



# Board of Adjustment

**Case Number:** CBOA-2952

**Hearing Date:** 03/15/2022 1:30 PM

**Case Report Prepared by:**

Robi Jones

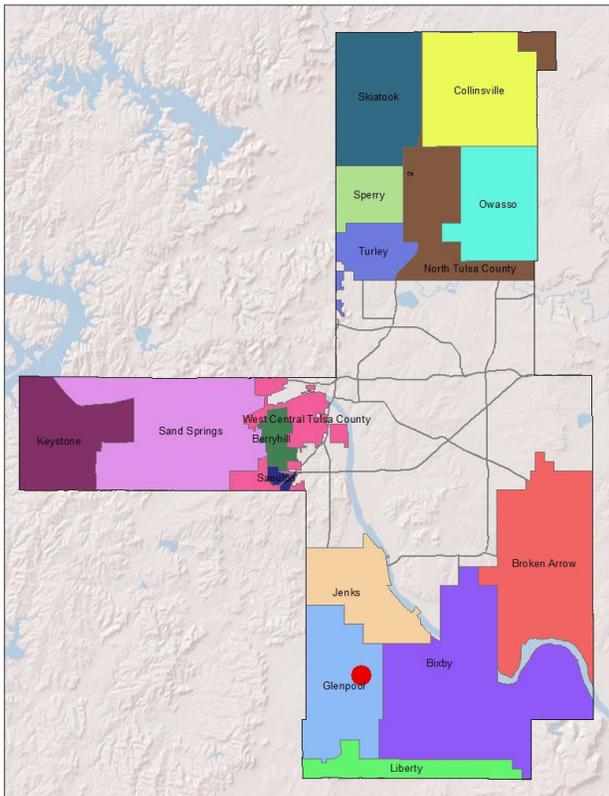
**Owner and Applicant Information:**

**Applicant:** Gawey Architects

**Property Owner:** HOLY APOSTLES ORTHODOX

**Action Requested:** Modification of a previously approved site plan to permit a new Parish Hall, Parish Temple, Caretaker Residence, and an update to parking locations in the AG district (Section 1205).

**Location Map:**



Tulsa County Comprehensive Land Use Plan

**Additional Information:**

**Present Use:** Church

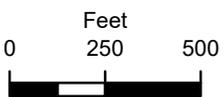
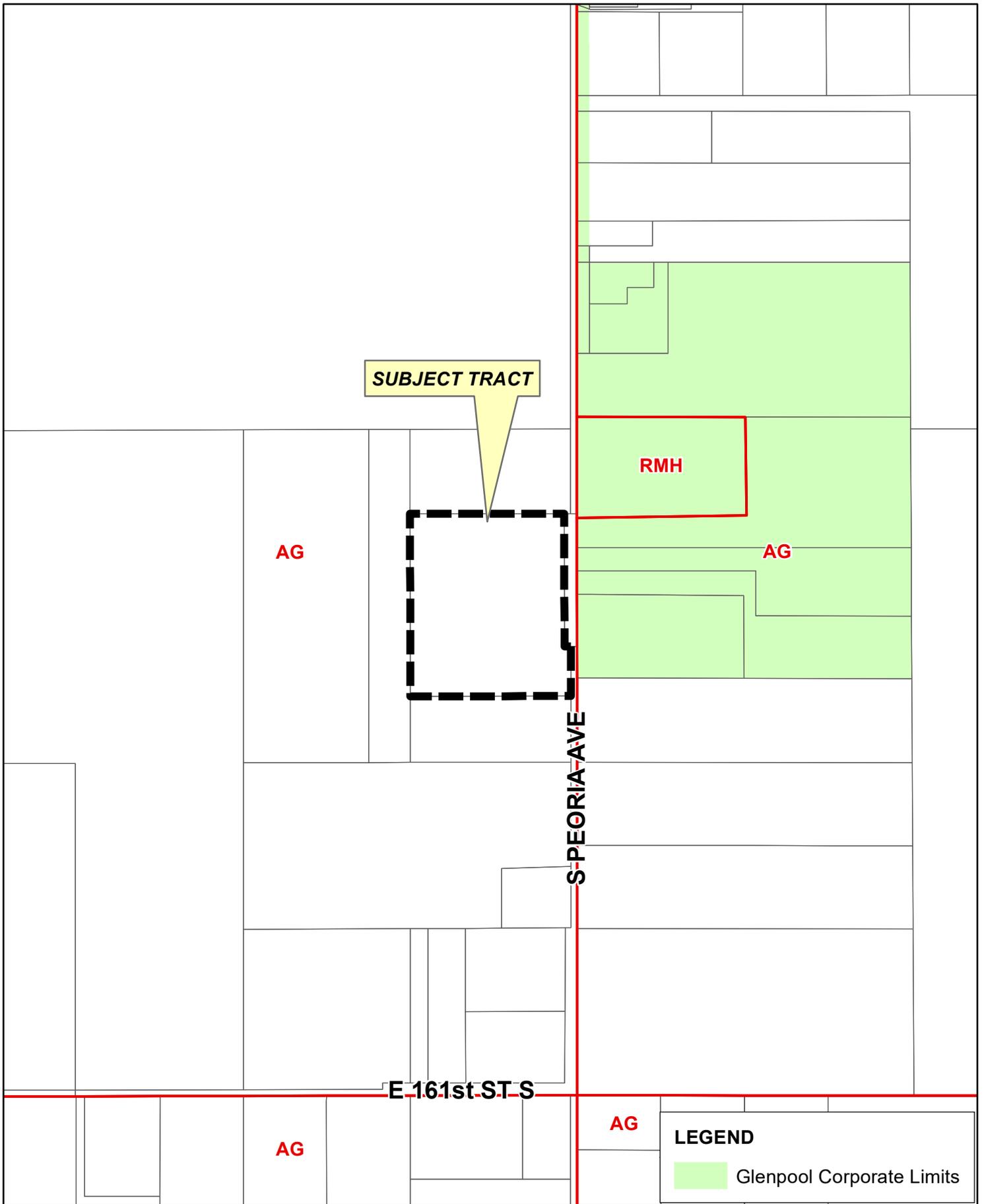
**Tract Size:** 10.28 acres

**Location:** 15710 S PEORIA AV E

**Present Zoning:** AG

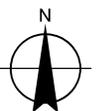
**Fenceline/Area:** Glenpool

**Land Use Designation:** Suburban Residential



**CBOA-2952**

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**TULSA COUNTY BOARD OF ADJUSTMENT  
CASE REPORT**

**TRS:** 7224  
**CZM:** 65

**CASE NUMBER:** **CBOA-2952**  
**CASE REPORT PREPARED BY:** Robi Jones

**HEARING DATE:** 03/15/2022 1:30 PM

**APPLICANT:** Gawey Architects

**ACTION REQUESTED:** Modification of a previously approved site plan to permit a new Parish Hall, Parish Temple, Caretaker Residence, and an update to parking locations in the AG district (Section 1205).

