

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1157  
Tuesday, March 8, 2016, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

<b>MEMBERS PRESENT</b>	<b>MEMBERS ABSENT</b>	<b>STAFF PRESENT</b>	<b>OTHERS PRESENT</b>
Henke, Chair Flanagan Snyder Van De Wiele White, Vice Chair		Moye Sparger Wilkerson	Swiney, Legal Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, March 3, 2016, at 9:38 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Henke called the meeting to order at 1:00 p.m.

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

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**MINUTES**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Flanagan, Van De Wiele, White "aye"; no "nays"; no "abstentions"; Snyder absent) to **APPROVE** the **Minutes** of the February 23, 2016 Board of Adjustment meeting (No. 1156).

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**UNFINISHED BUSINESS**

None.

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Mr. Henke explained to the applicants and interested parties that there were only four board members present at this meeting, and if an applicant or an interested party would like to postpone his or her hearing until the next meeting he or she could do so. If the

applicant wanted to proceed with the hearing today it would be necessary for him to receive an affirmative vote from three board members to constitute a majority and if two board members voted no today the application would be denied. Mr. Henke asked the applicants and the interested parties if they understood and asked the applicants or interested parties what they would like to do. The audience nodded their understanding and no one requested a continuance.

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**OTHER BUSINESS**

**22028—Eller & Detrich – Lou Reynolds**

**Action Requested:**

Special Exception to permit a community group home in the CS District (Section 15.020, Table 15-2). **LOCATION:** 2921 East 91<sup>st</sup> Street South **(CD 2)**

**Staff has withdrawn the application and the applicant is requesting a full refund.**

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 4-0-0 (Henke, Flanagan, Van De Wiele, White “aye”; no “nays”; no “abstentions”; Snyder absent) to **APPROVE** the request for a **REFUND** in the amount of \$617.00; for the following property:

**E250 LT 1 BLK 1, DELAWARE CROSSING CONDOMINIUMS PRT RESUB B3 CEDARCREST, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**NEW APPLICATIONS**

**Ms. Snyder entered the meeting at 1:05 P.M.**

**22038—Crown Neon Signs – Gary Haynes**

**Action Requested:**

Variance of the allowable area of a freestanding sign (Section 60.050); Special Exception for the hours of operation (Section 60.050); Variance to permit a dynamic display within 50 feet of a driving surface of a signalized intersection (Section 60.100-D); Variance to permit a dynamic display within 20 feet of the driving surface of a road (Section 60.100-E); Special Exception to permit a

dynamic display within the R District (Section 60.050). **LOCATION:** 4020 South 102<sup>nd</sup> Avenue East (CD 7)

**Presentation:**

**Gary Haynes**, Crown Neon Signs, 5676 South 107<sup>th</sup> East Avenue, Tulsa, OK; stated the proposed sign is for Southwood Baptist Church. The church has a current sign that they are going to remove. The area from the curb in both directions from 102<sup>nd</sup> East Avenue is about 35 feet and also from 41<sup>st</sup> Street. The residential area is approximately 100 feet away. The proposed sign has been revamped and has been reduced in size to 79.5' square feet. Mr. Haynes stated that he would like to withdraw the Variance request to permit a dynamic display within 50 feet of the driving surface because the new sign will be set back in the parking lot of the church.

Mr. Henke asked Mr. Haynes what the hours of operation will be for the sign. Mr. Haynes stated the hours of operation will be 6:00 or 7:00 A.M. to 9:00 P.M. to comply with the zoning code and as agreed upon with INCOG so Mr. Haynes withdrew the Special Exception regarding the hours of operation.

Mr. Van De Wiele asked Mr. Haynes if the sign would be more than 20 feet from the driving surface since he is moving the sign farther into the parking lot. Mr. Haynes stated that he will not need the Variance to permit a dynamic display within 20 feet of the driving surface so he requests to withdraw that request as well.

Ms. Snyder asked Mr. Haynes to explain the size of the proposed sign. Mr. Haynes stated the sign will be a total square footage of 79.5'. Mr. Van De Wiele asked Mr. Haynes if that was just for the digital portion of the sign. Mr. Haynes stated that the 79'-6" is for the complete sign. Mr. Van De Wiele asked Mr. Haynes how much of 79'-6" is the digital element of the sign? Mr. Haynes stated that the digital portion will be approximately 40 square feet.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the request for a Variance of the allowable area of a freestanding sign (Section 60.050) and the request for a Special Exception to permit a dynamic display within the R District (Section 60.050), subject to per plan submitted by the applicant today pertaining to the sign on the right half of the submitted plan. This approval will allow an approximately 79'-6" square foot sign containing a digital element. Finding that the Board has determined the following facts, favorable to the property owner, have been established:

- a. That the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. That literal enforcement of the zoning code provision is not necessary to achieve the provision's intended purpose;
- c. That the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. That the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. That the variance to be granted is the minimum variance that will afford relief;
- f. That the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. That the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan.

Finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare. This Board Action will also acknowledge that the applicant has withdrawn at today's meeting a Special Exception for the hours of operation, a Variance to permit a dynamic display within 50 feet of the signalized intersection and the Variance to permit a dynamic display within 20 feet of the driving surface; for the following property:

**LT 1 BLK 1, CARRIE FRANCES ADDN, MILLWOOD ESTATES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**22039—Matt Roberts**

**Action Requested:**

Variance of the required front yard in the RS-2 District from 30 feet to 22 feet (Section 5.030.A). **LOCATION:** 3248 South Zunis Place East (**CD 9**)

**Presentation:**

**Matt Roberts**, 3240 South Zunis Place, Tulsa, OK; stated he would like to build a new house and line up the southern portion of his property with the northern portion of the house to the south side.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Variance of the required front yard in the RS-2 District from 30 feet to 22 feet (Section 5.030.A), subject to conceptual plan 3.12. The Board has found that the applicant is going to build a new house and wants the front of it to be even with the house immediately to the south, noting that the applicant at this time lives in the house to the north. The hardship is the house to the south and that the area of the property involved in the extension of this eight foot encroachment into the building line is minimal and will not adversely affect the neighborhood. The Board determines that the following facts, favorable to the property owner, have been established:

- a. that the physical surroundings, shape, or topographical conditions of the subject property would result in unnecessary hardships or practical difficulties for the property owner, as distinguished from a mere inconvenience, if the strict letter of the regulations were carried out;
- b. that literal enforcement of the subject zoning code provision is not necessary to achieve the provision’s intended purpose;
- c. that the conditions leading to the need of the requested variance are unique to the subject property and not applicable, generally, to other property within the same zoning classification;
- d. that the alleged practical difficulty or unnecessary hardship was not created or self-imposed by the current property owner;
- e. that the variance to be granted is the minimum variance that will afford relief;
- f. that the variance to be granted will not alter the essential character of the neighborhood in which the subject property is located, nor substantially or permanently impair use or development of adjacent property; and
- g. that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of this zoning code or the comprehensive plan; for the following property:

