

CBOA-2821

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**TULSA COUNTY BOARD OF ADJUSTMENT
CASE REPORT**

TRS: 7413
CZM: 64

CASE NUMBER: CBOA-2821
CASE REPORT PREPARED BY: Robi Jones

HEARING DATE: 07/21/2020 1:30 PM

APPLICANT: Holliday Sand & Gravel Company, Inc.

ACTION REQUESTED: Special Exception to permit Use Unit 24, Mining and Mineral Processing, (Section 1224) in an AG District (Sec. 310, Table 1).

LOCATION: SW of E. 141st St. S. & S. 193rd Ave. E.

ZONED: AG

FENCELINE: Broken Arrow

PRESENT USE: Agriculture

TRACT SIZE: 36.64 acres

LEGAL DESCRIPTION: 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.

RELEVANT PREVIOUS ACTIONS: None relevant

ANALYSIS OF SURROUNDING AREA: The subject tract abuts agricultural zoning in all directions. The Arkansas River is to the west and Wagoner County is to the east. The corporate limits of Broken Arrow begin north of E. 141st St. S.

NEW STAFF COMMENTS:

On 06/16/2020, the case was heard and continued by the Board. The applicant was requested to provide more information.

ORIGINAL STAFF COMMENTS:

The applicant is requesting a Special Exception to permit Use Unit 24, Mining and Mineral Processing, (Section 1224) in an AG District (Sec. 310, Table 1). A Special Exception is required as the proposed mining and quarrying operation is not permitted by right in an AG district because of potential adverse effect, but which if controlled in its relationship to the neighborhood and to the general welfare, may be permitted.

1224.3 Use Conditions: The Board of Adjustment, in granting a mining and mineral processing use by Special Exception, shall consider potential environment influences, such as dust and vibration, and shall establish in the particular instance, appropriate protective conditions such as setbacks, screening, and method of operation, as will mitigate the adverse effect on proximate land uses.

The applicant has provided a detailed Project Description and copy of their Good Neighbor Trucking Policy (see attached documents).

If inclined to approve the Board may consider any condition it deems necessary and reasonably related to the request to ensure the proposed mining (dredging) and quarrying of sand is compatible with the surrounding neighborhood.

Sample Motion:

“Move to _____ (approve/deny) a Special Exception to permit Use Unit 24, Mining and Mineral Processing, (Section 1224) in an AG District (Sec. 310, Table 1).

Subject to the following conditions (including time limitation, if any): _____.

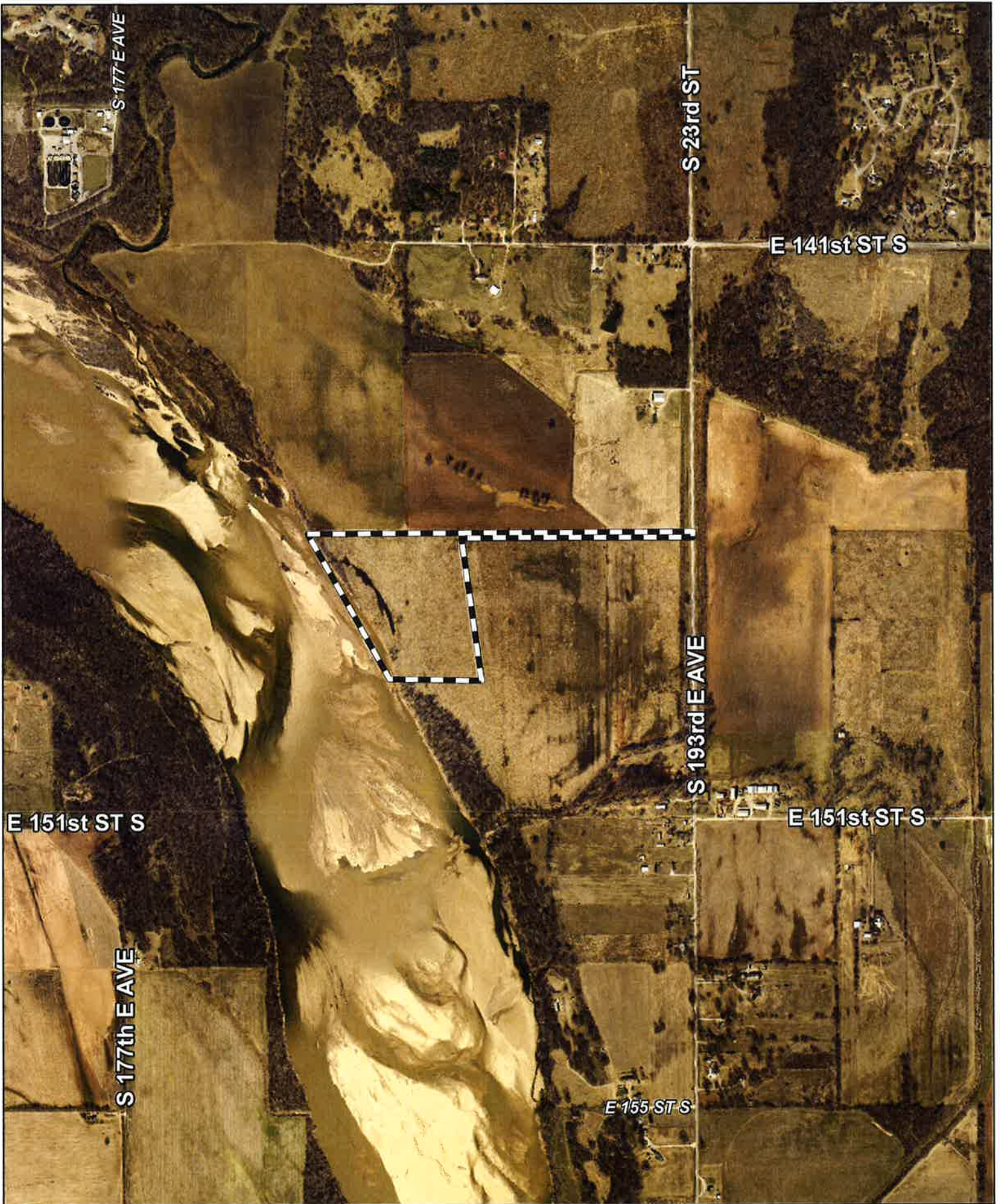
In granting a Special Exception, the Board finds that the Special Exception will be in harmony with the spirit and intent of the Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.”



Looking south on S. 193rd E. Ave. - subject property is on the right but the exact location of entrance was unclear.



Looking north on S. 193rd E. Ave. - subject property is on the left but the exact location of entrance was unclear.



S 177th E AVE

S 23rd ST

E 141st ST S

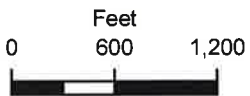
S 193rd E AVE

E 151st ST S

E 151st ST S

S 177th E AVE

E 155th ST S



Subject Tract

CBOA-2821

17-14 13

Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: February 2018

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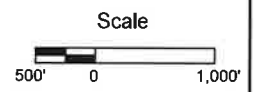


Google Earth Aerial Date: October 2018

Section 13, Township 17N, Range 14 E
 Tulsa County, OK.
 ±133 Acres (±37 Acres Land, ±96 Acres River)
 Portion of the Leonard and Coweta, OK.
 Quadrangles
 USGS

— P — Proposed Permit Boundary
 (±37 Acres Land)
 (±96 Acres River)

Site
 Plan



Holliday Sand & Gravel Co.
 North Broken Arrow
 Plant #21
 Site Location Map

drawn by	date	Triad Environmental Services P.O. Box 11837 Prichard, AL 36712 601.333.9100 www.triad.com
MG	05/2020	

166-2108-0627 Rev. Aug 2015.dwg (N. Broken Arrow Site Map)

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Revised 6-16-20
CBOA-2821

Project Description

Holliday Sand & Gravel Company requests a Special Exception from the Tulsa County Board of Adjustment under Use Unit 24, Section 310, in an AG District to locate a sand plant to dredge sand and gravel from the Arkansas River for commercial purposes.

Holliday proposes to operate a sand plant on 37 acres approximately one-half mile southwest of South 193rd Avenue East (County Line Road) and East 141st Street South (Yazoo), approximately one-half mile southwest of the Broken Arrow city limits.

Holliday plans to operate a floating cutter suction dredge on the adjacent 96 acres of the Arkansas River. See a detailed operation description on the last page of this document.

Summary Points

- Ongoing need for sand for concrete construction and paving
- Existing sand plant sites are overworked and depleting
- A sand plant is an appropriate land use for floodplain land zoned AG.
- Low density housing, rural location.
- Close to the turnpike, minimizing trucking impacts.
- Holliday has an active program that controls trucking impacts through close monitoring and strict enforcement of its established **Good Neighbor Trucking Policy** (included below).

Need

- Construction in the Tulsa area is booming.
- Demand for sand for concrete is growing beyond the capacity of the existing sand plants.
- As existing sand deposits and sites are exhausted new sites must be located, zoned, built and operated in time to prevent a shortage of construction aggregates.

Siting Factors

The proposed sand plant site is an appropriate location:

- Rural area
- Low population density
- Only 2.8 Miles from Creek Turnpike
- Excellent sight distance on 193rd Street
- ½ mile plant setback from 193rd Street
- No homes within ½ mile of the sand plant equipment

- No homes within ¾ mile on the opposite side of the River
-

Project Description

Please see detailed description of process and equipment on last page.

Schedule of Operation

- Sales and truck loading: 7 AM to 4 PM on weekdays (**Will be strictly enforced!**)
- Sand dredging and processing activities: 7 AM start time weekdays. 1 – 10 hour shift is normal but during peak demand a second 10-hour shift would be added on weekdays only. Dredge normally operates 75% of the time.
- The projected life of the operation is approximately 15 to 20 years.

Environmental Impact

Holliday Sand & Gravel Company is committed to being a good neighbor through:

- Strict enforcement of its *Good Neighbor Trucking Policy* (next to last page below)
Any violations result in no longer getting loaded at any Holliday Sand plants.
- Responding to and allocating resources to address concerns of our community (e.g.: speed signs, trucker training, enrollment in *Good Neighbor Trucking Policy* program, monitoring and follow up for observed violations, prompt response to any concerns of residents, street sweeping if needed, and maintenance of access road and drive entrance on 193rd Street.
- No trucks loaded before 7 AM, or after 4 PM.
- Installation of 2 - Radar Signs on 193rd Street either side of the plant driveway, which has shown to be extremely effective in reducing speeds and the potential for accidents.
- Application of noise reduction methods and materials (e.g.: engine silencers, noise barriers, strobe backup alarms (when dark), rubber chute liners and screening media).

Following is our evaluation of potential impacts and how we will mitigate them.

Residences

Approximate location of residences from the sand plant operation:

½ mile radius = 0 residences

1 mile radius = 25 residences

Mitigation of impacts to residences consists of limited hours of loading and operation, noise control and dust control. See further details below.

Schools

- No schools or crosswalks are located on the proposed truck route. 1000 feet north of 131st is a single school bus stop. Speed limit there is 45 mph.
- Holliday will monitor the bus stop for any incidences that involve trucks by contacting the school, bus company, guard or nearby neighbors and giving them our Area Manager's phone number and encouraging them to contact us immediately.
- Even if it is not one of our customer trucks, we will follow up with that trucking company.

Traffic

- Speed limit is 50 mph south of 131st Street on 193rd where the plant driveway is located.
- Line of sight is at least ½ miles in both directions on 193rd Street.
- At 55 MPH it will take about 6 seconds to stop a truck and the truck will have traveled about 512 feet. (Existing line of site is ½ mile.)
- 2018 INCOG-AADT average daily traffic counts:
 - Are low on S. 193rd Avenue East where the plant entrance drive would be = 2420 average vehicles per day.
 - Once north of E. 141st Street S. it increases to 6212 vehicles per day.

Additional Radar Signs will be installed on 193rd Avenue, both directions from the driveway entrance. See Holliday's existing Radar Signs at the end of this document.

- Holliday will regularly monitor all trucks on 193rd for speeding, noise, and if needed install cameras to document compliance.
- Violation of the designated trucking route will result in permanently being denied loading.
- Estimated volume of truck traffic coming and going from the plant:

Per Hour:	Min. = 0	Max. = 10	Ave. = 5
Per Day:	Min. = 0	Max = 100	Ave. = 50
- No loaded trucks are permitted to leave the plant overloaded or untarped.

Dust Control

- At least 75 feet of the plant driveway approach to S 193rd Avenue East will be surfaced to prevent tracking of material.

- Haul roads within the site will be watered during dry dusty conditions with a water truck.
- Any sand tracked onto 193rd Avenue will be swept up and removed as needed.
- The washed sand stockpiles do not emit dust.
- There are no dust emitting processes involved (no crushing or dry screening).

Noise

- Loading equipment will utilize strobe backup lights instead of beeping alarms before and after sunset.
- **Dredge and plant equipment would have limited hours of operation from 7 AM to 4 PM on weekdays, and during peak demand a second 10-hour shift would be added on weekdays only. Dredge normally operates 75% of the time.**
- The dredge is diesel powered and is equipped with a hospital rated silencer, so noise is not above 85 decibels at the dredge itself. The dredge would operate 18 feet below grade, at the level of the water table.
- Application of noise reduction methods and materials (e.g.: engine silencers, noise barriers, strobe backup alarms (when dark), rubber chute liners and screening media) throughout the plant.

Visual

The sand stockpiles are up to 30 feet in height and provide an excellent visual and noise barrier around the plant.

The plant is ½ mile back from 193rd Street.

Light

Light pollution to nearby residences (1/2 to one mile away) will be prevented with either light fixtures that emit downward light only or that are directed away from the sightline of residences.

Structures

The following is a list of the facilities or equipment to be erected on site:

(Structures, fuel tank, electrical and sanitary facilities would be placed 2 feet above the 100-year flood plain elevation.)

- Three phase pole mounted electrical power will be brought to the site by PSO.
- Truck scale - 11' x 70' low profile
- Office - 14' x 30' Prefabricated Quarry Office
- Two portable toilets
- Parking area adjacent to office – 20' x 50'
- Fenced parking for front end loaders - 50' x 60, six-foot chain link
- 2 – 2000 gallon diesel storage tanks with containment
- Powerhouse for plant switchgear – small building 8' x 12', 10 feet tall.
- Sand processing equipment - on 20' x 60' pad, 40 feet tall.

- Sand stockpiling belt conveyors - 100' long, 30' high, 2 each.

Pollution Prevention

- Holliday Sand is committed to the prevention of contamination of the ground and groundwater, and surface water from project materials.
- The only bulk chemicals (55 gallons or greater) stored on site are diesel fuel and lubricating oil. Biodegradable hydraulic oil is used on the floating dredge in the river.
- A Stormwater Pollution Prevention Plan is being prepared to address the potential contaminants such as fuel and oil. It will establish procedures for training and inspection for the prevention and if needed cleanup of spills.
- A dredged water discharge and stormwater permit will be obtained through OK Department of Environmental Quality prior to operation.
- The river water discharge from the plant flows into a large settling basin for removal of fine sand and silt prior to release back to the Arkansas River.
- Monthly samples are taken, tested per OK DEQ guidelines and the results reported monthly.
- Fines are removed regularly from the settling basin and blended with saleable product.

Flood Plain

- The proposed site lies within the 500-year flood plain.
- The office, fuel tanks and electrical switchgear will be elevated as required by flood code.
- Should bank erosion occur during the project, Holliday has the equipment and resources committed to stabilize any eroded areas over the life of the project.

Flood Contingency Plan

The following are actions to be taken should flooding be eminent at the proposed project site:

- Sell and/or transport material stockpiles from the flood plain if possible.
- Contact PSO and electrician to disconnect electric power
- Cease operations, de-energize all electric powered equipment
- Verify an escape route out of the flood plain
- Secure or remove all equipment that could float: dredge, pontoons, fuel tanks, pipe
- Remove all portable equipment from the floodplain to higher ground

Security Fencing

To prevent the public and livestock access to the sand plant and entrance road, a 4-foot tall fence (matching the existing livestock fencing) will be installed with warning signs attached every 100 feet.

Examples of signage design:



Reclamation

The projected life of the plant is 15 to 20 years depending on river flows

All mining is by floating dredge in the river. There will not be any pit mining on land.

Upon completion of mining operations:

1. Remaining stockpiles would be sold
2. Any minor amount of sand or gravel will be graded level
3. All sand plant equipment will be removed, and plant equipment concrete footings and slab would be removed.
4. Settling pond would be backfilled and graded smooth
5. The two 2000 gallon diesel fuel tanks would be removed and closed out according to OCC requirements.
6. OK Department of Mines will inspect for compliance prior to the required bond release (\$1000/acre).

Additional Permits Pending

The Project will be regulated by the following agencies and application for those permits will ensue pending Tulsa County approval of a Special Exception:

- U.S. Army Corps of Engineers - Wetland determination and Section 404
- Oklahoma Department of Mines - Non-Coal Mining Permit
- Oklahoma Department of Environmental Quality - water permits
- Tulsa County building and driveway permits

Holliday Sand & Gravel Company
Good Neighbor Trucking Policy

Holliday Sand & Gravel is committed to operate its facilities in a safe and courteous manner. That commitment requires your hauling our products on the local roadways and through neighborhoods like a professional.

Holliday Sand & Gravel will **REFUSE TO DO BUSINESS** with haulers that do not demonstrate safe and courteous practices and comply with the following rules.

HOLLIDAY SAND HAS ADOPTED THE FOLLOWING AS OUR MINIMUM SAFE AND COURTEOUS GUIDELINES FOR ALL TRUCKS THAT WE LOAD:

- ✓ **OBEY THE SPEED LIMIT – ESPECIALLY RESIDENTIAL AREAS**
- ✓ **DO NOT ARRIVE AT THE PLANT BEFORE THE POSTED OPENING TIME – THIS VIOLATES OUR COUNTY PERMIT**
- ✓ **NO PARKING ON PUBLIC ROADS OUTSIDE THE PLANT ENTRANCE**
- ✓ **NO AGGRESSIVE DRIVING – NEVER CROSS THE CENTERLINE**
- ✓ **DISENGAGE THE JAKE BRAKE SYSTEM AND DRIVE SLOW ENOUGH THAT IT IS NOT NEEDED TO STOP SAFELY**
- ✓ **WATCH FOR CHILDREN PLAYING, RIDING BIKES, AND AT BUS STOPS AND BE PREPARED TO SLOW DOWN OR STOP**
- ✓ **TARP AND DO NOT ALLOW SAND TO SPILL OUT ON THE ROAD**
- ✓ **COMPLY WITH ANY SPECIALLY DESIGNATED HAULING ROUTES**

FAILURE TO FOLLOW THESE GUIDELINES WILL RESULT IN A REFUSAL TO LOAD YOUR TRUCK AT ANY OF OUR FACILITIES.

