

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 409
Tuesday, June 17, 2014, 1:30 p.m.
Ray Jordan Tulsa County Administration Building
500 South Denver, Room 119

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Charney, Chair	Osborne, Secretary	Miller	West, Inspector
Dillard		Sparger	
Hutchinson		Hoyt	
Walker, Vice Chair			

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 12th day of June, 2014 at 9:11 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.

MINUTES

On **MOTION** of **WALKER**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker "aye"; no "nays"; no "abstentions"; Osborne "absent") to **APPROVE** the Minutes of May 20, 2014 (No. 408).

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

Mr. Charney explained to the applicants that there were only four board members present at this meeting, and if an applicant would like to postpone his or her hearing until the next meeting he or she could do so. If the applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the

application would be denied. Mr. Charney asked the applicants if they understood and asked the applicants what they would like to do. The applicants stated that they would like to proceed with the hearing today.

Mr. Charney stated that while he was reviewing the documents for the Holliday Sand and Gravel case, he wants everyone to know that he personally has no financial or business relationship with Holliday Sand and Gravel. However, when reviewing the case documents he saw people and companies that he does business with and those people do have significant relationships with Holliday Sand and Gravel. So it is one step removed, and even if there is no legal requirement for him to recuse himself from the case he is going to recuse from Holliday Sand and Gravel case to avoid any appearance of impropriety. It would not sway or alter how he views the case, or how he would vote, but there is a rule that he wants to hold the Board members to above and beyond. Given that he is not going to involve himself in any of the voting, deliberations or comments. He will call the interested parties forward, and will conduct the meeting but he will not vote or make any comments regarding the Holliday Sand and Gravel case. Given that, it is important for the applicant to know that for his case there are three remaining Board members to hear and vote on his case. In order to achieve the required result for the applicant there must be three positive votes. Mr. Charney asked the applicant if he will choose to proceed with the hearing of his case today. The applicant answered affirmatively.

Mr. Dillard stated that his profession is a banker and some of the people on both sides have been his customers. Mr. Charney stated that it is important to know that the legal standard is direct financial interest, and that would not be the case with Mr. Dillard. Mr. Charney stated that he appreciates the full transparency because that is what the Board wants to be about. Mr. Charney stated that his clientele relationships are one step closer than Mr. Dillards so that is why he has chosen to recuse himself. Mr. Charney asked the Board if they were comfortable with proceeding with the three voting members, and all nodded their consent. No opposition to this was received from the audience.

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UNFINISHED BUSINESS

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 129th Avenue East

Presentation:

Mike Odell, Vice President of Holliday Sand and Gravel, 14900 South Garnett Road, Broken Arrow, OK; stated his company is before the Board requesting additional operating hours because as it is now the company cannot keep up with the demand. Sand is a commodity and is something that is produced on demand, it is not a situation where the more that can be produced the more that can be sold. When the demand grows there must be more produced. There are operating difficulties at Holliday's other two locations, i.e., low water. Since the April 15th meeting the staff at Holliday has been busy. Until that time the company had not been aware of the trucking issues, but they were aware of the noise issue. After that meeting he realized there was a need for communication with the neighborhood. The company should have known the issues raised but the fact that they did not proves they were not adequately communicating with the neighbors. Holliday Sand has since taken steps to improve the communications. Mr. Odell stated that he had brought Mr. Michael Harnden to explain what he has done since the last meeting. In regards to trucking safety, what Holliday Sand realized is two things, there needed to be a trucking safety program and one was established with rules. The rules were distributed to the customers and haulers, and the drivers signed the rules. The other thing established was a consequence to the rules. It was found that the consequences are quite effective. If a driver is seen breaking the law or receives a ticket that is reported to the employer then the driver is banned from Holliday Sand. It was discovered that the fear of this program is greater than fear of receiving a traffic ticket, because this usually results in the driver losing his job. That of course is the choice of the driver's employer but that has been the situation in one case already. Along with the trucking safety Holliday Sand recognized a need for noise reduction. Neighbors came forward and stated that they could still hear noise, so there were additional noise reduction measures taken. Holliday Sand purchased commercial enclosures to go on the dredge machinery, erected additional large concrete blocks around the booster station, instructed the employees on how to properly clean a loader bucket and there is a spare loader now for handling the dirtier materials. So there will be no more bucket banging at the plant. The back-up alarm on the equipment is no switched on at 5:00 P.M. is switched to the strobe light for a silent operation. What has been even more encouraging, and he received a letter of support from Anchor Stone a competitor of Holliday Sand, stating they are committing to all the things that Holliday Sand is doing. Holliday Sand has not only impacted trucks leaving their plant but impacted their competitors. Almost immediately Mr. Harnden erected a sign right in front of the plant that clearly displays his cell phone number for a contact. Holliday Sand also realized that there was a need for a meeting with the neighbors, and there were mailer sent out to 2,100 residents along 129th, and only 42 people attended the meeting that lasted 2 ½ hours. At the meeting there were 18 suggestions given and Holliday Sand has been following up on them, and a lot of the centered around road conditions. Mr. Harnden has also contacted the Highway Patrol and the Transportation Department for the school district to inform them of what was being done and give them the contact number. At this point Mr. Odell deferred to Mr. Harnden.