**LOCATION:** 15710 S PEORIA AV E

**ZONED:** AG

**FENCELINE:** Glenpool

**PRESENT USE:** Church

**TRACT SIZE:** 10.28 acres

**LEGAL DESCRIPTION:** N198 S461 E/2 NE SE LESS E24.75 FOR RD & LT 1 BLK 1, HOLY APOSTLES CHURCH

**RELEVANT PREVIOUS ACTIONS:**

Subject Property:

**CBOA-2369 July 2010:** The Board **approved** the Amendment as submitted per site plan; that special attention be given to the perimeter lighting and completed according to County staff recommendations; to a previously approved site plan to permit an expansion to an existing church use in the AG district; and a *Special Exception* to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property, on property located at 15710 South Peoria Avenue East.

**CBOA-2315; on 12.16.08** the Board **denied** a *Special Exception* to permit a (Use Unit 2) cemetery in an AG district (accessory to an existing church) finding the special exception will not be in harmony with the spirit and intent of the code.

**CBOA-2244; on 1.16.07** the Board **approved** a *Modification* of a previously approved site plan for church use in an AG district, with the change of use from a multi-purpose building to a parsonage as presented, finding it in keeping with the previously approved special exception;

**CBOA-2141-A; on 4.19.05** the Board **approved** a *Required Site Plan* for a church and accessory uses, with conditions: site plan to include precise location of parking spaces per code requirement; and **no improvements in the front yard area;**

**CBOA-2141; on 11.16.04** the Board **approved** a *Special Exception* to permit church and accessory church uses in an AG district; subject to a more detailed site plan submitted to the Board when plans are finalized;

**ANALYSIS OF SURROUNDING AREA:** The subject tract abuts AG zoning to the north, east, south, and west. Surrounding uses appear to be mainly residential and agricultural.

**STAFF COMMENTS:**

The applicant is before the Board requesting a Modification of a previously approved site plan to permit a new Parish Hall, Parish Temple, Caretaker Residence, and an update to parking locations in the AG district (Section 1205).

The existing church established a required site plan with the Board of Adjustment for the approved church use on April 19, 2005 (CBOA-2141-A) The required site plan was later modified in January 2007 (CBOA-2244), to change of use of a multi-purpose building to a parsonage and then modified again in July 2010 (CBOA-2369), to permit an expansion to an existing church use.

According to the new site plan:

- The proposed parish hall has a new location and the square footage is increasing to 7,000 square feet maximum (from the approved 4,400 square foot maximum).
- The proposed parish temple has a new location and the square footage is 5,000 square feet maximum.
- The property has been combined with the parcel to the south and the new site plan includes a future caretaker's residence and barn.

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

As the church was originally permitted by special exception, the Board should find that the proposed modified site plan is consistent with the spirit and intent of that original special exception approval (CBOA-2141).

**Sample Motion:**

*“Move to \_\_\_\_\_ (approve/deny) a Modification of a previously approved site plan to permit a new Parish Hall, Parish Temple, Caretaker Residence, and an update to parking locations in the AG district (Section 1205).*

*Per the Site Plan(s) shown on page(s) \_\_\_\_\_ of the agenda packet.*

*Finding the proposed modification is compatible with and non-injurious to the surrounding area and meets the previously granted Board relief or meets the zoning requirements, per code.*

**COUNTY BOARD OF ADJUSTMENT**  
MINUTES of Meeting No. 362  
Tuesday, July 20, 2010, 1:30 p.m.  
County Commission Room  
County Administration Building, Room 119  
500 South Denver

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

Charney, Chair	Walker, Vice Chair	Alberty	West, Co. Inspector
Dillard		Cuthbertson	
Osborne, Secretary		Sparger	
Tyndall			

The notice and agenda of said meeting were posted at the County Clerk's office, County Administration Building, 15<sup>th</sup> day, July, 2010 at 10:35 a.m., as well as in the Office of INCOG, 2 West Second Street, Suite 800.

After declaring a quorum present, Chair Charney called the meeting to order at 1:35 p.m.

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

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**MINUTES**

On **MOTION** of **TYNDALL**, the Board voted 3-0-1 (Charney, Dillard, Tyndall "aye"; no "nays"; Osborne "abstain") to **APPROVE** the Minutes of June 15, 2010 (No. 361).

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**UNFINISHED BUSINESS**

Mr. Osborne recused himself from the panel on this case and left the room.

**Case No. 2369-Sack & Associates**

**Action Requested:**

Amendment to a previously approved site plan to permit an expansion to an existing church use in the AG district; Special Exception to permit a (Use Unit 2) cemetery in

CBOA-2369

an AG district (Section 301) on an existing church property. **Location:** 15710 S. Peoria Ave. E.

**Presentation:**

**Ted Sack**, Sack & Associates, 111 South Elgin, Tulsa, OK; he represents Holy Apostles Christian Orthodox Church. Mr. Sack presented a new master development plan, an overall plan to outline the development of the church. Mr. Sack stated the church had been before the board before and received permission for the church use of this property. Approximately 18-20 months ago, the church went to the board regarding church cemetery use, which was turned down. At that time there was an indication from the board of a desire to know exactly what the church had planned. The church went to Sack & Associates and asked to have a master plan developed for them and to give some guidance as to their future development. The church wants to be good neighbors, so Sack & Associates developed the plan to take into account the property around the church. The plan shows the new parish temple along with a parish community hall and the change of an all-purpose building to a meeting room and the associated parking that is required to meet the square footage requirement. It also shows the rectory in the southeast corner next to Fr. Ambrose. Fr. Ambrose has been at the two previous meetings, but unfortunately, he is at a funeral today and is unable to attend. Mr. Bearer of Barber & Bartz is here and would like to speak. The neighbors may also wish to speak before he speaks.

Mr. Sack continued to go on with the master plan; it identifies the potential area of the detention facility when that need arises and also a cemetery area or an interment area. In meeting with the neighbors, they asked why that area was picked. In the doctrine of the church, they very much believe in praying and respecting the dead, and they insisted it be out near the chapel. That worked well for the neighbors because it was the most remote location from them. This area of interment is less than a quarter of an acre; it is 187 ft. from the north property line and over 410 ft. from the west boundary and over 205 ft. from the south boundary. From the Peoria side from the center of the street it is 100 ft. from the center of the street, which by the time a structure is built on the other side of the street with that 100 ft. to the center of the street plus the right-of-way for an arterial street with an additional 50 ft. with a 35 ft. setback, which is typical of agricultural or residential zoning on an arterial street, there is 185 ft. from someone on the east side. Sack & Associates also split it up by installing some landscaping in the front to break up the area and to help screen. The cemetery use or interment area has brought the most interest. The consultants have prepared an artist's rendering of how the church would anticipate the interment area to look. It is in front of the chapel where they can pay respect to the buried people, their parishioners. There are very plain markers with a single cross; they do not want to make something that is gaudy. In the package there is a copy of another Orthodox cemetery that is in the San Antonio area. The Holy Apostles Church would like to mark the graves with an iron type cross, as opposed to the wood cross that is shown in the photograph in the packet.