As a truck operator that wishes to be loaded by Holliday Sand & Gravel Company, I have read these Guidelines, and agree to comply with them as a minimum standard.

Printed Name: _____

Signature: _____

Today's Date: _____

DESCRIPTION OF DREDGING AND PROCESSING OPERATION
ON THE ARKANSAS RIVER – TULSA COUNTY, OK

Sand and gravel would be removed hydraulically from the Arkansas River bottom by a diesel-powered floating cutter suction dredge. Material would be dredged to a depth of approximately 12 feet below the ordinary low water level. The sand-gravel slurry is then pumped through a floating pipeline to the processing plant on land. The sand-gravel slurry is discharged onto a scalping screen to separate the plus 3/8" gravel from the sand slurry. The sand slurry passing through the screen enters a sizing tank containing river water. The sand settles to the bottom of the tank and is selectively removed through valves in the tank bottom to produce various aggregate specifications. This slurry then enters a dewatering screw which discharges onto a conveyor belt placing the sand in conical piles over subsurface drains for final dewatering. Approximately 40,000 square feet would be needed for stockpiles.

Return water from the plant consists of river water and some wasted sand which has overflowed the weirs of the sizing tank and dewatering screw. This return water gravity flows by pipeline into a settling pond (approx. 75' x 250'). Solids collected in the settling pond are mechanically removed. The pond discharge water is then routed back to the river through a pipe. Discharge water samples are taken monthly, tested for pH and suspended solids and the results reported to the Oklahoma DEQ.

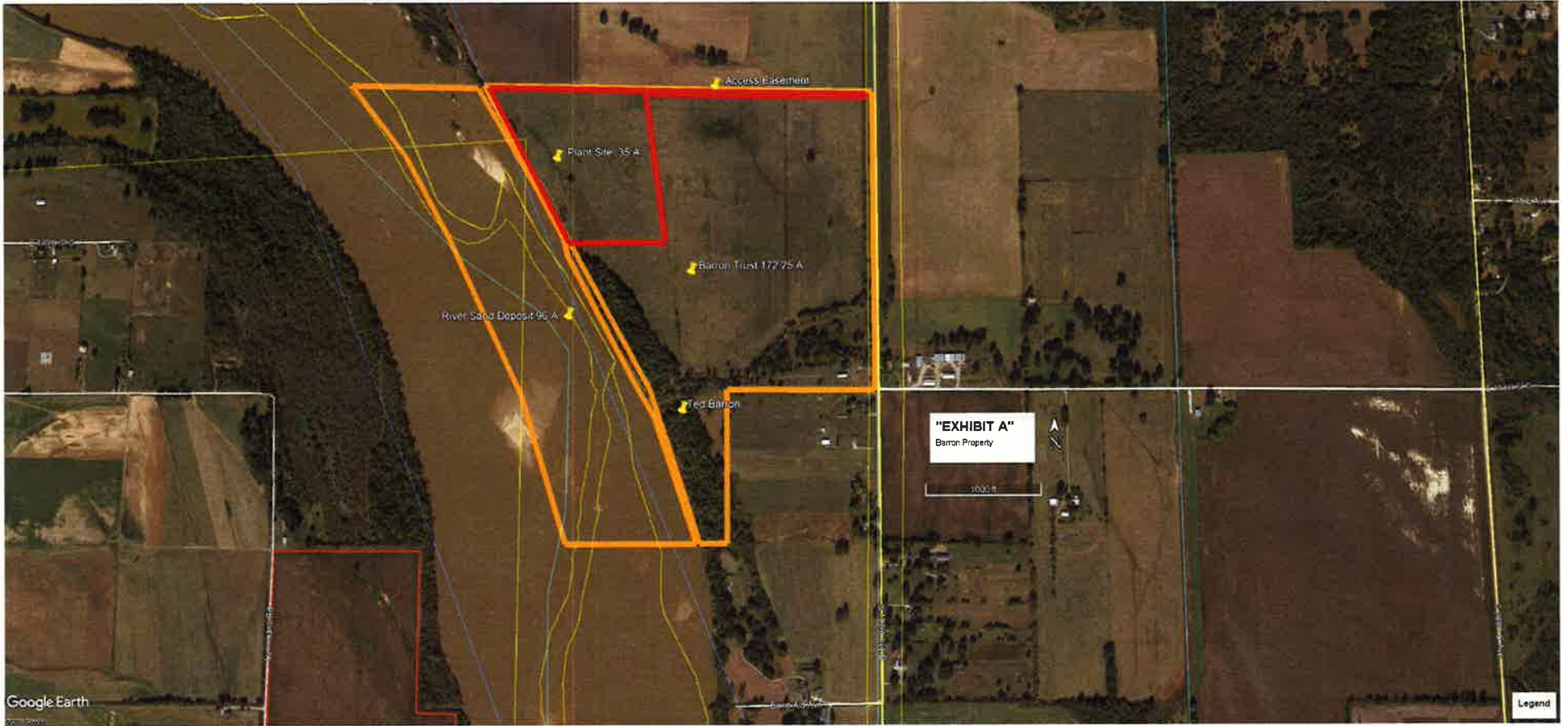
Approximately 300,000 tons of sand and gravel would be removed annually at this site. The dredge and plant would operate approximately 2500 hours a year.



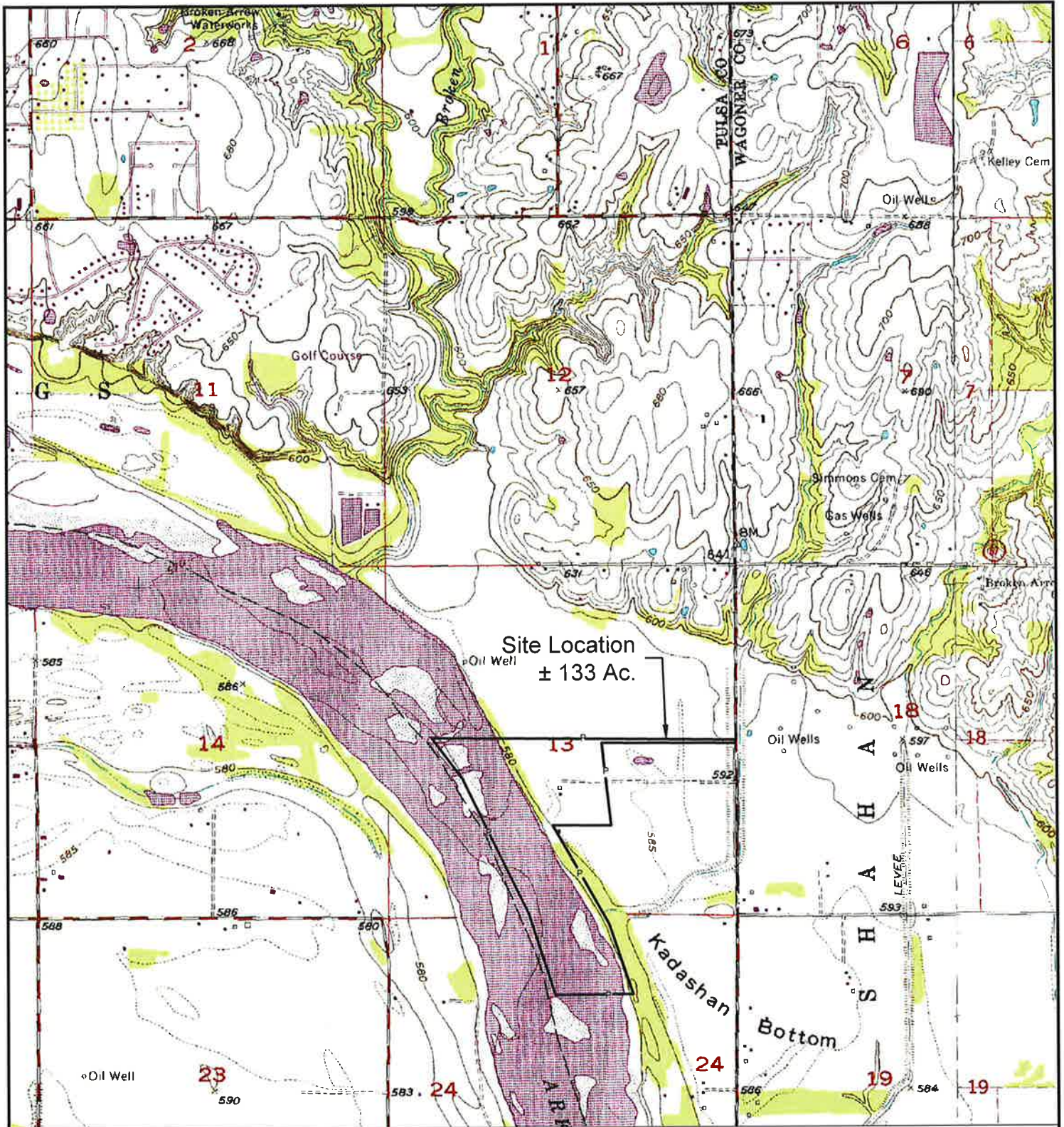
Holliday's RadarSign on E. 161st Street South



Holliday's RadarSign on S. 193rd Avenue East

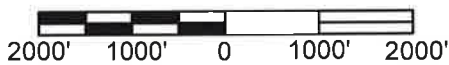


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Sect 13, T17N, Rng 14 E
 Tulsa County, OK.
 ±133 Acres (±37 Acres Land, ±96 Acres River)
 Portion of the Leonard and Coweta, OK. Quadrangles
 USGS

Scale



TP168-21\dwg\68-21 08-0627 Rev Aug 2015.dwg(N. Broken Arrow #21 Gen Loc)



Holliday Sand & Gravel Co.
 North Broken Arrow
 Plant #21
 General Location Map

drawn by	date	Triad Environmental Services P.O. Box 15207 Pittsburg, KS 6 (820) 231-6660 (820) 231-6661
MG	05/2020	

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Imagery ©2020 Landsat / Copernicus, Maxar Technologies, USDA Farm Service Agency, Map data ©2020 1 mi

TULSA COUNTY BOARD OF ADJUSTMENT
 CASE NO. 2821
 OFFICIAL RECORD EXHIBIT _____
 ENTERED IN THE _____
 MINUTES OF THE TULSA COUNTY BOARD
 OF ADJUSTMENT.

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TULSA COUNTY BOARD OF ADJUSTMENT
CASE NO. 2821
OFFICIAL RECORD EXHIBIT _____
ENTERED IN THE _____
MINUTES OF THE TULSA COUNTY BOARD
OF ADJUSTMENT.

3.25

141ST + 193RD LOOKING NORTH
(TRUCKS LOADED) OFTEN THE
INTERSECTION IS COVERED WITH
SAND THAT HAS SPILLED FROM THE
ROUGH INTERSECTION RAFTING
THE PRODUCT FROM THE TRAILER,
DANGEROUS TO CARS AND MOTORCYCLES.

141ST + 193RD LOOKING SOUTHEAST
(NORTHBOUND LANE (TRUCKS LOADED))

3.27





131ST + 193RD LOOKING WEST
HELMET TO ILLUSTRATE THE
DEPTH OF THE EXISTING DAMAGE
NORTHBOUND LANE (TRUCKS LOADED)



131ST + 193RD LOOKING NORTH
TRUCKS LOADED (U)



**121ST + 193RD LOOKING
SOUTHWEST**

121ST + 193RD LOOKING SOUTH (D)

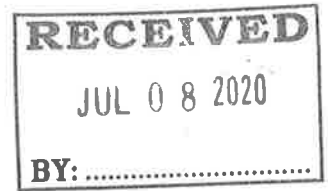


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**121ST + 193RD LOOKING NORTH
TRUCKS LOADED**

OF ADJUSTMENT
MINUTES OF THE TULSA COUNTY BOARD
ENTERED IN THE
OFFICE RECORD EXHIBIT
CASE NO. _____
TULSA COUNTY BOARD OF ADJUSTMENT



TULSA COUNTY BOARD OF ADJUSTMENT

CASE NUMBER: CBOA-2821

HEARING DATE: 7/21/2020

APPLICANT: Holliday Sand & Gravel Company, Inc. (“Applicant”)

OBJECTION TO APPLICANT’S REQUEST FOR SPECIAL EXCEPTION

On June 16, 2020, a hearing was held before the Tulsa County Board of Adjustment (the “BOA”) on Applicant’s request for a special exception. Specifically, Applicant requests a special exception to once again attempt to put a second sand and gravel dredging and mining operation in the community in the vicinity of 151st Street South, and 193rd East Avenue. The hearing was continued to July 21, 2020 upon the vote of the BOA, with a 4-1 vote in favor of the continuance. The BOA requested that Applicant submit additional documentation and information relating to the concerns and objections voiced by the many neighbors in attendance who opposed Applicant’s application.

This firm represented landowner Steve Walker of 15525 S. 193rd East Avenue (“Walker”) at the initial hearing. This firm now represents other interested parties, in addition to Walker. Walker, along with David Barron (“Barron”), the landowner whom Applicant stated contacted them about putting the proposed mining operation on his property, previously opposed a similar relevant application in 2001. As the BOA is aware, there was a civil lawsuit filed objecting to the BOA’s granting of Applicant’s previous application (the “District Court Case”).¹ As a matter of public record, Barron was a named Plaintiff in that case. Barron opposed the plant being located at 155th in 2001, but now seeks to profit from a plant on his property at approximately 145th. The only material changes to this AG zoned community since 2001 is that there are more residences and residential neighborhoods in the area, and both the Tulsa County District Court and the Oklahoma Court of Civil Appeals have previously found that an exception permitting a mining and dredging operation in this community will be harmful to the community and the environment.

PREVIOUS LITIGATION RELATING TO APPLICANT & THIS COMMUNITY

Although the Chairman expressed it is his opinion the previous litigation involving this same community and the Applicant are not binding upon the BOA, which may be technically accurate due to a minor adjustment in location, we believe it is important for this body, with its current members, to have a firm understanding of the previous litigation involving Walker and Applicant. As will be shown below, Applicant made essentially the same promises, pleas, and representations in its 2001 application, which the Oklahoma Courts found insufficient to justify a special exception for Applicant’s operation.

¹ Tulsa County District Court Case No. CJ-2001-4244.

Applicant made the same request as the current request before the BOA in 2001 (Case No. 1877). After a hearing on the application on June 19, 2001, the BOA approved Applicant's request.² The 2001 application identified the site of the proposed operation at SW/c E. 155th St. & 193rd E. Ave. The current Application identifies the location as "SW of E. 141st St. S. & 193rd E. Ave."; however, the drawing shows the location to be closer to 145th Street, with the dredging and mining operation extending south of 151st Street. The same community impacted by Applicant's previous application is clearly the same community affected by Applicant's current Application.

Attached hereto is copy of the Journal Entry of Judgment in the District Court Case.³ In summary the Tulsa County District Court found the BOA erred in granting the special exception. The Court held: "[there was] insufficient substantial evidence to grant the special exception"; that "the decision of the [BOA] was arbitrary, capricious, and unreasonable"; and "[t]he granting of the special exception would result in unnecessary and substantial harm to the Petitioners and the community at large, and will further potentially harm and damage the environment through noise, erosion, an increase in dangerous traffic, and possibly from damage to the roadways."

Applicant appealed the District Court's decision to the Oklahoma Court of Civil Appeals (the "Appellate Court"). The Appellate Court affirmed the District Court's decision. The Appellate Court issued a detailed Opinion on January 13, 2004 (the "Opinion").⁴ As set forth in Applicant's 2001 application and the Opinion, Applicant asserted many of the same reasons for the request, as well as the same mitigating factors Applicant claims will minimize the impact of its operation. For example, Applicant asserted its plant would "not be injurious to the neighborhood or detrimental to the public welfare".⁵ Applicant alleged the increase in traffic on the area roads would not be greater than the current use, and that it would take considerable precautions to reduce noise at its plant".⁶ Applicant similarly asserted it would use a wide range of precautions to reduce noise, including, "electric motors in various equipment, a 'hospital quality' silencer on the diesel engine on the dredge, state of the art silencers on the scoop loaders, and the use of plastic or rubber coated chutes and screens."⁷

The Appellate Court noted in the Opinion the testimony of Dean Holladay, the Superintendent of Highway Maintenance (the person responsible for maintaining 193rd East Avenue in the area of the proposed plant at that time), stating the roadway "is beginning to fail and needs maintenance performed on it" and "...that the road was designed for light traffic and is not suitable to handle an additional one hundred semi-trucks...".⁸ The Opinion goes on to cite the

² See Tulsa County Board of Adjustment Minutes of Meeting 253, attached hereto as Exhibit 1.

³ See Journal Entry of Judgment dated October 17, 2002, attached hereto as Exhibit 2.

⁴ See Appellate Court Opinion dated January 13, 2004, attached hereto as Exhibit 3.

⁵ See Exhibit 3 at p. 5.

⁶ See Exhibit 3 at p. 5.

⁷ See Exhibit 3 at p. 6.