**LT 14 BLK 5 OAKNOLL; BEG NWC NE SE NE TH S25 E134.3 N25 W134.3 POB  
SEC 19 19 13, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **22040—Ronnie Potter**

### **Action Requested:**

Special Exception to permit a night club within 150 feet of the R District (Section 15.020-G-2); Verification of the 300 foot spacing requirement for a bar from any church, school, or public park and the 50 foot spacing requirement from the R District (Section 40.050-A-1,2); Variance of the 300 foot spacing requirement between bars to permit two bars in the same commercial center (Section 40.050-A-3). **LOCATION:** 11426 East 21<sup>st</sup> Street South **(CD 6)**

### **Presentation:**

**Ronnie Potter**, 15405 East 530 Road, Inola, OK; stated he is an agent for the owner of the subject property and the new owner of the project. The request is for a night club which will be for dancing and serving liquor. There is another facility in the center which is a billiards bar which prompts the request for the Variance.

Mr. Henke asked Mr. Potter if his site is on the west side of the center. Mr. Potter answered affirmatively further clarifying that the subject club would be on the northwest corner of the center on the front side facing 21<sup>st</sup> Street.

Mr. Van De Wiele asked Mr. Potter if the billiard hall was in the middle on the same west side of the center. Mr. Potter answered affirmatively and they are approximately 200 feet away.

Mr. Potter stated that center currently has a grocery store, a restaurant, a Herbalife facility, a liquidation store, an alteration and tailor shop and an Asian elderly facility. At this point Mr. Potter deferred to Mr. Valdez to explain more about the proposed project.

**Frank Valdez**, 8321 East 81<sup>st</sup> Street, Tulsa, OK; stated that he is trying to open an upscale nice club and it would only be open for the weekend; three nights.

Mr. Van De Wiele asked Mr. Valdez if that would be Thursday, Friday and Saturday only. Mr. Valdez answered affirmatively.

Mr. Van De Wiele stated that in order to grant a Variance the Board needs a valid hardship and that is his concern.

Mr. Potter stated that this proposal is going to be an entirely different scope of what the billiards bar is now. They are open in the evenings and it is basically for people to play billiards and have a drink. This proposal is going to be a community place for couples to dance and have an evening out. There will be a dress code and there will be security so people can feel safe. Mr. Potter stated that Mr. Valdez is attempting to put in something that is totally different so people will have a place to dance.

**Interested Parties:**

**Lewis Dillon**, 2142 South 117<sup>th</sup> East Avenue, Tulsa, OK; stated he lives on the east side of the proposed project. Mr. Dillon stated that he is not in favor of this project because of the children in the area. Mr. Dillon stated that he has lived in his home since 1968 and his house was in the Parade of Homes in 1966. Mr. Dillon stated that he believes there is a Chinese church operating in the south end of the center.

Mr. Henke asked Mr. Dillon if he has experienced any problems with the businesses in the center. Mr. Dillon stated that he has had experiences since it was built in 1980. Mr. Henke asked Mr. Dillon to explain what sort of problems he has had. Mr. Dillon stated that traffic is a problem and crime. The 21<sup>st</sup> and Garnett area has become the top crime area in the City of Tulsa; it surpasses South Peoria and North Tulsa. Mr. Dillon stated that bars and clubs are followed by crime.

**Rebuttal:**

Mr. Ronnie Potter came forward and stated that a Chinese church cannot happen in the center. He permitted the grocery store that is in the center and it is a B rated unlimited space so there cannot be any A-3 ratings in the center and a church is an A-3. There was an outreach center that was interested in moving into the center but there was never anything done by the outreach center. The billiards facility was in the center when the current owner purchased the property and he (Mr. Potter) came before the Board for a Special Exception regarding the billiards bar, and at that time the billiards bar was rated A-3 for billiards only. The billiards had to install a bar so they could receive a rating of A-2 so the City would allow them to stay in the center.

Mr. Van De Wiele asked Mr. Potter what the Senior Asian American Association does, Item #25 on the list of uses for the center. Mr. Potter stated it is a Senior Citizens group that meets in the building and they have dinners; they are on the southeast corner. Mr. Potter thought they met one or two days a week.

Mr. Flanagan asked if he understood that the billiards bar would be the only business open at the same time as the proposed club. Mr. Potter stated that he is not sure at what time the grocery store closes and he thinks the restaurant stays open until about 10:00 p.m.

Mr. Henke asked Mr. Potter how large the proposed club is to be. Mr. Potter stated that it will be approximately 3,400 square feet. Mr. Henke asked Mr. Potter how many people were expected to be inside the club. Mr. Potter stated that it will be whatever the City will allow on the Certificate of Occupancy, but he would guess about 130 people.

**Councilor Connie Dodson**, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated asked where the club would be located in the building. Mr. Potter stated that it will be on the northeast corner. Ms. Dodson stated that she has a couple of issues with the parking and the ingress and egress of that area of the center. The old Tulsa City Limits is currently in the center and as far as she knows it is operating as a club as well. There is another club at the back corner of the odd shaped building in the center. Those two facilities

have been in a war and there has been a fence installed that narrows the passage to approximately one car width. There is also a fire hydrant in danger of being knocked out in that area which is a concern. The proposed club would not impact the neighbors in the rear but it will however increase traffic in the area. Ms. Dodson asked Mr. Potter if he owned the entire building. Mr. Potter stated that he does not and the owner of the proposed club would just be a renter. Ms. Dodson stated that she is not necessarily for or against the proposal but did want to advise the Board of the one situation.

Mr. Van De Wiele asked Ms. Dodson to identify the two clubs on the map that is located on the overhead projector. Ms. Dodson stated the old Tulsa City Limits is in the white building on the right side of the picture and it is her understanding that it is now a Hispanic club. Ms. Dodson showed a fence that had been erected across the parking lot because of a disagreement over parking spaces and she has been working with different departments in an attempt to get it removed. Ms. Dodson pointed out another spot on the map that was the former Oasis but she is not sure if it is currently operating. Ms. Dodson also pointed out low-income housing and apartments near the center.

Mr. Henke stated that Mr. Van De Wiele had raised a good point regarding the Variance needing a hardship, and he asked Mr. Potter to state his hardship.

