TULSA COUNTY BOARD OF ADJUSTMENT
CASE REPORT

TRS: 9205
CZM: 35
CASE NUMBER: CBOA-2803
CASE REPORT PREPARED BY: Robi Jones

HEARING DATE: 02/18/2020 1:30 PM

APPLICANT: Martin Benson

ACTION REQUESTED: Special Exception to permit Use Unit 2, Area-Wide Special Exception Uses, for a temporary construction facility in the AG District (Section 1202).

LOCATION: 5342 W EDISON ST
ZONED: AG

AREA: West Central Tulsa County

PRESENT USE: Vacant
TRACT SIZE: 7.52 acres

LEGAL DESCRIPTION: E551 GOV LT 2 LESS PRT BEG 28.7W SEC GOV LT 2 TH W15 N15 E15 S15 PO8 & LESS BEG SEC GOV LT 2 TH W28.70 N15 W15 S15 W506.79 N157.81 E550.67 S156.28 PO8 SEC 5 19 12 7.52ACS,

RELEVANT PREVIOUS ACTIONS: None relevant

ANALYSIS OF SURROUNDING AREA: The subject tract abuts AG zoned properties in all directions. The northside of the subject property abuts Osage County. All surrounding properties appear to have agricultural and residential uses.

STAFF COMMENTS:

The applicant is before the Board requesting a Special Exception to permit Use Unit 2, Area-Wide Special Exception Uses, for a temporary construction facility in the AG District (Section 1202). A Special Exception is required as it is a use which is not permitted by right in the AG District because of potential adverse affect, but which if controlled in the particular instance as to its relationship to the area and to the general welfare, may be permitted. The temporary construction facility must be found to be compatible with the surrounding area. Construction Facilities must abide by the following Use Conditions:

1202.3 Use Conditions:

A. The Board of Adjustment shall impose appropriate time limitations on temporary open-air activities, except construction facilities, to ensure that the use is not injurious and is temporary in nature.

B. Construction Facilities

1. The use may continue for a period not to exceed two years in the same location.
2. Ingress and egress must be from arterial or collector streets, provided that such location would result in less traffic on streets in residential areas.
3. The use shall not be located nearer than 100 feet to any lot containing an occupied dwelling, without the consent of the owner thereof.

The facility is proposed as a temporary use operating for a minimal period of time while the Gilcrease Expressway is under construction. The subject property is agricultural and appears to have a communications tower near the southern portion of the property. According to the Plant Site Lease Agreement, the applicant will be leasing 5 acres from the owner as depicted in EXHIBIT A but at this time, the applicant is not able to provide a legal description for the precise 5 acres.

Staff notified the applicant about the provision number 3. (The use shall not be located nearer than 100 feet to any lot containing an occupied dwelling, without the consent of the owner thereof.) There appears to be two properties within 100 feet of the request so the applicant will be required to prove that the homeowners consent to the proposed temporary construction site.

The approval of a special exception will trigger the requirement to conform to the Subdivision and Development Regulations. Issues related to Right-of-Way dedication and storm water management would be addressed during the platting stage.

If inclined to approve the Board may consider any condition it deems necessary and reasonably related to the request to ensure that the construction facility is compatible with the surrounding area.

SAMPLE MOTION:

“Move to ________ (approve/deny) a Special Exception to permit Use Unit 2, Area-Wide Special Exception Uses, for a temporary construction facility in the AG District (Section 1202).

Approved per conceptual plan on page ______ of the agenda packet.

Subject to the following conditions (including time limitation, or hours of operation if any): __________

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

Aerial Photo Date: February 2018
PLANT SITE LEASE AGREEMENT

This Plant Site Lease Agreement is between KJMM Inc, Russell Perry, agent, Owners of the real property herein described, hereafter referred to as “Owners” and Duit Construction Company, Inc. an Oklahoma Corporation, 6250 Industrial Blvd., Edmond, OK, hereafter referred to as “Operator.”

In consideration of the mutual covenants hereinafter set forth, Operator and Owner agree as follows:

1. Lease of Plant Site

a. WHEREAS, Owners own the following described real property, E551 GOV LT 2 LESS PRT BEG 28.7W SECR GOV LT 2 TH W15 N15 E15 S15 POB & LESS BEG SECRGOV LT 2 TH W28.70 N15 W15 S15 W506.79 N157.81 E550.67 S156.28 POB SEC 5 19 12 7.52ACS Operator hereby leases 5.0 acres of said land, being the area depicted on the google map labeled EXHIBIT A, and made a part of this agreement. All easements appurtenant thereto, including but not limited to those for ingress, egress, and utilities ("the Plant Site"), for the purpose of installing, constructing, maintaining, repairing, using and operating portable concrete batch plant(s) and all machinery, equipment, scales, telephone lines, parking and material storage areas, and other items and improvements desirable in Operator’s judgment for its operations on the Plant Site (collectively "the Plant"). Operator agrees to keep the site free of all loose trash and debris.

b. Any utilities required by Duit Construction Co., Inc. will be furnished by Duit Construction Co., Inc. The property is leased in “as is” condition at the commencement of the lease. The existing tower and any guy wires, etc., will be protected from damage with portable concrete barrier walls.