⁸ See Exhibit 3 at p. 7.

testimony of Jack Sheridan, an engineer specializing in hydraulics, who testified the plant would cause erosion of the riverbank and erosion up to 193rd East Avenue.⁹

In the Opinion, the Appellate Court held, “[i]n reviewing the evidence, we find that Landowners presented clear evidence that the operation of the sand plant will ‘be injurious to the neighborhood’ and ‘possibly detrimental to the public welfare.’ Although [Applicant] presented testimony that it would do a variety of things to hold down noise, the increase of heavy traffic will be substantial, and the evidence tends to establish that this will considerably increase the noise level and damage the roadways. In addition, section 1224.3 of the Tulsa Zoning Code requires consideration of possible ‘environmental influences.’ Although there is a strong evidentiary dispute over whether the plant will result in substantial erosion to the river bank, there was expert testimony to that effect which the Trial Court could have, and apparently did, accept.”¹⁰ In conclusion the Appellate Court stated, “[w]e conclude that the Trial Court’s decision is not clearly contrary to the weight of the evidence. The Landowners presented clear evidence that the zoning exception would allow a use of the property which would be injurious to the neighborhood and environment. Accordingly, the decision of the Trial Court is affirmed.”¹¹

THE APPLICATOIN IS INCONSISTENT WITH THE CITY OF BROKEN ARROW’S COMPREHENSIVE PLAN & THE CITY OBJECTS

In addition to the extensive testimony regarding how the proposed plant will be injurious to the neighborhood, community and environment, Applicant’s request is also contrary to the City of Broken Arrow’s Comprehensive Plan. The City of Broken Arrow objected to Applicant’s request by letter dated June 15, 2020. A copy of the City of Broken Arrow’s letter is attached hereto.¹² In its letter, Broken Arrow’s Community Development Director, Larry R. Curtis, states the application is not compatible with the Level 1 low density residential use of the property, as designated in the Comprehensive Plan. Further, Broken Arrow objected to the application because: most of the tract and surrounding properties are not in the 100 year floodplain, and are capable of development; 193rd East Ave. is currently maintained by the City of Broken Arrow¹³; there have not been additional traffic studies to analyze traffic control signage; and no analysis has been done to determine the impact the proposed plant could have on the Lynn Lane Waste Water facility located approximately ½ mile south of the proposed plant.¹⁴

⁹ See Exhibit 3 at p. 8.

¹⁰ See Exhibit 3 at p.10.

¹¹ See Exhibit 3 at p. 11.

¹² See City of Broken Arrow letter dated June 15, 2010, attached as Exhibit 4.

¹³ The City of Broken Arrow’s letter states that although the east side of 193rd East Ave. (north-bound) is in Wagoner County, Broken Arrow maintains 193rd East Ave. in this area. Tim Kelley with Wagoner County confirmed that Broken Arrow does maintain both lanes of 193rd East Ave. in the area in question.

¹⁴ See Exhibit 4.

The City of Broken Arrow's objection to the Application was neither raised, disclosed, nor discussed at the initial hearing on this Application. At the time of the initial hearing Walker was not aware Broken Arrow had provided a written objection to the Application.

EVIDENCE OF DAMAGE TO THE COMMUNITY & ROADS

At the hearing a member of the BOA stated that the interested parties all gave statements about the noise from the existing plant at 161st, as well as the truck traffic therefrom, but that no video evidence supporting the same was presented. Unfortunately, Mr. Walker was not able to present the evidence he possessed (on a thumb drive) showing the BOA representative examples of the noise, traffic and road conditions due to Zoom conferencing being utilized. Walker did provide the BOA with photographs supporting his assertions at the hearing, which were made part of the record. Attached hereto are additional photographs depicting the conditions of 193rd East Ave., photographs of sand on the roadway, dust covering surfaces of Walker's real and personal property.¹⁵ Walker further submits video evidence of the noise associated with passing trucks, which Applicant admits will occur 100 times per day, beginning before 7AM and ending at shortly after 4PM (which is when Applicant says the last trucks will be loaded).¹⁶

It is clear from the photographs provided, there is substantial existing wear and tear on 193rd East Ave. between the site of the proposed plant and the Creek Turnpike. Notably, the wear and tear is more substantial in the northbound lane of 193rd due to loaded trucks traveling to the Creek Turnpike. The intersection at 141st St. S. has ripples in the asphalt (washboard effect), which are clearly from heavy trucks starting and stopping at the intersection. Similarly, the intersection at 131st St. S. has substantial damage to the asphalt, including a large/long rut in the asphalt where traffic traveling northbound has pushed the asphalt up across the east side of the intersection.¹⁷ This stretches nearly the entire length of the intersection. Also located at this intersection is a BlockHouse Grill & Pub, which has an outdoor patio near the roadway.

As the BOA is aware, heavy trucks produce noise and vibration while traveling the roadways. From 50' away, a heavy truck traveling between 30 mph and 50 mph will produce noise levels (not including vibration) of 80 – 85 decibels.¹⁸ There are homes along 193rd East Ave. which are closer than 50' from the roadway; therefore, the decibel levels of the heavy trucks coming from Applicant's proposed plant would produce noise greater than 80 to 85 decibels. Although Applicant downplayed the significance of 85 decibels at the hearing, the Occupational Safety and Health Administration (OSHA) requires employers to establish a hearing conservation program for employees whose noise exposures equal or exceed an 8-hour time-weighted average of 85 decibels.¹⁹ Although Walker and those similarly situated will not be exposed to a time-weighted average of 85 decibels, they will be exposed to 85 decibels or greater up to 100 times a

¹⁵ See Exhibit 5, pages 5-1 through 5-4.

¹⁶ See Thumb Drive marked Exhibit 6.

¹⁷ See Exhibit 7, pages 7-1 through 7-2.

¹⁸ <https://nonoise.org/resource/trans/highway/spnoise.htm>, see chart attached as Exhibit 8.

¹⁹ See 29 CFR 1910.95(c)(1).

day during a 9-10 hour period. Contrary to Applicant's presentation, 85 decibels is significant, and is substantial enough for OSHA to promulgate rules relating to exposure to such levels.

APPLICANT'S ABANDONED PLANT

Upon information and belief, Applicant currently owns the abandoned sand plant just north of the Memorial Dr. bridge at 141st and Memorial Dr. in Bixby, OK. According to the Tulsa County Assessor's Office, HSG Acquisition Company, LLC (owned by Applicant) purchased the property at 14101 S. Memorial Dr. E., Bixby, OK 74008 (the "Abandoned Plant") in 2008.²⁰ Applicant's Abandoned Plant is relevant to these proceedings for two reasons: (1) Holliday left mounds of sand, equipment, and a vacant building after abandoning the site; and (2) the Abandoned Plant provides Applicant with an existing source of sand.

At the previous hearing Applicant expressed the importance of being a good neighbor. Applicant spoke of measures they take relating to: controlling truck traffic, managing driving behaviors, keeping dust down, and leaving the land in good condition when they were finished. However, as demonstrated by the photographs of the Abandoned Plant, Applicant abandoned that site years ago and left behind metal, equipment, a vacant building and mounds of sand.²¹ This clearly shows Applicant's disregard for the environment and the community in which its plants are located.

Further, as a basis for Applicant's request, Applicant claims there is an existing and ongoing need for sand for concrete construction and paving, and that existing sand plant sites are overworked and depleting. However, in addition to Applicant's two (2) existing and operational sites in this area, Applicant has a third site in Bixby at the Abandoned Plant. There is even unused sand Applicant left at the old plant. Applicant explained during the hearing that flood events are one way sand deposits for mining are restored. The Abandoned Plant was not operational prior to the recent major flooding event in this area, and has not been operational since. Therefore, the Abandoned Plant could be another source of sand for Applicant without the need to destroy more land or disrupt this community further.

CONCLUSION

As the BOA is aware, this is Applicant's third attempt at putting a sand and gravel mining operation along a three or four mile stretch of 193rd East Ave. First in Tulsa County in 2001, then in Wagoner County in approximately 2010, and now again in Tulsa County in 2020. This community strongly opposes Applicant's request, as does the City of Broken Arrow. The Applicant's proposed use is inconsistent with the AG zoning of the area in question, is inconsistent with Broken Arrow's Comprehensive Plan, and as the courts have previously stated, "[t]he granting of the special exception would result in unnecessary and substantial harm to the


²⁰ See property data attached as Exhibit 9.

²¹ See photos attached as Exhibits 10, pages 10-1 through 10-4.

[interested parties] and the community at large, and will further potentially harm and damage the environment through noise, erosion, an increase in dangerous traffic, and possibly from damage to the roadways.” Therefore, Walker respectfully requests the BOA deny Applicant’s request for a special exception to operate a sand and gravel mining facility as proposed in Case No. CBOA-2821.

Respectfully submitted,

JONES, GOTCHER & BOGAN, P.C.


Tadd J.P. Bogan

Prepared By:
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Attorneys for Interested Party, Steve Walker

COUNTY BOARD OF ADJUSTMENT
MINUTES of Meeting No. 253
Tuesday, June 19, 2001, 1:30 p.m.
County Commission Room
Room 119
County Administration Building

MEMBERS PRESENT MEMBERS ABSENT STAFF PRESENT OTHERS PRESENT

Alberty, Chair	Walker	Butler	West, Co. Inspec.
Tyndall	Dillard, Vice Chair	Fernandez	
Hutson			

The notice and agenda of said meeting were posted in the Office of INCOG, 201 W. 5th St., Suite 600, Friday, June 15, 2001 at 8:00 a.m., as well as at the City Clerk's office, City Hall.

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

MINUTES:

On **MOTION** of **Hutson**, the Board voted 3-0-0 (Alberty, Tyndall, Hutson "aye", no "nays"; no "abstentions"; Walker, Dillard "absent") to **CONTINUE** the May 15, 2001 minutes to the next County Board of Adjustment meeting, June 19, 2001.

UNFINISHED BUSINESS

Case No. 1847

Action Requested:

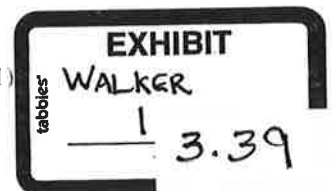
Variance of Section 240.2.E to permit an accessory building of 2,400 sq. ft. in an RS district. SECTION 240.2. YARDS, Permitted Yard Obstructions -- Use Unit 6; and a Variance to permit the accessory use on a lot adjoining the principal dwelling unit (under common ownership) as the principal and only use on the lot, located 742 N. Willow St.

Presentation:

Diane Fernandez, stated that this case was re-advertised, and it would have been heard by the City of Sand Springs but they did not have a quorum for this particular Board of Adjustment referral.

Ronald Shipman, 724 Willow St., Sand Springs, stated he wants to build a building for equipment for a small siding business, including trailers and

06:19:01:253(1)



site. They were planning the entrance and exit as far south as possible to be as far as possible from the homeowners' drives. He indicated that the existing plants could not provide enough sand for the Tulsa area. They plan to minimize the use of County roads for trucking sand. The existing trees along the fence line would be left for screening. He stated the plant would be in the flood plain but not in the floodway. The existing homes would be used for offices and would also be left for screening.

Interested Parties:

Dennis Shook, 109 N. Casper St., Wagoner, Oklahoma, submitted photographs (Exhibit D-3). He stated he represented John and Pat Holder and other property owners in the neighborhood. They believe the neighborhood would be adversely affected if the application was approved. He noted the zoning along the turnpike is a mix of R and AG districts. He indicated that the truck traffic would cross the County Line road at about 155th St. The Long Range Transportation Plan 2025 does not include improvements or widening of the two lane road. He estimated 180 – 200 trucks on 193rd E. Ave. per day, from numbers given by the sand company. He reminded the Board that there are only two stop signs at 141st and 193rd St. and at 131st and 193rd and no other traffic control devices on this road. He felt the speed of 18 wheelers would be cause for concern to those living in the area.

Mr. Alberty out at 3:50 p.m.

Mr. Shook reminded the Board that the area is zoned AG not industrial. Holliday Sand and Gravel has an existing plant which has caused the river to erode and old Highway 51 is now closed and not passable. The homeowners are concerned that the second plant could impact properties in the same way.

Mr. Alberty returned at 3:52 p.m.

He expressed concern that calcium chloride would not be effective to prevent dust during the drier season of the year. He also mentioned that homeowners were concerned about decreasing property value.

Pat Boyd, P.O. Box 225, Porter, Oklahoma, stated that this project is not compatible with a residential district.

John Holder, 15353 S. 193rd E. Ave., stated he purchased his property to raise horses. His land has increased in value and he has improved his home considerably. He informed the Board that the current average daily truck traffic only on 193rd E. Ave. is between 119 and 164 trucks.

Steven Walker, 15511 S. 193rd E. Ave., pointed out the sod farms and indicated the plant would ruin the view and beauty of the property. He noted previous concerns and suggested this is not a good location. He indicated the nuisances it would cause to health by mosquitoes and noise. He was concerned about hours of operation and lighting.

Beverly Hefley, 15606 S. 193rd E. Ave., **Mel Chambers**, 15238 S. 193rd E. Ave., **Brenda Chambers**, 15238 S. 193rd E. Ave., **Pat Bouie**, 15495 S. 193rd E. Ave., **Mrs. L.C. New**, and **Pat Holder**, 15353 S. 193rd E. Ave., all had similar concerns to those previously listed.

Jo Caruthers, spoke in support of the application, stating the trucking is necessary to transport the sand. He stated that the company does everything they can to be good neighbors. He informed the Board that Tulsa really needs this sand supply.

A letter of support was submitted (Exhibit D-4). Letters and petitions of opposition were submitted (Exhibits D-5, D-6).

Applicant's Rebuttal:

Mr. Odell commented that the company is in favor of any transportation improvements that will increase safety. He informed the Board that Keystone Dam causes the erosion. He stated that the existing plants cannot keep up with the supply of sand needed for the Tulsa area. He indicated that this site was the only one available at this time. The Department of Environmental Quality has inspected and approved. Mr. Odell stated there would be no open pits and the settling ponds are not stagnant and fill up with sand with water flowing through them so they are very clean. He added that they do pay sales tax on the sand.

Comments and Questions:

Mr. Tydall asked about the hours of operation. Mr. Odell responded hours of operation would be 6:00 a.m. to 6:00 p.m., Monday through Friday, a half day on Saturday. They realize that this is early in the morning but they have a shortage of trucks. He added that they will haul a certain amount of sand per day, whether it is in twelve hours or eight hours. The plant will be closed on Sunday and holidays.

Board discussion ensued.

Board Action:

On **MOTION** of **Hutson**, the Board voted 3-0-0 (Alberty, Tyndall, Hutson "aye", no "nays"; no "abstentions"; Walker, Dillard "absent") to **APPROVE** a **Special Exception** to permit mining of sand and gravel and associated processing in an AG district, per presentation, finding that it 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, on the following described property:

A part of the Fraction Section 24, T-17-N, R-14-E, Tulsa County, State of Oklahoma, described as follows: Commencing at a point on the NE/c SE/4 NE/4 of said Section 24 a distance of 1010' to the POB; thence W along the N line of the SE/4 NE/4 of said Section 24, also known as the N line of Lot 5, a distance of 560' to a point on the Wly high bank of the Arkansas River; thence W along the SE/4 NE/4 of said Section 24 a distance of 1140' more or less to a point along the centerline of the Arkansas River; thence SEly along the centerline of the Arkansas River and its meandering thereof a distance of 4100' more or less to a point on the S line of said Section 24; thence E along the S line of said Section 24 a distance of 900' more or less to a point on the Wly high bank of the Arkansas River; thence NWly along the Wly high bank of the Arkansas River and its meandering thereof to a point that is on the S line of said Lot 5; thence E along the S line of said Lot 5 a distance of 750' more or less to a point that is 720' more or less W of the E line of said Section 24; thence NWly along a line that is parallel to the Arkansas River a distance of 1300' more or less to the POB.

Case No. 1878

Action Requested:

Variance of the required 30' frontage on a public street to 0'. SECTION 207. STREET FRONTAGE REQUIRED -- Use Unit 6, located 11908 N. Oswego.

Presentation:

Linda Vestal, 11908 N. Oswego, Sperry, Oklahoma, stated her request.

Comments and Questions:

Mr. Alberty asked if this was like a family compound. Ms. Vestal replied that it was and her sisters and father are all around it. He asked how she accesses the property. She responded from 116th and 41st and 119th and 41st on New Haven. She submitted a letter showing approval for a rural water tap (Exhibit E-1). She added that she was going to put in an aerobic system for sewage. Mr. Alberty advised Ms. Vestal to file the roadway that would lead from the nearest public right-of-way to her property with a minimum width of 30' and utility easements of record.

Interested Parties:

There were no interested parties present who wished to speak.

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

OCT 17 2002

IN THE MATTER OF AN APPEAL FROM)
A DECISION BY THE TULSA COUNTY)
BOARD OF ADJUSTMENT IN BOARD)
OF ADJUSTMENT CASE NO. 1877.)

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

Case No. CJ-2001-4244-Peterson

JOURNAL ENTRY OF JUDGMENT

Now on this 29th day of May, 2002, there comes on for trial before this Court, the Appeal of John Holder, Patricia Holder, L. C. Neal, Leon Hefley, Beverly Hefley, Don Chambers, Brenda Chambers, Steve Walker, and Pat Buie (hereinafter collectively referred to as "Petitioners") appealing of a decision rendered by the Tulsa County Board of Adjustment on the 19th day of June, 2001. Petitioners appeared in person and by and through their attorney, Dennis N. Shook. The Tulsa County Board of Adjustment appeared through Assistant District Attorney, Dick A. Blakeley. The Intervenor, Holliday Sand and Gravel Company, Inc. appeared through its attorney, James M. Meredith. The Court, after hearing the witnesses and reviewing the evidence submitted and being otherwise fully advised in the premises, makes the following findings:

1. The Tulsa County Board of Adjustment did err in granting intervenor the special exception.
2. There is insufficient substantial evidence to grant the special exception.
3. The decision of the Tulsa County Board of Adjustment was arbitrary, capricious and unreasonable in the granting of the special exception.

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SALLY HOWE SMITH
COURT CLERK

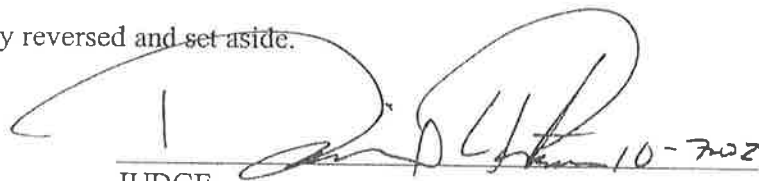
[Handwritten Signature]


EXHIBIT
WALKER
2

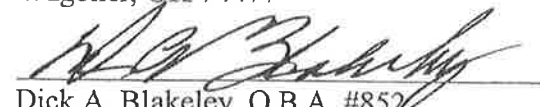
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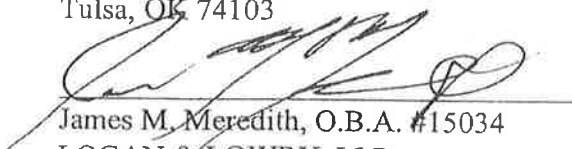
4. The granting of the special exception will result in unnecessary and substantial harm to the Petitioners and the community at large, and will further potentially harm and damage the environment through noise, erosion, an increase in dangerous traffic, and possibly from damage to roadways.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED BY THIS COURT that the decision of the Tulsa County Board of Adjustment in Case No. 1877 in the issuance of a special exception to the intervenor is hereby reversed and set aside.


