Parties:**

**Rebecca Bengé**, 13209 West 41<sup>st</sup> Street, Sand Springs, OK; stated she has no problem with the parking lot but she would like to have a wooden privacy fence installed. She and the Pastor of the church came to an agreement that the fence would be the length of the church parking lot. It has also been agreed that the church would maintain the fence and be responsible for the expense of installing the fence.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Dillard, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a

Modification of a previously approved plan for a church in an RE District to add a porch that extends 5'-3" from building and to replace the green belt with a screening fence along the west property line; for the following property:

**BEG 660W SECR SE TH W330 N360 E330 S360 TO POB LESS S50 E/2 SW SE SE FOR RD SEC 21 19 11 2.348ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**

**2497—Morton Building, Inc.**

**Action Requested:**

Special Exception to allow a Church with accessory uses (Use Unit 5) in an AG District (Section 310, Table 1). **LOCATION:** South of Highway 64/East 171<sup>st</sup> Street South between South Garnett Road & South 129<sup>th</sup> East Avenue

**Presentation:**

**Scott Norvell**, 7509 East 65<sup>th</sup> Street, Tulsa, OK; stated he is the Chairman and CEO of Blue Flame 47, Inc. and Pastor of the church. This is a small church which consists of about 75 people including many small children. The primary function of the church is that it is a ministry, and the ministry is provided throughout the world. The church purchased the land in December 2013, and plan to build a church with offices for the church. The congregation meets every Tuesday for services and hold prayer appointments on Friday and Saturday. They would like to have a gathering place where conferences twice per year. The average attendance of the conferences has been about 200 people. The conference are usually four days twice per year. These conferences have been held in the Garnett Road Church of Christ Green Country Event Center for the past four years. The church has been meeting on the subject property in a tent since the purchase. The church chose a design that would match the environment, so instead of a traditional church building it would be similar to a barn with a smaller building for the administrative offices and the prayer appointments. The smaller building would also be able to seat 150 people for dinner which would be used about twice a year.

Mr. Charney asked Mr. Norvell to elaborate about the proposed parking. Mr. Norvell deferred to Mr. Jeff Bonebrake.

**Interested Parties:**

**Jeff Bonebrake**, Morton Buildings, Inc., P. O. Box 1388, Muskogee, OK; stated that one of the desing goals is to make the church look like it fit into the area. The church requested that the buildings look like a farm house with a barn behind it. The parking is an issue that has yet to be determined. If it is possible a gravel surface would be preferable because the subject property is in a nonregulatory flood plain. It is proposed to have the front be have a concrete paved area for the handicapped with a paved entry way.



Mr. Charney asked Mr. Bonebrake about a third building that is on the proposed site plan. Mr. Bonebrake stated that the building is under consideration but it would be a building that is allowed by right because it would just be a parking garage.

Mr. Walker asked Mr. Norvell about the church membership and how many vehicles are typically at a service. Mr. Norvell stated the membership is about 75 and typically there is about 30 cars.

Mr. Hutchinson asked about the size of the property. Mr. Norvell stated the subject property is 302 acres. The church has people that have been cleaning up the property because there are about 1,200 pecan trees on the property.

Mr. West confirmed that about 200 acres of the subject property is a flood way, and if the applicant were to apply for a Variance on the parking the County would be happy.

Mr. Charney asked Mr. Norvell if had any problems setting the building back on the subject property to comply with the setbacks. Mr. Norvell stated he understood about the setbacks and had not problems with them.

**Garvin Henderson**, 1730 Highway 62 East, Ft. Gibson, OK; stated he owns property south and west adjacent to the subject property; 131 acres on the south side and 40 acres on the north side. He wants to know what the use will be for the area, not the building portion, because he does not want a cult to be allowed to move in.

**Dr. James Derby**, P. O. Box 178, Leonard, OK; stated he owns the land south of Highway 64 and east of 129<sup>th</sup> East Avenue, which is east of the subject property. This property has been in his wife's family before statehood. He is a retired geologist and an area farmer. He wishes the best to the Pastor and the church. He has seen families and children on the subject property, and they seem to be a nice group. He is concerned about this application because there seems to be something that does not ring true. Why would a small church need 300 acres to build on for which an exorbitant amount was paid?

Mr. Charney appreciates the doctor's concerns, but the Board tries to focus on whether the use itself, a church use, conforms.

