

**TULSA COUNTY BOARD OF ADJUSTMENT**  
**MINUTES of Meeting No. 401**  
Tuesday, October 15, 2013, 1:30 p.m.  
Ray Jordan Tulsa County Administration Building  
County Commission Room, Room 119  
500 South Denver

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

Charney, Chair	Draper	Miller	West, Co. Inspector
Dillard	Osborne, Secretary	Bates	
Walker, Vice Chair		Sparger	

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 10<sup>th</sup> day of October, 2013 at 9:17 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 1:35 p.m.

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**MINUTES**

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the Minutes of August 20, 2013 (No. 399).

On **MOTION** of **DILLARD**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the Minutes of September 17, 2013 (No. 400).

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Mr. Charney explained to the applicants that there were only three 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 all three

board members to constitute a majority and if one board member 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. None of the applicants requested to have their cases continued to the next Board of Adjustment meeting and all nodded consent showing they understood Mr. Charney.

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

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### **UNFINISHED BUSINESS**

#### **Case No. 2474—Melissa Torkelson**

##### **Action Requested:**

**Special Exception** to allow a Firework's Stand (Use Unit 2) in an IM District for 5 years (Section 910, Table 1). **LOCATION:** 4500 West 21<sup>st</sup> Street South

##### **Presentation:**

**Melissa Torkelson**, 1120 South 221<sup>st</sup> West Avenue, Sand Springs, OK; stated the fireworks stand was set for this summer's season and she would like to keep the stand in the same location.

Mr. Walker stated that typically the Board approves a Special Exception for a fireworks stand for one year and then require the applicant to come back for a review. Mr. Charney stated that he does not recall any other fireworks stands that were granted approval for more than one year without an additional review.

Mr. Charney asked Ms. Torkelson if she operated the fireworks stand with the proper permitting for her first year. Ms. Torkelson answered affirmatively. Mr. West stated that is incorrect. Her first year the fireworks stand was set up without acquiring prior approval. But the stand was placed after the fireworks season had started so the County allowed Ms. Torkelson to operate the stand with the understanding that she was to come before the Board of Adjustment for approval. Ms. Torkelson stated that as far as the permits were concerned she was in compliance, but she had not been before the Board of Adjustment for approval.

Ms. Torkelson asked Mr. West if five years was the standard operation time for a fireworks stand because she has never known a fireworks stand that had to come before the Board of Adjustment every year. Mr. West stated that normally a fireworks stand request comes before the Board and if there is any opposition to the operation the Board will grant approval for one year. After the one year operation the Board will

review the case, and if there is no opposition from neighbors and the stand worked well in the chosen location, then the Board will grant an additional amount of time. Mr. Torkelson stated that four years ago she had a fireworks stand near 209<sup>th</sup> and she received a five year term on that stand.

Mr. Charney stated that the distinction Mr. West was making is that the Board wants an applicant to come before the Board with all the proper permitting in place. After receiving approval for a one year time limit which allows the public to place any complaints, and should there be any issues they can be addressed when the applicant comes back before the Board for approval of the extended time period.

Mr. Charney asked Ms. Torkelson if there was a graveled area for her customers to park while visiting the fireworks stand. Ms. Torkelson stated the gravel parking lot is actually for a business, an excavating company, that is used primarily as a turn around for semi-trucks.

Mr. Charney asked Ms. Torkelson what her hours of operation for the fireworks stand would be. Ms. Torkelson stated the stand is open only 2 ½ weeks, from June 15<sup>th</sup> thru July 5<sup>th</sup>, from 10:00 a.m. to 9:00 p.m. and the closing is extended to midnight on July 3<sup>rd</sup> and 4<sup>th</sup>.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

Mr. Walker stated that he looked at the site and does not have a problem with the fireworks stand, but he has concerns with the mining operation that is there. He stated that he understands the approval for the mining operation there was for the backside of the hill but they have now moved to the front side of the hill and looks terrible. This mining operation has nothing to do with the fireworks stand but he would like to have Mr. West address this infraction.