JUDGE


Dennis N. Shook, O.B.A. # 8202
Attorney at Law
109 N. Casaver St.
P. O. Box 876
Wagoner, OK 74477


Dick A. Blakeley, O.B.A. #852
Chief, Civil Division
Office of the District Attorney
406 Tulsa County Courthouse
500 S. Denver
Tulsa, OK 74103


James M. Meredith, O.B.A. #15034
LOGAN & LOWRY, LLP
19 East Third Street
Grove, OK 74344
918.786.7511

I, Sally Howe Smith, Court Clerk, for Tulsa County, Oklahoma, hereby certify that the foregoing is a true, correct and full copy of the instrument herewith set out as appears on record in the Court Clerk's Office of Tulsa County, Oklahoma, this

OCT 31 2002
By Betty Crocker
Deputy

DISTRICT COURT
FILED

APR 22 2004

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

IN THE COURT OF CIVIL APPEALS

STATE OF OKLAHOMA

DIVISION II

IN THE MATTER OF THE)
APPLICATION FOR EXCEPTION)
OF HOLLIDAY SAND & GRAVEL)
COMPANY BEFORE THE TULSA)
COUNTY BOARD OF)
ADJUSTMENT.)

JOHN HOLDER, PATRICIA)
HOLDER, L.C. NEAL, LEON)
HEFLEY, BEVERLY HEFLEY,)
DON CHAMBERS, BRENDA)
CHAMBERS, STEVE WALKER,)
and PAT BUIE,)

Plaintiffs/Appellees,)

vs.)

HOLLIDAY SAND & GRAVEL)
COMPANY,)

Defendant/Appellant.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JAN 13 2004

MICHAEL S. RICHIE
CLERK

Case No. 98,501

Not for Official Publication

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DAVID L. PETERSON, TRIAL JUDGE

AFFIRMED

2004 APR 22 11:06

SALLY HOWE SMITH
COURT CLERK

EXHIBIT
WALKER
3 3.46

Dennis N. Shook
Tulsa, Oklahoma

For Plaintiffs/Appellees

Donna L. Smith
LOGAN & LOWRY, LLP
Vinita, Oklahoma

For Defendant/Appellant

OPINION BY RONALD J. STUBBLEFIELD, JUDGE:

Holliday Sand and Gravel Company (Holliday) appeals from an order of the District Court of Tulsa County which overturned the decision of the Tulsa County Board of Adjustment to grant Holliday's application for a zoning exception to permit operation of a sand mining plant in a district zoned agricultural. The issue on appeal is whether the Trial Court's decision is clearly contrary to the weight of the evidence. Upon review of the record on appeal and applicable law, we find it is not and affirm.

FACTS AND PROCEDURAL HISTORY

In May 2001, Holliday submitted an application to the Tulsa County Board of Adjustment (Board) seeking a special exception to zoning ordinances to allow it to mine and process sand and gravel at a location – the southwest corner of 155th Street South and 193rd East Avenue – zoned agricultural. The Board held a hearing at which Holliday presented the Board with various documentation demonstrating

its pending licensure to operate such a business.¹ The Board voted to approve the special exception.

Landowners John Holder, Patricia Holder, L.C. Neal, Leon Hefley, Beverly Hefley, Don Chambers, Brenda Chambers, Steve Walker, and Pat Buie filed an appeal with the District Court of Tulsa County. A hearing was held with each side presenting evidence. The Trial Court found that the Board erred in granting the special exception, concluding there “is insufficient substantial evidence to grant the special exception” and that the Board was arbitrary and capricious in granting it. The Court found that the grant of the special exception, would “result in unnecessary and substantial harm to the [Landowners] and the community at large, and will further potentially harm and damage the environment through noise, erosion, an increase in dangerous traffic, and possibly from damage to the roadways.” Holliday appeals.

¹ The documentation included an air quality permit application, a spill prevention control and countermeasure plan and stormwater pollution prevention plan, Oklahoma Water Resources Board Waste Disposal Permit information from a plant operated by Holliday in Coweta, Oklahoma, an application for a wastewater discharge permit, an application for a non-coal mining permit made to the Oklahoma Department of Mines, and an application for a permit from the U.S. Army Corps of Engineers. In addition, there was evidence of employee training to protect a federally listed endangered bird – the least tern – that nests on sand bars along rivers and waterways.

STANDARD OF REVIEW

Under 19 O.S.2001 § 866.24, a trial court is required to perform a trial *de novo* when reviewing a decision of a county board of adjustment. In conducting the trial, the trial court has the same power and authority as a county board of adjustment. *Id.* However, the burden of proof before the trial court “rests on the same party upon whom it rested before the board of adjustment.” *Hargrave v. Tulsa Bd. of Adjustment*, 2002 OK 73, ¶ 6, 55 P.3d 1088, 1091.

When reviewing a decision of a board of adjustment, “there is a presumption of correctness that attaches to [a board’s] decision which, *if affirmed*, will be accorded ‘great weight’ and not disturbed on appeal to this court unless it is ‘clearly arbitrary or erroneous.’” *Bankoff v. Bd. of Adjustment of Wagoner County*, 1994 OK 58, ¶ 19, 875 P.2d 1138, 1143. However, where as here, a trial court reverses the decision of a board, “the presumption that originally attached to its validity is to be considered as having been overcome by the adverse ruling of the trial court.” *Id.* In reviewing a trial court’s decision reversing a board of adjustment decision, we will not overturn the trial court’s decision unless we find it is clearly contrary to the weight of the evidence. *Id.*

ANALYSIS OF ISSUES

Holliday contends that the decision of the Trial Court was against the clear weight of the evidence. It emphasizes its own evidence that environmental concerns had been addressed by various regulatory entities, and that their approval of Holliday's license to operate constitutes a prima facie showing that the land use would not be injurious to the neighborhood or detrimental to the public welfare. It also emphasizes its evidence that the increase in traffic on the area roads would not be a great percentage of increase over current use, and that it had and would take considerable precautions to reduce noise at its plant.

Holliday's principal witness was its Vice President of production, Michael Odell. Odell testified that a good portion of the proposed plant site is flood plain and that approval had been obtained to operate in the flood plain. He described the plant operation as follows:

[S]tarting in the river we have a dredge, a floating steel dredge with a pump on it that sucks sand and gravel slurry out of the river from the bottom of the river, conveys it with a floating pipeline to the bank where we have a hinge point. The pipe continues directly to the processing equipment, and – which is located here. You can see its more – as near to the riverbank as possible.

These kidney shapes are sand stockpiles conveyed both directions from the plant, as there's two primary piles. The trucks would enter – they would come down south on County Line Road, turn west into the plant;

down the entrance road, it's about 800 feet, make a circuit on the plant haul road here, be loaded near the sand stockpiles, proceed to the scale to be weighed, receive a ticket, pull off after the scale, tarp, head out east on the haul road or the entrance road, and then I believe all the traffic will be heading north again on County Line Road.

Odell further testified that Holliday would locate the proposed facility as far from existing residences as possible, that Holliday does not use any kind of chemical processes in its operations, and that Holliday would take a wide range of precautions against increased noise. Those precautions included the use of electric motors in various equipment, a "hospital quality" silencer on the diesel engine on the dredge, state of the art silencers on the scoop loaders, and the use of plastic or rubber coated chutes and screens. He did admit that there would be approximately 90 trucks using the facility per day and also that erosion had occurred at the Coweta plant operated by Holliday, but before Holliday began operating the plant.

In addition to Odell's testimony, Holliday called an appraiser to testify that the operation of the plant would not substantially reduce the values of neighborhood properties. However, the witness's credibility was substantially diminished by his admission that he had "dropped" his appraiser's license and was no longer a licensed/accredited appraiser.

Finally, Holliday presented the testimony of an engineer to refute the testimony of a witness of Landowners that the sand mining would result in bank erosion at the site.² The witness found several faults with the conclusion that substantial erosion was a probability from the operation of the mine.

Landowners presented the testimony of Dean Holladay, the Superintendent of Highway Maintenance Division District 3, Tulsa County. Mr. Holladay is responsible for the maintenance of existing roadways, including 193rd East Avenue in the area of the proposed plant. He testified that the span of 193rd East Avenue between the new Creek Turnpike and 161st Street is beginning to fail and needs maintenance performed on it. He stated that the road was designed for light traffic and is not suitable to handle an additional one hundred semi-trucks that would travel the road in connection with the proposed plant's operation. On cross-examination, Holladay acknowledged that semi-trucks currently use the roadway in connection with sod farms and another sand plant operating near the area. He also admitted a possibility that the City of Tulsa is conducting an evaluation to determine if the roadway should be improved.

² Although Holliday had the burden of proof at trial, the Landowners put on their case first.

Landowners also called witness Patrick Boyd, a real estate appraiser. He testified that the land in the area of the plant, between the new Creek Turnpike and 161st Street, is a rural residential farming community area, that had become more dense in population in the last ten years. Boyd stated that he is familiar with another sand plant owned by Holliday in Coweta, Oklahoma, and opined that a sand and gravel plant has a negative impact on the value of residential property because of the noise of the plant and the heavy commercial traffic.

Landowners also called Michael Odell, the Holliday Vice President, primarily to gain his admission that he had described the traffic flow to the area homeowners as an average of ninety trucks per day – both dump trucks and semi-trucks. He had also informed the homeowners that the plant would operate between 6:00 a.m. and 6:00 p.m. on Mondays through Fridays and between 6:00 a.m. and 12:00 p.m. on Saturdays.

Landowners also presented the testimony of Jack Sheridan, an engineer specializing in hydraulics, who testified that the operation of the sand plant in the area proposed by Holliday would cause erosion of the riverbank and erosion up to 193rd East Avenue. He stated this was a probability, not just a possibility.

Finally, landowner Patricia Holder testified that the noise from trucks involved in the sod farms and other sand plant had already affected the enjoyment

of her property, and that a substantial increase in truck traffic as contemplated by Holliday would further demean the lifestyle in the “very quiet, very peaceful” neighborhood. The parties stipulated that, if called as witnesses, the testimony of four other landowners would be essentially the same as Ms. Holder’s testimony.

The parties do not dispute that the area in which the proposed plant is to be located is zoned agricultural. Under section 310 of Tulsa County Zoning Code, mining and mineral processing are permitted by special exception in areas so zoned. When an application for special exception is filed, section 1680.3 of the Tulsa County Zoning Code provides for the following procedure:

The Board of Adjustment shall hold the hearing, and upon the concurring vote of three members may grant the Special Exception *after finding 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.* Provided that the Board in granting a Special Exception shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.

(Emphasis added.) When considering a special exception for mining, the Board must also “consider potential environment influences, such as dust and vibration,

and shall establish in the particular instance, appropriate protective conditions such as setbacks, screening, and method of operation, as will mitigate the adverse affect on proximate land uses.” Tulsa County Zoning Code § 1224.3.

In reviewing the evidence, we find that Landowners presented clear evidence that the operation of the sand plant will “be injurious to the neighborhood” and possibly “detrimental to the public welfare.” Although Holliday presented testimony that it would do a variety of things to hold down noise, the increase of heavy truck traffic will be substantial, and the evidence tends to establish that this will considerably increase the noise level and damage the roadways. In addition, section 1224.3 of the Tulsa County Zoning Code requires consideration of possible “environmental influences.” Although there is a strong evidentiary dispute over whether the plant will result in substantial erosion to the river bank, there was expert testimony to that effect which the Trial Court could have, and apparently did, accept.

It is true, as Holliday points out in its brief, that a denial of a special exception cannot be based on fears of what may or may not happen. *In re Application of Volunteers of America, Inc.*, 1988 OK 8, ¶ 11, 749 P.2d 549, 552. However, Landowners fulfilled the requirement of “actual evidence,” *Id.*, by both the testimony regarding the substantial increase in truck traffic and its probable

effect on the roads, and by the engineer's expert testimony that erosion will occur, resulting in damage to the riverbank.

CONCLUSION

We conclude that the Trial Court's decision is not clearly contrary to the weight of the evidence. The Landowners presented clear evidence that the zoning exception would allow a use of the property which would be injurious to the neighborhood and the environment. Accordingly, the decision of the Trial Court is affirmed.

AFFIRMED.

COLBERT, V.C.J., and TAYLOR, P.J., concur.

January 13, 2004



Case Number CBOA-2821

Holliday Sand & Gravel Company

To: The Tulsa County Board of Adjustment

The City of Broken Arrow has reviewed the proposal for a Special Exception to permit Use Unit 24, for a Sand Mining operation. This undeveloped area is within the Broken Arrow fence line and has access only to County Line Road, 23rd Street (193rd East Avenue), which is maintained by the City of Broken Arrow.

The City of Broken Arrow is not in support of this Special Exception, for the following reasons;

1. The City of Broken Arrow's Comprehensive Plan, designates this entire area for and low density residential uses only, as identified in Level 1 of the Broken Arrow Comprehensive Plan. The proposed use – Sand Mining, Sand Extraction and Sand and Earth Transportation, is not a permitted Land Use, nor a compatible land use within Level 1 of the Comprehensive Plan.
2. The application states that this property is in a floodplain. According to County and City maps, some of this property is in the 100 year floodplain. However, most of this tract and surrounding property is not in the 100 year floodplain and is developable as permitted within Level 1 land uses, identified in the Comprehensive Plan.
3. There is only one access point to this property, from County Line Road or 23rd Street (193rd East Avenue). This road is currently maintained by the City of Broken Arrow, though the east portion of the street (north bound) is in Wagoner County and within the City of Coweta Fenceline.
4. Existing street and traffic control signs (south bound) are installed and maintained by the City of Broken Arrow. There has been no coordination for additional traffic studies to analyze traffic control signage.
5. Proposed Sand Mining and Dredging operation is approximately ½ mile south of the City of Broken Arrow Lynn Lane Waste Water facility. Impacts of the proposed use should be analyzed, before this use can be considered.

Based on the above reasons and the City of Broken Arrow's Comprehensive Plan, it is recommended that this special exception not be permitted at this time, until all of these concerns have been addressed.