Mr. Sack expressed in many ways, the cemetery use could be looked at as an accessory use to the church. In older parts of the country most of the churches,

07/20/2010/#362 (2)

CBOA 2369

especially back East in the older part of the country, have cemeteries associated with them. A lot of the churches, even in the Tulsa area, are trying to provide columbaria for cremation within their facilities. Sack & Associates engineered a church approximately 10 to 15 years ago on 91<sup>st</sup> Street that had a small cemetery associated with it; actually platting the property and cemetery with it. Mr. Sack stated he could provide a copy of that if the Board would like to see it. He expressed that it was a larger area; it was more like a half acre, as opposed to the quarter acre at this facility. One of the things that is not on this proposal is this is only for the members in good standing within the church; it is not a cemetery that is church-affiliated. It is a church that has an associated cemetery with it for its members.

**Comments and Questions:**

The board asked how many burial plots could be planned for the proposed site. Mr. Sack stated that it could be a 3' x 10' interment, which could be questionable; he expressed they do a lot of work for Floral Haven, they have done gardens there of all sizes of burial plots. But with the 3' x 10', it would allow for approximately 300 spaces.

**Interested Parties:**

**Robert Bearer**, 525 South Main, Suite 800, Tulsa, OK; Mr. Bearer expressed he is here today because he is a member of the parish and he practices law so he has been asked to attend this meeting and supplement Mr. Sack's presentation, although he has never appeared before this board and it is not his principle area of practice. He is here more as a member of the parish, and he wants to speak to three items.

First, Mr. Bearer stated he believes this request is in harmony with the spirit and intent of the code and is not injurious to the neighborhood or detrimental to the public welfare. He expressed under that heading he speaks for Fr. Ambrose who can't be here. Mr. Bearer continued, the second point is that regarding the burden of proof, he would like the board to consider approaching their burden of proof. He thinks the burden of proving injury to the neighborhood and detriment to the public welfare should be on those opposing the site plan. And third, he provided that he would like to bring to the board's attention a federal statute that does affect the Board's decision making here and that is the Religious Land Use and Institutionalized Persons Act 42 USC 2000 cc which has been summarized in the handout. But on these three issues for Fr. Ambrose they think actually this application could have been posed as an accessory use. They regret they didn't do that. The reason is this cemetery really has no function whatsoever, it has no purpose except for (inaudible) for the church. It would be strictly reserved for members of the parish and their immediate family. Mr. Bearer provided the only charges that would be imposed would be those necessary to insure the maintenance of the property long term. The parish is associated with the Diocese of the South and the Orthodox Church of America. The Diocese of the South signs on as the guarantor for all financial applications. It ultimately is the beneficiary under a trust. The department is actually held in the name of the local congregation not the proper corporation but it is held in trust by the diocese of the national church. There is some financial support behind this venture that would assure its maintenance. Mr. Bearer also wanted to take the liberty of trying to share with the Board how important having a cemetery on the

premises is to Orthodox Christians. He continued, maybe not only to Orthodox Christians, as Mr. Sack has said, in the past many churches traditionally were associated with cemeteries in fact the church had its beginnings in the catacombs of Rome where the deceased were buried. Mr. Bearer said orthodoxy is not just a professional or philosophical association of persons who get together because they believe the same things. It is really a lot like Orthodox Judaism it is a way of life, and part of that way of life is remembering and praying for the departed at intervals on the day of their burial, the third day after, the ninth day after, the 40<sup>th</sup> day after and every year thereafter. In fact in every service of evening and morning prayer, and every divine liturgy on Sundays and Feast Days, the parish prays this prayer and they pray for all their fathers and brethren, the Orthodox who departed this life before them who here and in the entire world lie asleep in the Lord. For this prayer to have any meaning at all assumes that the departed are associated with marriage are laid to rest there and lie here in sleep with the Lord.

Now as far as the burden of proof, Mr. Bearer provided he would like to move to that and recommend at least the Board consider that the burden of actually showing injury to the neighborhood or detriment to the public welfare ought to lie on those opposing the motion because to do otherwise would impose on the applicant the responsibility to prove a negative, that it won't do any harm. He stated that is difficult to show. On the other hand, he has personally spoken with two Glenpool/Bixby developers and an experienced appraiser, and none of those three have expressed any concern about elements of the plan including the cemetery. They have said that they do not believe it would impair the development of the adjacent property if they were developing it. Mr. Bearer expressed he would like for the Board to consider those anecdotal testimonies and weigh accordingly.

Mr. Bearer provided, the Religious Land Use and Institutionalized Persons Act (RLUIPA) says that even the zoning board is prohibited from imposing any land use regulation in the manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly restitution unless the Board demonstrates that in position of the burden on that person, assembly or institution is in furtherance of a compelling governmental interest, and is the least restrictive means of furthering that compelling governmental interest. He provided in May of this year the 10<sup>th</sup> Circuit applied this act to permanently enjoin on the basis of unreasonable limitations a county's partial denial of a church's special use application for approval of its master site plan in an agricultural district in the case of the Rocky Mountain Christian Church vs. The Board of County Commissioners in Boulder County, Colorado. Under the RLUIPA the applicant's site plan or elements thereof may only be denied if the denial would be in furtherance of a compelling government interest. Mr. Bearer expressed he trusts the Board will agree no such compelling interest prevails in this case so as to deny the plan. He continued should the Board however demonstrate that denial is required, or that modification it is required to protect the compelling government interest, then they would ask the Board to impose only the least restrictive means of furthering that interest and they would be quite willing to submit to any appropriate conditions or

CBOA 2369

safe guards regarding size, location, screening, illumination, landscaping, whatever the Board may see fit to recommend or impose.