Mr. West stated that the mining originally started on the backside of the hill but all the ore was mined and the operation has moved to the front side of the hill, but the whole 45 acre tract was approved for mining. Mr. Walker thought there were restrictions on that approval. Mr. West stated that it was stipulated that the mining would start on the backside of the hill, and since there is no more ore to mine on the backside the operation has moved to the front side. Mr. Walker stated that he remembers the request was approved but he thought there were restrictions and requested Mr. West to check on that case for the Board.

**Board Action:**

On **MOTION** of **WALKER**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the request for a **Special Exception** to allow a Firework's Stand (Use Unit 2) in an IM District for 5 years (Section 910, Table 1) from today's date of October 15, 2013; for the following property:

**NE NW SEC 16 19 12 -LESS N 50, OF TULSA COUNTY, STATE OF OKLAHOMA**

**Case No. 2478—Sam & Tracy Patton**

**Action Requested:**

Special Exception to allow a duplex use in an RS district (Section 410, Table 1);

Variance to allow a second dwelling structure on a lot of record (Section 208).

**LOCATION:** 3302 South 65<sup>th</sup> Avenue West

**Presentation:**

The applicant has withdrawn this case.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

No Board action required.

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**NEW APPLICATIONS**

**2479—James R. Rainer**

**Action Requested:**

Special Exception to allow for a single-family residence (Use Unit 6) to be permitted within an RMH district (Section 410). **LOCATION:** 13624 North 109<sup>th</sup> Avenue East

**Presentation:**

**James Rainer**, 13624 North 109<sup>th</sup> East Avenue, Collinsville, OK; stated he requesting the Board for approval so he and his son can build a house on an acre of land.

Mr. Charney asked Mr. Rainer if he understood that if the Board were to grant approval of today's request he would need to meet certain DEQ requirements, rural water requirements, electrical requirements, and sanitary disposal requirements. Mr. Rainer answered affirmatively.

Mr. Charney asked Mr. Rainer if he would have any objections to removing the old structures on the land if the Board made that sort of requirement. Mr. Rainer stated that he would not have any objections to that request.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **CHARNEY**, the Board voted 3-0-0 (Charney, Dillard, Walker “aye”; no “nays”; no “abstentions”; Draper, Osborne “absent”) to **APPROVE** the request for a **Special Exception** to allow for a single-family residence (Use Unit 6) to be permitted within an RMH district (Section 410), subject to the removal of all the existing structures and meet all DEQ requirements. Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following property:

**BLK 19 LESS W150 & E24.55 W174.55 S100 THEREOF & LESS E10 THEREOF FOR ST, INDUSTRIAL HGTS ADDN, OF TULSA COUNTY, STATE OF OKLAHOMA**

**2480—Matt Blair**

**Action Requested:**

Variance of the minimum frontage requirement of 30 feet on a public street or dedicated right-of-way to 0 feet (Section 207) to allow a lot-split. **LOCATION:** 4121 West 26<sup>th</sup> Street South

**Presentation:**

**Matt Blair**, 2248 South 61<sup>st</sup> West Avenue, Tulsa, OK; stated he and his wife want to build a house on the property. The property has an existing house and to build a new house the bank is requiring them to split the property. The property is zoned AG so they are meeting the minimum requirement of two acres for the lot split. He will appear before the Planning Commission to have the lot split approved. In splitting the property the rear 7 ½ acres not accessible to a county maintained road. As he understands it there are no future plans to extend West 26<sup>th</sup> Street thus the reason for his request of zero feet frontage.

Mr. Charney asked how much of the property he owns. Mr. Blair stated he owns all of the property but 7 ½ acres will be the piece of property where the house will be built.