Mr. Potter came forward and stated that this summer he received a permit and built a security fence on both corners of the parking with the cooperation of Robbie Robertson of the Tulsa Fire Department. Mr. Potter stated that Chuck Lange of the City of Tulsa asked about the parking and the parking was dealt with through the architect.

Mr. Van De Wiele asked Mr. Potter if the Oasis Club mentioned by Councilor Dodson was outside the 300 feet radius. Mr. Potter stated that the only club he is aware of is the billiards bar. Mr. Van De Wiele asked Mr. Potter if he was aware of a club being located in the odd shaped building. Mr. Valdez came forward and stated the Crystal Palace is dedicated to private parties. The Oasis Club has been turned into a party center also.

Mr. Valdez stated that no one would be parking in the rear of the building because there are about 100 parking spaces facing 21<sup>st</sup> Street.

Mr. Henke stated that he does not think this proposal will be detrimental to the neighborhood but the biggest problem is the Variance because he believes it is a self-imposed hardship.

Mr. Potter stated that downtown there are bars located next to each other and the two businesses being discussed are two different types of businesses. The proposed club is for entertainment of couples and the billiards bar is for people that play billiards. This has been a center that has existed for quite a long time with no activity and the owner is trying to get it developed in hopes of moving forward.



**Comments and Questions:**

Ms. Snyder stated there needs to be a hardship and she cannot see what it would be. She is also concerned that the billiard bar had to receive a Special Exception and now another similar business wants a Special Exception.

Mr. Van De Wiele asked staff if there had been any thought on the fact that the businesses are two different types of bars and if that gives way to a hardship.

Mr. Wilkerson stated that the Zoning Code stipulates that both bars are adult entertainment establishments. There is no detail that can be looked at in the Code that helps the situation. If there is a Board interpretation that is different that would be the Board's choice to make.

Mr. Van De Wiele both stated that they did not have a problem with the location for the Special Exception but the billiards hall exists, and the Variance hardship seems to be self-imposed.

Mr. Henke stated the Board does not want to set a precedent with a Variance that does not have a valid hardship.

Mr. White concurred with Mr. Van De Wiele that the hardship is self-imposed and he cannot see any reason to approve the request.

Mr. Flanagan concurred.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the request for a Special Exception to permit a night club within 150 feet of the R District (Section 15.020-G-2); Verification of the 300 foot spacing requirement for a bar from any church, school, or public park and the 50 foot spacing requirement from the R District (Section 40.050-A-1,2); Variance of the 300 foot spacing requirement between bars to permit two bars in the same commercial center (Section 40.050-A-3) for want of a hardship; for the following property:

**LT 1 BLK 1, BURRIS SQUARE, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Swiney entered the meeting at 1:51 P.M.**

**22041—Situs of Sound, LLC**

**Action Requested:**

Special Exception to permit a fabrication facility (Industrial/Moderate Manufacturing Industry) in the IL District (Section 15.020, Table 15-2). **LOCATION:** 18280 East 11<sup>th</sup> Street South (CD 6)

**Presentation:**

**Bruce Robbins, Jr.**, 2716 East Apache, Tulsa, OK; stated that his client, Mr. Hector Estrada, owns the business, employs about 50 people and has been in business for approximately nine years. This project is about two years in the making and it started with Councilor Dodson's predecessor, Mr. Skip Steele. Mr. Robbins stated that he would like to see East Tulsa revitalized with commercial and residential growth while having a strong contributing impact on the economics of Tulsa. He has been working very closely with the City of Tulsa and Mr. Wilkerson at INCOG. Mr. Robbins stated that he typed a petition for the nine property owners within the 300 foot radius and he was able to get seven signatures showing they are in favor of the proposed project.

Mr. Van De Wiele asked Mr. Robbins if he was lacking the two remaining signatures because they were opposed to the project or if he could not reach them Mr. Robbins stated it was because he had not able to contact them. One of the property owners is in New Mexico on vacation and the other has not been able to be contacted for about two years.

Mr. Robbins presented an updated site plan on the overhead projector and several pictures of the subject property to substantiate his explanation of the project and the relation of the subject property with the surrounding properties and the creek on the south side of the subject property. Mr. Robbins stated that his client chose the subject site because it has the capacity to help him fulfill his obligations to his clientele.

Mr. Henke asked Mr. Robbins if the IL zoning was denied by the Planning Commission then appealed to the City Council, and City Council granted the request for the IL zoning at the Council level. Mr. Robbins answered affirmatively. Mr. Henke asked Mr. Robbins if the City Council vote was unanimous. Mr. Robbins stated that he believes it was unanimous, and there was no opposition and no neighbors attended the meeting.

Mr. Henke asked Mr. Robbins if what he was proposing was a manufacturing facility because that it is what it looks like in the information he reviewed. Mr. Robbins answered affirmatively.

Mr. Van De Wiele asked Mr. Robbins to tell the Board what his client does in the facility. Mr. Robbins deferred to Mr. Estrada.

**Hector Estrada**, 2716 East Apache, Tulsa, OK; stated his company fabricates piping, vessels, and stacks up to 10'-0" x 50'-0".

Mr. Van De Wiele asked Mr. Estrada if all the fabrication was performed indoors. Mr. Estrada answered affirmatively. Mr. Van De Wiele asked Mr. Estrada if there were any raw materials stored outside. Mr. Estrada answered affirmatively and stated that the company stores the flat material outside. Mr. Van De Wiele asked Mr. Estrada if he staged the finished product outdoors until it was ready to be shipped. Mr. Estrada answered affirmatively and stated that sometimes the product ships right away and then there is a possibility that it can be stored outdoors for quite awhile. Mr. Van De Wiele asked Mr. Estrada if the operations that are currently being conducted will be the same as what is proposed to be conducted on the subject property. Mr. Estrada answered affirmatively. Mr. Estrada stated that currently he has to move a lot of product to the outside because the facility is too small; right now he leases three facilities and trucks the product from one place to another to another to be able to complete his product. Mr. Estrada stated that in the proposed new facility he will be able to work on the product from one end to the other under one roof.

Mr. Van De Wiele asked Mr. Estrada if this is the same operations being conducted when he went through the rezoning process. Mr. Estrada answered affirmatively.

Mr. Van De Wiele stated that at some time during the rezoning process the subject operations were industrial light; that is what would be appropriate for the subject operations on the subject parcel and now the reason the Special Exception is being requested is because there has been a change in someone's mind that the operations are not industrial light but industrial moderate or that in the new Zoning Code what is being manufactured in the subject operations has been changed. Mr. Van De Wiele asked Mr. Estrada if that was correct or if he knew whether it was something different. Mr. Estrada stated that is the ambiguous part of this process because he was advised to go one direction and when the architect submitted the permit application there was a red flag for this application. Mr. Estrada stated that when he spoke with Paul Enix he never received a clear answer as to what the difference is between industrial light and industrial moderate.