**Kurston McMurray**, 1515 South Utica, Suite 250, Tulsa, OK; Mr. McMurray is opposed to the application and represents Sharp Mortgage Company. Mr. McMurray, like Mr. Bearer, expressed he does not make this a general place to practice. He stated when he became involved in looking at this application he looked into what it meant to get a Special Exception, what a Use Unit 2 category is, etc. He stated that the Use Unit 2 classification is a list of uses for properties that are on this list because "they have a potential adverse influence on adjacent properties". That is precisely why when the land owner wants to use his property in this manner he has to come to the Board and seek a Special Exception. Other Use Unit 2 uses are an Adult Detention Center, Bus Stations, Jails, Landfills, and on that list is also a Cemetery. These are not typically uses that increase the market value or the pleasure of the neighbors, and that is precisely why they are on this list. So that is why an applicant is required to prove to the Board, which the board hears every single time they have one of these meetings, that the use will be in harmony with the spirit and intent of the code and will not be injurious to the neighborhood.

Mr. McMurray provided that Mr. Bearer mentioned burden of proof, he asked the Board to consider the opposition to bear the burden of proof in this matter. Mr. McMurray submitted to the Chairman of the Board that Oklahoma case law, Supreme Court case law, is pretty clear on who has the burden of proof. It is well established in a case called Volunteers of America, Inc. that the applicant bears the burden of proving the conditions that will authorize a Special Exception. He stated can submit this case to the Board if it need be. Mr. McMurray provided he wants to make sure that it is understood right away in his part of this presentation because he didn't understand that was the applicant's position until he read the additional information that Mr. Bearer submitted to this Board. An exhibit Mr. Bearer presented when they submitted the burden of proof was on us, is contrary to Oklahoma law. Mr. Bearer says it requires them to prove a negative. Mr. McMurray stated he doesn't think it requires them to prove positively that it is in harmony and that is not injurious. Here the applicant hasn't carried that burden. They mentioned in their presentation that previously in December 2008 they presented this application for Special Exception regarding the cemetery to this very Board. This Board made a very specific determination pursuant to these standards, and Mr. McMurray read from the materials that were posted as part of the history, "the Special Exception for cemetery use will not be in harmony with the spirit and intent of the Code, and would be injurious to the neighborhood or otherwise detrimental to the public". That was this Board's ruling or determination in December of 2008. Mr. McMurray suggested this Board's previous rulings should be such that interested parties, like Mr. McMurray's client Sharp Mortgage who owns about 785 acres of land in this area that surrounds and is adjacent to the church's property, and interested parties, like the other land owner's that were here previously, the Herrings and the Ranfords, ought to be able to rely upon this Board's rulings, and use their property appropriately. Ramifications of not following previous rulings are obvious and this is not an application that would justify an about-face on a previous determination.

07/20/2010/#362 (5)

CBOA 2369

Mr. McMurray provided that the cemetery and the expansion of the church is not in harmony with the intent of the Code and this Board's previous rulings and would be injurious to the neighborhood. Mr. McMurray stated since he doesn't get in this forum very often he referred to the case law. He thinks this is an unauthorized appeal of that previous December 2008 ruling. There is a case called Hargrave that would suggest that because they didn't appeal the December 2008 ruling within 10 days this is an inappropriate forum for them to reconvene. When that is heard by District Court, if it has to be, Mr. McMurray thinks that would be the salient point for them, for the opposition.

Mr. McMurray provided the application is not like the other ones, in that there is not a whole lot of information; there is not a timeline of accomplishment of all of these events, there is a little bit of information about access, parking is a concern, screening, scheduling of events is a concern. There is also, on the colored master plan a reference regarding an aerobic septic system. Mr. McMurray stated he had not heard much about it and had a lot of concern. If the church is going to expand to 200 or 300 members Mr. McMurray stated he would like to hear about the functionality of an aerobic septic system in that area, as it would affect those on the west, south and north. On the master plan there is a notation that a drainage stream would be blocked off and irrigation changed; he has not heard much from the applicant about that. Sharp Mortgage has cattle and livestock that is serviced by the drainage stream that follows through both properties. It would be unfortunate for that to be dammed up and altered without any further additional information.

Mr. McMurray stated the applicant's burden was to prove that this is in harmony with the spirit of the code. Mr. McMurray provided a brief history to the Board stating in 2004 the church was approved as a church with no site plans, as a small chapel and a church office; that seemed to be okay with the neighbors, it didn't draw much, if any at all, opposition. That seemed to fit the small quaint country chapel. There was no evidence at that time of building a mega-church-looking facility with a cemetery. In April 2005 the Board approved the site plan with the limitation that there be no improvements in the front yard area, and Mr. McMurray quoted that from a previous record of the Board's previous determination. He read the master plan that is before the Board from the applicant, the proposed cemetery and maybe some of the other buildings are in what looks like the front yard; that is east and south of the chapel. Mr. McMurray stated if he were reading the master plan correctly and hearing the applicant the church is asking the Board to overrule itself from its December 2008 determination, and also its April 2005 determination to allow some improvements placed in the front yard of the church. Mr. McMurray expressed that Mr. Bearer told the Board about 2008 where they applied for the cemetery and now, today, they have a master plan. They went from a quaint church to a master plan with bell tower, lighted parking lots, gazebos, playgrounds, a storage building, a cemetery with 300 plots, a new drainage system, an aerobic system that he thinks is spraying septic tank water; the deal keeps changing from the church and the neighbors are feeling mistreated by the way this information is being presented to them in piecemeal. The master plan is not in harmony with what they originally started with in 2004, a quaint country church.

CBOA 2369

Mr. McMurray continued a brief analogy would be, if he told his neighbors he was going to put a private swimming pool in his backyard that would be okay with the neighbors. But if he added a 30 ft. diving board and septic pool and big water slide that runs 24 hours a day, and he changed the irrigation of his property and then he bulldozed his house and put parking lots with lights that are shining in my neighbor's yard then he charged admission he would have a water park not a swimming pool. That is what the neighbors, the message he would like to convey to the board, feel like. They started with a country quaint church and now they have a water park that the neighbor's did not understand back in 2004 when this began.

Mr. McMurray continued, Chapter 3 of the code defines the AG zoned districts; in Chapter 3 is very applicable to the Board's obligations today. Section 300.1 says the purposes of the agricultural district is to encourage and protect agricultural land until an orderly transition to urban development can be accomplished. Mr. McMurray submitted to the Board in granting this application the Board would not be protecting the orderly transition to urban development as required under Section 300.1. He stated he thought this is particularly applicable to this area of the county. No doubt the Board knows the economic development which has been occurring in the Glenpool area, there has been a Wal-Mart center, banks, restaurants, etc. This is a prime, when he says "this" he is speaking about the church's property and Sharp Mortgage's property and those neighboring it; that is what he thinks the developers would consider a prime piece of development land. The last time he was here in 2008 he provided the Board a sketch of a development that was pitched to Sharp Mortgage Company by a development company, and he represented to the Board this is just one of a number of opportunities that Sharp Mortgage has had with respect to developing the property, and that these opportunities exist for them now. The reason they exist is because the zoning code had been enforced properly and is offering them an orderly transition of urban development just as Section 300.1 contemplates. Sharp Mortgage views this church's application as a threat to their future development plans.