Interested Parties:

Michael Harnden, 14900 South Garnett Road, Broken Arrow, OK; stated after the April 15th meeting he immediately contacted all the haulers that haul for Holliday Sand and Gravel. Mr. Harnden stated that he told them there was a problem that needed to be addressed, and they were in agreement. The company, as a whole, drafted a policy and the drivers must sign it. It was made very clear that if the rules are not followed then they will not be hauling for Holliday Sand any more. He has literally followed trucks into the Anchor plant that he observed committing a violation, and discussed it with the driver. He cannot do it all so that is why he contacted the Highway Patrol, Tulsa County Sheriff Department who has been making a presence also. The truckers know that he catches them on 129th, whether it is jake braking, speeding, running the stop signs, they will not be loaded out of Holliday Sand. Holliday Sand has made a commitment to stick to that, because they want the neighborhood to be a better and safer neighborhood. Mr. Harnden stated that Dr. Shadley came to Holliday Sand and performed noise level testing prior to and after the installation of the noise barriers. One of the days that the test was performed was overcast and the wind was from the south, which couldn't have been a better day, and the report shows a great improvement in noise level.

Dr. John Shadley, 5111 South Houston Avenue, Tulsa, OK; stated that he wrote the report the was submitted to the Board at the last meeting. In that report he demonstrated that the sound levels during the night time hours, with the three machines that were to be operated at night, the sound levels in the community for those three machines would be well below the EPA standards. He read the minutes of the last meeting and he saw that people said they could still hear the equipment. So he met with Mr. Harnden and worked on some more improvements. The dredge was fitted some noise barrier materials that contains the noise within the dredge, and the noise level dropped 4.5 decibels or dba. The booster pump uses a concrete noise barrier and when the noise level was measured 15.6 dba. When both those noise sources are combined together and extrapulate them into the community it resulted in a change of -7 or -8 decibels. That is the acoustical equivalent of moving the plant twice as far away from the neighborhood. After the noise measurements were taken the barrier has been increased so the noise level is probably even less than it was before.

Mr. Hutchinson asked Dr. Shadley asked about the noise level of the condensor kicking on. Dr. Shadley stated the level was 40 dba through the neighborhood and then it jumped to 46 dba when the condensor unit kicked on. The noise reading was taken about four houses away, and in that particular location the sound was dominated by distance traffic and birds singing. He moved to another location that is closer to the plant where there are no houses and the condenser could not be heard and that was in the day time. Mr. Hutchinson asked if the readings were taken before the concrete barrier was erected. Dr. Shadley stated the readings were taken after the installation of the concrete barrier.

Mr. Odell came forward and stated that there was some misconceptions in the community that was brought out in the meeting with the neighborhood. One of the

misconceptions discussed was the idea of the trucking hours being increased. The trucking hours will be kept from 7:00 A.M. to 4:00 P.M. as they have always been. It was also stated at the community meeting that the number of trucks on the road were going to be doubled. Holliday Sand estimates that there will about 30 additional trucks on the road a day, or about an increase of 15%. Holliday Sand is not the only company that have trucks on the road. There are trucks from Anchor Stone, Watkins Sand, and other facilities in the area, and there are sod trucks certain times of the year. The company has changed the request from unlimited to two ten-hour shifts starting at 7:00 A.M., operate two shifts until 3:00 A.M., and keep Saturday as a make-up day from 7:00 A.M. to 7:00 P.M. especially if there was downtime during the week. Mr. Odell hopes the company has demonstrated the desire and the integrity to be good neighbors and to minimize the company's impact. The additional hours requested would be the maximum. The company does not operate 100% of the time, there is down time of about 40%.

