

**TULSA COUNTY BOARD OF ADJUSTMENT**  
**MINUTES of Special Meeting No. 468**  
Monday, May 13, 2019, 1:30 p.m.  
Ray Jordan Tulsa County Administration Building  
500 South Denver, Room 119  
Tulsa, Oklahoma

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

Charney, Chair	Dillard	S. Miller
Crall, Secretary		Ulmer
Hutchinson, V.Chair		R. Jones
Johnston		Sparger

The notice and amended agenda of said meeting were posted at the County Clerk's office, County Administration Building, 10<sup>th</sup> day of May, 2019 at 1:59 p.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

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

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**MINUTES**

None.

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Ms. Ulmer read formerly called the case for the Board of Adjustment Public Hearing.

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**UNFINISHED BUSINESS**

**2678—Shane Edmondson – Remand**

**Action Requested:**

Special Exception to allow a Community Services & Similar Uses (Use Unit 5) in an AG District (Section 310) to permit a child nursery/child development center.

**LOCATION:** 6441 East 106<sup>th</sup> Street North

Mr. Charney asked Mr. Reynolds to come forward. Mr. Charney stated that he understands, from the directive from the District Court on the order of remand, that the Board is to consider submissions by the applicant related to certain paper copies.

**Presentation:**

**Lou Reynolds**, Eller & Detrich, 2727 East 21<sup>st</sup> Street, Tulsa, OK; stated that he is familiar with the order of remand and he has the paper copies for submission. Mr. Reynolds submitted his copies to the Board for review. Mr. Reynolds stated that this item was actually submitted to staff, but it did not make it into the packet that was distributed to the Court for the appeal, it was a clerical oversight. The copies are of the documents that were submitted new and were also submitted to staff right after the hearing which is shown on the attachment.

Mr. Charney asked Mr. Reynolds if the paperwork was his affidavit. Mr. Reynolds stated that it is the affidavit of Shane Edmondson who appeared at the hearing and the applicant that presented the documents.

Mr. Charney asked Mr. Reynolds if they were the identical documents that were presented at the hearing and shown on the poster boards as well at the time of the hearing. Mr. Reynolds answered affirmatively.

Mr. Charney asked Mr. Reynolds if there was anything else he would like the Board to consider in regard to the item being discussed today. Mr. Reynolds stated there was not.

**Interested Parties:**

There were interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **HUTCHINSON**, the Board moved to **CONFIRM** the submissions by Applicant related to the paper copies of the site plan shown on the poster boards that were presented at the hearing in Meeting No. 457 on June 19, 2018, along with signed confirmation that the paper copies are identical representations of the exhibits shown on the poster boards that the Board required Applicant to submit as a condition or safeguard to the Board's motion approving the Special Exception in this matter, case no. CBOA-2678; for the following property:

**SE SE SE SEC 10 21 13 10ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**

Before the vote was taken: **Gregory Reilly**, Attorney at Law, 320 South Boston, Suite 200, Tulsa, OK; stood and stated that he would like to have the opportunity to review the documents with the people that were present at the public hearing.

Mr. Charney asked Mr. Reynolds if the affidavit had been submitted to Mr. Reilly. Mr. Reynolds stated that it had not. Mr. Charney asked Mr. Reynolds to submit the documents to Mr. Reilly.

Mr. Charney stated that in his judgment as Chair of the County Board of Adjustment the scope at this hearing was to be limited to a submission by the applicant related to the copies. It is his judgment that the applicant has done so and he would be in favor of the motion as recited by Mr. Hutchinson.

On **MOTION** of **HUTCHINSON**, the Board voted 3-0-1 (Charney, Hutchinson, Johnston “aye”; no “nays”; Crall “abstains”; Dillard “absent”) moving to **CONFIRM** the submissions by Applicant related to the paper copies of the site plan shown on the poster boards that were presented at the hearing in Meeting No. 457 on June 19, 2018, along with signed confirmation that the paper copies are identical representations of the exhibits shown on the poster boards that the Board required Applicant to submit as a condition or safeguard to the Board’s motion approving the Special Exception in this matter, case no. CBOA-2678; for the following property:

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Mr. Charney stated that the next item on the agenda is a directive from the Court that the Board can determine for the record that the matter being discussed were consistent with the standard of review, which the Board normally applies to such cases. Mr. Charney asked if there was anyone that would like to make a motion to that effect, consistent with the Court’s limited mandate to the Board the Chair would entertain such a motion.