Mr. McMurray continued, since the May 2010 meeting Sharp Mortgage Company has found out the City of Glenpool has a plan to construct a 40-acre cemetery at 161<sup>st</sup> and Elwood, which he understands is less than a mile away from the subject property. Putting this into context with today's application he thought it offered the church an alternative that is more in harmony with the intent of the code and with this Board's previous determinations. Mr. McMurray thought if they were to investigate and speak honestly about it the City would probably be amenable to selling them or making a deal with them to allow them to have a private section of that public cemetery they are planning to construct. He understands there is a similar Orthodox church in Dallas that has that arrangement with the City of Dallas for this very reason. He also believed the existence of the cemetery probably wipes out all of these threats about the religious land use persons act Mr. Bearer raised. In addition, it can't be a substantial burden to them to reject this application because the code requirements have not been met, and there is an alternative option that is more palatable for them.

07/20/2010/#362 (7)

CBOA 2369

In addition, the church has existed, at least in that area, since 2004 and they existed for four years at a minimum before they submitted their application for the cemetery. So, he thought it would be difficult for the church to prove to this Board and a court of law that the cemetery is a substantial burden that then triggers their remedies under that federal act. If it was a substantial burden the church would have bought property that was more easily suited for a cemetery, or they would have made sure that when they bought the property they obtained the approval before they purchased. Sharp Mortgage Company is also in preliminary discussions with the City of Glenpool and they view this application as something that is negative.

Secondly, this is injurious to the neighborhood. There has been previous testimony from the Ranfords and the Herrings that the cemetery and the additional construction of buildings, etc., is something they do not want. The cemetery, in particular, has garnered up fears of those who have property out there. Mr. McMurray asked the Board to recall, there was testimony from Mr. Ranford and Mr. Herring stating their wives would move out and would not develop their land if the Board approved the Special Exception. Those are live concrete examples and evidence of injurious to the neighborhood.

Lastly, there are some practical issues the Board should consider. Is there a risk the applicant would start this cemetery and then relocate the church? What would happen then? Does the church have the financial wherewithal to maintain the cemetery in compliance with Title 8 of the Oklahoma statutes? Mr. McMurray stated he is not an expert in Title 8 but he understands there has to be a trust in place; it has to be fully funded; it has to comply with the state requirements of how to maintain it insuring public safety and safeguards; and has to comply with certain regulations as to avoid an abandoned cemetery. There has been nothing presented to the Board today that would show the church has any experience in how to run and maintain a cemetery. And that is Sack & Associates, Inc. burden, not the neighbors. They want the Special Exception they should come forward with proof that this is not going to be injurious because they know how to maintain and run a cemetery.

Practical issue number two, there are 39 new parking places that face directly toward north. From past experience, 39 parking lot spaces would shine lights right onto the neighbors to the north and disturb them. On the map it shows 40 ft. from those parking spaces to the church's neighbor to the north, that Mr. McMurray would suspect is no longer than from here to there (referring to physical points within the County Commission room). Mr. McMurray thought thinks this is an issue the church has not addressed and there has been nothing said about that, and it's their burden. Facing to the west there's 12 more parking spaces. He mentioned the drainage system, there's a drainage stream. This is the next issue. The drainage stream runs through the southern part of the property and onto the west, onto Sharp Mortgage Company's property. He can't tell from the master plan if they are proposing to dam up that water and put a detention pond there. That would definitely negatively affect Sharp Mortgage's property. It will block water flow and fills to his ponds, and ponds are used to care for his livestock and cows. The aerobic system is that an airborne aerobic

CBOA 2369

system, where is it sprayed? They have not provided the Board anything with regard to how that would work. They can't provide the Board, or the neighbors, any comfort as to how that would work. There is a high pressure gas line easement that they believe runs along the eastern property line. These are things that Mr. McMurray doesn't think they presented to the Board. Mr. McMurray would submit to the Board that according to 1680.3 the Board must determine the Special Exception is in harmony and not injurious.

**Mike McConnell**, Crown Hill Cemetery, 4301 East 66<sup>th</sup> Street North, Tulsa, OK; Mr. McConnell is here on another completely different matter but heard some things he wanted to address. There were very good points made by both folks. Mr. McConnell stated he is a professional cemeterian and while some of the things Mr. McMurray questioned are real concerns such as the trust funds, what happens when the cemetery fills up and so forth. For that amount of land Mr. McConnell strongly questions whether 300 people could be buried in the area in question, he believes somewhere between 250 and 270 could be buried. The parking he would think would be in favor of the church, 8' x 17' parking space, they are going to be assembling there for the services anyway. There are rules about trusting the land to the state board but he doesn't know if the church would fall under those same rules; a trust does not need to be established if it is a non-perpetual care cemetery. If the church is a perpetual care cemetery they must trust 10% of everything they sell. But they are not selling property so there is nothing to post. There are two government bodies that govern cemeteries which in time will eventually move over to the state insurance board; but right now cemeteries are governed by the insurance board and the state banking commission, they do hold the trust and you are audited randomly. But those issues will not apply, for the most part, if you are not an operating cemetery for profit. Each burial has an aerobic system because it has concrete liner. There are companies that will come out and dig a grave and their insurance would stand in place for anything that may or may not go wrong, and they will also put a concrete liner in the ground and there are ways to do that so everybody is protected. Mr. McConnell seriously doubted if this 40 acre cemetery around the way is going to be built, but that depends on the State Cemetery Board; he is also the second Vice President of the State Cemetery Association. He would hate to see, he doesn't live in that area, something that might affect these folk later or come into play and affect myself or other cemeteries.

**Rebuttal:**

**Robert Bearer**, commented to the meeting in December 2008. He stated he wouldn't characterize it exactly the same way as Mr. McMurray did, an out-an-out denial. He thought the Chairman stated that there was not enough information in the application at the time. He also remembers Mr. Hudson stating he could not support the application as submitted, and the site plan was totally inadequate at that time. He suggested the applicant should provide more information to the neighborhood for support. He provided that was the genesis of this site plan before the Board today.

As to the question of whether they would ever be a mega-church, no way. The Orthodox Christian Churches in the Orthodox Christian Church of America are typically

CBOA 2369

a maximum size of about 250, and that is not what would be called a mega-church. Actually that's pretty small.

Mr. Bearer continued, as far as no improvements being in the front yard, which is true. One of the former approvals by this board was that there were to be no improvements to be in the front yard but it would be his position that is a decision that could be modified if this site plan were satisfactory or approved. He expressed he doesn't see that as something to be permanently binding upon the Board that made that rule. As far as scheduling services I didn't know that was an issue, but that can certainly be addressed.