Sincerely,

Larry R. Curtis, CFM

Community Development Director, City of Broken Arrow



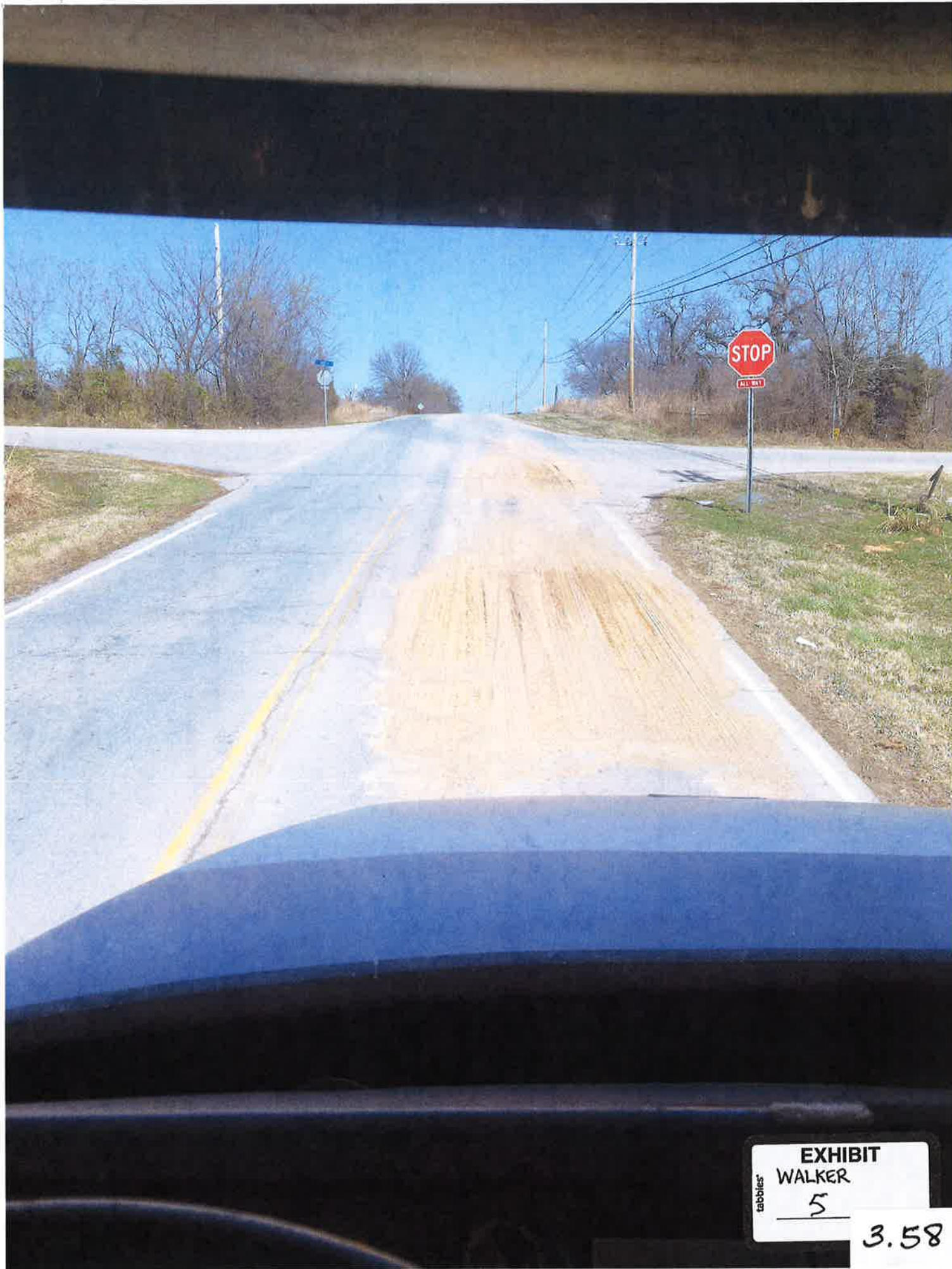


EXHIBIT
WALKER
5

3.58

5-1



3.59

5-2



3.60

5-3



3.61

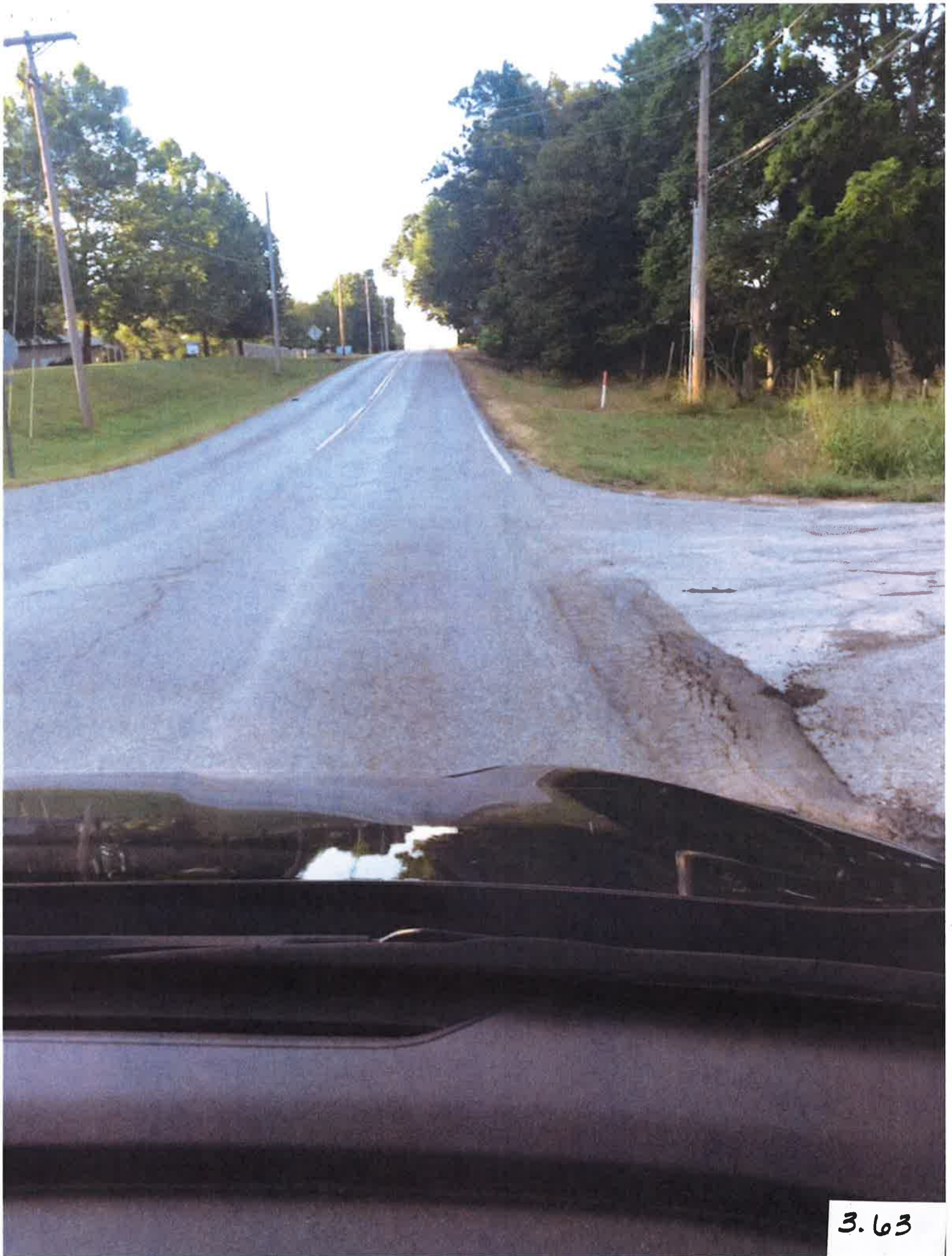
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EXHIBIT
WALKER
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3.62

tabbles

7-1



3.63

7-2

Noise Increases with Vehicle Speed

When Congress allowed states to raise speed limits, and many states did raise speed limits from 55 mph to 65 mph and higher, highways in these states got noisier. The table below lists the change in the noise made by automobiles, medium trucks, and heavy trucks as they increase in speed from 30 mph to 70 mph. Raising the speed of an automobile 10 mph (from 55 to 65 mph) increases the noise made by that vehicle 3 dB, from 72 dB to 75 dB. Similarly, noise made by trucks increases from 86 to 88 dB with the same 10 mph increase in speed. In these examples, gas mileage also decreases by 15%.

The result is a substantial increase in noise for those living and working near highways. Soundwalls are capable of reducing noise levels by 10 dB, so increased speed limits have also significantly reduced the effectiveness of highway noise barriers.

Reducing speed limits on roadways and increasing enforcement of speed limits is often the most effective and cost efficient means of reducing noise. For example, reducing vehicle speeds from 40 to 30 mph is as effective as removing one half the vehicles from the roadway.

Speed (mph)	Noise at 50 ft (dB)		
	Auto	Medium Truck	Heavy Truck
30	62	73	80
31	62	74	80
32	63	74	81
33	63	75	81
34	64	75	81
35	64	76	82
36	65	76	82
37	65	77	82
38	66	77	82
39	66	77	83
40	67	78	83
41	67	78	83
42	67	78	84
43	68	79	84
44	68	79	84
45	68	79	84
46	69	80	85
47	69	80	85
48	70	80	85
49	70	81	85
50	70	81	85
51	71	81	86
52	71	82	86
53	71	82	86
54	72	82	86



3.64

55	72	82	86
56	72	83	87
57	72	83	87
58	73	83	87
59	73	83	87
60	73	84	87
61	74	84	88
62	74	84	88
63	74	84	88
64	74	85	88
65	75	85	88
66	75	85	88
67	75	85	89
68	75	86	89
69	76	86	89
70	76	86	89

Source: Cowan, Environmental Acoustics, 150

[Top](#)

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Assessor JOHN A. WRIGHT

Property Search


Disclaimer

The Tulsa County Assessor's Office has made every effort to insure the accuracy of the data contained on this web site; however, this material may be slightly dated which could have an impact on its accuracy.

The information must be accepted and used by the recipient with the understanding that the data was developed and collected only for the purpose of establishing fair cash (market) value for ad valorem taxation. Although changes may be made periodically to the tax laws, administrative rules and similar directives, these changes may not always be incorporated in the material on this web site.

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Quick Facts	
Account #	R97313731329980
Parcel #	97313-73-13-29980
Situs address	14101 S MEMORIAL DR E BIXBY 74008
Owner name	HSG ACQUISITION COMPANY LLC
Fair cash (market) value	\$223,400
Last year's taxes	\$2,386
	Subdivision: UNPLATTED
Legal description	Legal: PRT NE & NW BEG 175E NWC NW TH SE 110.18 SE531.35 SE778.07 SE1983.07 SE555.22 NE435 SW244.2 NW627.81 NW924.84 NW236.91 NW970.64 NW334.52 W TO POB SEC 13 17 13 13.09ACS
	Section: 13 Township: 17 Range: 13



General Information	
Situs address	14101 S MEMORIAL DR E BIXBY 74008
Owner name	HSG ACQUISITION COMPANY LLC
Owner mailing address	11011 CODY 3RD FLOOR OVERLAND PARK, KS 66210
Land area*	13.09 acres / 570,200 sq ft
Tax rate	BI-4A [BIXBY] Subdivision: UNPLATTED
Legal description	Legal: PRT NE & NW BEG 175E NWC NW TH SE 110.18 SE531.35 SE778.07 SE1983.07 SE555.22 NE435 SW244.2 NW627.81 NW924.84 NW236.91 NW970.64 NW334.52 W TO POB SEC 13 17 13 13.09ACS
	Section: 13 Township: 17 Range: 13
Zoning	AGRICULTURE DISTRICT [AG]

Values				
	2018	2019	2020	
Land value	\$95,000	\$95,000	\$95,000	
Improvements value	\$112,400	\$116,200	\$128,400	
Fair cash (market) value	\$207,400	\$211,200	\$223,400	

Exemptions claimed				
	2018	2019	2020	
Homestead	-	-	-	
Additional homestead	-	-	-	

Tax Information			
	2018	2019	2020
Fair cash (market) value	\$207,400	\$211,200	\$223,400
Total taxable value (capped)	\$155,715	\$163,500	\$171,675
Assessment ratio	11%	11%	11%
Gross assessed value	\$17,129	\$17,985	\$18,884
Exemptions	\$0	\$0	\$0
Net assessed value	\$17,129	\$17,985	\$18,884
Tax rate	BI-4A [BIXBY]		
Tax rate mills	131.43	132.66	132.66*
Estimated taxes	\$2,251	\$2,386	\$2,505*
Most recent NOV	March 3, 2020		

* Estimated from 2019 millage rates

Tax detail (2019 millages)			
	%	Mills	Dollars
City-County Health	1.9	2.58	\$48.72
City-County Library	4.0	5.32	\$100.46
Tulsa Technology Center	10.0	13.33	\$251.72
Emergency Medical Service	0.0	0.00	\$0.00
Tulsa Community College	5.4	7.21	\$136.15
School Locally Voted	26.5	35.16	\$663.96
City Sinking	0.0	13.10	\$247.38
School County Wide			7.25
School County Wide			5.54
School County Wide			0.77
County Gov			3.19

EXHIBIT

WALKER

9

3.66

Improvements

Bldg ID#	Property type	Use	Year built	Year remodeled	GBA †	NRA †	Stories	Story height
1	Commercial	Storage Warehouse	1978	—	2,000 SF	2,000 SF	1.0	16.0
1	Commercial	Office Building	1978	—	680 SF	680 SF	1.0	10.0
1	Commercial	Storage Warehouse	1987	—	1,500 SF	1,500 SF	1.0	14.0

Sales/Documents

Date	Grantor	Grantee	Price	Doc type	Book-Page/Doc#
Aug 1, 2008	LIST & CLARK COMPANY	HSG ACQUISITION COMPANY LLC	\$100,000*	Warranty Deed	2008093678

* Multiple parcel sale

Images

Photo/sketch
(Click to enlarge)

† Square footage and acreage values included in this record are approximations. They may not reflect what a licensed surveyor would determine by performing a formal survey. They are for tax purposes only and are not intended for use in making conveyances or for preparing legal descriptions of properties.

Leaflet | Tiles © Esri — Source: Esri, DeLorme, NAVTEQ, USGS, Intermap, iPC, NRCAN, METI, TomTom, 2012

[Click to view this area on the Google Maps web page in a new window](#)

John A. Wright — Tulsa County Assessor

Tulsa County Administration Building, Room 215 | 500 S. Denver | Tulsa, OK 74103

Phone: (918) 596-5100 | Fax: (918) 596-4799 | Email: assessor@tulsacounty.org

Office hours: 8:00–5:00 Monday–Friday (excluding holidays)

3.67

	2018	2019	2020
Senior Valuation Limitation	—	—	—
Veteran	—	—	—

(Continued on next page)

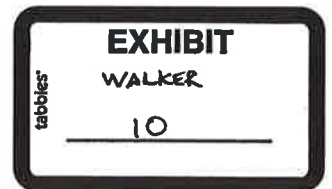
3.68



Holliday Sand & Gravel Plant @ 14101 S. Memorial Dr. (abandoned)



Imagery ©2020 Maxar Technologies, Map data ©2020 50 ft





3.70



10-3

3.71



10-4

3.72

Sparger, Janet

From: Ron Schnare <rschnare51@gmail.com>
Sent: Wednesday, June 10, 2020 11:59 AM
To: esubmit
Subject: Case # CBOA-2821 written Comments for Holiday Sand & Gravel new Sand Plant.

Ron Schnare
19441 E 133rd Pl S
Broken Arrow, 74014
918-451-8169

My Name is Ron Schnare and I am a resident that lives at approximately 133rd and county line road in Broken Arrow. I am writing to comment on the proposed new Sand plant in which I received a notice of via mail.

I would like to submit 2 concerns with the proposal.

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2. Noise and Jake Brakes. Are there plans to address this concern for the residents that live along county line road? The use of Jake brakes should not be allowed if this proposal is approved as part of Holiday Sand and Gravel being a good neighbor.

Thank you for the opportunity to comment and for addressing my concerns.

Ron Schnare

Sparger, Janet

From: Susan Vitt <showard34@hotmail.com>
Sent: Saturday, July 4, 2020 12:26 PM
To: esubmit
Subject: Holliday Sand & Gravel, ref# CBOA-2821

Tulsa County Board of Adjustment c/o
Incog
2 W 2nd St, STE 800
Tulsa OK 74103
Ref # CBOA-2821

I am writing in response to ref#2821 concerning the change of usage for Holliday Sand and Gravel. This company is using county line rd, (193rd) for transportation of their sand and gravel. I do not want to increase the traffic by hauling more sand and gravel. This area is a residential area and is not able to handle the extra traffic and weight loads. I believe this would be a great injustice to the people currently living in this area. Who is going to pay for the up keep of the roads. The amount of traffic would be a great burden to everyone. This is already a heavy driven area. We have Churches, housing and a great number of children that are in this area. New sub division are going in daily. This will hinder the growth in south Broken Arrow. Someone will be lining their pockets at the expense of Broken Arrow residents. I am a resident of South Broken Arrow and do not care for the traffic, littering, smell and the noise level that would be introduced to our area of Broken Arrow. Please do not allow approval of this request.

Thank you
Susan Vitt

Sparger, Janet

From: fcs85a <fcs85a@windstream.net>
Sent: Saturday, June 13, 2020 2:17 PM
To: esubmit
Subject: CBOA-2821 Zoning application Holliday Sand and Gravel

June 13, 2020

Dear Sirs,

If I may, I would like to submit my objection to the proposed special exception requested by Holliday Sand and Gravel Company, slated to be heard by the Tulsa County Board of Adjustment on June 16th, 2020. Case Number CBOA-2821.

First and foremost, Holliday Sand has already been denied a zoning variance by the Oklahoma Supreme Court in CJ-2001-4244.

There are numerous reasons for rejection I would like to briefly address.

Holliday states in their application that there would be an average of 5 trucks per hour, or 50 trucks per day entering and leaving this plant.

I spent three hours last week counting both north bound and south bound trucks crossing in front of my property on 193rd east ave. On Wednesday, June 10th, a total of forty trucks passed between 11:22 am and 12:22 pm. Eighteen going north and twenty two going south. On June 11th, between 9:00 and 10:00 am, forty nine trucks passed, twenty north bound and twenty nine south bound. And on June 12th, between 5:55 am and 6:55 am, forty two trucks went by, twenty seven north and fifteen south. Please note the time on June 12th. I did not count the truck that went by at 5:37 am.

This equates to four hundred and forty truck per a ten hour day or two thousand two hundred trucks leaving and entering the Holliday sand plant on 161st street. These are not Chevrolet or Ford pick up trucks. They are very large ten axle vehicles capable of carrying fifteen tons. The noise and vibration from these trucks is difficult to comprehend until you are exposed to them ten hours or so per day five days a week.

I would also like to state that these trucks are extremely detrimental to the county road system along 193rs street. A segment of this road was resurfaced approximately two years ago from just south of the 141st. intersection. It is already developing several potholes and the intersection itself has virtually been destroyed because of the asphalt buckling. A washboard effect so to speak. These road faults are very destructive to regular traffic vehicles. I might also state, that these trucks do discharge a great deal of sand on the intersections when they proceed from a stop, which causes a lot of tire slippage for regular cars.

The number of trucks that will be traveling along 193rd street will cause a tremendous amount of traffic congestion to the Creek turnpike.

This is only a two way street with no shoulders. There are double yellow lines just about the whole route. Consequently, no passing allowed. The amount of congestion, if one is unfortunate enough to be behind one of these trucks, can be very frustrating. Imagine the back up if four hundred or more truck join the parade.

I will keep this brief as other residences will also be adding their objections I am sure. Bottom line. This area is both residential and farm land. It is not zoned for mining and we do not live out here to be subjected to the constant truck traffic, noise and air pollution this company proposes to bring to our area. We already have enough of it from the 161st street plant. I respectfully request that the board reject this application forthwith.

I appreciate you reading and considering this e-mail.

Sincerely,

James M Zyskowski DVM Emeritus

15355 south 193rd east ave

Broken Arrow, OK. 74014

918-694-8587

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This email has been checked for viruses by Avast antivirus software.
<https://www.avast.com/antivirus>

Sparger, Janet

From: Patricia Lester <pattilester@cox.net>
Sent: Monday, June 15, 2020 9:00 AM
To: esubmit
Subject: Case number:CBOA-2821 (Holiday Sand and Gravel, Inc.)

I currently live on the 30 acre property that is located at 131st and County Line Road. This property has been lived and farmed on since 1946 by the Lester family. Currently 3 family units reside on this land. Included are small children and older grandparents who grew up on this property. We have seen County Line road change over the last 75 years, but never imagined that this road which virtually has not changed except for resurfacing the dirt roads; It is still a 2 lane road with no room on either side to walk or stand on safely. There are no shoulders, sidewalks bile or walking paths. This road has not been changed to accommodate the increasing number of dump trucks which go back and forth all hours of the day and pre daylight hours. Just trying to get the mail safely is a waiting game with traffic.

One of our family members teaches at Holland Hall. He bikes to work daily and uses all manner of lights on his bike and personal self to alert the trucks from running into him. There is no room for the trucks to get by him as he must go down County Road for 1 mile to get to the Creek Turnpike bike paths. The Broken Arrow school buses pick up children up and down County Line Road and the traffic backs up frequently, children are waiting by the side of the road with no where to stand except the sloping bar ditches. If you want to jog or run for exercise, you cannot safely be on this road.

We have fenced in our yards to protect our toddlers from running into the road, where trucks whiz by at a steady pace. We have an electric gate which stays open for about 30 seconds, so we constantly are watching to make sure the children don't get into the road before it shuts. Unfortunately, not all the families have the luxury of fenced yards. There are homes with children up and down County Line Road.

Gone are the days when we could sit on our porch and have a conversation, mainly because the trucks are using Jake Breaks to slow down at the stop sign after going as fast as they can before they stop. This goes not just one way, but both north and south.

Holiday Sand claims that no families live within a half of a mile from their plant; but this is not true. Besides the several families in that immediate area, there are dozens of homes between the 141st and 161st area where the trucks are going back and forth. But these trucks cannot get to this location without going down County Line Road where hundreds of families reside and have to listen to these vast amount of trucks pass by all day. We also have friends who bought property at 151st and County Line Road over 1 year ago and were not notified of this hearing.