Tralynna Scott, 12775 South 129th East Avenue, Broken Arrow, OK; she presented some pictures to the Board as support for her objection. Ms. Scott stated she cannot hear the company operating, but she wants to speak to the dangers presented by the trucking traffic on 129th. She has heard many claims stated today that the company has implemented a safety program. The pictures she presented to the Board showed an accident that occurred directly in front of her home, about June 1, 2014. She was not able to obtain a copy of the police report so she does not know the cause of the accident, but she knows it was extremely dangerous and if she had been pulling out of her driveway she would probably be dead. She does know that the trucking company was Yocham Trucking. Additional pictures depicted how an attempt to clean up the sand off the road and from her yard. The road clean up consisted of the sand being pushed into the drainage ditch in front of her house completely blocking the drainage pipe under her driveway. She dug a hole in the sand to keep her driveway from washing away in a rain. No one left a note or attempted to place a telephone call to her, she had to track down the trucking company to request a clean up crew. At that time she was told the sand would be cleaned up but it was wet so it will be awhile. Ms. Scott presented another picture of the ditch after the clean up and stated the picture was taken at 5:00 P.M. June 16th. Ms. Scott stated there is still several inches of sand, and the company merely scooped out a little of the sand and called it good. Ms. Scott stated that she knows Holliday Sand is aware of the problem because Holliday Sand had left a note on her door stating that Yocham Trucking had been contacted and requested to finish the clean up. She believes that Holliday Sand and Gravel is poor corporate citizen, they do not care about the damage that is done or the hazards they cause. She has contacted Tulsa County requesting the speed limit to be lowered. It is currently 45 mph on 129th between 121st and 131st, and it is 35 mph on 129th between 131st and 141st with signs stating no Jake brakes. She has contacted Tulsa County and the City of Broken Arrow, both of which claim to have jurisdiction, of the road and both have failed to take any action on her requests. Every resident on the east side of 129th must walk across the street to gain access to their mailbox. A 15% increase in trucks is 30 more trucks that must be dodged to walk to her mailbox. She has contacted the U. S. Postal Service and requested the mailboxes be moved, but again to this day has not received

any type of answer from the postal service. Ms. Scott is asking the Board to not put her family's safety in any more jeopardy than it already is in. Even with increased truck safety it is still dangerous. She would like to have the trucks start after the neighborhood children were on the school bus and stop before they got off the school bus. She has called the Highway Patrol and they have confirmed they have received many complaints about the trucks on 129th but they expressed that have a limited number of patrolmen and they must cover the entire that is outside the Tulsa city limits. She has lived in her house for 15 months and she has never seen Broken Arrow police, Tulsa County sheriff, or Oklahoma Highway Patrol on her road, and the truckers know this. Ms. Scott asked the Board, if it were their children that lived on that street how would they vote?

Dan Coley, 2404 West Pensacola Street, Broken Arrow, OK; stated he is in support of Holliday Sand's request. He wants to applaud the efforts that Holliday Sand has taken and made since the last Board of Adjustment hearing. He went to that meeting thinking it was all a noise issue and discovered it was a truck issue, not nullifying the noise issue altogether but 95% of the issues in the 200 pages in the Board's agenda packet all seem to be trucks, trucks, trucks. He thinks that Holliday Sand has taken the right steps to control what they can. Other efforts they have made to deaden the sound proves they are a good neighbor. Mr. Coley stated that on the flip side, from the neighborhood standpoint, he does not think it is a good situation for the neighbors to just say no. Holliday Sand have been there. They have three plants in town, two of which are hurting because of the discharges from the Keystone Dam. He does not think Holliday Sand wants to run 24 hours a day, seven days a week and that production will slow once the demand is met. His wife has accused him of having selective hearing, but he does not think selective hearing is gender specific it is with everyone. If a person wants to hear something they are going to hear it. If a person does not want to hear something they are not going hear it. If a person wants to be so focused on hearing something that is off in the distance, that they might be able to hear, then they are going to be upset for a long time.

Damon Martin, 12715 East 138th Street, Broken Arrow, OK; stated he was at the last Board of Adjustment meeting and had a lot of concerns over the trucks. He, too, thought the trucks are going to kill someone on 129th. His wife and children have almost been hit by one of the trucks. He has been almost run off the road by one of the trucks. It is a problem and there is nothing that Holliday Sand can do about it. It is going to be an individual truck driver that is going to cause it. Even today, the truck can be coming down the road in the middle of the road or be in his own lane. The area is a quiet area when there is nothing operating, nature can be heard. He and his family chose the area to live in because it was quiet and he never imagined there would be heavy machinery operating 24/7. To ask people to accept production to be allowed up to 3:00 A.M. is a lot to ask. If a person comes to the area to possibly buy a house and all they hear is noise from the sand company he can guarantee that person is going to look for another quieter area. This request, if it is approved, is going to hurt house values. He has children that are in school and they will have to deal with the trucks. The snow route for the Bixby schools is on 129th. The road is one busy road and any increase in truck

traffic would be unacceptable. The company has been issued a permit to operate certain hours and he does not think that should be extended.

Mr. Hutchinson asked Mr. Martin if he had noticed any difference in the noise level since the improvements have been made for noise reduction. Mr. Martin that he lives close enough to the plant that he does not think there is anything they can do to stop the noise.

Joe Smith, 13705 South 129th East Avenue, Broken Arrow, OK; compared the noise to barking dogs. Just because a person moves his barking dogs six blocks farther away from a neighbor the barking dog can still be heard. That barking dog may not be as loud but the barking is still irritating. Mr. Smith compared the 10-hour days of operation to the barking dog being taken inside at midnight; the neighbor is still going to be irritated because he can hear the dog barking all day long. He lives very close to operation site and it can be tuned out if a person wants to. It is not that you tune it in, it is always heard. He is concerned about the safety of the neighbors. Two days after the neighborhood meeting with Holliday Sand he had an incident with one of the trucks on the road. A truck lost control, going into the ditch and then coming back across the road toward him. Some of the noise is caused by the trucks. Some of them do not have mufflers, some of them jake brake, and some of them speed. He asks the Board to think of themselves living in the neighborhood, and ask themselves if they would want to have the hours increased or be able to enjoy your home after 5:00 P.M.