Dr. Derby asked what accessory use is intended for the 300 acres. He has no problem with a church or the Morton Building plan, because it appears to be with tone of the neighborhood. There have been too many examples of things being done under the name of a church that become a public nuisance and a public hazard. The area is a wonderful community and he would hate to see anything happen to the community. Dr. Derby would urge the Board to place restrictions on what is being approved, that the application is being approved for exactly what the Pastor has described. There is no need for 300 acres for a twice year meeting of 200 people. Dr. Derby also questions the appropriateness of the site. According to the survey map the south portion of the

acreage is a designated flood plain, and the north portion is Flood Zone AE. He has twice seen the subject property under water higher than his waist.

Mr. Charney stated that the northwest corner of the subject property, about 400 feet, is not within the designated flood way according to the site plan provided. There are other bodies that speak to the appropriateness of granting building permits. This Board is focused upon the appropriateness of a use, yes or no. Whether a building permit is actually permitted on a given site is another professional's function, but not this Board. Mr. West confirmed Mr. Charney's statement.

Dr. Derby stated that he knows the portion of the land that is raised has been approved as a building site and there is a building on it. That area does not flood so why not build on that portion?

**Rebuttal:**

Mr. Scott Norvell came forward and stated that there is a fancy wood shed on the subject property, which is a temporary building and not a house. The shed is being used by he and his wife as a retreat prayer room. The only true plans the church has currently are the plans for the meeting place and the offices, which are in the proposal.

Mr. Charney asked Mr. Norvell if anyone was residing or spending the night in the shed. Mr. Norvell stated that no one is living on the subject property, nor are there any plans to have anyone living on the property.

Mr. Charney asked Mr. Bonebrake to confirm that all that is being sought today is the allowance of three church buildings to be located in the northwest portion of the property and seeking nothing other than the standard agricultural uses in the southwest corner of the property. Mr. Bonebrake answered affirmatively.

Mr. Norvell stated that he and his church members are Christians. He made an attempt to meet with the neighbors but there is no easy way to contact them. He used a realtor with McGraw to get the names, addresses and numbers of all the neighbors so contact could be made. He made contact with many of them, and they all wanted to know if the group were Christians. He feels that he responded to those questions effectively. The church is not out to control anyone and it is not out to build a commune. The use intentions are really for a church. For the large amount of land, traditionally the church trains internationally how to pray over land and a blessing of nations. He asked McGraw for a large tract of land with timber and water, and they found it. The church wants to be a good neighbor and take good care of the land.

Mr. Walker asked Mr. Norvell if the two conferences a year would take place within the church's buildings. Mr. Norvell answered affirmatively. Mr. Walker asked there would be any temporary structures installed during the conference times. Mr. Norvell stated that at this time the church does not see a need for temporary buildings once the permanent buildings are erected.

Mr. Charney asked Mr. Norvell if today's request is approved per site plan, and then it is decided there is a superior site for the site plan, then will he be prepared to reappear before the Board? Mr. Norvell stated that he understands all of that because Mr. West was very helpful, and that is why the site was chosen.

Mr. Charney asked Mr. Norvell if he would have any problems with a condition limiting the conference meetings to only twice a year with only about 200 attendees. Mr. Norvell stated that he does not have any problems with that.

Ms. Back stated that in regards to the graveled parking area the applicant will need to come back before the Board with a Variance application if the applicant wants to change from an all weather surface, or they could request a continuance today to cover this thus allowing for the proper notifications.

Mr. Bonebrake asked Mr. West if a building permit would be approved with the parking issues not being decided. Mr. West stated the parking will be based on one parking space for every 40 square feet of sanctuary area. So the size of the sanctuary will dictate how many parking spaces are required. Mr. Bonebrake asked if the Permit Office must know whether it is pervious or impervious before construction can proceed. Mr. West stated that per code the parking area must be impervious at this time, unless a Variance is sought. Ms. Back stated that Mr. West's office would issue the permit under the assumption that the parking area is an all weather surface. Mr. Bonebrake asked, that with the understanding that it may be six months before the parking lot is started, if a Variance can be granted in the mean time. Mr. West answered affirmatively. Ms. Back stated the Mr. Norvell can make that application in that time span.