Mr. Van De Wiele asked if the decision to call Mr. Estrada's operations moderate industrial was made at the permitting stage of this application. Mr. Estrada answered affirmatively. Mr. Van De Wiele asked Mr. Estrada that when he did the rezoning, assuming there was a similar conversation with either permitting or with development someone made the determination that the business was industrial light. Mr. Estrada stated that this was supposed to be the last step.

Mr. Robbins stated that the initial application was November 15, 2013 and it was for zoning a fabrication shop. Mr. Robbins had several documents placed on the overhead projector.

Mr. Henke stated the point that Mr. Robbins is trying to make is that he provided information outlining what the property was going to be used for approximately 2 ½ years ago. Then the decision was made to seek the IL zoning, the IL zoning was obtained, and that was a unanimous decision by the City Council. Then there was a

change in the Zoning Code, and timing wise and based on the use classification looking at 5.20 and at 5.21 the use would be allowed by right in an IL zoning. But the proposed moderate manufacturing and industry needs a Special Exception. Under the old Code the operations would be a Use Unit 25. The application for the Board of Adjustment was filed on the 6<sup>th</sup> of January so the new Code went into effect the 1<sup>st</sup> of January. Mr. Robbins agreed and stated that the Civil Engineer submitted his application in 2015. Mr. Henke stated that the reason the relief from this Board was filed for is because there was notice received from the City stating the case needed to go before the Board of Adjustment and that was after January 1, 2016. That is how Mr. Robbins and Mr. Estrada find themselves before the Board of Adjustment today.

Mr. Van De Wiele stated that he would like to hear from staff how this went from industrial light to industrial moderate.

Mr. Wilkerson stated that when this process was started in 2013 and the initial application was for a fabrication facility. When staff read the old Zoning Code it stated exactly what the new Zoning Code says today, that in an IL District is primarily intended to provide areas suitable for manufacturing, wholesaling, warehouses and other industrial activities that have few if any adverse land use or environmental impacts. Mr. Wilkerson stated that he and Mr. Robbins had many conversations about whether the operations will have any adverse impact.

Mr. Van De Wiele asked if adverse impact was the tipping point to take an applicant to IM. Mr. Wilkerson answered affirmatively and stated that in this particular instance the real issue was the scale of the operation. When this process was first started it was very clear what the operation is but he is not sure he knew the operations was building a product that is quite a large as it is, but to him the scale does not matter. It is an issue of whether the operations are inside; is it objectionable with odors, light, noise, etc. Mr. Wilkerson stated that from everything he has heard so far that is still the case, but at the Building Permit level there were questions about the scale of the operations. Due to the scale of the operations it was the Permit Office's interpretation that this would be more of a moderate use so they sent it to the Board of Adjustment.

Mr. Van De Wiele stated that if his thought would be that if a person welds a two inch pipe and that is light manufacturing, welding a twelve inch pipe does not make it moderate and welding a 36" pipe does not make it heavy.

Mr. Wilkerson stated that was staff's thought process also. He knows there are other things that need to be considered at the Building Permit level, but just purely from the zoning stand point that staff's position, it does not make a difference.

Mr. Henke stated this is a 50,000 square foot facility on approximately 14 acres, so was staff thinking the building was not going to be as big size wise. Mr. Wilkerson stated the size of the building really had nothing to do it because they could have been manufacturing jewelry in the building so the building size really had nothing to do with it.

**Interested Parties:**

**Councilor Connie Dodson**, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated that she had submitted a letter to the Board of Adjustment and asked if the Board if they had any questions regarding the letter. Mr. Henke stated the letter has been received and all have reviewed the letter.

Mr. Van De Wiele stated the issue seems to be whether the operations is industrial light or industrial moderate, and if there was an error made where was it made. He does not see why an applicant would present what he wants to do on a piece of property, then someone tells him that he can do it, he goes through the process, has a recommended denial, reversal at City Council, the property is zoned industrial light and now he is not light he is moderate and more relief is needed. This seems like a problem. Ms. Dodson agreed.

Ms. Dodson had a series of pictures placed on the overhead projector which pertained to the subject manufacturing facility and the size of the containers that are shipped.

Ms. Dodson stated that she has concerns of the heavy products on the trucks traveling on a two lane historical road that does not have the weight bearing ability to handle shipped loads and the turning radius of the trucks on a soft shoulder on a repeated basis. She does see how the trucks are going to make the turns or how the road is going to handle the weight regardless of the applicant's zoning. That is an issue. When this first went through zoning it was not just a matter of fitting into the Comprehensive Plan they had their own issues, one of which being the inaccuracy of the wording on the petition. The owner of the subject property now owns the property next to it. The ambiguous part of this is that the number of residents, some of them in the audience, is that people have been told that it is going to be a small welding shop, it is going to be an electrical shop, it was not presented that it is going to be a large scale fabrication shop. Ms. Dodson stated that the property owner that the applicant stated he was unable to contact for two years in the audience today and he states that he did speak with the applicant and told them he was not on board and would not approve of the proposed project. Ms. Dodson stated that an interested party will be showing pictures of the subject property before and current that show the debris exiting the facility in the stormwater is worse than it was before.

Mr. Henke asked Ms. Dodson if she was aware of any citations that the applicant has received. Ms. Dodson presented a piece of paper showing the City visited the facility in July 2015 and it was found that the applicant did not have a permit for discharging into stormwater facilities. The subject facility processes are cut, drill, grind, bend, form, sandblast, weld, paint and hydroblast. The summary of pollutant sources are metal cut offs, drill cuttings, welding flux, metal oxides, spent and new blasting sand, and three scrap metal bins have been cited as pollutants identified. In addition to that the City report does stated that it is all inside, materials are stored inside, not all the materials are stored outside.

Mr. Van De Wiele asked Ms. Dodson if these pollutants were identified as being in the water or just at the site. Ms. Dodson stated they are identified as being at the site and in the water runoff.

Ms. Dodson stated the report also states other concerns are paint thinner dispensing from drums that have not had secondary containment since August 2014; spills from both metal cut offs and slag as well; diesel and paint thinner and welding flux; all of these are being discharged from the property into the current stormwater system. This facility is being proposed in the middle of residential single family agricultural properties in which these people are supporting, raising and feeding live stock from the creek of the flood plain that transects both of the subject properties. Ms. Dodson stated that she spoke with Peter Barnett of the Oklahoma Department of Environmental Quality this morning and the applicant still has not filed for the permit.