As far as the piecemeal planning, they certainly apologize for that but they asked the Board to understand that when a church like this starts it starts as a mission effort, with 4 to 6 families, they rent property in a strip center and try to make it do. And in this case this congregation has an extraordinary way of beautifying property; these people love art, they love beauty and he thinks the neighbors can be assured this property will be developed in a tasteful manner. What is built there will be very good when it's finally permanent. As far as a timeline for development that's, again, a function of the youth of the parish. It has to have a certain critical mass before it can afford to implement this plan. The second item in the plan would be the house for Fr. Ambrose which has been approved by the parish council, and Mr. Bearer believes an agreement has been signed and guaranteed by the diocese. So, the house would go forward because there is funding but the rest of the plan would have to wait for maturity of the congregation.

The church never made a proposal for a cemetery and a site plan like this partly because of lack of size, lack of funds, they couldn't afford to hire a firm to design a plan, and now they are getting around to it. Even now it would take awhile for the plan to come to fruition.

As far as light shining on the neighbors, the church would be more than happy to look at screening of some kind, and that was explained in a meeting.

Mr. Charney interrupted at this point to interject on two or three points to save some time for the Board, the staff, and participants of the meeting. In regards to three items, one was the lighting, one was the drainage that Mr. McMurray addressed, and one was the aerobic system. There are third parties that govern that and address that, they are a part of the construction process. Those issues are never addressed at the Board level; and he thinks it is important for everyone to know. The Board recognizes it as being critically important in the construction process, the platting process, and the building permit process where they will have to design a stormwater detention facility and make sure it doesn't impair downstream flows. That is so the post-development issue doesn't increase flows and there isn't improper diversion of water. Those are all very real concerns, He just wants to make sure everyone here recognizes those aren't the Board's concerns when there are third parties that address those at different stages of development. He asked Mr. Alberty if that is a fair description of the Stormwater Management concept.

07/20/2010/#362 (10)

CBOA 2369

Mr. Alberty stated, "Yes, the county engineer would review all drainage plans, detention plans, and any requirements that remain. Obviously the Board is concerned about those issues but it's not an issue that you technically address in this stage."

Mr. Charney stated, "In determining the actual land usage and I think with regard to the aerobic system's capacity I know there is strong engineering and DEQ input, an approval process where those functions, decisions, analytical processes are handled by other parties other than us and they aren't put into our maintenance and decision making. I just wanted everyone to know that, and we recognize the importance of them but not here."

Mr. Charney continued, "Lighting, as well. I have heard there are ordinances and factors that we look to as to how certain lighting can occur, and these are part of our approval if it were to be. I know many times we have said that there must be certain lighting that is shielded so that they are not visible from a certain distance. So, those are all things we care about but the engineering components are often addressed at later stages, if this were to be approved."

Mr. Bearer thanked Mr. Charney. Mr. Bearer then stated his final two points would be as far as Mr. McMurray raised the issue of relocation of the church. He doesn't think that is something that should be of concern. This church is, the way these parishes plant, once they are planted the land is consecrated and dedicated in the names dedicated to church use forever. If the church were to grow larger than that 250 size, what would happen would be a different parish would be started somewhere else. Some people would leave, not bring a detriment to this parish but they would leave, the parish would remain and a new mission would be set up in a geographic area that is proximate, more proximate, to the new members. But this parish would remain there in perpetuity.

Finally, as far Title 8 goes Mr. Bearer does not believe the Title 8 applies to church cemeteries but if it does they will comply with it. The church may decide that it is a good thing to comply with anyway, but he doesn't think it actually applies to church cemeteries he thinks they are exempt.

Mr. Charney asked, "Do you have anything new to rebut, Mr. Sack, with regard to technical issues, we will give you a moment please then we are going to close this portion."

**Ted Sack** came forward. He stated they need to keep in mind the fact about development around the cemetery. The cemetery use here is very incidental, and it is very small. It has 3% of the property.

There is quite a large development, a very high-end development that was put in just recently called Tanglewood, down on Harvard, just south of 91<sup>st</sup> Street. He never heard of problems, of that development having trouble due to being next to the cemetery. As

CBOA 2369

small as this is he doesn't think the neighborhood will really ever know that it is there. And, he just doesn't think it is harmful to anyone. The master plan is something for them to grow into. Sack & Associates pushed the church to give them their dreams and their ideas as to where they wanted to end up. Mr. Sack thinks this is going to be something achieved over the next 10 to 20 years; it is going to take some time for them to get this. But the plan tries to address all the different issues, like detention. It doesn't attempt to design it but set aside for it, like the aerobic system, it is not designed but it is set aside for it.

Mr. Charney stated, "At this point we will conclude and close the public comment portion of this particular case. We'll deliberate openly amongst ourselves (the Board members) and to reach a conclusion or see if a motion is capable of being formed. Again, the applicant is seeking two things, an Amendment to a previously-approved site plan and a Special Exception to permit cemetery use. With that, is there anybody who would like to make any introductory comments or thoughts?"

**Board Deliberation:**

Mr. Charney stated he recalled this case coming before them previously; "I remember that we needed more information. So I wouldn't feel as though we were overruling ourselves or ignoring a previous decision as much as I remember not having enough information and thinking we needed something more; and I know that's what I recall thinking at the time. This is exactly what I wish we had more of, quite frankly. This is a very thorough site plan; whether we agree or not is a different matter but this helps immensely in making decisions and I think that this is exactly what we needed to make a thorough decision so I don't necessarily consider it as piecemeal as just it evolved to the point that there finally was an appropriate master plan to us to review. That is how I recall our previous thoughts."

Mr. Tyndall stated, "I don't think this is going to stop growth to that area. I don't see that it is a growth stopper, and it has not stopped it in other areas. I don't see why this small one would stop it down there." Mr. Charney interjected, "I agree." Mr. Tyndall continued, "They have done a good job with what they have done, with their construction and their appearance down there so far. I can support this application."

Mr. Dillard stated, "We just traveled to Boston down to Philadelphia and it seems like in other parts of the nation cemeteries are pretty much part of the church, and it didn't stop growth in Boston. I didn't see any stopped growth in Philadelphia, and I didn't see any deterioration in values of property that was nearby. When I read the Code, the Code defines "accessory use" as one that is customary, incidental and subordinate to the principal use. The principal use of their building is that of conversion to salvation, or whatever, church usage they do. I can support it too."