Mr. Charney asked Mr. Blair if he understood the need for a mutual access agreement and why it is required. Mr. Blair stated there is an existing mutual access agreement in

place, which is actually an agreement with himself, and it has been filed with Tulsa County.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **CHARNEY**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the request for a **Variance** of the minimum frontage requirement of 30 feet on a public street or dedicated right-of-way to 0 feet (Section 207) to allow a lot-split with the stated hardship being the configuration of the land and the lack of access to a public road. This approval is subject to the standard permitting requirements; for the following property:

**A tract of land being a part of the S/2 SE/4 NW/4 of S16, T19N, R12E of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the U.S. Government Survey thereof, more particularly described by K.S. Collins, L.S. #1259 in and for the State of Oklahoma on 08/26/2013 as follows; BEGINNING at the Southeast Corner of said NW/4; thence S 89°53'29" W along the South line of said NW/4 a distance of 660.20 feet; thence N 00°02'51" W a distance of 659.04 feet to a point on the North line of said S/2 SE/4 NW/4; thence N 89°56'48" E a distance of 659.79 feet to a point on the East line of said NW/4; thence S 00°05'01" E along said East line a distance of 658.40 feet to the POINT OF BEGINNING, containing 9.98 acres of land, more or less, OF TULSA COUNTY, STATE OF OKLAHOMA**

**2481—Holiday Sand and Gravel**

**Action Requested:**

**Special Exception** to permit mining (dredging) and quarrying of sand in an AG district (Arkansas River Channel) (Section 310, Table 1). **LOCATION:** Southeast of the SE/c of East 141<sup>st</sup> Street South and South 129<sup>th</sup> East Avenue

**Presentation:**

**Mike Odell**, Vice President of Production for Holiday Sand and Gravel, 14900 South Garnett Road, Bixby, OK; stated the request will cover approximately 114 acres in the Arkansas River channel. Holiday Sand currently operates under a lease arrangement with Watkins Sand. Holiday does not propose any activity on South 145<sup>th</sup> East Avenue on the east side of the river, only in the river itself. Holiday proposes to operate a hydraulic dredge in the river channel and pump sand to the existing plant on the west side of the river. Holiday Sand has been dredging sand in the Tulsa area since 1992,

primarily near Bixby. Holiday is the primary supplier for sand for the construction industry, and currently have one active site with three inactive sites. The sand deposits are very shallow in the river so the company is limited to the size of equipment that can be utilized in the dredging process, thus dredging requires more hours of operation. The purpose and need is to continue to meet the demand of the construction industry with a quality product without increased cost. The reason for today's request is to extend beyond a depleted area to another part of the river that has adequate deposits. This request is not for an increase in the scope of operation it is to be able to meet current sand demands. Holiday Sand also requests flexibility in their operating hours because there are times, such as now, to run the equipment 24 hours a day. The primary issue with the neighbors seems to be noise, therefore, Holiday equipped the grids with a hospital silencer knowing about the noise issue. The plant and equipped is down below ground level and is surrounded by earth on all sides. Mr. Odell stated that the company had a noise study performed and he submitted a noise level report which states the noise level is normal. Mr. Odell stated that he was told that the back-up beeper on the equipment can be heard at night, and he proposes to add a strobe for back-up purposes which would be used at night.

Mr. Charney stated that there seems to be multiple elements to this request. Watkins Sand is one element and then there is a request to amend a previous operating understanding in regards to the hours of operation and a new Special Exception request with a new legal description for sand in the river. Mr. Charney asked staff if both of those matters were properly before the Board today. Mr. West stated that the only request before the Board today is the mining of the sand out of the Arkansas River. The hours of operation is not a part of today's application.

Mr. Charney asked Mr. Odell how far the sand travels from the site of excavation before it is separated. Mr. Odell deferred to Mr. Terry Fox.

**Terry Fox**, Geologist for Triad Engineering Services, P. O. Box 1507, Pittsburg, KS; stated Mr. Odell did bring up two separate issues. One is the complaint of the neighbors and the hours of operation. The hours of operation is for the dredging only not the trucking and selling of the sand. The dredge in use is a hydraulic dredge and the hum of a pump is what is heard. The pipeline can extend anywhere from ¼ mile to ½ mile to bring the sand to the plant. When the sand arrives at the plant it is deposited into a classifying system. Mr. Fox used photos as a show-and-tell for the Board members to show where the Holiday Sand operation under discussion is located.