Mr. Henke asked Ms. Dodson if the applicant had a permit for their current location. Ms. Dodson stated they do not have a permit for discharging the pollutants into the stormwater system.

Ms. Dodson stated that according to the City Inspector the applicant is required to have a permit to be discharging into the stormwater system.

Mr. Van De Wiele asked if the applicant is required to have a permit if they say they do not discharge anything. Ms. Dodson stated that certain industries by their classification are required to have a permit because the assumption is that simple rainfall will discharge contaminants from the facility into the stormwater system.

Mr. Henke asked Ms. Dodson to explain what the Board was looking on the overhead projector display. Ms. Dodson stated that it is an inspection report and a directive that the applicant needs to apply for a permit.

Mr. Van De Wiele asked Ms. Dodson who the applicant was to apply for a permit from. Ms. Dodson stated the applicant needs to apply for a permit from the Oklahoma Department of Environmental Quality.

Mr. Henke asked Ms. Dodson where the correspondence is from the City to the applicant that says they came out and performed an inspection of the facility and there are violations and operating without a permit. Ms. Dodson stated the on site representative was Jose Estrada which the City Inspector spoke to on July 24, 2015. Mr. Henke stated that he is not questioning that the inspection took place he is trying to understand after the inspection took place. If there was a City Ordinance broken was there instruction from the City to the applicant as to what they needed to do and what took place at that point. Mr. Henke stated that as far as he is concerned he cannot sit on the Board and tell the applicant that he can and cannot do something because he is not with the DEQ. Ms. Dodson stated that she is assuming that the applicant had a copy of the inspection sent to them.

Mr. Van De Wiele stated at the bottom of the report it states "follow up" and he asked Ms. Dodson if a follow up was made. Ms. Dodson stated that when she spoke with the inspector this morning he was not sure that a follow up had been made but would check. Ms. Dodson stated that is why she checked with the State to see if the State had followed through with the applicant about getting a permit and as of this morning the applicant had not gotten a permit.

Mr. Van De Wiele stated it is obvious that welding flux and paint thinner cannot be dumped into the stormwater, but likewise I don't think a person could get a permit to do that either. Ms. Dodson stated that it is not permitting that, it is permitting the fact that incidental discharge may occur.

Mr. Henke asked if there was anything from the City stating the applicant had broken an Ordinance. Ms. Dodson stated that this was a violation because the applicant is supposed to be permitted. The inspection showed when the City inspected the property the applicant did not have the necessary permit from the Department of Environmental Quality.

Mr. Van De Wiele asked if that is a City permit or an Oklahoma DEQ permit. Ms. Dodson stated that it is an Oklahoma Department of Environmental Quality permit and as of this morning the permit has not been applied for. Ms. Dodson stated that she spoke with the City of Tulsa Stormwater Manager and the applicant was cited for being in violation because they did not have a permit.

Mr. Henke stated that to him the exhibit is like an internal report that is in the computer and it was not of such great concern that they did anything after the inspection, unless there is a letter or something that was sent to the applicant. This is a little confusing.

Ms. Snyder stated the document on exhibit states that the last day to prove NOI filed is Wednesday, July 29, 2015 or NOV will be issued. Ms. Dodson reiterated that at the State, when she spoke to them this morning, the applicant had not yet filed a Notice of Intent which is the NOI.

Mr. Van De Wiele asked who would issue the Notice of Violation, the DEQ or the City of Tulsa? Ms. Dodson stated that she assumes either can issue the violation. Mr. Van De Wiele asked Ms. Dodson if she knew if a Notice of Violation had been issued. Ms. Dodson stated that there has not been one issued that she is aware of at this time.

Mr. Henke stated that Ms. Dodson had referenced the need for a hardship in a letter, but the applicant is requesting a Special Exception which does not require a hardship. But the request cannot be detrimental to the neighborhood and that is why the Board is interested how the applicant has operated their business in the past and how the Board thinks they are going to operate their business in the future. Ms. Dodson stated that she understands that and stated the residents have obtained their own information in regards to the detriment. The subject property is in a flood plain and a creek that transects the property as well as the neighboring properties, there are some serious

concerns about the applicant's ability to take care of the issues. And the fact that the residents were initially lied to when it came to approaching the zoning issue. The residents were never informed that there was an appeal so they did not have an opportunity to follow up.

Mr. Van De Wiele asked Ms. Dodson who was lied to and what was the lie. Ms. Dodson deferred to the area residents because from what she has it was in what was anticipated for the subject property which was in regards to a small welding shop. It was not anything of the scale being presented nor this magnitude.

Mr. Van De Wiele stated that he believes there was an error made somewhere, either currently with the permitting department telling the applicant they are a moderate industrial facility or the prior decision that the applicant was an industrial light fabrication shop. Mr. Van De Wiele asked Ms. Dodson where was the error made and who made it after reviewing everything. Ms. Dodson stated she has issues with the way the whole process was performed because when it was initially denied by TMAPC she believes it should have stood right there. Mr. Van De Wiele stated that is not a denial it is a recommendation for a denial. Ms. Dodson had she been in office at the time it came to Council the application would have stopped there provided she had the support of the other Councilors. Ms. Dodson thinks the way this was maneuvered, and the fact that only four parcels were done, in her opinion and from discussions with the representative it is her firm belief that the applicant has anticipation of purchasing the other two properties on 11<sup>th</sup> Street to enlarge the entire facility which is why the focus was on the four lots. The applicant focused on getting the Comprehensive Plan changed on those but, again, the applicant says one of the residents was not eligible for contact but he was contacted and he is in the audience and can attest to the fact that he had words with the applicant and was against the proposal. Still the Comprehensive Plan was changed and when it came before the Council none of the fact that TMAPC had serious reservations about this was brought forward. Ms. Dodson stated that everyone can only assume that the Councilors read the back-up material and she knows that a lot of them do not, so they went with the recommendation of the City Councilor in the District at that time to move for approval. Ms. Dodson stated that in her opinion, the manner in which this has been done is very close to spot zoning. This is a four parcel employment sitting in the middle of primarily new growth agricultural residential houses on a corridor that the Board of Adjustment and TMAPC in the past has held 4<sup>th</sup> Street as the southern boundary of an already heavy industrial area along Admiral Boulevard. If the City hopes to grow in that area industrial will inhibit that. Ms. Dodson stated that is why she move to deny the neighboring property and it is no surprise to Mr. Robbins that she is against this proposal.