Fred Perry, 11404 East 133rd Street, Broken Arrow, OK; stated that he lives three houses from Garnett as opposed to 129th. He is on the homeowners association board for the housing addition that is southwest of 131st and Garnett. His primary concern is if the company is allowed to operate 24/7 will that automatically lead to 24 hours of trucking. In the neighborhood Mr. Odell and Mr. Harnden assured everyone that would not happen. He is representing the homeowner's association is asking the Board to hold the company responsible for 24 hour truck operation. His neighborhood does not hear the noise so he has no input on that. Mr. Perry stated that he was a County Commissioner for six and a half years, and would like to let the people know that the Highway Patrol is not the agency to call for law enforcement, it is the Sheriff's Office. If the Sheriff's office does not respond lean on the County Commissioner and he can lean on the Sheriff. The same thing with the street signs. The County is the agency to contact not the state.

Steve Friebus, 2501 West Natchez Street, Broken Arrow, OK; stated that 60 days this request was tabled to see what could be done for the neighborhood, and things have been done. The Board asked for a compromise between the company and the neighborhood. A compromise is an agreement or settlement of a dispute that is reached by each side by making concessions. The original zoning language states this area is zoned AG and residential. In 2000 a Special Exception was allowed for extended hours provided it does injure the neighbors. In 2012 the hours were extended but due to ignorance the hours became 24/7 due to a need and demand. So again the residents were forced to concede the peace and quiet, and deal with increased traffic.

In 2013 the hours officially became 24/7 and now they are being dropped down to 20 hours as if that were a concession. Mr. Friebus compared the noise level to a loud radio being played by a neighbor. The music is so loud you can sing the words but then volume is turned down a little. The music can still be heard but you can not hear the words. The noise from the operation is still audible. Some residents are affected by noise, others are affected by traffic, and some by both. He appreciates Holliday Sand having the neighborhood meeting. He knows of a business that closed because of the truck traffic, no one wanted to turn into the business because they were afraid of being hit by a truck. He saw the mess of sand in front of Ms. Scott's house, and it stayed there quite some time. It was there long enough that the clogged pipe caused her front yard to flood. It was mentioned that there would be an increase in the truck traffic by approximately 30 trucks. A truck going to the sand plant must come back up the road so that is 60 trucks down and back. He has a hard time believing this is the only spot of the river that can be dredged. He would ask the Board to vote no on the extension of the hours of operation.

Steve Cox, 14503 South 129th East Avenue, Broken Arrow, OK; stated that he still hears the noise and it can interrupt a night's sleep. He can hear the dredge from Memorial Drive which is a mile and a half away. At the neighborhood meeting truck safety was discussed and that is a good thing, but the problem is noise. The noise of dredging all night. Holliday Sand cannot control the trucks. There will be more trucks coming for sand. All the projects they are providing sand for will happen and they will pass, but what Holliday is asking is for eternity. Permanent decisions should not be made on temporary situations. He believes that dredging does not need to be done for 20 hours at a time, because they currently have a truck every 20 minutes. This request is injurious to the neighborhood, and they are attempting to turn the area into an industrial area rather than a neighborhood.

Malcolm Rosser, 321 South Boston, Suite 500, Tulsa, OK; stated there are a few points that he would like for the Board to keep in mind. He is sympathetic to the job the Board performs on the Special Exception requests, and especially in this case. This is a balancing act in terms of what amount of burden on the neighborhood is appropriate, and there will be some burden on the neighborhood if the request is approved. This is not a new application because there was an application made for this use and it is already in place so the amount on the neighborhood has already been considered. What has changed? The only thing he can see that has changed is that business is better, but is that a basis for allowing additional burden to the neighborhood over and above what has already been determined to be appropriate. If this application is granted for Holliday Sand then it must be done for Anchor Stone when they apply.

Henry Seymour, 12718 East 138th Street, Broken Arrow, OK; stated he lives two houses off 129th, and has been there for 20 years. When the permit is considered what seems to eluding everyone is that there is no enforcement. That is probably why the neighborhood is having such trouble with getting something done on their behalf. They feel that they are not being heard. He has called the Sheriff many times and nothing because the Sheriff says that if he stops one truck they all know, but when they are

gone everything reverts back. The company is working 24/7 now so he feels the request for set working hours is bogus. It not just that sand is being removed, the company is dumping all kinds of stuff in the pits constantly to fill them back up. He has heard trucks at 2:00 A.M. driving down 141st Street to dump their load. The area used to have bald eagles and now they are gone. The wildlife is disappearing because of the operations of the companies. In the past the company has ignored any regulations that have been issued because there is no enforcement. He feels that if the company receives a permit they will do what they can to get around the rules because that is what they have done in the past. In the last two weeks he has witnessed three truck wrecks on 129th. There is a gouge in the middle of the road where a truck flipped and slid down the road. By the turnpike there is a car in the middle of a pasture because of a mishap with a truck. There have been three deaths on the hill between 131st and 138th, and he witnessed one of them. The truckers are not going to listen to anyone, and the noise is constant because there is no enforcement. The voice of the people is not being heard.