Mr. Charney asked Mr. Fox if the dredging operation being discussed is closer to the residents than it is on the west side of the river. Mr. Fox stated that it will be about the same distance to different residents as it was to the residents on the west side.

Mr. Charney asked Mr. Fox if truck traffic would be impacting the residents. Mr. Fox stated that truck traffic would not be impacting the residents.

Mr. Charney asked Mr. Fox if he was familiar with the back up beeping system on the equipment, and if he knew of a way to silence the beeping noise. Mr. Fox stated that he was familiar with the beeping system on the equipment, and as Mr. Odell stated, a strobe system can be added to the equipment for use at night.

**Interested Parties:**

**Naomi Shanks**, 17420 East 161<sup>st</sup> Street South, Bixby, OK; stated she owns approximately 160 acres on the river and it has always been her concern to take care of the river. Ms. Shanks stated there are five or six sand companies in approximately a two mile section of the river, and she wanted to know if there had been an environmental study made of the river because of this activity? There is also an eagle's nest in the immediate area and the nest has been there for about 20 years. Ms. Shanks stated she had called the avian research center in Bartlesville and asked them if the sand dredging would affect the eagles. The research center stated that it would affect the eagles because they need a certain depth of water for feeding. She also wanted to make sure the truck traffic stayed on the other side of the river because the roads in her area could not handle or withstand the heavy truck traffic. Ms. Shanks would also like to know who the governing body for the river would be, because she wants to know who to talk to if a concern arises.

Mr. Charney stated that the Board of Adjustment's focus is fairly narrow, it is the use the underlying land is being put to. The Board does not have environmental studies or eagle studies done. The Board looks at the land usage, and for this agricultural piece of land would be looked at to see if the request seems appropriate. The Board does go beyond the land usage. Mr. Charney stated that there are other government bodies that can address river issues, whether it is Corp of Engineers, EPA, etc. Ms. Shanks stated that she had attempted to reach the Wildlife Fish and Game Department but due to the government shut down there was no one in the office. Ms. Shanks also wanted to know if there would be restrictions on a pumping station on the east side of the river. Mr. Charney stated that is not before the Board today. The Board is not hearing such a request because it has not been sought by the applicant.

**Marsha Wolf**, 14724 South Grant, Bixby, OK; stated the farm she lives on has been in her family for almost 100 years and she wants to see that preserved along with that type of lifestyle. She has looked at the subject site and she would not want that in her front yard. She also sleeps with her window open and she does hear noises at night. Some of the noises have been loud enough she went outside to see what the disturbance was. She is also concerned over the word "depleted" that heard several times in conversation today. Depletion concerns her and she would like to have that terminology clarified.

Mr. Walker stated that the sand depletes itself by the movement of the river but it replenishes itself with the water that comes down the river. So the company is looking for new areas to dredge after they deplete a particular dredged area, but that area will be replenished by the flow of the river itself.



Mr. Charney asked Ms. Wolf if her farm was on the east side or the west side of the river. Ms. Wolf stated she is actually south. Mr. Charney stated for this case it would be considered on the east side.

**Charles Benny**, P. O. Box 100, Leonard, OK; stated there is a tree line along the river bank and he would not want that disturbed because it holds the earth in place. His neighbor lost 40 acres of land in the last flood because he had cleared the land. He is a sod farmer and has been since 1975, and wants to see that area remain as agricultural.

**Rebuttal:**

Mr. Fox came forward and stated that the Corp of Engineers govern the river. He has spoke with the Corp and they are in favor of dredging, but they do not want stockpiles or berms built in the floodplain which could alter the course of the river. The Oklahoma Department of Mines regulates the actual mining of the river. The County Board of Adjustment governs the planned land use portion. The U. S. Wildlife Department and the U. S. Conservation also has concerns with the river. Every year the Fish and Wildlife performs a study and they come by boat down the river to do the study. If they see sand plants, Least Terns which is a protected species, or Eagles they will make a visit to the operation and express their concerns. All the operators have had training from the Wildlife Department. When they see an area of concern they will stake out and set up a buffer zone that is not to be disturbed for a specified time period. Holiday Sand is not proposing to be close to or to disturb the trees. Holiday Sand also works with the DEQ and the Stormwater Department.