**Richard Wayne Turner**, 18002 East 12<sup>th</sup> Street, Tulsa, OK; stated that Mr. Robbins came to his house awhile back and told him about a small weld shop for the subject property. Mr. Turner stated that blast substance can either be sand or black beauty which has been found on the subject property and leaving the property. At this point Mr. Turner had a series of photos placed on the overhead projector showing the subject company and to support his statements. The photos started at the company's front gate



on December 3, 2015 up to date. Mr. Turner stated that in the before and the after photo of the media pile confirms that the media pile has grown and that there has been no effort to clean it up and there is not silt screen or fence to stop it from draining into the stormwater system and that is what the permit is all about.

Mr. Van De Wiele asked Mr. Turner if he knew whether the media pile was new or used. Mr. Turner stated that it was used media because all media must be dry to be shot through a blaster.

Mr. Turner stated that Mr. Robbins, representing the applicant, has seen the first set of subject photos at Council and he did not tell his client to clean up the media. These are the contaminants that the report Ms. Dodson presented is referring to.

Mr. Turner stated that almost half of the subject property is in a flood plain. After the applicant builds his building and his parking lot with his moat where is he going to store his product. Will the product be stored in the flood plain?

Mr. Turner showed a picture of a metal vessel that was blasted with zinc and another tank that has aluminum paint on it, and aluminum paint has metal in it, so not only is the applicant blasting but he is spraying in an open area that is bad, bad, bad.

Mr. Turner presented a photo of oxygen and acetelyn tanks that were not contained or chained to keep them toppling over.

Mr. Turner stated that if the applicant does not take responsibility for his property and neighborhood how is he going to look out for Mr. Turner's neighborhood.

**John Connect**, 1533 South 181<sup>st</sup> East Avenue, Tulsa, OK; stated that Mr. Robbins stated he could not reach the person living in Albuquerque and that person is his sister who owns 30 acres below the subject property. He has 30 head of cattle on the property and he walked the property with Mr. Donnie Henson and discovered so much trash from the Estrada property, i.e., glass, trash bags, etc. and now it is worse. His concern is that the area is wooded and he has \$80,000 in cattle on the 30 acres and if there should be a fire started by the Estrada company there would be no dousing it because the 30 acres so heavily wooded. He stated that he does not want to lose livestock from a polluted creek and right now Mr. Estrada is polluting the creek with trash before he has even started his project.

Mr. Van De Wiele asked Mr. Connect where the trash is coming from. Mr. Connect stated that the trash is coming from Mr. Estrada's property. Mr. Van De Wiele asked Mr. Connet what operations were being performed there. Mr. Connect stated nothing. The trash is broken glass, trash bags, garbage bags, feed bags from his horses, it is just trash. It is everyday household trash and Mr. Connect offered to display pictures that he taken from his cell phone which Ms. Moyer showed from the overhead projector. Mr. Van De Wiele asked Mr. Connect if the trash had been dumped onto the property. Mr. Connect stated the trash has been dumped there and not picked up.

Mr. Connect stated that his biggest concern is if there is a fire because the fire department can not get onto the property. Mr. Connect stated that he stores approximately 200 round bales on his property for his cattle and if there is a fire it will be out of control in a matter of seconds. Mr. Connect stated that he was lied to him at the auction because he and several others were told by the auctioneer that there could not be any building in the flood plain.

Mr. Henke asked Mr. Connect when the land was auctioned off. Mr. Connect stated that it was auctioned in 2014.

**Floyd Springer**, 18411 East 11<sup>th</sup> Street, Tulsa, OK; stated he owns property at 18411, 18414 and 18439 East 11<sup>th</sup> Street which is all within 300 feet of the subject property. Mr. Springer stated that he used to own the 80 acres that was being discussed and he sold it at the auction. The people he sold it to divorced and they split it into 11 tracts and he (Mr. Springer) purchased 6.7 acres back at the auction located between 11<sup>th</sup> and the subject property. There is a flood plain on the 80 acres but it is not the portion where the proposed building is to be built. Mr. Springer stated that the trash in the creek can be found all along its banks into Wagoner County, and he continually had to pick it up the entire time he owned the land. Mr. Springer stated that he has known Mr. Hector Estrada since the day he purchased the subject property and he has been a good neighbor. Mr. Springer stated that if this proposal would affect anyone it would affect him more than anyone because his property is 615 feet from 11<sup>th</sup> Street to the subject property. The proposed building will be the best looking building within a mile in any direction of it. Mr. Springer stated that he has no problem with this request.

**David Chesney**, 18105 East 11<sup>th</sup> Street, Tulsa, OK; stated this was supposed to be a small shop placed back so it could not be seen from 11<sup>th</sup> Street and it hard to believe that it has become what is being presented today. Mr. Chesney stated that he lives approximately 500 feet away from the gate on 11 acres. There are at least seven residential properties between his property and the subject property on 11<sup>th</sup> Street. Mr. Chesney stated that Mr. Floyd Springer does not live near the area but he does own properties in the area and this will not impact him. Mr. Chesney stated that this ordeal has been dishonest through the entire process. Mr. Chesney stated that he does not believe that 11<sup>th</sup> Street could handle the load because it is a narrow two lane street. The area is not on City sewer and the environmental impact has not been addressed. This is old Route 66 and this will have an adverse impact to the area.

Mr. Van De Wiele asked Mr. Chesney what type of sewer system the houses were not on, sanitary or sewer system? Mr. Chesney stated that everyone is on septic. Mr. Van De Wiele asked if there were storm sewers in the area. Mr. Chesney stated there were not, only bar ditches and creeks.

**Terry Duke**, 17802 East 12<sup>th</sup> Street, Tulsa, OK; stated he was one of the people that has been misled from the start of this project. Mr. Robbins approached and told him that a small welding shop was going to be built on the subject property and he did not

state that the business would be employing 50 people. Mr. Duke stated that every notification he received never had the company business name on it, it was only presented as Situs Sound so there was no way to check or verify any of the information. The neighbors did not find out about the actual name of the company until the City Council meeting in December. Mr. Duke is confused how this project has made it to this point. Does any one look at the existing company's operation and question whether it is industrial moderate or industrial light? Mr. Duke stated that when Mr. Estrada purchased the extra piece of property he explained it away by saying he needed it to give access to the fire department and even Ms. Miller stated that it would probably be an office supply place. Mr. Duke stated that he has real problem with the contaminate issue. The applicant may build a moat or a catch pond but the way it floods in the area it will wash any contaminates into the creek. Mr. Duke stated there will also be traffic issues. Mr. Duke stated this project looks really good on paper but it will not help the neighborhood or anyone's property values. Mr. Duke stated that the applicant has already been issued a citation for violations but no one went back, even after a year, to check to see if there had been any clean up. Mr. Duke is against this project and he asks the Board look at the whole picture because the residents have to count on the Board for their decisions.