Mr. Charney said, "My feelings are similar." He didn't view a church use, even in an agricultural setting, as an intense use. He stated when he thinks of intense uses, the Wal-Marts, the restaurants, he thinks of that as significant intense use. He thinks of churches, and he has seen and been involved in many developments near, around, and

CBOA 2369

adjacent to churches, and he thinks the neighbors view them as a low intensive use; maybe a couple times a week there's people there. There are things that he thinks should be addressed with regard to them; one of them is lighting, and he was glad it came up. He thinks if it were approved he might be concerned and make certain that lighting on the perimeter is the down lighting, making certain that lighting is as unobtrusive as possible. He continued that he doesn't view the church as an intense use and he doesn't see it as a threat to future development. Mr. Charney stated he has found sometime more intense uses are pleased to see areas begin to fill in with uses such as this. It's not one that is bothersome, and it is one that he has seen residential development thrive adjacent to. He said he views this as a lot of information. This site plan demonstrates, on a perimeter showing the cemetery plots on the perimeter where there would be a later plat right up next to it, it is virtually impossible for there to be a home site immediately adjacent to the cemetery the way it is insulated by the parking lot, the structure, and an arterial street on one side. He stated whenever he looks at it he feels there is sufficient information and he feels like the applicant has met the burden whether it be the applicant's burden or the opponent's burden to establish that there has been no showing of adverse impact upon the surrounding neighbors. Mr. Charney stated he would like that the finding be made in the record that the Board considered it and that the Board might have, Mr. Charney would like to make a motion that the Board approves the amendment as submitted per site plan; that special attention be given to the perimeter lighting to be completed upon consultation with County staff. The motion is to be binding; the applicant has demonstrated there would be no adverse impact. The Special Exception is 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.

**Board Action:**

On **MOTION** of **CHARNEY**, board voted 3-0-0 (Charney, Dillard, Tyndall "aye"; no "nays"; no "abstentions") to **APPROVE** the Amendment as submitted per site plan; that special attention be given to the perimeter lighting and completed according to County staff recommendations; to a previously approved site plan to permit an expansion to an existing church use in the AG district; Special Exception to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property; finding the Special Exception will be in harmony with the spirit and intent of the Code, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare; for the following described property:

**LT 1 BLK 1, HOLY APOSTLES CHURCH**

\*\*\*\*\*

Mr. Osborne came back to the panel to participate in the discussion of the remaining cases.

**NEW APPLICATIONS**

**Case No. 2378-Fred Owens**

communications tower in the AG district (Section 310) based on items found in Section 1204.3, Sub. 1, A through L.; 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, on the following described property:

LT 4 BLK 1, BLUE STEM ACRES II

\*\*\*\*\*

FILE COPY

**Case No. 2369-Sack & Associates/Ted Sack**

**Action Requested:** Amendment to a previously approved site plan to permit an expansion to an existing church use in the AG district; Special Exception to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property. **Location:** 15710 S PEORIA AV E

**Presentation:** No presentation made.

**Comments and Questions:**

Mr. Charney stated this case will need to be continued because Mr. Osborne has a close personal friendship with counsel for the applicant. Even though counsel is here pro bono, Mr. Osborne is going to recuse himself from voting on this case. There are only three board members present for this meeting and there must be three board members to act on a decision vote in any case before the board. Even with the continuance granted from the last meeting stipulating there will be no more continuances, the board is compelled to continue this case to the July 20, 2010. The board will make every effort to have all board members present at the next meeting.

**Interested Parties:**

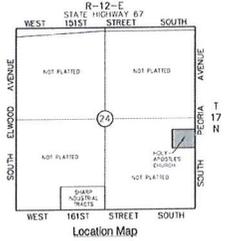
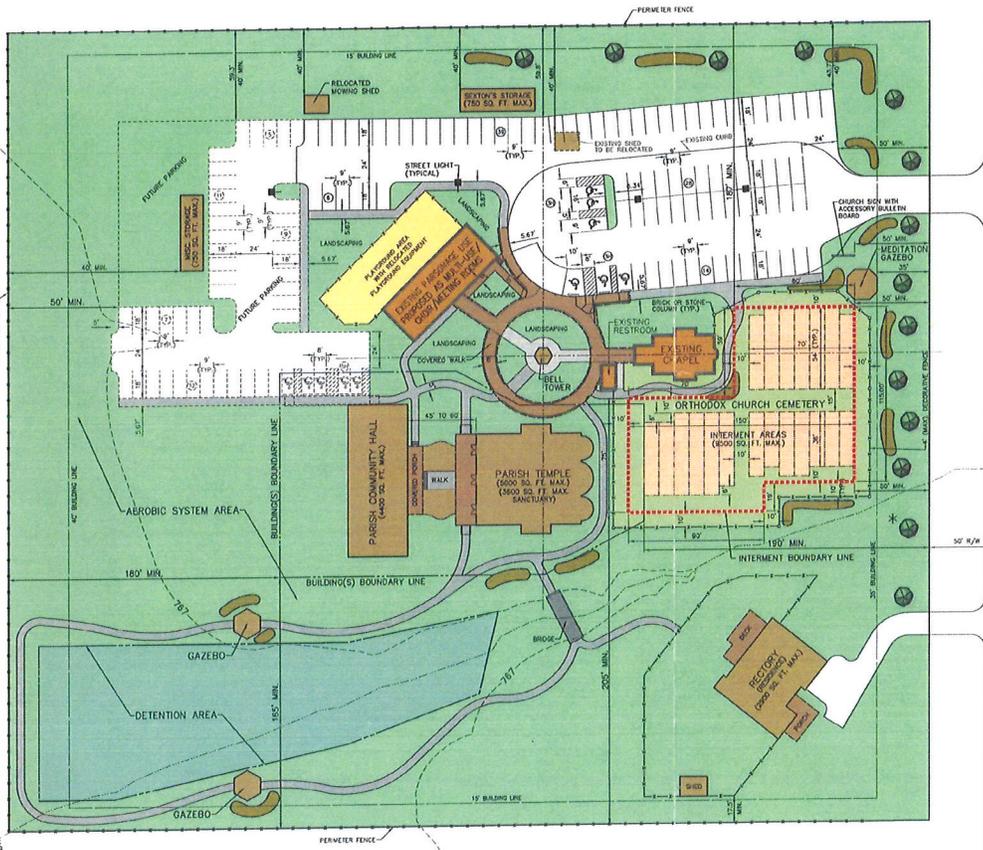
**Ben Herring**, 15612 South Peoria Avenue, Bixby, OK; stated he feels the board is making a wrong decision in continuing this case to July because the May minutes have been approved as written with no correction, and this case is reflected in the May minutes stating this case will be heard at the June hearing with no further continuances.