The grandparents who live on our property have friends on the other side of the street, who also have lived on their properties for 50 plus years, but neither can visit by walking when they cannot safely cross the street. Nor can they walk to the corner because the roads are not wide enough for trucks and people to be on the same street.

So multiplying the current amount of trucks with more trucks will not be suitable for safety of the current residents, nor future residents.

I wish that I could be at the meeting in person, but due to the COVID 19 health risk for older citizens, and with the increase level of infections this past week, I will respectfully send this email instead.

Regards,
Patricia Lester

Sparger, Janet

From: Ron Schnare <rschnare51@gmail.com>
Sent: Wednesday, June 10, 2020 11:59 AM
To: esubmit
Subject: Case # CBOA-2821 written Comments for Holiday Sand & Gravel new Sand Plant.

Ron Schnare
19441 E 133rd Pl S
Broken Arrow, 74014
918-451-8169

My Name is Ron Schnare and I am a resident that lives at approximately 133rd and county line road in Broken Arrow. I am writing to comment on the proposed new Sand plant in which I received a notice of via mail.

I would like to submit 2 concerns with the proposal.

1. The negative impact to intersections and road conditions. The proposal will DOUBLE the number of big heavy trucks using County line between the creek turnpike and 141st meaning added wear on what are already rough intersections. Is there budget available or where does funding come from to maintain the road and condition of the intersections? The intersections at 121st, 131st and 14st are already in sub-par condition and will deteriorate at a faster pace with the increased truck traffic. With this proposal, this stretch of road will average either a 10 wheeler dump truck or 18 wheeler every 3 minutes for 10 hours a day. That is a lot of stress on the roadway. Please do not approve the request of Holiday Sand & Gravel without considering this and having a defined plan in place to address the roads and intersections.

2. Noise and Jake Brakes. Are there plans to address this concern for the residents that live along county line road? The use of Jake brakes should not be allowed if this proposal is approved as part of Holiday Sand and Gravel being a good neighbor.

Thank you for the opportunity to comment and for addressing my concerns.

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My Name is Ron Schnare and I am a resident that lives at approximately 133rd and county line road in Broken Arrow. I am writing to comment on the proposed new Sand plant in which I received a notice of via mail.

I would like to submit 2 concerns with the proposal.

1. The negative impact to intersections and road conditions. The proposal will DOUBLE the number of big heavy trucks using County line between the creek turnpike and 141st meaning added wear on what are already rough intersections. Is there budget available or where does funding come from to maintain the road and condition of the intersections? The intersections at 121st, 131st and 14st are already in sub-par condition and will deteriorate at a faster pace with the increased truck traffic. With this proposal, this stretch of road will average either a 10 wheeler dump truck or 18 wheeler every 3 minutes for 10 hours a day. That is a lot of stress on the roadway. Please do not approve the request of Holiday Sand & Gravel without considering this and having a defined plan in place to address the roads and intersections.

2. Noise and Jake Brakes. Are there plans to address this concern for the residents that live along county line road? The use of Jake brakes should not be allowed if this proposal is approved as part of Holiday Sand and Gravel being a good neighbor.

Thank you for the opportunity to comment and for addressing my concerns.

Ron Schnare

Sparger, Janet

From: Ron Schnare <rschnare51@gmail.com>
Sent: Wednesday, June 10, 2020 11:59 AM
To: esubmit
Subject: Case # CBOA-2821 written Comments for Holiday Sand & Gravel new Sand Plant.

Ron Schnare
19441 E 133rd Pl S
Broken Arrow, 74014
918-451-8169

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Thank you for the opportunity to comment and for addressing my concerns.

Ron Schnare

Sparger, Janet

From: Jones, Robi
Sent: Monday, June 15, 2020 3:31 PM
To: Sparger, Janet
Subject: FW: CBOA-2821

These came in today as well.

From: Harnden, Michael (Holliday Sand & Stone) <mike.harnden@hollidaysand.com>
Sent: Monday, June 15, 2020 11:18 AM
To: Jones, Robi <rjones@incog.org>
Subject: CBOA-2821

Robi,
I spoke with Ron Peters about starting a road maintenance fund for 193rd if we were approved. Ron gave me Alex Mills contact information the Tulsa County Engineer. I spoke with Alex and he thought it was a great idea. Alex was going to find out how and who he would need to speak with about setting the fund up. I'll let you know when I find out more.

Thanks

Mike Harnden

Sales Manager

Cell: (918)232-2301

Office: (918)369-8850

Fax: (918)369-8842

Email: mike.harnden@hollidaysand.com

Holliday Sand & Stone Co.

A CRH COMPANY



Case Number CBOA-2821

Holliday Sand & Gravel Company

To: The Tulsa County Board of Adjustment

The City of Broken Arrow has reviewed the proposal for a Special Exception to permit Use Unit 24, for a Sand Mining operation. This undeveloped area is within the Broken Arrow fence line and has access only to County Line Road, 23rd Street (193rd East Avenue), which is maintained by the City of Broken Arrow.

The City of Broken Arrow is not in support of this Special Exception, for the following reasons;

1. The City of Broken Arrow's Comprehensive Plan, designates this entire area for and low density residential uses only, as identified in Level 1 of the Broken Arrow Comprehensive Plan. The proposed use – Sand Mining, Sand Extraction and Sand and Earth Transportation, is not a permitted Land Use, nor a compatible land use within Level 1 of the Comprehensive Plan.
2. The application states that this property is in a floodplain. According to County and City maps, some of this property is in the 100 year floodplain. However, most of this tract and surrounding property is not in the 100 year floodplain and is developable as permitted within Level 1 land uses, identified in the Comprehensive Plan.
3. There is only one access point to this property, from County Line Road or 23rd Street (193rd East Avenue). This road is currently maintained by the City of Broken Arrow, though the east portion of the street (north bound) is in Wagoner County and within the City of Coweta Fenceline.
4. Existing street and traffic control signs (south bound) are installed and maintained by the City of Broken Arrow. There has been no coordination for additional traffic studies to analyze traffic control signage.
5. Proposed Sand Mining and Dredging operation is approximately ½ mile south of the City of Broken Arrow Lynn Lane Waste Water facility. Impacts of the proposed use should be analyzed, before this use can be considered.

Based on the above reasons and the City of Broken Arrow's Comprehensive Plan, it is recommended that this special exception not be permitted at this time, until all of these concerns have been addressed.

Sincerely,

Larry R. Curtis, CFM

Community Development Director, City of Broken Arrow

Sparger, Janet

From: Wolfe <chantelg@yahoo.com>
Sent: Saturday, June 13, 2020 10:23 AM
To: esubmit
Subject: Case Number: CBOA-2821 Holliday Sand and Gravel Hearing

To Whom it May Concern,

We live just south of 131st St on County Line. We moved here a year ago for the peace and quiet and country living. We did not realize at the time that County Line was used to transport so many large and loud trucks. The traffic noise, congestion, and street conditions are the only real downfall of the property we bought.

The constant road noise from 100 trucks a day accelerating without a muffler right in front of our house is upsetting. Adding another 100 trucks a day would just be miserable. Plus the countless number of drivers in loud cars or motorcycles thinking the intersection is the place to drag race and get up to speeds of 100 miles per hour makes the road noise a constant annoyance. When I pull out of my driveway onto County Line, I typically have to wait for several minutes for traffic to clear because of the significant amount of cars and trucks on this road. The condition of the road is poor, as well, due to all the heavy trucks driving back and forth daily. I believe that adding another 100 trucks a day down this road would result in extreme difficulty with pulling into traffic, a significant increase in noise pollution, and escalate unsafe driving conditions from the worn down road.

We spent so much money on our dream house and to have that spoiled by the constant presence of these loud trucks is supremely disappointing and the thought of that multiplying is truly demoralizing. I hope there is a solution where everyone can get what they want, but in the meantime, we have to tolerate the trucks we have now. Please, do not add any more trucks to the scenario.

Thank you,
Chantel Wolfe

Sparger, Janet

From: Patrick Lester <patlester1939@icloud.com>
Sent: Sunday, June 14, 2020 11:00 PM
To: esubmit
Subject: Case Number: CBOA-2821 (Holliday Sand and Gravel, Inc.)

I am expressing opposition to this proposed Special Exception to permit Holliday Sand to double the number of massive dump trucks that will travel on 193rd (County Line Rd). I would attend this hearing in person except for a scheduled physician appointment.

- 1) I travel County Line daily and the current dump truck traffic from the existing sand mining operation just south of the proposed plant already impedes and endangers traffic on this heavily traveled road. Last Thursday, I counted 3 of these trucks passing me in the morning and 4 in the afternoon going in the opposite direction just between 131st and 121st streets.
- 2) It has been reported that current non-dump truck traffic volume at County Line road and 131st St is several thousand vehicles each day. I first lived immediately south of 131st St in 1946 (returning to live on our farm in 2018). In the late 1950s, I often walked home from high school football practice and usually 1-2 cars would drive by but on occasion, not a single vehicle passed and I walked the entire 7 miles. What a difference! But it would be considerably more dangerous today not just with the busy passenger traffic but with these monster trucks!
- 3) There are citizens who ride bicycles on 193rd to the Creek Expressway to take advantage of the bike trails. I don't as I'm risk adverse but younger people do.
- 4) There are children who live on this route. Large trucks with very long stopping distance create an additional hazard for them as they walk to neighbors' homes.
- 5) These drivers usually use Jake Breaks when approaching 131st St. This is incredibly loud and is a further disturbance to the quiet rural environment many moved to the country to enjoy.
- 6) With the current and anticipated new home construction on this route, it is already a growing suburban area. Those of us with small farms bemoan the additional loss of solitude but a conversion of agricultural land to such a noisy and dangerous industry would be regrettable.
- 7) And finally, over the past year or so, I have noticed a more rapid deterioration of the road surface, presumably from the 75-100 dump trucks which currently travel this road. Can we sacrifice safety, solitude and street maintenance cost escalation for the benefit of an already undesirable industry?

I urge you to deny the Special Exception.

Yours truly,
Patrick D. Lester

Sent from my iPad

Sparger, Janet

From: Jeffery Hamilton <lipgrippers@aol.com>
Sent: Monday, June 15, 2020 9:37 PM
To: esubmit
Subject: Case Number CBOA-2821

Please **do not** grant a special exemption to Holliday Sand and Gravel Company to permit mining and mineral processing in an AG zoning district.

They are not good neighbors. The light and noise pollution, even at 2am, is horrendous. Their 75-100 trucks entering and exiting their plant on 161st and travelling on both 161st (a 15 ton limit road) and 193rd East Ave (weight limit unknown) sandblast our cars and throw rocks at our windshields, even when travelling in the opposite direction. They are not stopped for speeding.

193rd East Ave is in bad shape from all the truck traffic that we have currently. It is already falling off the road bed, has many unfilled potholes (one big enough to lose a tire in) waffling, ruts and bumps. Lets add another 100 trucks and watch it sink further into the river bottom.

Before allowing 200 trucks to run up and down 193rd East Ave, a major traffic concern, one should consider whether or not the roads and bridges were built to handle that much heavily weighted traffic. From all appearances, they were not. They cannot even handle the 100 trucks we see now.

The entrance to Holliday's Sand Plant on 161st street is dangerous as trucks pull out trying to get on the road before you get there. There has been one death that I know of. Now they want to open another plant with their entrance near the bottom of a hill. The people driving south on 193rd East Ave will have a good chance of having a truck pull out in front of them. Since the speed limit is 50, a very dangerous proposition.

Enough is enough! How they ended up with a plant on this side of the river is beyond me. It shouldn't have happened. And it should not happen again.

PLEASE...NO SPECIAL EXEMPTION.

Jeff and Arlene Hamilton
16818 S 203rd East Ave
Broken Arrow OK 74014
(918) 486-5150

Sparger, Janet

From: Mandy <amanda.damaris@gmail.com>
Sent: Monday, June 15, 2020 10:04 PM
To: esubmit
Subject: Case number:CBOA-2821 (Holiday Sand and Gravel, Inc.)

To Whom m it may concern,
I live on 131st and 193rd and I am writing to state that I Strongly oppose allowing Holiday Sand to further develop land that will increase truck traffic in 193rd street.

This street is already full of large construction vehicles, dump trucks and semis. The noise level these trucks bring to our community is already appalling. Let alone the fact that children play in these neighborhoods and in the yards that face 193rd, like mine.

This county road used to be quite and peaceful and is now littered with trash and noise, largely because of the increased traffic of already operating dirt and gravel companies. It has become equivalent of living next to a busy highway.

Our family has lived here for over 30 years and we DO NOT want this community to turn further into a through-fair for sand and dirt mining business.

Our roads cannot take the increased wear and our families and kids cannot take the increased noise, view, and unsafe conditions that large trucks bring to our neighborhood.

I have to work and cannot attend the meeting. Please allow our voices to be heard. Please to not approve this use of the land unless there is a different route trucks can take, decreasing the traffic through our street.

Mandy Foster
13150 S 193rd East Ave

Sparger, Janet

From: Justin & Mandy <jmfester@gmail.com>
Sent: Monday, June 15, 2020 10:12 PM
To: esubmit
Subject: Case number:CBOA-2821 (Holiday Sand and Gravel, Inc.)

I am writing to state that I do not agree that Holiday Sand and Gravel should be allowed to further develop their land which will increase truck traffic along our street of 193rd East Ave.

This street is already unsafe to the neighborhood. Houses like ours that face 193rd cannot allow our children to play in the front yard. We are awoken at 5 AM due to truck brakes Monday -Saturday mornings. We had to upgrade all of our windows to highest level of sound proof because the noise level of the trucks are so great we are at times unable to hear a conversation within our own home, let alone attempt a conversation outdoors.

To increase this would not only be effecting our daily lives, but increasing the unsafe conditions large trucks already contribute to for biking and walking along our street. The streets are narrow and worn due to the great amount of traffic and the high speed limits. County line did nit see this type of large truck traffic before dirt and gravel mining businesses opened at 141st/county line. Please do not increase this type of traffic to our community and to our streets

Justin Foster

Sparger, Janet

From: Jonathan Klecka <jonathanklecka@gmail.com>
Sent: Monday, June 15, 2020 10:40 PM
To: esubmit
Subject: Case Number CBOA2821 Hearing Set for 06/16/2020

To whom it concerns:

My wife and I would like to express our concerns with the request to add another location for Holliday Sand.

The road (S. 193rd E. Ave) already suffers from the large number of heavy trucks that come and go from the current sand plant. The road has potholes that haven't been repaired in some time (over a year). The intersection of S. 193rd and E. 141st is in horrible shape when traveling north from the south side of the intersection from the heavy loads. Not to mention this is a two-lane road and the current traffic load is more than enough.

The current sand plant is a little over one (1) mile away from our residence. I can hear the machines running at night as well as can see the light pollution they produce. They have been running 24hr shifts. I am a first responder and I moved to the county for peace and quiet. A lot of businesses shut down operation in the afternoon but not the sand plant.

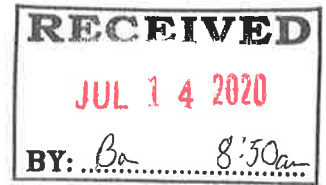
The new proposed site would be very close to my residence and I am completely against it! Why is there a need for a second plant so close to the current? We believe that if the plant were to be opened it would lower the quality of life for the surrounding residents and their farm animals

Thank you for your time:
Concerned residents on E. 151st St. S. between 193rd and 209th.



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PATRICIA NEEL
Patricianeel79@gmail.com

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TULSA, OKLAHOMA 74103-4304

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F: (918) 587 6822
T: (918) 695-0644

July 13, 2020

Tulsa County Board of Adjustment
Two West Second Street
Suite 800
Tulsa, Oklahoma 74103

Re: **Application 2821 Holliday Sand and Gravel Company Special Exception from Patricia Neel, Attorney for the LC Neel Revocable Trust and Suburban Realty Co., Inc.**

Gentlemen:

I appeared at the June 16, 2020 Meeting No. 483 representing the LC Neel Revocable Trust and Suburban Realty Co., Inc. but was limited to a 2-minute presentation. This memorandum is submitted to address the Re-Notice of hearing received July 1, 2020 and to present a complete due process presentation of my clients' position opposing this special exception.

I. RE-NOTICE DOES NOT CURE INITIAL OBJECTION

It appears the Re-Notice simply provides a more detailed site plan but does not move the operation to make it less obstructive to the view from my client's home and does nothing to negate the devaluation of Mr. Neel's home, his and Suburban's and other owners' investments in their properties. Any proposed minor relocation/reconfiguration does not reduce the constant parade of trucks on the east/west gravel road which will obscure the view along with their dust clouds and motor/brake noise. It only makes the dust/noise extend a greater distance. Since the site is South of my client's home, the prevailing South winds will blow the dust towards the home and cloud the home with dust, adding to the devaluation.

Attached to this memorandum is a photo I took on June 15th of the current Holliday operation at 161st. See Ex. 1. At around 2:00 pm, I entered the Creek Turnpike at Yale and exited at County Line. There was a car in front of me and in front of the car was a sand and gravel truck which I followed all the way to the current Holliday operation site. The truck crossed over the center line of the narrow 2 lane road several times. The car in front of me passed the truck just south of 131st and narrowly missed a head-on collision. I counted 10 sand and gravel trucks going north toward the Turnpike before I arrived at the Holliday location. Due to the number of large sand and gravel trucks, it would have been unsafe for me to turn into the Holliday gravel road so I drove past and

3.96

pulled over to take the photo of the north/south road. The photo accurately depicts the clouds of dust billowing high into the air from the massive trucks but represents only a short portion of the road, which was approximately 5 times the distance shown. I zoomed a photo into that portion in order to demonstrate the volume of airborne dust. There was a steady flow of trucks entering/leaving the road during the time I observed the operation. The dust cloud at the actual dredge site, which was too distant to photograph, was so high it disappeared into the clouds. The roadway dust never settled and carried south across 161st even though winds were light. See attached copy of the weather forecast page from the Tulsa World for the 15th, Ex. 2. I observed there were no houses or structures directly south of the road as far as I could see. The closest business was Sanders Nursery, a garden store.