**Brandon Johnson**, 1121 South 179<sup>th</sup> East Avenue, Tulsa, OK; stated that he does not understand why a person would attempt to set up an industrial facility in an AG zoned area. He does not understand how this project ever got to this point. Mr. Johnson stated that he has owned his property for about one year and if he had known what being proposed he would not have purchased the land and if this is approved he hopes he can sell. Mr. Johnson stated that he does not approve of how Mr. Estrada runs a business and he is totally opposed to this request because it is not for the neighborhood.

**Alix Clounesali**, 29011 East 62<sup>nd</sup> Street, Broken Arrow, OK; stated he is the party that is supposed to be missing. He owns the property, five acres, immediately to the northeast of the subject property. Mr. Robbins tried to contact him several times but he did not appreciate the way he was approached so he made no contact. Mr. Hector Estrada approached him and explained to Mr. Estrada that he would be against his project. Mr. Estrada stated that he would purchase the five acres but a price could not be agreed upon. Mr. Clounesali stated this project would not be a good fit for a neighborhood.

**Beverly Chesney**, 18105 East 11<sup>th</sup> Street, Tulsa, OK; stated that she signed the initial petition presented by Mr. Robbins because Mr. Robbins stated that he wanted to build a small electrical shop on the rear part of the property and that all of the neighbors had signed. Ms. Chesney stated that she would not signed the petition if she had known then what is being presented today.

**Jon Star**, 17810 East 13<sup>th</sup> Street, Tulsa, OK; stated he has owned his 10 acre tract for approximately 11 years. Everything in a square mile of his property is acreages and all zoned AG with the exception of the church. Mr. Star was not contacted about the

project and did not receive notice because he apparently is outside the 300 foot radius. He does not have any doubt about what his neighbors have said about the misrepresentation because when a piece of property within his 300 boundaries Mr. Robbins represented to him that he had to have light industrial zoning on the property to get emergency access for the subject property. But yet when it came before the Planning Commission and the issue was raised the Board challenged INCOG about it. Mr. Star stated that he told Mr. Robbins that he does not need a piece of property to be zoned light industrial to get emergency access. Mr. Star that Mr. Robbins clearly misrepresented that to him in the process. This has all been under the guise of Situs of Sound. It has not been filed under the actual name of the business that is to go on the subject property, it has all been under the guise of Situs of Sound. Nobody really knew what it was. Mr. Star stated that it is important to note that when this was manipulated through the process with the City Council it was stated that it was unanimously approved when in fact it was unanimously denied after seeing the pictures. Even one of the Councilors told him that the business was heavy industrial not light industrial and that may be where the problem arose. Mr. Star stated he does not know who failed to look at the project initially or if the representation by Mr. Robbins were not accurate, but clearly this type of business would never fit a light industrial zoning. Mr. Star thinks it is wrong for the applicant to push on the residents a medium or heavy industrial use.

A man from the audience stood and asked the Board to explain the difference between light and moderate industrial. Mr. Wilkerson stated that the definition between light industrial and moderate industrial there is no change. There is a paragraph in the Zoning Code that states there are few if any adverse land use or environmental impact. An Industrial Moderate Zoning is a District that primarily intended to group together a wide range of industrial uses that may produce some moderate adverse land use or environmental impacts in terms of the operation and appearance.

Mr. Van De Wiele asked Mr. Wilkerson if there was a following paragraph for heavy industrial. Mr. Wilkerson answered affirmatively. The high impact manufacturing and industry is a little different. It is manufacturing and industrial uses that regularly use hazardous chemicals or procedures that produce hazardous by-products or explosive hazards. Mr. Wilkerson stated that the few IH Districts that the City has are refineries or similar uses.

Mr. Henke asked Mr. Wilkerson if the new Zoning Code abolished the Use Units. Mr. Wilkerson answered affirmatively. Mr. Wilkerson stated there are actually Use categories and the last paragraph read from the Zoning Code is the high impact use category.

**Brian Casement**, Casement Engineering, LLC, P. O. Box 688, Owasso, OK; stated he is the Civil Engineer on the project. He wants to clarify that the subject property is not in the flood plain. The project has gone through City review a couple of times and the project is definitely out of the flood. There is a detention pond planned for which will also be out of the flood plain.

Councilor Dodson came forward and stated that after speaking with the Department for Stormwater Inspections they performed an inspection of the United Contracting Services this morning and the site does not have the permit required from the Oklahoma Department of Environmental Quality, and for that the applicant will receive a notice of violation.

**Rebuttal:**

Mr. Hector Estrada came forward and stated that he did not intend to keep anything from the residents. There are big facilities in the area and his business is something that is small. He does intend to keep all processes inside so there would not be a fire threat. He does not plan to place trash outside. The facility he is currently old and does not represent his company the way he wants it to be represented. The area he is in has a high crime rate and as soon as his product was built it would be stolen and that will not change until he moves his company. Mr. Estrada stated that he does not plan on destroying the subject property because he wants to make it as nice as possible. That is why he went to architects for a design. Mr. Estrada stated that he never told Mr. Robbins to lie to the residents or mispresent his intentions. The petition the residents signed was on a letterhead. Mr. Estrada stated that he does not have retention pond at his current facility so if he is told to do so he will have one. He is not trying to force his way into the subject neighborhood and he appreciates all comments because he will work with surrounding residents.

Mr. Henke reminded Mr. Estrada that he is requesting a Special Exception and it cannot be detrimental to the neighborhood. Obviously, after seeing the pictures of the current operating facility, the condition was not flattering by way of trash, debris, runoff, etc. All the Board has to make a determination is testimony and documents that are submitted into the record. Mr. Henke stated that the applicant is standing before the Board saying he is going to be a good neighbor yet the condition of the property as it stands today says the applicant has not been a good neighbor.

Mr. Estrada asked if the sand was the issue. Mr. Henke stated that is talking about the bags of trash, and the pictures that were shown from the cell phone which is the subject property. That looks like it has not been kept cleaned. Mr. Henke stated that he understands where the residents are coming from. Mr. Estrada stated that is not his trash because he has nothing on the property. Mr. Van De Wiele asked Mr. Estrada if it was his property. Mr. Estrada answered affirmatively. Mr. Van De Wiele asked Mr. Estrada when he was last at the property and looked at it. Mr. Estrada stated that he was on the property last week but he did not go to the creek.

Mr. Henke asked Mr. Estrada to speak about the trucks, the ability to move the product and 11<sup>th</sup> Street, and he asked Mr. Estrada if he thought this was a good spot for his company. Mr. Estrada answered absolutely. Mr. Estrada stated that the subject area is where heavy or wide loads are routed through currently.

Mr. Henke asked Mr. Estrada how he was going to handle the turning onto 11<sup>th</sup> Street. Mr. Estrada he has the radius and the height for the equipment that is going to be built

on the subject site. Mr. Estrada stated that there are several shops in the area, i.e., on 193<sup>rd</sup> East Avenue and Lynn Lane there are manufacturing facilities.

Mr. Van De Wiele asked Mr. Estrada if he knew if his business required permits for stormwater discharge or other permits, and does he have them. Mr. Estrada stated that he did not know he needed stormwater permits.

Mr. Henke asked Mr. Estrada if he did any painting outside. Mr. Estrada stated the painting is contained in a carport like structure.

Mr. Van De Wiele stated that he has represented enough manufacturers to know that a hose cannot be run into a storm pipe. When he read the back up material he thought there was an error and it seemed like Mr. Estrada had through all the right processes to get the property zoned whether it should have or should not have been zoned through the process as industrial light. The difference the Board heard from staff reading the difference from light and moderate appears to be impact on the environment and impact on the land. The pictures that were shown today and the report, whether it has blossomed into violation or not, the report from the City of Tulsa shows that there are things coming from the subject property into the water. There are pictures of sandblasting material flowing out of the fence line onto the neighboring property into the storm sewer and hoses that looks like there is water being drained off the subject property straight into the storm pipe. Mr. Van De Wiele stated that all of those things, to him, sound like impact on the environment and impact on the land.

Mr. Estrada stated that in the proposed facility there will not be a paint booth.

Mr. Van De Wiele asked Mr. Estrada if he would be performing hydro testing. Mr. Estrada stated there would be hydro testing. Mr. Van De Wiele asked Mr. Estrada where he was going to dispose of the hydro testing water. Mr. Estrada said he could drain into the retention pond. Mr. Van De Wiele informed Mr. Estrada that a retention pond is not for industrial waste water so the only option would be to dump it into the creek or to containerize it in either a tank or barrels, and that does not sound like industrial light to him. Mr. Van De Wiele stated that is his biggest problem. The scale is not as big an issue, but people have different interpretations for big, medium or small. Mr. Van De Wiele stated that if he had reviewed this he is not sure he would have classified it industrial light at the beginning, but he is just one person. After hearing and seeing what he has today he believes the company is industrial medium which kicks the project into the standard that was just read, "as to whether it will be injurious to the neighborhood or detrimental to the public welfare". Flowing sand blasting media, metal shavings, welding flux, etc. as testified on the report into the creek he cannot tell anyone how that is not injurious to the neighborhood or detrimental to the public welfare. Mr. Van De Wiele stated he cannot support this application because of those reasons.

Mr. Estrada stated that he never planned to have a painting facility on the subject property and everything else was to be contained. Mr. Van De Wiele stated that it was not the painting for him. Mr. Van De Wiele asked Mr. Estrada if he planned on sand

blasting on the subject property. Mr. Estrada stated that he does not plan on sand blasting on the subject property because it is used for painting and the painting will be done at his current facility.

Mr. Van De Wiele stated that it has already been admitted to that there will be hydrotesting and whether it is a pipe as big as a shoe box the water has to go somewhere, and there has to be a permit for that and he does not know where Mr. Estrada plans on putting that water.

Mr. Estrada stated that he thinks the pictures misrepresents his company. He does not see where he mislead anyone in the beginning because he always spoke with the truth about what he wants to build. Houses cannot be built there because the area is full of rock and that is why no one has moved to the area. He has been at this process for two years and thought this would be good for the area.

**Comments and Questions:**

Mr. White stated that he was surprised to see this classified as IL. Councilor Dodson used a term "spot zoning", and that used to be a problem years ago. On the north side of 11<sup>th</sup> and a couple of miles west of the subject property there is a concrete plant, and that was one of the worst applications of spot zoning that was ever seen by the Board. The pollution from the concrete plant went right into the creek. He does not want to see another situation like that. Mr. White stated that he cannot support the request because it is too intensive for the area.

Mr. Flanagan stated that he cannot support the request because it will be injurious to the neighborhood.

Mr. Van De Wiele stated that Mr. Estrada's business has probably taken a pot shot at this meeting and he appreciates any employer in Tulsa and this sounds like a good business, it is just whether or not it is good to move into the subject area. Mr. Van De Wiele thinks the error may have been very early on in the process, but he does not believe that Mr. Estrada or his representative misrepresented or mislead anyone. In the manufacturing since a 50,000 square foot shop is a small shop not a large shop. Mr. Van De Wiele stated that ultimately for him he thinks the business is an industrial medium and cannot get to the point of saying that from an environmental and land use stand point the business would not be injurious to the neighborhood or the public welfare.

Mr. Robbins stated that he does not understand the spot zoning statement because Mr. Wilkerson and the INCOG staff did a great job on the Comprehensive Plan Amendment study, when the whole process on the project was to make it make sense was to stretch the mixed use southward. The Comprehensive Plan Amendment states that it wants the four properties to be "new employment". He was told that the only change he had in moving forward was to have the four parcels changed to "new employment" hence the light industrial.

Mr. Van De Wiele stated that his opinion is if the property had been zoned IM Mr. Estrada would not be here today because when you applied for the permit if they determined that the business was industrial moderate facility Mr. Estrada would have the right to perform in an IM zoned district.

Mr. Henke informed Mr. Robbins that Mr. Estrada needs to search for some IM zoned property to build his proposed facility.

Mr. Robbins asked the Board where is the liability; who is liable for the "oops"? Mr. Henke stated the Board is not here to decide the liability but are here to decide whether the applicant meets the requirements of a Special Exception to be granted the relief, and the applicant did not meet the requirements. The Board has done as much as they can do today and unfortunately the Board can not help any more.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Flanagan, Snyder, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **DENY** the request for a Special Exception to permit a fabrication facility (Industrial/Moderate Manufacturing Industry) in the IL District (Section 15.020, Table 15-2) finding that this will be injurious to the neighborhood and detrimental to the public welfare; for the following property:

**BEG 451.37W NEC NW TH SW110 S645 SW411.43 S1005 NE521.19 N1650 POB  
SEC 12 19 14 13.656ACS, CITY OF TULSA, TULSA COUNTY, STATE OF  
OKLAHOMA**



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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 3:46 p.m.

Date approved: 3/22/16

Frank X. [Signature]  
Chair