Mr. Walker asked Mr. Seymour if he attended the neighborhood meeting. Mr. Seymour stated that he did not attend.

Rebuttal:

Mike Odell came forward. As for the recent truck mishap it is more timing for the company but Mike Harnden closely followed the incident, and things were not done to Holliday Sand's standards. Mr. Odell informed Ms. Scott that Mr. Yocham from Yocham Trucking was in attendance today and will gladly speak with her after the meeting or at another time if necessary. Mr. Martin asked why the other Holliday Sand plants were not producing, and he is glad that was questioned. When the company finds there is a release from Keystone the crews are brought in to work; at the other plants there is pumping 24 hours. Holliday Sand has brought in a smaller dredge to operate at Mingo because it needs less water. Mr. Cox mentioned a huge pile of sand, and he wants everyone to know that sand belongs to Watkins Sand and it is their fill sand. The dumping operations is also Watkins Sand. Watkins is permitted by the state and the Corp of Engineers, and the island is private property of Watkins. Holliday Sand quits loading at 4:00 P.M., and Watkins quits at 5:00 P.M. so if there are trucks coming in in the middle of the night Holliday Sand was not aware of it, but it will be followed up. It does not seem as if there is enforcement in the area but Holliday Sand is before the Board today because of the enforcement. Mr. Odell stated they were ignorant because the permit and the building permit does state any hourly restrictions. The minutes from past meetings read the Special Exception was granted as presented. If you go through the minutes it stated that normal hours by Watkins, and Holliday Sand was not aware of that. The people of Holliday Sand are attempting to get together with Watkins Sand and Anchor Stone to jointly repair the road because everyone knows it is a mess. The road does not have enough base, there are no ditches, so if the road can be fixed to the County standards the three companies will do so. But the companies cannot just do it, specifications must be presented to the County and approved. Mr. Odell stated that he realizes none of this benefits anyone directly, but the County does need the sand and there are limited placed to obtain sand because it is difficult to receive a permit. The

dredge will not be run an actual 20 hours because there are normal down times of about 45%.

Mr. Dillard asked Mr. Odell if they had ever considered having a Deputy Sheriff appointed to them. If there were Deputy Sheriff appointed to the company there could be a lot of enforcement in the area. Mr. Odell thinks that is a perfect idea.

Mr. Odell stated that he knows the company can only be judged by the past but honestly the company was not aware of the situation. Holliday Sand thinks there is a lot of confusion who is Anchor Stone, who is Watkins Sand, and who is Holliday Sand. In the last 60 days Holliday Sand has made a lot of progress, and he hopes the people of the neighborhood will trust the company to correct their bad track record. The company has turned over a new leaf and established a line of communication for the neighborhood. Noise is the one factor that Holliday Sand has the most control over and the company has made improvements and there will certainly be more improvements made.

Jared Burden, 1717 South Boulder, Suite 900, Tulsa, OK; stated he is counsel for Holliday Sand. Granted Holliday Sand does have a bad reputation from the past, but today as they have been made aware of each issue they have made positive changes, to address the issues, and to meet with the residents of the neighborhood. Most sand operations do operate 24 hours a day, but it is difficult to operate 24 hours. Holliday Sand did not know there was any restrictions, and the minutes did not reflect that. As soon as Holliday Sand was made aware of the restrictions they immediately ceased on those operations and they began this proceeding to receive authority to operate lawfully. When Holliday Sand became aware of the multiple problems with the trucking and noise, they took immediate reactive measures going so far as to go to the industrial neighbors who also run trucks and get them aboard. They were successful because everyone realizes this is a problem. Holliday Sand is taking positive steps within the community and making real differences. Broken Arrow 25 years ago was very different than the Broken Arrow of today. There are a lot of concerns about trucks and they are valid concerns. It is not just limited to Holliday Sand and Gravel, however, there are company trucks on the road. There are WalMart Super Center trucks in the area. There are other sand and gravel trucks in the area. There is going to be an increase in trucks over the coming years. Granting or denying this request is not going to affect that. The City and County are going to continue to develop as they have been developing. This request is in line with that development.

Mr. Dillard stated that sometimes people want to receive forgiveness instead of permission, and he believes Mr. Burden's speech was primarily that. He hear the neighbors asking how are they going to be assured that Holliday Sand is not going to do that again. Mr. Dillard said that Holliday Sand has pleaded ignorance, so what will keep them from continuing to be ignorant of the law? The time frame was set on the front end, and they had to have a representative here when it was previously approved so he is confused. Is it being said that it is okay because they were dumb to the law, but it is okay now because everything is going to be fixed? Mr. Burden stated that he

appreciates Mr. Dillard's opinion, but his client was not dumb to the law. They were leasees under the Watkins Sand lease and permit. Holliday Sand was not present at the previous meeting, several years ago, as far as he understands and there was no communication from Watkins Sand to the limitations. The way any misunderstandings or miscommunications can be stopped is to make everything very clear by stating in the motion exactly what the hours of operation are to be, include the hours of trucking, etc. Clarity will make the limitations understood by everyone.

Comments and Questions:

Mr. Walker stated most of the problems are the roads, and this Board does not officiate over roads.

Mr. Dillard agrees it is a road problem, but it is also a communication problem and a timing problem. He can support the continuance of company operating, but he does not know if he could support it on a permanent basis. He could support a one or two year approval so he could see that Holliday Sand is truly going to honor their words and actions. Mr. Walker agreed.

Mr. Hutchinson stated that he visited the subejct site and he has been to the sports complex many times before this request came to the Board. He has been at the sport complex after the fact and he has never heard anything. As far as the noise level, the steps that Holliday Sand took are very noble. When a person stands on one side of the concrete wall surrounding the equipment the noise is very loud but walk to the other side of the wall and the noise level drops dramatically. He drove to one of the closest points in the subdivision and could only hear a condenser that was running. He drove to the farthest point of the sport complex and listened, and could not hear anything but a golf cart that was being driven on the grounds of the sports complex.

Mr. Dillard stated that he did not visit the site at the same time as Mr. Hutchinson because of the Open Meeting Act, so he and his wife drove around the area. The road and traffic issues are not something this Board can deal with, and he understands how awful the truckers can be because he purposely drove 35 mph and had truckers driving around him.

Board Action:

On **MOTION** of **DILLARD**, the Board voted 3-0-1 (Dillard, Hutchinson, Walker "aye"; no "nays"; Charney "abstaining"; Osborne "absent") to **APPROVE** 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. The approval is to be with the hours as stated: **Loading** will be 7:00 A.M. to 4:00 P.M., Monday through Friday, except legal calendar holidays; **Trucking** will be 7:00 A.M. to 4:00 P.M., except legal calendar holidays; **Dredging** will be two ten-hour shifts from 7:00 A.M. to 3:00 A.M., Monday through Friday with an eight (8) hour make-up day on Saturday which would be 7:00 A.M. to 3:00 P.M. Holliday Sand is to continue to work on the community relationship of controlling the traffic on 129th East Avenue, they are not to stop. Holliday Sand is to continue to enforce the rules that the drivers have

voluntarily signed. This approval is for a period of not longer than 24 months from today's date of June 17, 2014. A copy of the approved meeting minutes is to be given to Holliday Sand so when they come back before the Board in two years there cannot be a plea of ignorance. The Board does not find that the stated hours will be injurious to the neighborhood and will be in harmony with the spirit and intent of the Code or otherwise detrimental to the public welfare; 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

2494—Taylor King

Action Requested:

Special Exception to allow an event center (Use Unit 5) in an IL District (Section 910). **LOCATION:** 4812 East 76th Street North

Presentation:

Taylor King, Contractor, 2215 South Florence Avenue, Tulsa, OK; stated the property is currently zoned IL, and he has study the IL and assembly to know what the environmental impact would be on the surrounding area. In his research he found that established event centers do not have set times of operation, and he wants to be able to do the same thing. His client would like to be able to operate the event center at any time to accommodate the public's event that would want to use the center. His client would like to be able to operate seven days a week from 6:00 A.M. to 2:00 A.M., which allow for an hour set up time and an hour close down time. These hours would allow for a trade show to open at 7:00 A.M. or for a wedding to be held in late afternoon or early evening. He also researched sound levels, lighting levels, traffic patterns, occupant loads, etc. that could impact the surrounding area. His proposal for the event center would be a lower impact than if there were an industrial facility were to be placed on the subject property. What is happening there currently is trains, semi-trucks, and cars for three shifts a day. The event center would not be near that level. Highway 75 is just to the west of the subject property and Highway 75 has a dba of 100 and above. A highway is one of the loudest things that a person can be near, and the event center would not have a noise level of the capacity. The event center would be a much easier use from an environmental perspective. Mr. King thinks the event center would also enhance the property values in the area.

Mr. Charney asked Mr. King where the egress and ingress would be located for the event center. Mr. King stated it would be from 76th Street North and also from Whirlpool Drive. Mr. King stated that Mr. Kevin Banner of Impact Engineering stated there is a proposal for a Level II gas station and food establishment for the area between the subject property and Highway 75, but it has not been built as of yet.

Interested Parties:

Ronnie Hill, 4702 East 76th Street North, Sperry, OK; stated he lives two houses away from the proposed event center, and his issue with the proposal is that he thinks this is going to be a bar and dance hall, not an event center. Why else would a place be open every weekend until 2:00 A.M.? Whirlpool holds all of their staff events inside. Mr. Hill stated that he never hears anything from Whirlpool because everything is contained within their building. As for Highway 75, it is about 40 feet deep at the point where the houses in the area are located and he barely hears anything.

Mr. Charney asked Mr. Hill if he was aware that an industrial use could be placed on the property by right. Mr. Hill answered affirmatively.

John Harris, Director of Finance, 7301 Whirlpool Drive, Tulsa, OK; stated that Whirlpool does not know whether to agree or oppose the proposal simply because the concept of an event center is very wide open. A casino, a bar or anything else could be an event center. Whirlpool has asked what is this event center and do not receive any significant response. There is light industrial in the area and it was understood that there would be other IL or IM businesses brought into the park to support the Whirlpool business. Whirlpool is an employee and family friendly company. There are company picnics held on the property every other year, and if this event center leads to the serving of alcohol it would not be conducive to the industrial park, the day care or the church that is across the road. There are concerns over safety because what is the event center? There is a four-way stop at the intersection with flashing lights because of the number of incidents at the intersection. The Macy's addition going in will result in more traffic. How much traffic will be added and what type of improvements will be needed at the intersection of Whirlpool Drive and 76th Street North? Then there is the real or perceived risk of damage to company property, employee personal property, or the residents. Without knowing exactly what the property will be used for Whirlpool would ask the Board deny the request.

Rebuttal:

Taylor King came forward and stated that the applicant does think that Whirlpool and the Rubuo's are fantastic neighbors. This event is for anything for rent. Using the Mid-America Industrial Park as an example, they have two event centers where anything from birthdays, weddings, conferences, trade shows, award ceremonies, etc. and that is what this event center will be used for. This is not a bar and that is not the intent. It would be an event center for the community to use; Owasso, Collinsville, anyone to use it. The applicant just wants to take advantage of the industrial park in the area by erecting an event center. It is not a bar. It will a space for hire where people can congregate. There are not enough of these facilities around and the applicant is attempting to be a civic minded leader and entrepreneur by providing the event center.

Mr. Walker asked Mr. King why he did not list the type of operation was going to be on the land when asked for a description. Mr. King stated that at the time the question was posed he did not know.

Mr. Hutchinson asked Mr. West if there was a law about how far a bar could be placed from a church. Mr. West stated there is but the event center is classified under Use Unit 5 which is a community building. A bar would be a Use Unit 19. Both of these are Special Exceptions in the IL District so a bar would not allowed under a Use Unit 5. Mr. Walker asked if a concert would be allowed. Mr. West stated the code does get into the concert which is a community event, but a wedding could have a band for the reception which would be a permitted use under Use Unit 5.

Ms. Miller stated the Use Unit 5 code is very broad. Included uses are wide in range because the Use Unit category is even called community services, i.e., a church, a community center, a college, a day camp, a library, a museum, etc. Use Unit 5 is an activity of which is a service not carried on as a business, so that means the event center cannot be turned into a bar or transition into that because it is not allowed.

Mr. Charney asked if it would be prohibited to serve a glass of wine were to be served at a wedding reception, and if someone brought in a concert that wanted to sell the wine by the glass. Mr. West stated the selling of the wine would be allowed but it would also involve a liquor license for the sale of mixed beverages. As for the zoning, the location a Special Exception would allow the sell of mixed beverages with a liquor license. To have champagne or wine at wedding would be permitted.

Mr. Charney asked Mr. King, in light of hearing the concerns of the corporate neighbor and the resident nearby, would there be bands booked on the weekends then allow dancing and beer by the bottle. Mr. King stated that the intent is not to sell tickets. The intent is to allow people to have a special get-together by renting the facility for that use. It is not going to be like the Spirit Event Center. All his client wants to do is offer a center that is controlled and safe for all types of functions.

Mr. Ronnie Hill came forward and asked if the request is approved, if the applicant cannot have a bar but has an event that plays music every weekend until 2:00 A.M. while drinking what is that? Mr. Hill stated he can have friends have a party every weekend and play music until 2:00 A.M. This seems unfair to the neighborhood if this is granted.