c. At the beginning of the lease period, operator will clear the area of all trees and brush and strip the available topsoil on the lease, and stockpile same in an area to avoid contamination of same. Prior to the termination of this lease, the Operator will haul off remaining aggregate stock piles, remove all equipment, fixtures, inventory and any other personal property brought onto the real property by the Operator. The site shall be graded back to a reasonably smooth surface, and shall be free of all trash, refuse and any other material brought onto the site by Operator. Operator will then spread the stockpiled topsoil back across the property in a smooth and workman like manner with natural drainage and seed with a Bermuda/rye seed combination. Operator shall hold harmless and indemnify the Owner for any hazardous materials brought onto the property during the term of this lease. Operator shall be responsible for any cost related to the removal and/or monitoring of any hazardous material brought onto the property during the term of this lease. Operator shall indemnify and hold Owner harmless for any claims arising from said hazardous material. Operator shall comply with all EPA standards during the term of this lease and shall leave the real property in compliance with EPA standards at the termination of this lease.
2. **Term, Termination**

Term of Lease will begin the date operator enters the site to begin operations, and terminate when the operator has concluded his operations and has satisfied the terms of this lease, but no later than 60 days after final acceptance of OTA Project GCT-2500.

Upon the Termination of this Lease Agreement, Operator shall remove all equipment and materials and surrender the Plant Site to Owner in the condition stated in Section 1.c of this lease, ordinary wear and tear and acts of God excepted.

3. **Rental Payments**

This Lease Agreement is expressly contingent upon the execution of an agreement by Operator and Owner as follows: Operator will pay Owner a specified sum per month, payable in advance, by the first of each month. The first three months payment will be paid when the lease is signed by both parties.

4. **Warranties of Owner**

Owner represents that its ownership of the Plant Site is fee simple and absolute.

5. **Damage to Plant Site: Eminent Domain**

If the Plant Site is damaged by an act of God and its use by Operator is rendered impracticable, or if all or a portion of the Plant Site is taken by eminent domain, or if for any reason the Plant Site is rendered inoperable for more than thirty days by any government action, Operator may, with sixty (60) days advance written notice to Owner, terminate this Lease Agreement by notifying Owner in writing.

6. **Notices**

Any notice or communication concerning this Lease Agreement shall be sent by certified mail, return receipt requested, or delivered by hand, if to Operator, addressed to: Duit Construction Company, Inc., 6250 Industrial Boulevard, P.O. Box 3788, Edmond, Oklahoma 73083, Attention: Tim Duit, President. If to Owner, addressed to, KJMM INC, 1528 NE 23rd ST, Oklahoma City, OK 73111, Attention: Russell Perry, Agent.

7. **Miscellaneous**

Time is of the essence of this Lease Agreement. This Lease Agreement may not be modified or amended except by written instrument executed by both parties. This Lease Agreement shall be binding upon the heirs, successors, administrators, and assigns of both parties.
8. **Atornment, Subordination, Non-disturbance**

Operator shall, in the event of a sale or assignment of Owner's interest in the real property of KJMM Inc. & Russell Perry, or if the real property comes into the hands of a mortgagee or any other person because of a mortgage foreclosure, exercise of a power of sale under a mortgage, not disaffirm this lease and atorn to the purchaser of such mortgage, or other person and recognize the same as Owner hereunder. Operator shall execute, at Owner's request, any atornment agreement required by any mortgagee or other person. Any subsequent Owner will not disturb Operator's quiet enjoyment per the terms of this lease. This lease shall be junior and inferior at all times to the lien of any mortgage or mortgages which now or hereafter have a lien upon any part of the real property and Operator shall execute such instruments as Owner requests, to evidence such subordination.

9. **Insurance**

Operator agrees to carry public liability insurance on the real property of KJMM Inc. & Russell Perry during the term hereof, covering the Operator and naming the Owner as an additional insured, for limits of not less than $1,000,000.00 for bodily injury, including death and personal injury for any one occurrence and $250,000.00 property damage insurance. Operator's insurance will include contractual liability coverage recognizing this lease, products and/or completed operations liability and providing that Owner and Operator shall be given a minimum of thirty (30) days written notice by the insurance company prior to cancellation, termination or change in such insurance. Operator shall provide Owner with a written certificate of said insurance.

10. **Indemnification**

Operator shall indemnify and save harmless Owner from and against any and all liability, liens, claims, demands, damages, expenses, fees, costs, fines, penalties, suits, proceedings, actions and causes of action of any and every kind and nature arising or growing out of or in any way connected with Operator's use, occupancy, management or control of the real property.

11. **Contingents**

This Lease Agreement is contingent on two happenings,

1. Contractor will enter into a contract with OTA to construct the Gilcrease Expressway, project GCY-2500. This is expected to be in January, 2020.

2. Contractor and Owner are able to obtain a zoning variance from Tulsa County to erect and operate a temporary batch plant, for the Gilcrease Expressway project, on property zoned for agriculture use.
This five-page agreement is deemed to be mutually and equally beneficial to both parties and shall constitute the entire agreement.

Executed by Owner and Operator through their duly authorized representatives this

____ Day of __________________, 2020.

OWNER: KJMM INC

By: __________________________

Title: __________________________

By: __________________________

Title: __________________________

OPERATOR: DUIT CONSTRUCTION CO., INC.

By: __________________________

Title: __________________________

By: __________________________

Title: __________________________
Plant Site is 392' From Residence to East