**Board Action:**

On **MOTION** of **Charney**, the Board voted 3-0-0 (Charney, Osborne, Tyndall "aye"; no "nays"; no "abstentions") to **CONTINUE** the Amendment to a previously approved site plan to permit an expansion to an existing church use in the AG district; and the Special Exception to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property until the next Board meeting on July 20, 2010 due to the eligibility of only two board members being able to vote; on the following described property:

**BEG 2885W & 370N SECR SE TH W150 N335 E150 S335 POB LESS S176.5 SEC 33  
19 12**

06/15/2010/#361 (3)



**Parking Requirements**

Use	Ratio (SEC 1005.6)	Required Parking	Proposed Parking
Place of Worship 8000 S.F. Sanctuary	1 to 40 S.F.	90 Spaces	93 Spaces

**Legend**  
LANDSCAPE PLANTING (TYP.)

\* NOTE: PRIOR TO ANY USE OF THE CEMETERY, TEN (10) TREES WILL BE INSTALLED WITHIN THE NON-RESIDENTIAL STREET YARD ALONG SOUTH PEORIA AVENUE.

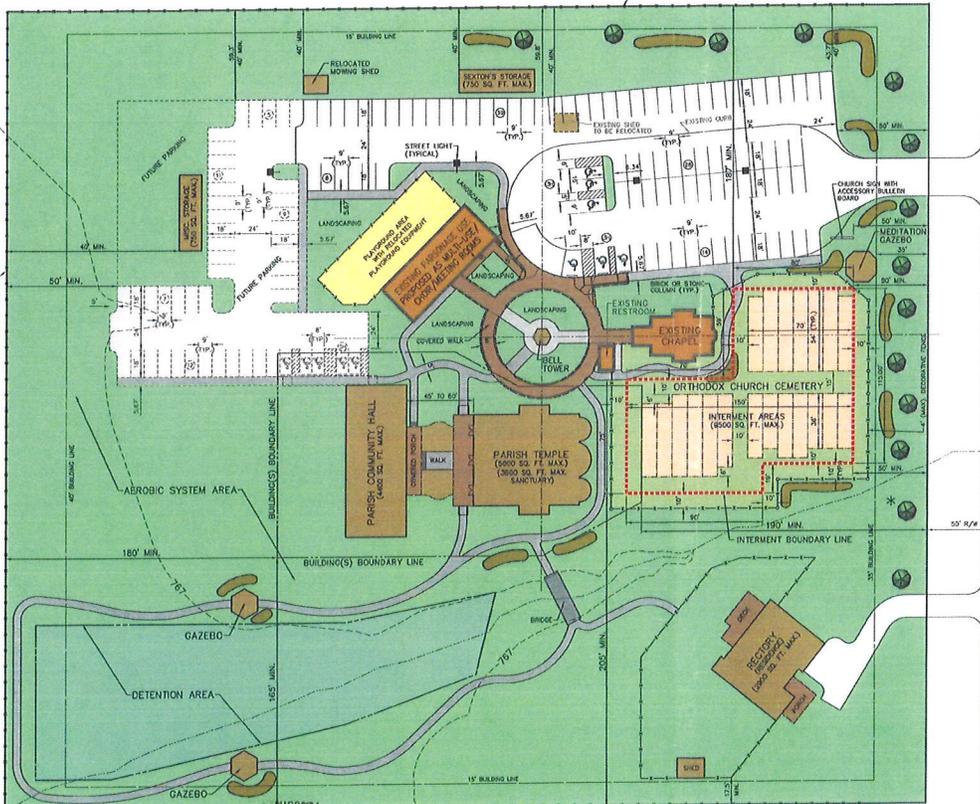
EXHIBIT  
FOR  
COUNTY BOARD OF ADJUSTMENT  
MASTER DEVELOPMENT PLAN  
FOR  
LOT 1 IN BLOCK 1  
OF  
'HOLY APOSTLES CHURCH'  
SECTION 24, T-17-N, R-12-E  
TULSA COUNTY, OKLAHOMA



3.8

**SACK AND ASSOCIATES, INC.**  
1000 WEST 10TH STREET, SUITE 100, TULSA, OKLAHOMA 74106  
918-438-1111 FAX 918-438-1112





**Parking Requirements**

Use	Ratio (SEC. 1055.4)	Required Parking	Proposed Parking
Place of Worship 3000 SF Sanctuary	1 to 40 S.F.	90 Spaces	93 Spaces



\*NOTE: PRIOR TO ANY USE OF THE CEMETERY, TEN (10) TREES WILL BE INSTALLED WITHIN THE NON-RESIDENTIAL STREET YARD ALONG SOUTH PEORIA AVENUE.

EXHIBIT  
FOR  
COUNTY BOARD OF ADJUSTMENT  
MASTER DEVELOPMENT PLAN  
FOR  
LOT 1 IN BLOCK 1  
OF  
'HOLY APOSTLES CHURCH'  
SECTION 24, T-17-N, R-12-E  
TULSA COUNTY, OKLAHOMA

0 60 120  
SCALE IN FEET



TULSA COUNTY BOARD OF ADJUSTMENT  
CASE NO. 2010-12-1  
OFFICIAL RECORD EXHIBIT  
ENTERED IN THE  
MINUTES OF THE TULSA COUNTY BOARD OF  
ADJUSTMENT  
DATE 12/17/10

**Presentation:**

Dennis Seawright, 16201 North Utica Avenue, Skiatook, Oklahoma, proposed to split the 300 ft. lot. The frontage would be 150 ft. average per lot but they would need a panhandle for access. There is a dry-weather creek at the rear, a pond, and existing structures that would interfere with the code requirements. The strick-built house was built before 1980. They want to replace the single-wide mobile home with a double-wide.

**Comments and Questions:**

Mr. Charney recognized the hardships.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On Motion of Charney, the Board voted 3-0-0 (Tyndall, Charney, Hutson "aye"; no "nays"; "abstained"; Walker, Dillard "absent") to **APPROVE** a Variance of the minimum average lot width required in the AG district from 150 ft. (Section 330) to permit a lot split, as presented, finding the hardship to be the existing structure, topography, creek to the west and the easement to the east, on the following described property:

N/2 S/2 SW NE LESS N30 THEREOF & LESS W40 THEREOFFOR RD SEC 18  
22 13, Tulsa County, State of Oklahoma

\*\*\*\*\*

**Case No. 2315**

**Action Requested:**

**FILE COPY**

Special Exception to permit a (Use Unit 2) cemetery in an AG district (accessory to an existing church) (Section 310), located: 15710 South Peoria Avenue.

Mr. Cuthbertson mentioned that the cemetery could not be considered as an accessory use, but rather as a second principal use.

**Presentation:**

George Michalopoulos, 2670 South Utica Avenue, proposed to put in a cemetery in the church yard. He explained this would not be a 'for profit' cemetery, but for parishioners and indigents as needed.

**Comments and Questions:**

Mr. