

TULSA COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 483
Tuesday, June 16, 2020, 1:30 p.m.
Williams Tower I
1 West 3rd Street, St. Francis Room
Tulsa, OK

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Charney, Chair Hutchinson, V.Chair Crall, Secretary Dillard Johnston		Miller R. Jones Sparger	Tosh, County Inspector

The notice and agenda of said meeting were posted at the County Clerk’s office, County Administration Building, 11th day of June, 2020 at 11:29 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 **HUTCHINSON**, the Board voted 4-0-1 (Charney, Crall, Hutchinson, Johnston "aye"; no "nays"; Dillard "abstains"; none "absent") to **APPROVE** the Minutes of May 19, 2020 (No. 482).

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

UNFINISHED BUSINESS

2807—Chris Webb

Action Requested:

Use Variance to allow Use Unit 16 for a Mini-Storage in an AG District (Section 1216); Special Exception to exceed the fence height in the required yard (Section 240.2). **LOCATION:** 9613 East 96th Street North

Presentation:

Chris Webb, 9613 East 96th Street North, Tulsa, OK; stated he would like to build a 100-unit mini-storage facility; the units would be 10'-0" x 10'-0" and all indoor units. The storage facility will back up to an existing neighborhood.

Mr. Charney stated there is a currently a County road at the intersection of 96th Street and Mingo, and Mr. Charney asked if this project would require an extension of that roadway back to the west to be able to access the property. Mr. Webb answered no and stated the County road goes directly to his property. The road is asphalt and is approximately 30 feet wide.

Mr. Hutchinson asked Mr. Webb what size of building he is proposing to build. Mr. Webb stated the units would be 10 x 10 with an 8-foot wall. There would be two buildings of 50 units each and each building would be 500 feet long. The access to reach each unit would be down the center of the two buildings.

Mr. Hutchinson asked Mr. Webb about the lighting for the project. Mr. Webb stated there would be halogen lights for security lighting placed at the four corners and in the center. The gate to the property would have a security code, and the property would only be open from 8:00 a.m. to 8:00 p.m.

Mr. Charney stated that the subject property is just outside of the City of Owasso city limits, and the subject property is zoned for residential use. The City of Owasso has expressed concerns, even though this request is under County jurisdiction, this Board cares greatly about actions that come before them that are adjacent to a city. Mr. Charney stated he thinks it is relevant though not binding on the Board. The relevant jurisdiction, the City of Owasso, feels this request is not consistent with the Comprehensive Plan, they feel that there are existing neighborhoods on either side that are very residential in nature and the City of Owasso has expressed a discomfort with the commercial use immediately adjacent to one neighborhood and right across from another neighborhood. Mr. Charney asked Mr. Webb to comment on the City of Owasso's concerns.

Mr. Webb stated there is a lot of commercial in the area, e.g., at the corner of 96th and Mingo. That area is dealing with growth and it is a mixture of commercial and residential.

Mr. Crall asked Mr. Webb if he had spoken with his neighbors expressing his intent. Mr. Webb stated there are a few neighbors that know and have expressed support. There was also a letter sent out notifying people of the potential project.

Mr. Hutchinson asked Mr. Webb if his house was on the subject property. Mr. Webb answered affirmatively. Mr. Hutchinson asked Mr. Webb if he would need to pass by the storage facility to get to his house. Mr. Webb answered affirmatively.

Interested Parties:

Jerri Dixon, 9632 North 95th East Avenue, Owasso, OK; asked the Board if a traffic study had been done for the subject neighborhood. Mr. Charney stated the Board does not answer those type of questions, but they do want to hear interested parties' perspective. Ms. Dixon stated she has never had a conversation with the Webbs. In the HOA meetings everyone attended; 100% participation against this request. The neighborhood does not want the security lights in their yards, storage facilities bring vermin, crime and they drop property values. People have worked too hard to keep their property values up.

Carl Fritschen, City of Owasso Planner, 200 South Main Street, Owasso, OK; stated that Mr. Charney is correct when he stated the plans call for the subject area to be residential and it has for quite some time, going back to 1978. The hard corner that was discussed previously is commercial use as well as transitional use and that is in the long-range plan, but only a small portion of that hard corner has been denoted for commercial selling uses. There is virtually no high intensity uses in this area at this time, and 96th Street does not go through and it is not expected to go through any time in the near future. There is a large flood plain that blocks progress and it will never be developed all the way to Memorial, so the intersection will be a three-legged intersection at Mingo and 96th. So, the likelihood of very high intensity commercial use is very small. The street itself, 96th Street, is in poor condition that has no curb and gutter, and the shoulders are constantly sloughing off from the little amount of traffic that goes in and out. Should this be improved he would recommend that the public road serving the site be brought up to a standard that is capable of handling commercial traffic with curb and gutter for storm water. He would also recommend that a buffer guard at the minimum of ten feet in width be provided to the east with a minimum of six feet in height opaque fence, and vegetation with maintenance responsibilities be placed on the landowner for perpetual maintenance of the plant material and fence. Mr. Fritschen stated that noise would be introduced to an otherwise quiet area. Lighting is another concern that he would take into account so he would ask that restrictions be placed on the lighting with a maximum foot candle of 0.5 at the boundary be allowed. With that, these are some general comments that the City of Owasso would bring forth to this discussion.

Ellen Kelly, 9301 North 95th East Avenue, Owasso, OK; stated that her most recent communication concerning this case is about what is really planned because there was an option B that was somewhat threatened, that if this request for a storage facility is not approved that the property will end up as a three-acre pot farm. Ms. Kelly stated that Mr. Webb essentially lives there, and he intends to live there on the site however, he

has listed the two parcels of land for sale and recently reduced the price by \$100,000. Ms. Kelly questions what the true intent is along with the other issues that have already been addressed.

Linda Phillips, 9611 North 95th East Avenue, Owasso, OK; stated that most of her concerns have been addressed, however, she would like to emphasize that besides the cultural concerns, the lighting, the noise and traffic she does have concerns the City of Owasso expressed about 96th Street west of Mingo, because in the current condition it is not sufficient to handle traffic of trailers and the activity that a mini-storage would create. To meet those conditions, it would be a significant expense to the applicant.

Rebuttal:

Chris Webb came forward and stated that the way he has the building designed is so that the shed roofs angle in toward the drive making the nine foot wall be more of a block so there would be no bother to the neighbors. Those walls also allow the lighting to be pointed in toward the middle drive. Another good thing about the subject property is that as soon as you drive over the hill the elevation starts dropping down. So, the mini-storage facility would not be seen by the public and it would be hidden. This is not a normal sized storage building like is typically seen, it is very small. The facility only takes up 0.75 acres with only 100 small units; the size helps it be more of a community type business.

Mr. Johnston asked Mr. Webb to state his hardship for his request. Mr. Webb stated the lay of the land is unique and it is difficult because of the flood plain.

Mr. Crall stated that part of the Board's difficulty is because the flood plain is not on the portion of property that is being proposed to be built on.

Mr. Webb stated that he is attempting to build the mini storage on an acre of the land, and he owns the eight acres next to that.

Comments and Questions:

Mr. Charney stated that his difficulty with this request is that the area is either very agricultural or very residential, all around the subject property. Also, he places great weight on what the City of Owasso and their perspective. He is respectful of the applicant's desire to create an income producing asset on the residentially planned land he has trouble supporting the request.

Mr. Hutchinson agrees with Mr. Charney and he cannot support the request.

Mr. Dillard stated he can support the request based on page 2.10 of the agenda packet. Mr. Dillard stated that the applicant understands he has to improve the road and he understands has to have six-foot fence and other items; this man is going to spend a lot of money to improve the property. Mr. Dillard stated the improvements appear to be enhancement of the area rather than a detriment.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 4-1-0 (Charney, Crall, Hutchinson, Johnston “aye”; Dillard “nay”; no “abstentions”; none “absent”) to **DENY** the request for a Use Variance to allow Use Unit 16 for a Mini-Storage in an AG District (Section 1216), finding that the request does not fit with the Master Plan and it would be detrimental to the neighborhood; for the following property:

E1/2SESWSESE SEC. 13-21-13, OF TULSA COUNTY, STATE OF OKLAHOMA

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **DENY** the request for a Special Exception to exceed the fence height in the required yard (Section 240.2); for the following property:

E1/2SESWSESE SEC. 13-21-13, OF TULSA COUNTY, STATE OF OKLAHOMA

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NEW APPLICATIONS

2819—Smalygo Properties, LLC

Action Requested:

Variance to permit a detached accessory building in the side yard in a RE District (Section 420.2-A.2). **LOCATION:** 9015 North 65th East Place

Presentation:

Kyle Smalygo, Smalygo Properties, 123 North 7th Street, Collinsville, OK; stated the subject property is a RE subdivision with 1/2-acre lots and he was contracted to build a replica of other detached accessory buildings in the same addition. Over the last couple of years with the Planning Department, Tulsa County being its own department, along with the new subdivision regulations there was an item in the new sub regs that stated any accessory building would be beyond the back corner of the house. This particular structure is somewhat half as far back as the house, beyond the front edge of the house. Mr. Smalygo believes this is just a housekeeping item that is required per the sub regs of the Zoning Code for the RE subdivision. The accessory building on the subject property is on the side of the house with all the air conditioning units, the electric meter, the gas meter, as well as there is no auxiliary door to access the building. Due to the topography of the adjacent lot behind it, which is also is a bigger lot, there is about eight feet in elevation change and the water does shed flowing from the east to the west. Any other placement of this building would adversely affect the drainage.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **APPROVE** the request for a Variance to permit a detached accessory building in the side yard in a RE District (Section 420.2-A.2). The Board has found the hardship to be the location of this particular accessory building needs to be where it is placed on the property by virtue of the topography of the lot and the drainage plan of the subdivision. The Board finds that this will not be detrimental to the neighborhood and is consistent with other structures in the neighborhood; for the following property:

Lot 2 Block 7, SHERIDAN CROSSING PHASE III, OF TULSA COUNTY, STATE OF OKLAHOMA

2820—American Promotional Events

Action Requested:

Special Exception to permit a fireworks stand (Use Unit 2); Variance from the all-weather parking surface requirement (Section 1340.D) for a period of 10 years.

LOCATION: 526 South 209th Avenue West, Sand Springs

Presentation:

Lonnie Basse, TNT Fireworks, 5401 West Skelly Drive, Tulsa, OK; stated this request is for a fireworks stand. This is a new location for TNT and that is why he is before the Board today.

Mr. Charney asked Mr. Basse if he had spoken with any of the neighbors on either side of the subject property. Mr. Basse answered no because most of the area is commercial or vacant.

Mr. Charney asked Mr. Basse what the hours of operation would be for this stand. Mr. Basse stated that normally the stand would open on June 15th but this year the stand will start selling fireworks around June 22nd. On opening day, the hours would be 10:00 a.m. to 10:00 p.m. until July 3rd, and on that day and on July 4th the hours would be 10:00 a.m. to 12:00 midnight; on July 5th the hours would be 10:00 a.m. to 10:00 p.m.