On **MOTION** of **HUTCHINSON**, the Board moved to **FIND** that based on the evidence in the Record in Case No. CBOA-2678, including, without limitation the Application, various submittals prior to the Hearing, the Hearing that took place in Meeting no. 457 on June 19, 2018 along with the submittals and deliberations during the Hearing, the minutes of the Hearing and related transcript, and the written confirmation submitted by the Applicant at this special hearing, we find that 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:

**SE SE SE SEC 10 21 13 10ACS, OF TULSA COUNTY, STATE OF OKLAHOMA**

Before the vote was taken, **Gregory Reilly** stood and asked to be recognized. Mr. Reilly stated that due process requires that if there is notice and opportunity to be heard at a special hearing that the people affected by that be given the opportunity to be heard on this motion.

Mr. Charney appreciated the comments given by Counsel for the appellant, normally, he couldn't agree more and he thinks the Board has a long history of wanting everyone to speak as much and as vehemently as they wish. Mr. Charney stated that it is his understanding, upon advice of Counsel, that the Board has a very limited scope and that the Court remanded this Board today for two very narrow issues. It is his understanding that those were the only two matters that the Board were to take, and there was to be no hearing, no testimony to be taken, no additional hearing to be incurred regards to the merits of the case or aspect at all, other than the two narrow matters that he understands the Court directed the Board to review upon remand. That is consistent on advice of Counsel. Mr. Charney asked Mr. Nolan Fields, Legal Counsel for the County Board of Adjustment, if that was the directive as he read it.

**Nolan Fields** stood and stated this directive is based on a Journal Entry that was joint between the parties and the Court signed off on. In commensurate, the narrow scope that the parties effectively crafted the Journal Entry and the Judge remanded it back for, and this is exactly what the Judge was asking for and it is being delivered.

**Gregory Reilly** stood and contested that. He thinks the word of the Court and the Journal Entry that was entered that this matter was to be set for a special hearing with notice and all other procedural requirements that are required with respect to a special public hearing.

**Nolan Fields** stated that in response there is no open meeting requirement for public comment at an open meeting. Commensurate with the Court's order and with the rules and procedures, it is the Chair's prerogative how this Board conducts such open meetings and hearings. Commensurate with the order from the Court, he believes the Board is proceeding correctly in that the Board is either approving or not approving the findings that the Court laid out for them to review.


**Gregory Reilly** addressed the Chairman, he thinks there is a conflict of interest issue that needs to be addressed that has not been addressed at the outset with respect to his development in a location that is approximately two miles from the site of the proposed daycare. Mr. Reilly thinks that in 2016 the Chair gave an eloquent elaboration of what his standard was with respect to conflicts of interest and an appearance of impropriety, and what a reasonable person believes if there is a conflict. Mr. Reilly believes there is a conflict and he believes there is an appearance of impropriety in Mr. Charney presiding over this matter; there probably was at the time the original hearing took place and he would like to raise that issue.

Mr. Charney stated that he appreciates Mr. Reilly raising the issue for the record and for God and country to hear. He respects Mr. Reilly's duty for the need to do that. Mr. Charney stated that on advice on Counsel that this was remanded back to the Board for two very narrow issues. Mr. Charney stated that if he is wrong he would very much appreciate a Judge, and he is not acting in that capacity, this Board of four volunteers who are doing their very best to try and understand what the Judge directed the Board to do and his reading of that as the Chair, and the Counsel for this Board concurs in that reading, is that the Board is here for two very narrow matters. That is what was posted on the agenda. There were no matters on the agenda regarding the matters that have been brought up by Mr. Reilly. Mr. Charney does not believe he has the power to delve into those today, or that the Board has the power. He could be wrong but he does not think he is wrong. If he is wrong, he welcomes a Judge to send this back to the Board again and the Board will come back for another special meeting. Mr. Charney believes in people having full, complete and fair hearings. The Board tries to very narrowly determine, very narrowly address, what it believes the Court remanded. Mr. Charney appreciates the need to make the record and to state the things that have been stated, but he disagrees vehemently that there was any conflict of interest or that there was even a remote appearance. Based upon advice of Counsel, and what the Board believes was fairly addressed some time ago, he will honor the motion that is on the floor and that motion will be voted on.

On **MOTION** of **HUTCHINSON**, the Board voted 3-0-1 (Charney, Hutchinson, Johnston "aye"; no "nays"; Crall "abstains"; Dillard "absent") moving to **FIND** that based on the evidence in the Record in Case No. CBOA-2678, including, without limitation the Application, various submittals prior to the Hearing, the Hearing that took place in Meeting no. 457 on June 19, 2018 along with the submittals and deliberations during the Hearing, the minutes of the Hearing and related transcript, and the written confirmation submitted by the Applicant at this special hearing, we find that 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:

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There being no further business, the meeting adjourned at 1:44 p.m.

Date approved: 5/21/19  
  
Chair