II. THE ISSUES HAVE BEEN PREVIOUSLY RESOLVED

This is the second time Mr. Neel has objected to the mining operation. He was a prevailing plaintiff in the 2001 action filed in Tulsa County, the decision of which was affirmed by the Court of Appeals in Case No. 98,501 filed in Tulsa County on April 22, 2004. [Note: Mr. Neel's last name was erroneously spelled Neal in the caption.] This special exception request is simply a rehash of the same issues just a stone's throw down the road. The objecting homeowners, some of whom were plaintiff's in the prior case, face the same issues. A review of the appellate decision, attached hereto, establishes Holliday raises no new justifications for a different conclusion to be reached in this case. See Ex. 3.

III. GRANTING THE EXCEPTION WOULD NEGATIVELY IMPACT QUALITY OF LIFE, HEALTH AND ECONOMIC SECURITY FOR LC NEEL, SUBURBAN AND THE SURROUNDING LANDOWNERS

A. Property Owners Relied on the City of Broken Arrow Comprehensive Plan and the Pattern of Residential Growth of the Area

Mr. Neel is 95 years old and lives in his home on 40 acres at 18500 E. 141st St. So., which he and Mrs. Neel purchased in 1999. Mrs. Neel passed away in 2013. The Neels were the perfect embodiment of the American Dream. Eloping at 18 with only \$24 between them, they worked together to become successful home builders, developers and realtors. Suburban Realty was their wholly owned real estate company.

In the early 1960's, the Neels made an educated guess that Tulsa would grow toward Bixby so they went to far south Tulsa (North Bixby), all farmland at the time, and bought as much land as they could at and around 111th and Memorial. At the time there was no development past 61st and Memorial. Over a 40-50 year period, as Tulsa grew south down Memorial, Mrs. Neel designed and they developed, built and sold homes in several additions (Southwood, Southwood South, Southwood Extended, South Country Estates, Country Crossing and more) which covered more than a square mile of property. In 1965, they moved from Tulsa to a new home on the undeveloped corner of 111th and Mingo. This corner remained undeveloped until 1993 when they platted the land for Country Crossing addition, carving out a 2 acre tract preserving their home. After more than 30 years of living without neighbors, they decided to find a more peaceful home and moved to the 40 acres on 141st for the beautiful view, the peaceful and quiet surroundings and the expectation that they would be able to age in their own home.

In addition to the land purchased in Bixby, beginning in the late 1960's, the Neels began buying land in both Wagoner and Tulsa Counties around 141st and County Line, anticipating Broken Arrow's growth. The Trust now owns 3 of the 4 corners at that intersection and numerous other land holdings north toward 131st and east toward Coweta which have been held for future development/sale. This represents Mr. Neel's portfolio and retirement fund. Similarly, for many of the people who have built homes within the sphere of the proposed operation, those homes likely represent a substantial percentage of their net worth.

The Neels had worked with the Cities of Bixby, Tulsa and Broken Arrow and Tulsa and Wagoner Counties over many years. They were aware of the comprehensive plan for the City of Broken Arrow and relied upon it in their investment in land. Two new additions have been recently developed on the east (Broken Arrow) side of 193rd between 131st and 141st and individual homes have multiplied in the last years. The increased development south of the Turnpike has increased traffic on 193rd, a two-lane road which is already experiencing deterioration, at least in part due to the current Holliday operation.

B. Granting the Special Exception Constitutes a Governmental Taking Without Compensation

For most homeowners, their home is their largest investment. Numerous other homeowners spoke at the June 16 meeting, expressing their reliance on the ambiance of the area remaining as represented by the comprehensive plan. My client and many homeowners expressly relied on the comprehensive plan when purchasing their homes. Most notably, Broken Arrow has objected to the special exception for the reasons expressed by the property owners, many of whom have mortgaged their homes to lending institutions which relied upon the appraised value of the properties. That value will decline if the special exception is granted. This would be tantamount to a reverse condemnation/adverse possession of these properties without compensation. Further, if it does not create an immediate actionable nuisance, it has every indicia of creating one in the near future.

C. Balancing Interests Weighs in Favor of Property Owners

As home builders/developers, the Neels were aware of the need for sand and gravel and in the 1970's had leased land for a sand and gravel operation at the Memorial bridge across the Arkansas River into Bixby. They did not, and would not, lease/sell any land that would negatively impact properties by being adjacent to and/or interfering with the nature of the neighborhoods/properties nearby, including one they developed further east of Memorial and south of 131st.

On June 16, I submitted a photo taken from the back porch of the Neel home showing the stunning view of the bend in the Arkansas River and Leonard Mountain beyond. The Neels were keenly aware that this overlooked the 100-500-year flood plain which made development of the land very unlikely, thereby preserving their view. Throughout the year, deer, bald eagles, fox and numerous other wildlife and birds can be seen.

Mr. Neel has a history of pneumonia, diabetes and allergies in addition to other serious health conditions which make him a vulnerable person. His primary exercise is walking to his back porch

to enjoy the tranquility of his home. The neighbors to the south are several members of a Creek Indian family living on their original land allotment. Their families also have health concerns that will be impacted by the dredge operation and dust that it generates.

Numerous persons spoke to the issue of noise. When trucks start lining up as early as 5:30-6 each morning, the noise and dust commence and are not only present from 7am-4pm. When there is a south wind, the noise and dust will be even worse. There is no question but that there will be an adverse effect on residents in the area, wildlife and waterfowl, an important aesthetic to the persons who chose this area in which to live. This is not only a nuisance but an additional health risk. See attached article from the June 2020 Prevention Magazine which sets forth the health concerns that noise presents. Ex. 4

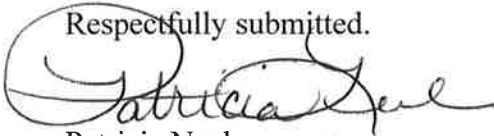
It is important to note that County Line is just that-the line between Tulsa and Wagoner County. Recently, Suburban received a notice of a request for rezoning impacting property owned at 141st and 225 E Ave., attached, Ex. 5. The request was approved over protest and ultimately the Wagoner County Commissioners approved rezoning based upon an agreement by the parties which included redirecting up to 50 dump trucks per day, tractor trailers with large bulldozers, track hoes and other large dirt moving equipment to exit 225th to the south to 141st (continuing on to County Line to go north to the Turnpike). These had been exiting north to 131st. This will immediately increase heavy traffic and cause additional deterioration of County Line Road in addition to increasing safety concerns. See email advising of settlement terms and supporting documents, attached, Ex. 6. As development on 141st in Wagoner County continues to increase, the use of County Line Road will further increase, exacerbating safety concerns and deterioration. The "road fund" proposed to the City of Broken Arrow, designated for general use, will not alleviate these issues and is in effect a band-aid on major wound.

D. Other Operations/Sites Are Available

Comments at the prior meeting indicated a concern for the need for sand and gravel operations. Recognizing the need does not mean it needs to be at the proposed site. There are other sand and gravel operations along the Arkansas River from Sand Springs to Wagoner County. Google lists 140 Sand and Gravel Contractors in the state. And as I stated at the first hearing, it is a long river and there should be no preference given to accommodate what might be most economic for one company over the vested property rights of the long term owners whose property values and lives will suffer.

IV. CONCLUSION

The LC Neel Trust and Suburban Realty Co. Inc., respectfully request the Special Exception be denied.

Respectfully submitted,

Patricia Neel

IMG_2141.JPG

tabbles
EXHIBIT
1

3.101





A2 MONDAY, JUNE 15, 2020

READ THE HEROIC STORIES OF SIXTY-FIVE WORLD WAR II VETERANS

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WEATHER

ALMANAC

Tulsa through 5 p.m. yesterday

Temperature

High	94
Low	67
Normal high	87
Normal low	67
Record high	107 (1911)
Record low	51 (1942)
High one year ago	85
Low one year ago	62

Precipitation

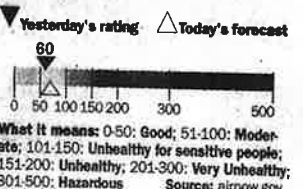
24 hours ending 5 p.m. yest.	none
Record precipitation	3.03" (2010)
Month to date	Trace
Normal month to date	2.46"
Year to date	21.68"
Normal year to date	19.04"

National Extremes Yesterday

High: 104 in Gila Bend, AZ
Low: 19 in Bodie State Park, CA

National extremes are for the 48 contiguous states.

AIR QUALITY TODAY



LAKE LEVELS

Measures above unless denoted by minus. Statistics as of 7 a.m. yesterday.

Beaver	8.62	Keystone	3.65
Broken Bow	0.60	McGee	-0.19
Bull Shoals	39.86	Oologah	4.51
Copan	0.13	Pine Creek	-2.99
Eucha	0.18	Salt Plains	0.07
Eufaula	1.05	Sardis	-0.06
Fort Gibson	2.40	Skatook	0.21
Grand	-0.88	Spavinaw	0.35
Heyburn	-0.43	Table Rock	14.67
Hudson	0.16	Tenkiller	4.30
Hulah	0.50	Toxoma	2.13
Kaw	4.86	Wister	4.56

LATER INFO: Call 918-669-7521

TULSA TEMPERATURES

24 hours ending 5 p.m. Sunday

6 p.m.	93	2 a.m.	75	10 a.m.	85
7 p.m.	91	3 a.m.	74	11 a.m.	87
8 p.m.	89	4 a.m.	69	Noon	90
9 p.m.	87	5 a.m.	69	1 p.m.	91
10 p.m.	79	6 a.m.	68	2 p.m.	92
11 p.m.	81	7 a.m.	73	3 p.m.	92
Mid.	76	8 a.m.	77	4 p.m.	93
1 a.m.	76	9 a.m.	82	5 p.m.	92

SUN AND MOON

Sunrise today	6:06 a.m.
Sunset tonight	8:43 p.m.
Total daylight	14 hr., 37 min.
Moonrise today	2:53 a.m.
Moonset today	3:33 p.m.

New	First	Full	Last

tulsaworld.com

TODAY'S FORECAST

93 71

Mostly sunny. Clear tonight.

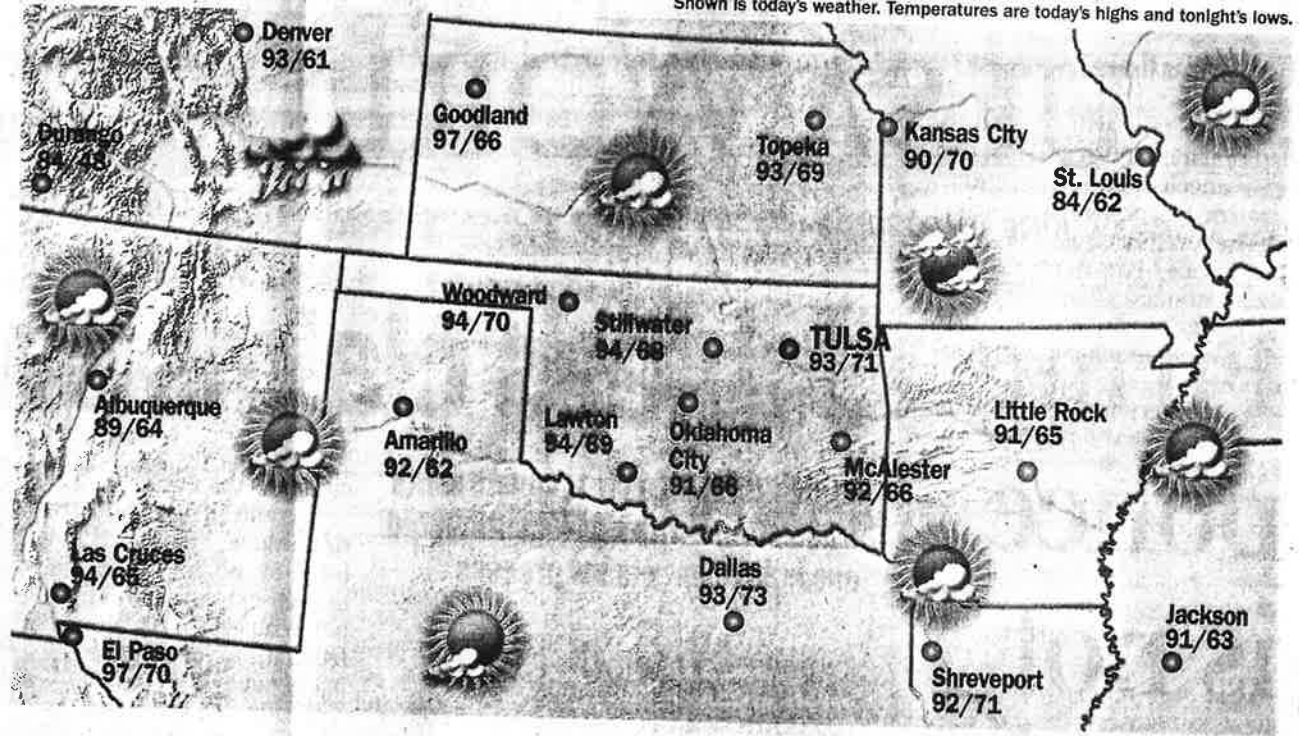
Wind: S 6-12 mph
POP: 0%
RealFeel®: 97/71

MORNING **72** AFTERNOON **89** EVENING **92**

EXTENDED 5-DAY FORECAST

TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY
92 72	92 73	94 75	95 74	92 71
Mostly sunny and very warm	Mostly sunny and very warm	Mostly cloudy and very warm	Mostly sunny and hot	Partly sunny, breezy and warm
Wind: S 7-14 mph POP: 15% RealFeel®: 98/69	Wind: S 8-16 mph POP: 15% RealFeel®: 94/71	Wind: S 8-16 mph POP: 10% RealFeel®: 95/72	Wind: SSW 8-16 mph POP: 10% RealFeel®: 95/71	Wind: S 10-20 mph POP: 25% RealFeel®: 91/70

REGIONAL FORECAST



SKYWATCH Source: McDonald Observatory

Under clear, dark skies, the galaxy M81 is visible through binoculars. Find the Big Dipper, which is high in the north at nightfall, then gaze to the lower right of the star

The Planets

Mercury	Rise 7:37 a.m.	Set 10:00 p.m.
Venus	Rise 5:06 a.m.	Set 7:11 p.m.

NATIONAL CITIES

City	Today HI/Lo/W	Tue. HI/Lo/W
Arlene	93/69/s	93/70/s
Memphis	87/62/pc	88/67/s

DISTRICT COURT
FILED

APR 22 2004

BALLY HOME SMITH, COURT CLERK
STATE OF OKLA, TULSA COUNTY

IN THE COURT OF CIVIL APPEALS

STATE OF OKLAHOMA

DIVISION II

IN THE MATTER OF THE)
APPLICATION FOR EXCEPTION)
OF HOLLIDAY SAND & GRAVEL)
COMPANY BEFORE THE TULSA)
COUNTY BOARD OF)
ADJUSTMENT.)

JOHN HOLDER, PATRICIA)
HOLDER, L.C. NEAL, LEON)
HEFLEY, BEVERLY HEFLEY,)
DON CHAMBERS, BRENDA)
CHAMBERS, STEVE WALKER,)
and PAT BUIE,)

Plaintiffs/Appellees,)

vs.)

HOLLIDAY SAND & GRAVEL)
COMPANY,)

Defendant/Appellant.)

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JAN 13 2004

MICHAEL S. RICHIE
CLERK

Case No. 98,501

Not for Official Publication

APPEAL FROM THE DISTRICT COURT OF
TULSA COUNTY, OKLAHOMA

HONORABLE DAVID L. PETERSON, TRIAL JUDGE

AFFIRMED

tabbles
EXHIBIT
3
3.105

Dennis N. Shook
Tulsa, Oklahoma

For Plaintiffs/Appellees

Donna L. Smith
LOGAN & LOWRY, LLP
Vinita, Oklahoma

For Defendant/Appellant

OPINION BY RONALD J. STUBBLEFIELD, JUDGE:

Holliday Sand and Gravel Company (Holliday) appeals from an order of the District Court of Tulsa County which overturned the decision of the Tulsa County Board of Adjustment to grant Holliday's application for a zoning exception to permit operation of a sand mining plant in a district zoned agricultural. The issue on appeal is whether the Trial Court's decision is clearly contrary to the weight of the evidence. Upon review of the record on appeal and applicable law, we find it is not and affirm.

FACTS AND PROCEDURAL HISTORY

In May 2001, Holliday submitted an application to the Tulsa County Board of Adjustment (Board) seeking a special exception to zoning ordinances to allow it to mine and process sand and gravel at a location – the southwest corner of 155th Street South and 193rd East Avenue – zoned agricultural. The Board held a hearing at which Holliday presented the Board with various documentation demonstrating

its pending licensure to operate such a business.¹ The Board voted to approve the special exception.

Landowners John Holder, Patricia Holder, L.C. Neal, Leon Hefley, Beverly Hefley, Don Chambers, Brenda Chambers, Steve Walker, and Pat Buie filed an appeal with the District Court of Tulsa County. A hearing was held with each side presenting evidence. The Trial Court found that the Board erred in granting the special exception, concluding there “is insufficient substantial evidence to grant the special exception” and that the Board was arbitrary and capricious in granting it. The Court found that the grant of the special exception, would “result in unnecessary and substantial harm to the [Landowners] and the community at large, and will further potentially harm and damage the environment through noise, erosion, an increase in dangerous traffic, and possibly from damage to the roadways.” Holliday appeals.

¹ The documentation included an air quality permit application, a spill prevention control and countermeasure plan and stormwater pollution prevention plan, Oklahoma Water Resources Board Waste Disposal Permit information from a plant operated by Holliday in Coweta, Oklahoma, an application for a wastewater discharge permit, an application for a non-coal mining permit made to the Oklahoma Department of Mines, and an application for a permit from the U.S. Army Corps of Engineers. In addition, there was evidence of employee training to protect a federally listed endangered bird – the least tern – that nests on sand bars along rivers and waterways.

STANDARD OF REVIEW

Under 19 O.S.2001 § 866.24, a trial court is required to perform a trial *de novo* when reviewing a decision of a county board of adjustment. In conducting the trial, the trial court has the same power and authority as a county board of adjustment. *Id.* However, the burden of proof before the trial court “rests on the same party upon whom it rested before the board of adjustment.” *Hargrave v. Tulsa Bd. of Adjustment*, 2002 OK 73, ¶ 6, 55 P.3d 1088, 1091.