Mr. Charney asked Mr. Basse if there was an existing gravel parking lot. Mr. Basse answered affirmatively. Mr. Basse stated the stand would be placed at the north end of the Western Market Trading parking lot and the lot is well maintained.

Interested Parties:

There were no interested parties present.

Comments and Questions:

None.

Board Action:

On **MOTION** of **HUTCHINSON**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; none “absent”) to **APPROVE** the request for a Special Exception to permit a fireworks stand (Use Unit 2) for a five year period starting on June 15th through July 5th. The hours of operation would be 10:00 a.m. to 10:00 p.m. except for July 3rd and July 4th, and those hours of operation would be 10:00 a.m. to 12:00 midnight. The Board has found the hardship to be that the stand is in an industrial area and there is no opposition; for the following property:

BEG 65W & 705N OF SECR NE SE TO POB TH W433.60 N466.69 E498.60 S236.89 W65 S229.80 TO POB SEC 3 19 10 5.0AC, OF TULSA COUNTY, STATE OF OKLAHOMA

On **MOTION** of **CHARNEY**, the Board voted 5-0-0 (Charney, Crall, Dillard, Hutchinson, Johnston “aye”; no “nays”; “abstaining”; “absent”) to **APPROVE** the request for a Variance from the all-weather parking surface requirement (Section 1340.D) for a period of 5 years, June 2025. The Board has found the hardship to be that there is an existing business that owns the lot and the lot is used during non-fireworks times. The Board finds that the Variance would not be injurious to the neighborhood; for the following property:

BEG 65W & 705N OF SECR NE SE TO POB TH W433.60 N466.69 E498.60 S236.89 W65 S229.80 TO POB SEC 3 19 10 5.0AC, OF TULSA COUNTY, STATE OF OKLAHOMA

2821—Holliday Sand and Gravel Company, Inc.

Action Requested:

Special Exception to permit Use Unit 24, Mining and Mineral Processing (Section 1224), in an AG District (Section 310, Table 1). **LOCATION:** SW of East 141st Street South & South 193rd Avenue East

Presentation:

Dan Jones, 8014 NW Vinita Street, Weatherby Lake, MO; stated this request is so Holliday Sand and Gravel can collect sand and gravel from the Arkansas River for commercial purposes. The operation would be on 37 acres approximately 1/2-mile southwest of South 193rd Avenue East and East 141st Street South and approximately 1/2-mile southwest of the Broken Arrow city limits. It is planned to operate a floater cutter dredge operation on the adjacent 96 acres in the Arkansas River. There is a need for sand and the existing plants are overworked and the sand resources are depleting. The sand plant is an appropriate land use for the flood plain area zoned agricultural. The rural location with low density housing plays well for the plant. Very significantly the plant is close to the turnpike which minimizes trucking impacts, which include diverting some of the truck traffic from the existing locations. Holliday Sand has an active program that controls trucking impacts through close monitoring and strict enforcement of the long established good neighbor trucking policy. Holliday Sand, as part of this application, is proposing the creation of a road maintenance fund for County Line Road

based on production of this proposed site and the existing James A. Wagner site. Construction in the Tulsa area is booming and the backlog in the beginning of 2020 showed promise until the pandemic but Holliday Sand does anticipate the need to rise. That demand is starting to exceed the compacity for existing sand plants in the area. As the existing plants exceed their production capability or the deposits go then the company needs to find new sites, get those site developed and built so they can continue to provide sand without having a lull for the customers. The subject site was chosen for many reasons. It is a rural area, low population density, the site is 2.8 miles from the Creek Turnpike, the plant also has an excellent setback 1/2-mile back from 193rd Street, there are no residential houses within a 1/2-mile and across the river 3/4-mile. The proposed operating schedule would be as follows: Sales and Truck Loading – 7:00 a.m. to 4:00 p.m., strictly enforced. The sand dredging and processing activities typically start at 7:00 a.m. with the dredging and processing and that would be a ten hour shift. In the heat of the season, July through September, Holliday would like to run a second ten hour shift starting after the first shift, however, there would be no truck loading after the first shift ends at 4:00 p.m. The life span of this plant is anticipated to be 15 to 20 years depending on the economy and the river. There are three major things that affect the community environmentally, the trucking, the noise and the dust. There will be strict enforcement of the good neighbor trucking policy.

Mr. Charney asked Mr. Jones if the trucks were independent trucks that haul Holliday Sand materials to a designated drop site. Mr. Jones stated that is both true and not true; about 30% of trucks hauling are part of sister companies and Holliday Sand does not own trucks but separate business entities are under the Holliday umbrella by the corporate owners that have trucks come to our sites. Mr. Jones stated that all truck drivers, or anyone that comes into the plant, has to sign and agree to this policy, no matter if you're owned by a sister company or you're an independent hauler.

Mr. Jones stated that Holliday Sand will refuse to do business with haulers that do not demonstrate safe and courteous practices and comply with the rules. Mr. Jones read the rules to the Board. Mr. Jones stated that Mike Harden, the area manager, has his telephone number on the signs and he gives it out to everybody; he responds to all the trucking questions and concerns, a personal response.

Mr. Jones stated the company does its very best to keep the trucks from showing up at the plant at 7:00 a.m., and Holliday does its best to keep them off the roadway and at the plant if they do show up a little early.

Mr. Charney asked Mr. Jones if the site plan permitted for an extended stacking location for those trucks that arrive between 6:30 a.m. and 7:00 a.m. Mr. Jones stated this site absolutely would allow for that because it is about 1/2-mile from 193rd Street down into the plant where they load.

Mr. Jones stated that Holliday proposes to install two additional radar signs on either side of the plant on 193rd Street. There are already a couple of radar signs in place and they have proven to be very effective slowing the traffic down where the signs are in the

residential area. There is one school bus stop in the area and there are no schools in the area, and that area will be monitored and if there are any issues Holliday will aggressively take care of it. Holliday is very good about taking care of other trucks, if we are alerted to a truck that is breaking a rule we have found that those trucks are not hauling from a Holliday location. There have been traffic counts done in the area; South 193rd Avenue East the average is 2,420 vehicles a day and it increases by 612 going out. Holliday has also incorporated local law enforcement when there have been issues with the trucking. No trucks are permitted to leave the plant overloaded or untarped; every load that goes out of the plant drives across scales so there is no overloading and trucks are tarped to minimize the dust.

Mr. Hutchinson asked Mr. Jones if Holliday has equipped their trucks with GPS so the speed could be monitored. Mr. Jones answered affirmatively. Mr. Jones stated that several of the subcontractors also have the GPS and in cab monitors which monitors the drivers actions and forward monitoring cameras that actually sees the road the drivers are on as well. The speed is monitored and recorded and that can be used in a court of law.

Mr. Jones stated there is no dust abatement process involved in the dredging of the sand because it is being pumped up with water. The stock piles on site do not blow off dust because it is clean washed sand. Holliday Sand is proposing that the first 75 feet of the driveway be paved and the rest of the road will be wet down to keep the dust down, and as the road is built the situation will be evaluated. Any sand that leaks out of the side rails or out of the tailgate onto the road Holliday has the ability to sweep that sand off the road.

Mr. Jones stated there are a lot of ways to reduce the noise in the sand dredging process. Holliday Sand uses engine silencers, use quiet run generators in the plants, line the chutes with rubber, there are rubber components in the screens that quiet the machinery. The dredge is a diesel power dredge that has a hospital rated silencer on the engine which reduces the noise level to 85 decibels; a lawn mower is 100 decibels. As darkness comes the equipment is switched over to strobe back up alarms and this has worked well. The dredging equipment would have limited hours of operation, 7:00 a.m. to 4:00 p.m. The jake brakes on trucks are not allowed to be used in residential areas or on the subject roads by Code, and Holliday does enforce that with the good neighbor trucking policy and with local law enforcement.

Mr. Jones stated the stock piles are about 30 feet in height and they provide a visual and noise barrier around the plant. The lighting on the plant is designed so that it shines downward to decrease any light pollution.

Holliday Sand is committed to the prevention of contamination of the ground, ground water and surface water from the project. The only chemicals in the operation are diesel fuel and hydraulic oils; all of those are regulated by EPA. Holliday sorts out secondary containment and have double wall tanks with leak protection. There is actually stormwater pollution prevention plans to prevent pollution in the event of rainfall. There

is a spill prevention plan that covers all the chemicals that are used at the work site, and what to do in case of a spill. There is annual training against spillage and water. All the dredge water that is discharged is regulated through the Oklahoma Department of Environmental Quality, and prior to discharging into the river the water goes through a settling basin where it settles down the solids. The solids are cleaned out so the detainment ponds work, and that water is then sampled prior to discharge back into the river and those results are submitted to Oklahoma.

Mr. Jones stated the site is located within a 500-year flood plain and floods are a fact of life. When the plants are put together so they can be quickly mobilized, unhook them from electrical, and move them to higher ground including the fuel and anything that might contaminate the river or nearby ground water.

Holliday Sand is proposing to fence the site with about five feet tall barbed wire and signage to prevent public and livestock access. After the site is done and it is decided the company is not going to come back, all the remaining sand is graded back to the original grade, remove all equipment, clean up any contamination that might be there, remove all concrete footings, remove buildings, fill the settling ponds back in, smooth and grade the settling ponds back out, remove the tanks, and the site is then inspected by the Department of Mines before they will release the company; there are bonds on all the sites that are held for reclamation.

Mr. Charney asked Mr. Jones if he had discussed the county road assistance or road fund. Mr. Jones stated that he had just briefly mentioned it and he would like for Mr. Harnden to come up to discuss that because he has been working with the County and the City.

Mike Harnden, 10303 North 118th East Avenue, Owasso, OK; stated the road fund is something he started about a month ago with Ron Peters and Alex Mills, the County Engineer. Mr. Mills informed him yesterday that the County no longer maintains County Line Road because it was annexed into Broken Arrow, but he did provide a contact name and he has a meeting on Friday morning at City Hall. Mr. Harnden stated that in the last two or three months the truck traffic has increased because one of the plants is down for maintenance so that business has been shifted to the plant at 161st and County Line.

Mr. Crall asked Mr. Harnden if peak demand was going to be influx year round or will peak demand going to be two months a year? Mr. Harnden stated that peak demand depends on the projects, but typically the peak demand is the summer months.

Mike O'Dell, no address given; stated at this site there will be no other road operators nearby so everything will be done by Holliday standards. If Holliday does have a problem with noise it will be worked on, and there was a sound test performed at the 129th Street site and that turned out to be another entity not Holliday. Once the cameras are installed on the road it will give Holliday a good way to monitor the trucks.

Interested Parties:

James Weger, 3800 First Place Tower, Tulsa, OK; stated he represents homeowner Stave Walker who is also in attendance. This is the third bite of the same apple; they tried an application for south of here that was denied in 2002; it went to Oklahoma Court of Appeals and it was affirmed and denied. They went into Wagoner County and tried to get another application which was denied. Now they are back before this Board for 145th Street, and the dredging operation goes all the way south to 151st Street which is close to his client's property. Mr. Weger stated that everyone agrees that sand is necessary for construction, it can be agreed that Holliday can try their best, and we can also agree about hundreds of sand trucks going in front of houses everyday, there is no mitigation that makes that better. This is a two-lane asphalt road with no curbs and bar ditches; there have been accidents on that road and sand dumps on that road. Now they are asking to drive even more trucks up the road to the turnpike, that is a problem. In 2002 Holliday came before the Board of Adjustment and was approved, the neighbors sued, the case went to District Court and won. Holliday went to Wagoner County and was denied at the Board level. The neighbors are now being asked to endure this for another 15 or 20 years on a brand new plant. Mr. Weger stated he did not hear any of the representatives say they are shutting the plant at 161st, what he heard them say is that they hope with the new addition maybe some of the traffic would be alleviated at 161st. This road is not set up to handle this type of traffic; it is not a four-lane divided highway but is a two-lane asphalt road. Mr. Weger stated the previous application that was initially granted and denied in District Court was case #1877, June 19, 2001, District Court #CJ-2001-4244, which the District Court overturned the Board and found that it was detrimental to the neighborhood. There are 13 houses from the dredge site and dredge is what will be making the noise at night. When it is quiet at night any kind of noise destroys the peacefulness of a person's house. This is agricultural and residential, that is what this area is surrounded by. Mr. Weger stated that on the application Holliday indicates that about 145th there are going to try to go straight across to tie into 193rd, and he is told by his client that 193rd, on both sides of the road, it is surrounded by berms that are installed by the Corp of Engineers. That is part of the levy system and it cannot be cut through. That means this will have to go down to 151st Street and over or go to 141st Street. This is the third time Holliday has tried to put dredging operations in this area and there is a long history, over 20 years, of that being denied.

Mr. Charney stated these are publicly dedicated roads that Holliday has the right to use. The public needs building materials and maybe the series of complaints or objections need to be voiced in another venue about making certain that the public gets roadway improvements where needed, that it isn't so much a land use issue. Mr. Weger stated that he understands.

Mr. Weger stated that increased traffic is always an issue in these hearings, and he is not aware of any law that states that sand companies cannot use the road. One of the considerations the Board is supposed to review is the detriment to the surrounding property owners in a Special Exception. The discussion is about sharing a two-lane

road with trucks that weigh about 40,000 to 80,000 pounds fully loaded. The characterization should not be do they have the right to use the road, but the Board's consideration should be focused on the Special Exception or Holliday would not be here requesting it. What does the Board's decision do to the road that people in the area have to utilize to get to their property. Mr. Weger thinks that is where the Board would address that.

Mr. Charney asked Mr. Weger to express his thoughts on the double shift request from Holliday. Mr. Weger stated that he lives in the area, across the river from the railroad yard and the refinery, and his thoughts are that a night time operation or anything that makes noise should be eliminated or reduced. Mr. Weger stated he can hear the trains coupling while he sits on his porch and he is a mile away; sound carries and it is much more noticeable at night. Hearing a dredge at night while sitting on your porch is very detrimental to the quality of life of the homeowners there.

Mr. Charney asked Mr. Weger if he thinks shifting deposits and the depletion of certain areas is a factor that a person should take into account when new applications are filed? Mr. Weger stated he does not know about shifting deposits because every commercial operation has a life span, he does not think there should be two sand plants on the same stretch of two-lane road. All of these trucks have to go north to the turnpike on the exact same road from both of these plants. If the discussion were that the 161st plant were being shut down but he has not heard that 161st is depleted. If this request is granted, there are three plants relatively close together.

Stephen Walker, 15525 South 193rd East Avenue, Broken Arrow, OK; stated this has affected his life dramatically and it is very emotional. He moved in his house in 1992 and he and his family moved there so there could be peace and tranquility in their lives. He spent everything he had saved in his early business life, basically his child's college fund, to oppose the first request and he thought he was done. In 2010 the process happened again and it was denied. Approximately three years ago the family started being woke up at 5:00 a.m. and he didn't know what had changed. He was never given an opportunity to address that issue. Everything the District Court spelled out in their decision has come to reality when Holliday Sand took over the plant. The roads were destroyed within ten months. Holliday Sand's clients are so much different than what was there before. In the time that he has lived in the area there have been accidents and one man lost his life at the entrance to J & J Sand. Mr. Walker stated he has counted over 400 trucks a day not 200 trucks a day like has been stated. The peaks and lulls in their business is very short. This will affect property values and it will affect his children's inheritance. This affects his daughter's safety, and he has had to explain to her that these are not concerned with her safety. The existing plant is an identical example of what the new plant will be. All the pollution, dust and exhaust rain down on the neighbors everyday, all day long and at night. The dredge never stops, it runs all day and all night, it roars and echoes and reverberates for miles across the river bottom. Everything the Board needs to decide today has already been decided by Judges and he hopes the Board would respect that. These Judges knew what they were doing.

Mr. Charney stated the Board is looking at and considering a totally different piece of property and a unique set of facts, and he thinks he would be doing a disservice to his Board if he did not respond with the information that they have, and the Board is trying to do their best with the information provided.

Mr. Walker stated that if the Board wishes to impose restrictions on this to mediate some of the impact it will have no effect. At a minimum, he would ask the Board to take some time to consider these things. The road is an issue. Safety is an issue. This is not consistent with agricultural use, this is heavy industrial. A hydrologist has determined that this will cause erosion to the bank. There are bald eagles with nests in this section of the river, and there are Least Terns that use the sand bars for their nesting so that is an issue. If there is an issue with erosion on the bank the flood plain is no longer protected; the sand bars and banks is what keeps the river contained. Holliday Sand made a comment that they could not run a successful operation without the support of the community, they do not have the support of the community.

Mr. Charney polled the Board to limit additional speakers in this case to two minutes per person, and there was an unanimous agreement.

Greg Beauchamp, 16407 South 203rd East Avenue, Broken Arrow, OK; stated he has lived in his house for 35 years. There are safety issues in this area. The road is not built for this kind of truck traffic.

Patricia Neel, 15 East 5th Street, #3700, Tulsa, OK; stated her father lives there and his property is the most directly affected by this proposal. Her father is 95 years of age and he owns the three corners at 141st and 193rd to develop in the future. This proposal would wreck the peace and tranquility in the area, and it would disrupt the wildlife. The properties in the area will be devalued considerably. The area is growing and there will be more traffic.

Kerry Smith, 16337 South 203rd East Avenue, Broken Arrow, OK; stated that what people are seeing in their neighborhood is destroying family life. It is noisy and it is not peaceful. Mr. Smith stated he lives less than 1/2-mile from the current facility. Mr. Smith stated that from his back yard he can hear the clanging of metal and see lights. He has called Wagoner County Sheriff multiple times, he has called the Broken Arrow Police Department to try to get the truck traffic stopped. He has been told by the Wagoner County Sheriff that they are so understaffed that they cannot police that road. The kids are in danger in the area and he begs the Board not to pass this request.

Jason Curtis Marrow, 1919 West Pittsburg Place, Broken Arrow, OK; stated there are two bus stops in the area. He has had his windshield hit with rock so there are many safety concerns.

Joni Harris, 13314 South 193rd East Avenue, Broken Arrow, OK; stated between 131st and 141st Street all the way to the Creek Turnpike there is nothing that can reduce that traffic. Ms. Harris stated that she sat there and counted the trucks and on average of

every 10 minutes a sand truck drives through. So, in 30 minutes there is an average of 67 trucks. There is nobody to hold the truck drivers accountable unless there are cameras on the road to see which truck driver was being negligent. The plant may start at 7:00 a.m. but the people are starting to line up at 6:15 a.m. She hears that jake brake from her bedroom because her window is only about 20 feet from the road. She is asking this case be tabled so there can be more discussion because she thinks the facts that are being presented are being distorted. Decisions will not be accurate until there is the right transparency and be able to make accurate decisions.

Blake Harris, 13314 South 193rd East Avenue, Broken Arrow, OK; stated there are five bus stops in between 131st and 141st. County Line and 141st Street intersection is destroyed and that destruction causes the trucks to loose large quantities of product. Sand and gravel spreads all over the intersection and as a motorcycle driver that is extremely dangerous. There is no law enforcement; if he sees law enforcement it might be Wagoner County but never Tulsa County. Between 161st and the Creek Turnpike there are 46 houses that directly connect to County Line Road; he has been rear-ended, not by a big truck but the possibility is there; he has three of them. With the existing 46 houses there are two neighborhoods going in.

Sherri Smith, 16337 South 203rd East Avenue, Broken Arrow, OK; stated the trucks are paid by the load so they are going back and forth on County Line Road to make their money. Those trucks drive so fast that she cannot always get the number of the truck, and she has called Mr. O'Dell about the trucks. Trucks do not follow the speed limit and they cross the center line.

William Henningsen, 13325 South 193rd East Avenue, Broken Arrow, OK; stated the big problem on the road is there is so much traffic; everything crosses the bridges, one at Memorial and one in Coweta. Everybody that crosses the bridge in Coweta comes down Indian Road and comes up 193rd East Avenue. Many times he has to wait on traffic to be able to get out of his driveway, and the other day it was eleven vehicles before he could exit his drive. If the road were four lane there would be no problem with the sand plant, and install traffic lights at 131st and 121st. The trucks are a problem but they're not any more a problem than the total amount of traffic on the road.

Brian Maxey, 16907 South 203rd East Avenue, Broken Arrow, OK; stated there are three things that bothers him the most about this request. Number One, the sound. The sound like a rock crusher and it jars a person to their bone. If he could ask one thing of the Board besides deny this request, please don't let them run two shifts. Number Two, the trucks. There is an unbelievable amount of trucks on the road right now. They don't start at 7:00 a.m., they line up about 5:30 a.m. and if a person is not on the road by 6:05 a.m. they will be stuck behind a bunch of trucks. The roads are not built for that; there are no shoulders. Number Three, the sand piles. The height of sand piles are well over 30 feet. He would request the Board table this request.

Mr. Crall asked what Mr. Maxey meant by postponement, is that so more people can speak? Mr. Maxey answered affirmatively; a lot of people did not get notices.

Conchita Woodruff-Johnson, 15270 South 193rd East Avenue, Broken Arrow, OK; stated she spent a lot of time looking for property. She has two children that will be using the bus stop and that stop will be affected by the trucks using that road. She is dedicated to raising her children not in an industrial area, not in a noise factory and she has a big concern about the noise pollution because she wants her children to be outdoors. She just poured concrete yesterday and already she is worried about her property value decreasing. She did not move to her property to live in an industrial area.

Matthew Sternke, 15220 South 193rd East Avenue, Broken Arrow, OK; stated he lives at 151st Street and County Line Road and he can hear the sand plant that is a mile away. Where the sand plant proposes to start dredging will be right behind his house. It is quite noisy, especially at night. The trucks dump sand, gravel and everything down the road constantly, especially at 141st and 193rd. That entire intersection is buckled and when you shift gears on a motorcycle while bouncing up and down it is quite dangerous. Mr. Sternke stated that he is a speeder but he tries not to speed on that road and he has had sand trucks that are not loaded pass me on the road. Mr. Sternke asked if the truck is traveling at about 58 mph how is he supposed to get a license plate number?

Kyle Loveland, 15353 South 193rd East Avenue, Broken Arrow, OK; stated this case should definitely be denied; it has already been denied twice. The four lane road that someone mentioned would make it better but it would take away from all the residential properties and that would be detrimental to the community. Sand, pollution, the smell of diesel in the air every morning is not good. The paving of the first 75 feet of the driveway is nothing compared to the actual length of the driveway, that is being done to appease the Board. That 75 feet will do nothing for the pollution in the air. There is no law enforcement and no patrol. This should not be passed.

Craig Deisenroth, 2102 East 30th Place, Tulsa, OK; stated he is familiar with the subject property and the people that were notified were the people that live within 300 feet of the subject property. As a matter of due process he believes this should be continued to another meeting to allow the people that are severely affected by the proposed plant have an opportunity to comment. He thinks this is a small fraction of the people that would have an opinion to express. He believes the City of Broken Arrow should also consider their Comprehensive Plan because it covers this property and he believes the adoption of this plant would be inconsistent with the City of Broken Arrow Comprehensive Plan. Mr. Deisenroth questions whether the City of Broken Arrow was made aware of this proposal. He would urge the Board to table this before a final consideration is made to allow more adequate notice be given to the surrounding land owners.

Ken Godwin, 16711 South 203rd East Avenue, Broken Arrow, OK; stated he lives about 1/2-mile due east of the existing plant which would make about 1 mile southeast of the proposed plant. He would like the Board to deny this petition. The proposed operation would be extentously larger than the next door facility. The existing condition

of the road encourages all traffic to straddle the center line and that is a huge problem now; the north bound lane is destroyed. How is it that Holliday Sand has been in existence for three years at the existing facility and they are just now speaking of a road maintenance fund in connection for a request for a new plant, why?

Joleen Cervantez, 15389 South 193rd East Avenue, Broken Arrow, OK; stated she just purchased her house three months ago in the rural area because that is where she wanted to move her family to have peace and quiet. She is a health care worker and she gets out on the road to work very early, about 6:20 a.m., and the trucks are beating her out on the road; it is very load. She has three children and every house in the area is a bus stop. This is not an asset for the community.

Bobby Broach, 7667 East 46th Place, Tulsa, OK; stated his family is a third generation property owner in the area, 170 acres 1/2-mile away from the proposed site and 500 acres about 1 1/2 miles from the proposed site. This is wrong to be going in in this area, it will destroy the roads and property values will go down. He does not like the fact that this a potential for the bald eagles to be affected.

James Zycath, 15335 South 193rd East Avenue, Broken Arrow, OK; stated that since he has lived there several houses have been built and housing additions have been built at 131st and 121st. There are about 500 houses that will be affected by this proposal. If this plant is allowed to go it will cause property values to descend.

Patrick Lester, 19104 East 131st Street, Broken Arrow, OK; stated he lives on a family farm that has been in his family for 75 years. This request is not about the applicant's good intentions but it is about the industrial operations in an agricultural and growing residential area. This is not a rural area that is in the middle of nowhere, there are 6,000 vehicles that pass the corner of 131st and 193rd East Avenue everyday. While the company's policies sound good they are worthless if no one enforces them, and the company does not. Just before the meeting today from 1:10 p.m. to 1:20 p.m. he counted ten trucks driving on 193rd East Avenue, that is about 500 trucks a day. His concerns deal with safety, noise and road maintenance.

Rebuttal:

Dan Jones came forward and stated that right now the 129th street plant is shut down so people would see 400 trucks a day, 200 trucks going both ways, and that traffic is heavy because the 129th Street plant is down. That plant is almost out of sand and Holliday Sand does not get a new site the residents will see the traffic they have now become permanent coming out of the Wagoner plant. The proposed site is to get another supply of sand and it would alleviate some of the traffic.

Mr. Charney asked Mr. Jones if the traffic funnels back into one location at 131st Street? Mr. Jones stated that the trucks are going to the Creek Turnpike.

Mr. Jones stated the proposed location is higher in elevation than any of the other plants. Holliday Sand has done a lot of things to put the banks back. The proposed road

is on the north side and there are some regulations that must be dealt with through Army Corp of Engineers and that is something Holliday Sand does all the time.

Mr. Jones stated the lady that was concerned about her father's view, Holliday Sand has moved the plant back toward the trees so the view of the river would not be blocked. Holliday Sand adjusted the plant site based on that interested party's comments and telephone calls.

Mr. Jones stated that Holliday Sand followed all the notification procedures and notified everyone that were required to be notified, that is spelled out the County Board's guidelines.

Mr. Jones stated that Holliday Sand wants to have a road maintenance fund. There is a need for the road to be better and the company wants to make that happen and alleviate the bad intersections.

Mr. Dillard asked Mr. Jones how much is this fund taxing a truck? Is it a \$1,000 a truck or \$.10 a truck?

Mike Harnden stated that it is proposed to tax each truck \$.10 per ton from the existing plant and also from the proposed plant; about 25-Tons on a truck.

Mr. Charney asked Mr. O'Dell if there was a recognized depletion schedule for the plant that is operating now.

Mike Harnden stepped forward and stated that the people did not think 75 feet of pavement would do anything. The paving at the entrance does actually do quite a bit. The hard surface allows the sand to drop out and it give the trucks a start onto the road. The whole road cannot be paved until it gets worked in otherwise the road would bust up, so the entrance is a start. Holliday Sand waters the road to keep the dust down until the roads can be worked in. If there is an issue at a site Holliday does pave roads.

Mr. Charney asked about the trucks lining up at 6:15 a.m. and the plant does not start at 7:00 a.m. Mr. Harnden stated that this has been exasperated now because of all the trucks coming from 129th to one location. Mr. Charney asked if there was room for the morning standard stack up, all on the throat not on the roadway. Mr. Harnden answered affirmatively.