Mr. Charney asked Mr. Norvell what the church means when they say they are praying over the land, and what type of activities does that entail? Mr. Norvell stated there would be no noise other than maybe a very quiet whispering. There would be no chemicals or anything else that would be disposed. He cannot think of anything that in any way would be harmful. It is an assembly of or dispersing of people.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Dillard, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Special Exception to allow a Church with accessory uses (Use Unit 5) in an AG District (Section 310, Table 1). This approval will allow up to three buildings in an AG District as designated on a submitted site plan, subject to conceptual plans on pages 6.5 and 6.6. Construction is to be in accordance with the general conceptual site plan that has been provided the Board. The larger gathering building would be for church offices and the church ministries, and is to be used no more than twice a year, up to four or five days at a time. Finding that the Special Exception is not injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**W/2 NE & E/2 NW & W/2 SW LESS APROX 7.10 ACRES FOR ROW & NE SW & NW SE LESS THAT PART LYING S & E CL SNAKE CREEK & NE NE LESS TR LYING E CL SNAKE CREEK & LESS APROX 7.253 ACS FOR RD SEC 32 17 14 302.09ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**

The next item was continued from the beginning of the agenda.

**2495—Robert Myers**

**Action Requested:**

Special Exception to allow for a Mining operation (Use Unit 24) in an AG District (Section 310). LOCATION: West of NW/c of Highway 11 and East 176<sup>th</sup> Street North

**Presentation:**

**Robert Myers**, R & V Trucking, 15360 State Highway 20, Skiatook, OK; he apologized to the Board but he had been waiting in Room 119 because his notice cited that room number. Mr. Charney extended the Board's apologies.

Mr. Myers stated that he has applied to the Board of Adjustment and to the Mining Commission to be able have a dirt mining operation on his property to sell the dirt. The Mining Commission has approved his application to them, and it should be received this week. He keeps a well maintained site with sloped banks, keep the roads maintained, and keep the dust factor down. Before he started on the subject property he checked with the adjoining land owners and there was only one person that actually lived in the area and no one stated they had any concerns over his proposal. Mr. Myers presented

Mr. Charney asked if the dirt was loaded on site with third party haulers. Mr. Myers stated the dirt was loaded on site onto his trucks.

Mr. Charney asked if the dirt would be sold to independent third parties. Mr. Myers answered affirmatively.

Mr. Osborne asked Mr. Myers if he had already began his operation. Mr. Myers stated that he started digging in June 2013 under a one year permit received from the Mining Commission. When he filed for his permanent mining permit he was informed by Mr. West that he needed to file for a Special Exception.

**Ms. Miller left the meeting at 4:36 P.M.**

**Interested Parties:**

**Karl Skalnik**, 13901 North Cincinnati Avenue, Skiatook, OK; stated he and Mr. Robert Myers were in business together for a long time on land that he (Mr. Skalnik) owned, but Mr. Myers permitted. Mr. Myers then decided to go into business for himself and purchased the adjacent land. His concerns are the reclaiming of a mine that is now abandoned. Mr. Myers has not mentioned the criteria for reclaiming the land, and he is not interested in seeing him start another mining operation until his other one is settled and reclaimed. Mr. Skalnik thinks that if Mr. Myers has the ability and the equipment to meet the criteria that requires mined property to be cleaned up and sloped he should. Mr. Skalnik would also like to re-start his business and be able to mine his own property, which the land that he and Mr. Myers started together. It is very easy to receive a permit if the mining operation is not changed, the permit is just transferred to the new person. In order to that, he was asked to state in writing that Mr. Myers owes him (Mr. Skalnik) no money or restitution, and he rejected that request. Mr. Skalnik stated that Mr. Myers has a temporary mining certificate on a new mining location and he does not understand how that was obtained. He has had an excavator sitting in his pit for over six months because he was advised that if one truckload of dirt was removed from his pit it would be a \$20,000.00 fine. He does not think it is a good idea to have two mining operations next to each other for many factors.

Mr. Charney asked if this was because there was a transfer of a license that was taken from land that Mr. Skalnik owns to a new site. Mr. Skalnik answered affirmatively. Mr. Charney asked Mr. Skalnik if he understood him to say that this was done without his consent but yet it happened under a temporary mining permit. Mr. Skalnik stated that should be asked of Mr. Myers because he will not lie to a person.

Mr. Charney asked Mr. Skalnik if there had been a commitment from Mr. Myers to restore his land, or if it is a regulation that the land be restored. Mr. Skalnik stated it is a regulation, it is an Oklahoma statute. It has been put in place to stop erosion. The land is on Bird Creek and it was an oxbow. In the 1920s the land was diked thus eliminating the oxbow. He feels very vulnerable and unprotected. He has a business that can make a good profit and has been out of business for six months. No one has offered to come out and look at the site, even though he has been in touch with the Mining Commission, to see what he wants Mr. Myers to do for reclamation of the land to meet the statutes.