When reviewing a decision of a board of adjustment, “there is a presumption of correctness that attaches to [a board’s] decision which, *if affirmed*, will be accorded ‘great weight’ and not disturbed on appeal to this court unless it is ‘clearly arbitrary or erroneous.’” *Bankoff v. Bd. of Adjustment of Wagoner County*, 1994 OK 58, ¶ 19, 875 P.2d 1138, 1143. However, where as here, a trial court reverses the decision of a board, “the presumption that originally attached to its validity is to be considered as having been overcome by the adverse ruling of the trial court.” *Id.* In reviewing a trial court’s decision reversing a board of adjustment decision, we will not overturn the trial court’s decision unless we find it is clearly contrary to the weight of the evidence. *Id.*

ANALYSIS OF ISSUES

Holliday contends that the decision of the Trial Court was against the clear weight of the evidence. It emphasizes its own evidence that environmental concerns had been addressed by various regulatory entities, and that their approval of Holliday's license to operate constitutes a prima facie showing that the land use would not be injurious to the neighborhood or detrimental to the public welfare. It also emphasizes its evidence that the increase in traffic on the area roads would not be a great percentage of increase over current use, and that it had and would take considerable precautions to reduce noise at its plant.

Holliday's principal witness was its Vice President of production, Michael Odell. Odell testified that a good portion of the proposed plant site is flood plain and that approval had been obtained to operate in the flood plain. He described the plant operation as follows:

[S]tarting in the river we have a dredge, a floating steel dredge with a pump on it that sucks sand and gravel slurry out of the river from the bottom of the river, conveys it with a floating pipeline to the bank where we have a hinge point. The pipe continues directly to the processing equipment, and – which is located here. You can see its more – as near to the riverbank as possible.

These kidney shapes are sand stockpiles conveyed both directions from the plant, as there's two primary piles. The trucks would enter – they would come down south on County Line Road, turn west into the plant;

down the entrance road, it's about 800 feet, make a circuit on the plant haul road here, be loaded near the sand stockpiles, proceed to the scale to be weighed, receive a ticket, pull off after the scale, tarp, head out east on the haul road or the entrance road, and then I believe all the traffic will be heading north again on County Line Road.

Odell further testified that Holliday would locate the proposed facility as far from existing residences as possible, that Holliday does not use any kind of chemical processes in its operations, and that Holliday would take a wide range of precautions against increased noise. Those precautions included the use of electric motors in various equipment, a "hospital quality" silencer on the diesel engine on the dredge, state of the art silencers on the scoop loaders, and the use of plastic or rubber coated chutes and screens. He did admit that there would be approximately 90 trucks using the facility per day and also that erosion had occurred at the Coweta plant operated by Holliday, but before Holliday began operating the plant.

In addition to Odell's testimony, Holliday called an appraiser to testify that the operation of the plant would not substantially reduce the values of neighborhood properties. However, the witness's credibility was substantially diminished by his admission that he had "dropped" his appraiser's license and was no longer a licensed/accredited appraiser.

Finally, Holliday presented the testimony of an engineer to refute the testimony of a witness of Landowners that the sand mining would result in bank erosion at the site.² The witness found several faults with the conclusion that substantial erosion was a probability from the operation of the mine.

Landowners presented the testimony of Dean Holladay, the Superintendent of Highway Maintenance Division District 3, Tulsa County. Mr. Holladay is responsible for the maintenance of existing roadways, including 193rd East Avenue in the area of the proposed plant. He testified that the span of 193rd East Avenue between the new Creek Turnpike and 161st Street is beginning to fail and needs maintenance performed on it. He stated that the road was designed for light traffic and is not suitable to handle an additional one hundred semi-trucks that would travel the road in connection with the proposed plant's operation. On cross-examination, Holladay acknowledged that semi-trucks currently use the roadway in connection with sod farms and another sand plant operating near the area. He also admitted a possibility that the City of Tulsa is conducting an evaluation to determine if the roadway should be improved.

² Although Holliday had the burden of proof at trial, the Landowners put on their case first.

Landowners also called witness Patrick Boyd, a real estate appraiser. He testified that the land in the area of the plant, between the new Creek Turnpike and 161st Street, is a rural residential farming community area, that had become more dense in population in the last ten years. Boyd stated that he is familiar with another sand plant owned by Holliday in Coweta, Oklahoma, and opined that a sand and gravel plant has a negative impact on the value of residential property because of the noise of the plant and the heavy commercial traffic.

Landowners also called Michael Odell, the Holliday Vice President, primarily to gain his admission that he had described the traffic flow to the area homeowners as an average of ninety trucks per day – both dump trucks and semi-trucks. He had also informed the homeowners that the plant would operate between 6:00 a.m. and 6:00 p.m. on Mondays through Fridays and between 6:00 a.m. and 12:00 p.m. on Saturdays.

Landowners also presented the testimony of Jack Sheridan, an engineer specializing in hydraulics, who testified that the operation of the sand plant in the area proposed by Holliday would cause erosion of the riverbank and erosion up to 193rd East Avenue. He stated this was a probability, not just a possibility.

Finally, landowner Patricia Holder testified that the noise from trucks involved in the sod farms and other sand plant had already affected the enjoyment

of her property, and that a substantial increase in truck traffic as contemplated by Holliday would further demean the lifestyle in the "very quiet, very peaceful" neighborhood. The parties stipulated that, if called as witnesses, the testimony of four other landowners would be essentially the same as Ms. Holder's testimony.

The parties do not dispute that the area in which the proposed plant is to be located is zoned agricultural. Under section 310 of Tulsa County Zoning Code, mining and mineral processing are permitted by special exception in areas so zoned. When an application for special exception is filed, section 1680.3 of the Tulsa County Zoning Code provides for the following procedure:

The Board of Adjustment shall hold the hearing, and upon the concurring vote of three members may grant the Special Exception *after finding 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.* Provided that the Board in granting a Special Exception shall prescribe appropriate conditions and safeguards, and may require such evidence and guarantee or bond as it may deem necessary to enforce compliance with the conditions attached.

(Emphasis added.) When considering a special exception for mining, the Board must also "consider potential environment influences, such as dust and vibration,

and shall establish in the particular instance, appropriate protective conditions such as setbacks, screening, and method of operation, as will mitigate the adverse affect on proximate land uses.” Tulsa County Zoning Code § 1224.3.

In reviewing the evidence, we find that Landowners presented clear evidence that the operation of the sand plant will “be injurious to the neighborhood” and possibly “detrimental to the public welfare.” Although Holliday presented testimony that it would do a variety of things to hold down noise, the increase of heavy truck traffic will be substantial, and the evidence tends to establish that this will considerably increase the noise level and damage the roadways. In addition, section 1224.3 of the Tulsa County Zoning Code requires consideration of possible “environmental influences.” Although there is a strong evidentiary dispute over whether the plant will result in substantial erosion to the river bank, there was expert testimony to that effect which the Trial Court could have, and apparently did, accept.

It is true, as Holliday points out in its brief, that a denial of a special exception cannot be based on fears of what may or may not happen. *In re Application of Volunteers of America, Inc.*, 1988 OK 8, ¶ 11, 749 P.2d 549, 552. However, Landowners fulfilled the requirement of “actual evidence,” *Id.*, by both the testimony regarding the substantial increase in truck traffic and its probable

effect on the roads, and by the engineer's expert testimony that erosion will occur, resulting in damage to the riverbank.

CONCLUSION

We conclude that the Trial Court's decision is not clearly contrary to the weight of the evidence. The Landowners presented clear evidence that the zoning exception would allow a use of the property which would be injurious to the neighborhood and the environment. Accordingly, the decision of the Trial Court is affirmed.

AFFIRMED.

COLBERT, V.C.J., and TAYLOR, P.J., concur.

January 13, 2004

LESSONS FROM NURSES

July 2020

Prevention

BEST 60-SECOND HEALTH HABITS

Brain Function
Blood Pressure
Lung Health

9 SIMPLE
SUMMER
RECIPES

HOW TO

5G
PHONE
TECH:

SECRETS TO
OVERCOMING
YOUR PAST

EXHIBIT
4
3.117

Natural Fixes Our Health in a Noisy World

BY ANDREW WEIL, M.D.

Noise pollution is nothing new: An 1856 editorial in London's *Times* complained of the city's "noisy, dizzy, scatterbrained atmosphere," and in 1866, American writer Nathaniel Hawthorne groused that steam-train whistles "bring the noisy world into the midst of our slumberous peace." But the sounds of our world today do more than just annoy us. Research reveals that the low-level thrum of constant noise from traffic, overhead jets, and the like—the common background of modern life—impairs health as well.

THE WIDE-RANGING REPERCUSSIONS

In 2019, an organization that tracks ambient noise levels in Paris found that an average resident in the noisiest regions lost more than three "healthy life-years" because of conditions

caused or worsened by noise pollution. That may sound surprising, but heart disease, obesity, diabetes, cognitive impairment, sleep disturbance, hearing problems, and tinnitus are all linked to chronic noise exposure, according to the World Health Organization.

The damage appears to manifest in two ways:

DIRECT EFFECTS

There's an immediate effect on the acoustic nerves and, as a result, the rest of the nervous system. A fluid-filled inner-ear organ called the cochlea converts sound vibrations into electrical impulses that go directly to the brain. Constant noise, especially when it's loud, can overload and compromise that nerve-based connection, leading to hearing loss.

INDIRECT EFFECTS

Sound-induced low-level emotional stress has an indirect effect on the body and the mind. Stress can lead to overproduction of cortisol, a hormone that, at elevated levels, has been linked to heart disease and most

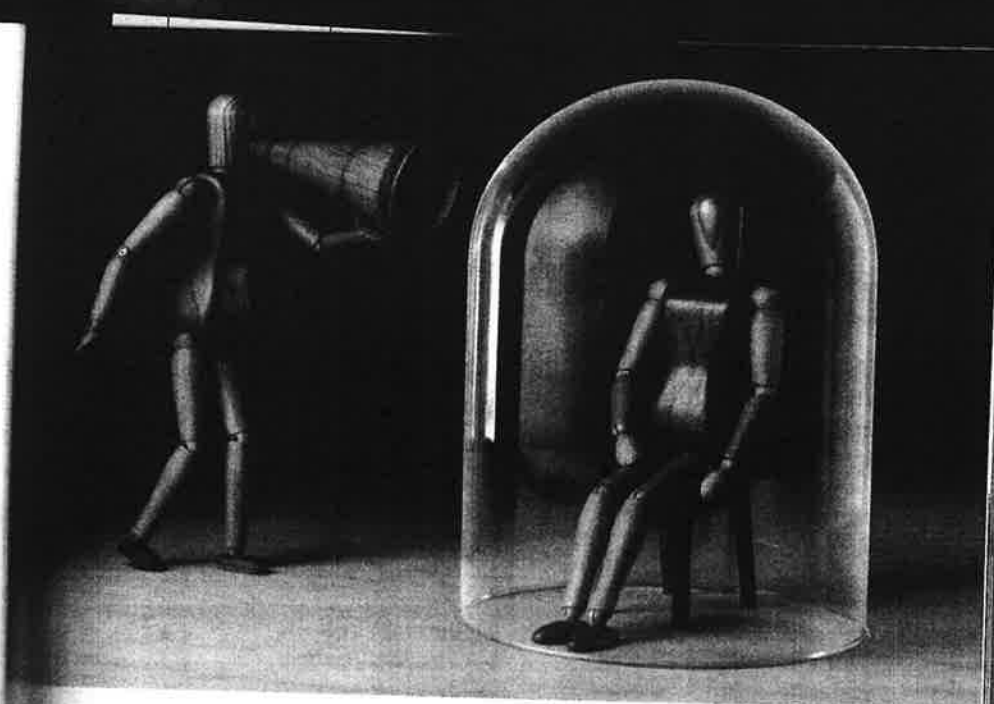
of the other conditions the WHO has connected with chronic noise exposure.

OPTIMIZING YOUR ENVIRONMENT

Sound is vital to the reflexes that help orient us—so much so that people standing in a chamber that blocks out all noise often feel dizzy and fall. A happy medium between the maddening mechanized noise we live in and eerie, disorienting silence appears to be the sorts of soundscapes in which we evolved: the breeze through the trees, rain on the roof, chirping birds. Evidence suggests that playing recorded nature sounds, such as that of flowing water, lowers stress levels (as measured by levels of cortisol in saliva) more than listening to music or being enveloped in silence.

I recommend that you take your sound environment seriously and do what you can to improve it. If your world is too noisy, noise-canceling headphones can bring blessed relief. A pair of quality closed-cell foam earplugs can work wonders in situations where headphones are inappropriate or awkward—including sleeping in bed. Thick curtains can also muffle street sounds.

And if you find yourself in an environment that's too quiet, search online for "nature sounds." There are lots of free recordings on YouTube, some up to 10 hours long. A friend of mine, a writer from Oregon now based in bone-dry Phoenix, typically works while listening to a drenching thunderstorm. Search, and you may discover just the natural sound you've longed to hear.



Dr. Weil is founder and director of the Andrew Weil Center for Integrative Medicine.

3.118

3.119



COWETA METRO AREA PLANNING COMMISSION

NOTICE TO PROPERTY OWNERS

WCZ# 21-20

THE WAGONER COUNTY LAND RECORDS INDICATE YOU ARE THE PRESENT OWNER OF PROPERTY LOCATED WITHIN THREE HUNDRED (300) FEET OF THE FOLLOWING DESCRIBED PROPERTY, to-wit:

THE SOUTH HALF OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER (S/2 SE/4 NE/4) OF SECTION EIGHT (8), TOWNSHIP SEVENTEEN (17) NORTH, RANGE FIFTEEN (15) EAST OF THE INDIAN BASE AND MERIDIAN, WAGONER COUNTY, STATE OF OKLAHOMA.

THE OWNER OF THE ABOVE DESCRIBED PROPERTY, MARISA RITTER, HAS APPLIED FOR A CHANGE OF ZONING FROM AGRICULTURAL (AG) TO LIGHT INDUSTRIAL (IL) SO THEY MAY USE THEIR PROPERTY FOR MEDICAL MARIJUANA GROWING.

A PUBLIC HEARING ON THIS APPLICATION WILL BE HELD BY THE COWETA METRO AREA PLANNING COMMISSION, WHOSE PHONE NUMBER IS 918-485-8123. THIS HEARING WILL BE HELD MONDAY, JUNE 22, 2020 AT 7:00 P.M. IN THE OLD COWETA COURTHOUSE AT 216 S. BROADWAY, COWETA, OK. 6:30

YOU MAY APPEAR IF YOU SO DESIRE, EITHER IN PERSON OR BY AGENT OR BY ATTORNEY AND BE HEARD. THE HEARING OF THIS APPLICATION IS NOT LIMITED TO THOSE RECEIVING A COPY OF THIS NOTICE AND IF YOU KNOW OF AN AFFECTED PROPERTY OWNER, WHO FOR ANY REASON FAILED TO RECEIVE A COPY, IT WOULD BE APPRECIATED IF YOU WOULD INFORM THEM OF THIS HEARING.

DATE MAY 21, 2020

Marisa Ritter

APPLICANT



3.120

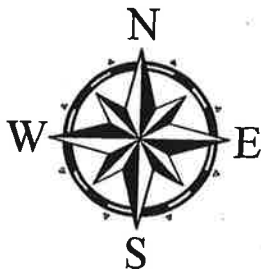
Section 8-T17N-R15E

Date created 2/14/2019

Reference Scale: 1:8,400



WAGONER COUNTY MAPPING DEPARTMENT
Sandy Hodges, Wagoner County Assessor



The contents of these maps are for the Wagoner County Reappraisal Program. Guidelines were established in accordance with Oklahoma Mapping Standards. Property descriptions are unofficial and Wagoner County assumes NO responsibility for any subsequent usage outside of the Reappraisal Program.



3.121

3.122





Patricia Neel <patricianeel79@gmail.com>

Zoning issue

annette capps <annettecapps@yahoo.com>
To: Patricia Neel <patricianeel79@gmail.com>

Fri, Jul 3, 2020 at 4:52 PM

Thank you so much for your support with the rezoning issue.

We appeared before the Wagoner County Commissioners on Monday and again presented our objections. It is rather long but the final result is that they conditionally approved the rezoning based up us (the landowner and our non-profit) coming up with a civil agreement. Based on our agreement which excludes 12 Industrial activities we find objectionable (such as heavy construction, wrecker service, industrial greenhouses), the landowner will receive his Industrial zoning and can grow marijuana. However, should he cease that business, he is required by our agreement to zone back to AG. In addition, he agreed to re-route his dump trucks to the south, so neighbors aren't constantly subjected to the heavy traffic and dust.

Since the state of Oklahoma is pressuring the municipalities and commissioners to approve and promote the marijuana business, I think this is probably the best result that was even possible.

[Quoted text hidden]



3.123

Annette Capps
13475 S 225th E Ave
Broken Arrow, OK 74014

January 29, 2019

Tim Kelley
Wagoner County Commissioner District 3
16507 S 305th E Ave
Coweta, OK 74429

Dear Tim:

I met with Brenda at the Metro Planning Commission on December 13, 2018 and have spoken to Shoni a few times regarding the situation on 225th E Ave between 131st and 141st. I own 120 acres with two homes ½ mile apart on the east side of this road.

I understand that this road may be paved next spring and I have 2 concerns:

1. The property on the west side of 225th across from my Mom's house at 13475 S 225th E Ave has been under constant dirt work and excavation for over 2 years. This includes up to **50 dump trucks per day**, tractor trailers with large bulldozers, track hoes and other large dirt moving equipment. Although I am thrilled with the idea of a chip and seal road, I have concerns that it would stand up to the constant flow of Elliot's heavy equipment. Having been involved with my Dad in real estate development in Arkansas, we often worked with the county on road surfacing and repair. With the dirt work filling in the ditches and constant dump trucks, I know the results can deteriorate a road quickly. By the time I returned from my visit with Brenda, there were 13 new loads of dirt dumped. I sincerely hope that the county can find a way to either stop the business across the street or regulate it in some way. We can all tolerate construction and growth for a time, but there seems to be no end to whatever business is taking place on the west side of the road.
2. Although my home is located 600 feet east of 225th, the dust has become intolerable even in my location. I have enclosed photos taken from my home at 22630 E 131st St S. Although I don't like the holes in the road, it is much more tolerable than the dust. We need some relief, as do our animals and our hayfields.
3. Would you be willing to talk to me for 10-15 minutes about my concerns? I will be making decisions about fencing and fertilizing our hayfield that depend on your input regarding this situation.

Thank you for your consideration. My number is 918-284-7511.

Sincerely,



Annette Capps

3.124