Mike O'Dell, address inaudible; stated the deposit is not always there the company must wait for it to come in. It is there to begin with, it is dredged out, then you wait for high water that brings it back in. So that is why the need for multiple plants. Two years of drought, the operation could be done until the next rain. The exact date of depletion depends on the river. Both plants have been operating for quite a few years; the plant at 161st has been in operation for about ten years. If a completion date had to be given it would probably ten to fifteen years, and the same way with the new plant. Quite a few of the area home owners will be helped a lot with the new plant because it will reduce

truck traffic from 161st southward by about 50%. As for the noise, there are 30 houses within ¼ mile of the 161st plant. There are limitations on hours, hours of operation. It is in Wagoner County and it is zoned industrial and it has been the busiest plant in Tulsa. What is trying to be done is to move that business farther away from all these people; all the people that live within ¼ mile and the company has never had a complaint. The berm the interested party brought up is a levy and that levy is there to protect the very land the company is on and it has been there for 40 years. The Holliday Sand road would have to go over it and the company wants to keep the levy in tact because it will protect the plant.

Mr. Charney asked Mr. O'Dell if he stated there were 32 houses within a ¼ mile of the Wagoner plant and there are no houses within 1/2-mile of the proposed plant. Mr. O'Dell answered affirmatively.

Mr. Crall asked Mr. O'Dell if he had stated that he could limit the capacity to 100 trucks per day if both plants were to remain open. Mr. O'Dell answered affirmatively; it would be 200 trucks total as a limit.

Mr. Charney asked Mr. O'Dell if he could still limit the trucks, 100 trucks per plant, if he was not permitted to operate at night. Mr. O'Dell stated the company is unlimited on the shifts down there, and if there is a noise issue at night the night shift would be shut down. The residents could hear a hum on a quiet still night but it would not be an offensive noise because it would not keep anyone awake.

Mr. Crall asked Mr. O'Dell if 7:00 a.m. to 4:00 p.m. are the only times trucks are running. Mr. O'Dell answered affirmatively. Mr. O'Dell stated that does not mean that the trucks won't start showing up at the plant at 6:30 a.m. but it means the company will not load trucks before 7:00 a.m. Holliday Sand has the capacity to keep the truck off the road and on the site and not in the road prior to 7:00 a.m.

Comments and Questions:

Mr. Hutchinson stated he could support the request. Holliday Sand has done a lot to remedy the problems.

Mr. Charney stated that he recognizes the need for these type of businesses to operate. Sand is in the river but he believes he needs more information. Maybe Mr. O'Dell and the other gentleman could present a package with site plan ideas, restrictions and other ideas to help him get comfortable with the request. Mr. Charney would appreciate it if the applicant were to regather with information with pointed statements. There are legitimate competing concerns.

Mr. Crall and Mr. Johnston agreed.

Mr. Dillard stated he finds it very offensive for the emotional side, when the Board is doing their best to make a decision on the use of the land, and only the use of the land.

He could agree to continuing this case to another day but he does not want to come back to three times more protestants and everybody saying the same thing.

Ms. Tosh stated that the County has worked with Holliday Sand. In the past the trucks have been an agenda of their own. Holliday Sand has done a diligent job about curbing the trucks and in the past year or two there have been no complaints.

Board Action:

On **MOTION of DILLARD**, the Board voted 4-1-0 (Charney, Crall, Dillard, Johnston “aye”; Hutchinson “nay”; no “abstentions”; none “absent”) to **CONTINUE** the request for a Special Exception to permit Use Unit 24, Mining and Mineral Processing (Section 1224), in an AG District (Section 310, Table 1) to County Board of Adjustment meeting on July 21, 2020; for the following property:

Commencing at the Northeast Corner of the Southeast Quarter of Section 13, Township 17 North, Range 14 East, said point being the Point-of-Beginning; thence N 90°00'00" W (assumed), along the North line of the South one-half of said Section 13, a distance of 3490.00' to the East line of the Arkansas River; thence S 30°54'00" E, along the said East line of the Arkansas River, a distance of 1538.34' to a point 1320' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 1320' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 840.00'; thence N 08°56'58" W, a distance of 1285.65' to a point 50.00' south of the said North line of said South one-half of said Section 13; thence N 90°00'00" E, 50.00' south of and parallel to the said North line of said South one-half of said Section 13, a distance of 2060.00' to the east line of Southeast Quarter of said Section 13; thence N 00°00'00" W, along said east line of Southeast Quarter of said Section 13, a distance of 50.00' to the Point-of-Beginning. Said tract contains an area of 36.644 acres, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA

2822—Leah Harris

Action Requested:

Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Residential District (Section 1203); Variance from the all-weather parking surface requirement (Section 1340.D). **LOCATION:** 11616 East 191st Street South

Presentation:

The meeting had to close because of the time constraints on the Zoom portion of the meeting.

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, Crall, Hutchinson, Johnston “aye”; no “nays”; no “abstentions”; Dillard “absent”) to **CONTINUE** the request for a Use Variance to permit Use Unit 3, Agriculture, for a Horticulture Nursery in a Residential District (Section 1203); Variance from the all-weather parking surface requirement (Section 1340.D) to the County Board of Adjustment meeting on July 21, 2020; for the following property:

NW NW SEC 8 16 14 40ACS, OF TULSA COUNTY, STATE OF OKLAHOMA

OTHER BUSINESS

None.

NEW BUSINESS

None.

BOARD COMMENTS

None.

There being no further business, the meeting adjourned at 5:20 p.m.

Date approved: 7-21-2020


Chair