Mr. Osborne asked Mr. Skalnik if he were to continue the mining operations would there be a need for the reclamation that he wants to happen. Mr. Skalnik stated that it is his responsibility, because he is the one to pay for the reclamation if he chooses to take a new permit. He also would inherit Mr. Myers liability for Mr. Myers actions. He has walked the property and it will not pass as it is today. The land must be vegetatively growing and the slides must be sloped at such an angle as to catch the rain to allow the vegetative growth to stop any erosion problem.

Mr. Osborne asked if this meant he is looking for the area that has been worked to be reclaimed, and then he will start another mining operation. Mr. Skalnik stated that is exactly what he wants and then he would restart in another area on his 60 acres.

Mr. Charney asked staff does the Board need to see the actual permit from the Mining Commission. Mr. West stated that normally the applicant would receive permission from the Board to perform the mining, and the Oklahoma Department of Mines would issue the applicant a permit if the mining operation is approved by the Board of Adjustment.

Mr. Skalnik stated a permit is also secured by a bond. Mr. Skalnik stated if Mr. Myers would co-operate and put the land back in a required state then take his bond it would allow him (Mr. Skalnik) to start mining. Mr. Skalnik stated that Mr. Myers has refused to do that. Mr. Skalnik stated that he has asked Mr. Myers to transfer the permit from Mr. Myers name to Mr. Skalnik's name but Mr. Myers refused. Mr. Skalnik feels as if he has been abused by the Department of Mines because he has documentation of many, many long distance telephone calls and letters to Oklahoma City, but no one has visited his property for any sort of discussion.

Mr. Hutchinson asked Mr. Skalnik how far off the section was Mr. Myers operation. Mr. Skalnik stated that Mr. Myers will digging right up to 176<sup>th</sup> Street North which is Mr. Skalnik's property line, and Mr. Myers is proposing a 20 acre site.

**Ralph Manor**, 11908 North Cincinnati Avenue, Skiatook, OK; stated Mr. Myers had to put up a bond when he moves in and Mr. Skalnik must put up a bond when he moves in to do the same thing.

**Rebuttal:**

Mr. Myers came forward. Mr. Charney asked Mr. Myers to comment on Mr. Skalnik's statements. Mr. Myers stated that he was unaware there was a problem. He has always been very open with Mr. Skalnik. Before he moved off Mr. Skalnik's property he informed him so he would know what was going to happen. He had problems with some people that Mr. Skalnik had on the property who was running Mr. Myers equipment. That is one of the reasons he moved. Mr. Myers stated that in regards to the condition of Mr. Skalnik's property, it is all sloped except for where he had Mr. Manor move in digging dirt. He had to have Mr. Manor's digging stopped because he was liable for the property and the mining production every month. Mr. Myers stated that he has no problem with complying with the Mining Commission and doing what they say to do, he will do that but he thought the land was in good condition.

Mr. Myers stated that a mining inspector comes to his operation every month and pulls an inspection. He assures this Board that his dirt pit is in better condition than any other dirt pit.

Mr. Charney asked Mr. Myers if he would understand that if the Board were to give an approval to his request today, that it is important for him to reclaim Mr. Skalnik's land. Mr. Myers answered affirmatively.

Mr. Hutchinson stated that Mr. Skalnik has already stated that Mr. Myers is an honest man, and Mr. Myers has said he will perform the reclamation on Mr. Skalnik's land so he knows that Mr. Myers will perform the reclamation of Mr. Skalnik's land.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Dillard, Hutchinson, Osborne, Walker "aye"; no "nays"; no "abstentions"; Charney "absent") to **APPROVE** the request for a Special Exception to allow for a Mining operation (Use Unit 24) in an AG District (Section 310). Finding the Special Exception 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; for the following property:

**S/2 SW SE SEC 2 22 12, OF TULSA COUNTY, STATE OF OKLAHOMA**

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**NEW BUSINESS**

None.

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**OTHER BUSINESS**

Ms. Sparger announced that this is Carolyn Back's last Board of Adjustment. She is leaving INCOG and going to Wallace Engineering. Mr. Charney stated on behalf of the Board that she will be missed and he congratulated her.

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**BOARD COMMENTS**

None.

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There being no further business, the meeting adjourned at 4:57 p.m.

Date approved: \_\_\_\_\_

May 20, 2014

  
Chair