Mr. Charney asked Mr. King if the request is granted would there be music going until 2:00 A.M. Mr. King stated that there could be an activity on the weekend and there could be activities during the week. The event during the week could end at midnight but the weekends would when the private activities take place while the business functions would probably be through the week. There would be no tickets sold for concerts.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker “aye”; no “nays”; no “abstentions”; Osborne “absent”) to **APPROVE** the request for a **Special Exception** to allow an event center (Use Unit 5) in an IL District (Section 910). The hours of operation are to be Sunday through Thursday, 7:00 A.M. to 10:00 P.M. with an hour before and afterwards for set up or break down. The hours of operation for Friday and Saturday are to be 7:00 A.M. to 12:00 midnight allowing for one hour before and after for the set up and tear down. The music is to stop at 10:00 P.M. Sunday through Thursday, and the music is to stop at 12:00 midnight Friday and Saturday. There is not to be any booking of concerts at this event center for tickets sold to third parties. The Board understands that there may be music that will be incidental to celebratory events or trade shows that may occur, i.e., a wedding, but not a concert hall. There may also be alcohol served incidental to celebratory events, i.e., a wedding, either provided or a cash bar setting. There is to be no alcohol served as a primary use or as a primary reason for a gathering. A copy of the approved minutes will be sent to Mr. Taylor King. With these conditions the Board finds 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:

TR BEG 90S NEC NE TH S569.96 W396 N569.87 E396 POB LESS E50 THEREOF FOR RD SEC 33 21 13 4.527ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

2499—Josh Johnston

Action Requested:

Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a new residence (Section 207). **LOCATION:** 18500 South 133rd East Avenue

Presentation:

Josh Johnston, 25716 East 107th Street, Broken Arrow, OK; stated that since the last meeting he has met with the neighbors, and those same neighbors that were opposed to the request at the last meeting are not here today. Mr. Johnston showed paperwork to the Board with signatures from the concerned parties saying they were in agreement with Mr. Johnston’s request and that Mr. Johnston has received the easement from the interested party.

Mr. Charney wanted Mr. Johnston to realize that the Board has concerns over subdividing, and that the Board does not want to have that happen. Mr. Johnston stated that he understands those concerns and he informed the Board that he does not want to subdivide.

Mr. Charney advised Mr. Johnston to hire a real estate attorney to make certain that the easement agreement that is obtained has the proper legal description and meets the

legal boundaries. Mr. Johnston stated he plans to hire a real estate attorney making sure that everything he needs is completed.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker “aye”; no “nays”; no “abstentions”; Osborne “absent”) to **APPROVE** the request for a Variance of the minimum required frontage on a public right of way from 30 feet to 0 feet to permit a new residence (Section 207). The applicant is to obtain a properly executed mutual access or easement in recordable form from all parties. There is to be a description of the easement and the maintenance associated with that easement. The approval is also with the understanding that the party land served by the easement will not be further subdivided; for the following property:

SE SE NW LESS S60 FOR RD SEC 4 16 14 9.091ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

Mr. Gene Dillard left the meeting at 4:07 P.M.

NEW APPLICATIONS

2503—Debbie Fisher

Action Requested:

Variance to permit the construction of a detached accessory garage in a side yard located in a RS District (Section 420.2.A.2). **LOCATION:** 307 South 71st Avenue West

Presentation:

Neal Fisher, 307 South 71st West Avenue, Tulsa, OK; stated he would like to build a steel garage for the house. There is no place else to erect the garage other than the site chosen.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **WALKER**, the Board voted 3-0-1 (Charney, Hutchinson, Walker “aye”; no “nays”; Dillard “abstains”; Osborne “absent”) to **APPROVE** the request for a Variance to permit the construction of a detached accessory garage in a side yard located in a RS District (Section 420.2.A.2). The hardship being the extreme width of the lot thus justify the garage setting in the side yard; for the following property:

LT 12 & N 25 OF LT 13 BLK 4, TWIN CITIES, OF TULSA COUNTY, STATE OF OKLAHOMA

Mr. Gene Dillard re-entered the meeting at 4:11 P.M.

2504—Wallace Engineering – Jim Beach

Action Requested:

Modification of a previously approved site plan to allow addition of sidewalks, light poles, generator pads, drinking fountains and bathroom building (BOA-8902).

LOCATION: 2727 South 137th West Avenue

Presentation:

Jim Beach, Wallace Engineering, 200 East Brady Street, Tulsa, OK; stated this request is for the Tulsa Boys Home. This application is to modify a previously approved site plan for sidewalk extensions, a small restroom building, and incidental site features that will enhance the overall facility. All of the proposed construction will be on the internal portion of the subject property.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-0-0 (Charney, Dillard, Hutchinson, Walker “aye”; no “nays”; no “abstentions”; Osborne “absent”) to **APPROVE** the request for a Modification of a previously approved site plan to allow addition of sidewalks, light poles, generator pads, drinking fountains and bathroom building (BOA-8902) finding that it is compatible with the surrounding area; for the following property:

PRT SE LYING S OF HWY 51 LESS TR BEG SWC SE TH N660 E115 SE372.62
S446.81 W435 POB & LESS TR BEG 30E NWC SE TH S735.21 E705 NE475.40 NW
TO PT ON NL SE TH W TO POB & LESS 42.87ACS ANNEXED INTO CTIY SEC 16
19 11 98.12ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

NEW BUSINESS

None.

OTHER BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 4:16 p.m.

Date approved: _____

7/15/14

David E. Charney
Chair