Mr. Charney asked Mr. Fox to confirm that there would be no equipment placed on the east side of the river, and no traffic generated by the operation. Mr. Fox answered affirmatively.

Mr. Charney asked Mr. Fox to address the concerns of the interested parties in regards to the noise levels. Mr. Fox stated that in the past there has been a loader working at night and the back up alarm is the possible beeping that was heard. The back up alarm on a loader is a high pitched noise because it is made to be heard, but the loader is at the plant. The only noise now is the hum of the pump.

Mr. Odell came forward and stated that he has the authority to address some of the issues raised today, i.e., the eagles nests, the back up alarm, and loud noises. His company will follow up on the issues by contacting Fish and Wildlife to confirm what sort of setback is needed for the eagle's nests. He is not sure what is making the loud noise that has been heard, but he will leave a copy of noise survey that was performed, and he will figure out what the noise is. He will also take care of the back up alarm that can be heard at night.

Mr. Benny stated that some of the noise that is heard at night is from the other sand plant in the area.

Ms. Shanks came forward and stated that if the sand is an asset to Mr. Benny then the sand on her mile of land is her asset. So if the sand is pumped and replenished, then that is replenished by the sand upstream which means it is her sand that replenishes Mr. Benny's sand. That means part of her asset is being utilized.

Mr. Charney stated he appreciates her comments, but he knows enough to know that water flowing through sand and other minerals are constantly in motion, and will end up in the Mississippi River at some point in time.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **CHARNEY**, the Board voted 3-0-0 (Charney, Dillard, Walker "aye"; no "nays"; no "abstentions"; Draper, Osborne "absent") to **APPROVE** the request for a **Special Exception** to permit mining (dredging) and quarrying of sand in an AG district (Arkansas River Channel) (Section 310, Table 1). This approval is subject to the applicant continue to explore means to properly buffer the wildlife from the operation as required by law, and adhere to all wildlife rules and regulations. The applicant is to take noise abatement measures that are within their control; for the following property:

**That part of the Arkansas River Channel described as follows: Beginning at a point 2080 feet East of the Southwest Corner of the Northwest Quarter of Section 16, Township 17 North, Range 14 East, thence North 13 degrees East a distance of 1578 feet to a point in the Arkansas River, thence North 42 degrees 10 minutes East a distance of 1588 feet to a point in the Arkansas River, thence North 31 degrees 40 minutes East a distance of 1288 feet to a point in the Arkansas River, thence North 33 degrees 30 minutes East a distance of 876 feet to a point in the Arkansas River, thence North 61 degrees 10 minutes East a distance of 379 feet to a point in the Arkansas River, thence North 77 degrees East a distance of 386 feet to a point in the Arkansas River, thence South 00 degrees 30 minutes East a distance of 1068 feet to a point on the East Bank of the Arkansas River, thence South 37 degrees 10 minutes West a distance of 991 feet along said East Bank, thence South 23 degrees West a distance of 285 feet along said East Bank, thence South 38 degrees 10 minutes West a distance of 384 feet along said East Bank, thence South 51 degrees 40 minutes West a distance of 365 feet along said East Bank, thence South 44 degrees 40 minutes West a distance of 776 feet along said East Bank, thence South 39 degrees 10 minutes West a distance of 381 feet along said East Bank, thence South 28 degrees 40 minutes West a distance of 307 feet along said East Bank, thence South 14 degrees 40 minutes West a distance of 364 feet along said East Bank, thence South 22 degrees 50 minutes West a distance of 710 feet to a point on the South line of said Northwest Quarter, thence East along said South line a distance of 952 feet to the Point of Beginning, OF TULSA COUNTY, STATE OF OKLAHOMA**

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**NEW BUSINESS**

None.

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**OTHER BUSINESS**

None.

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**BOARD COMMENTS**

None.

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There being no further business, the meeting adjourned at 2:48 p.m.

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

11/19/13

David E. Conway  
Chair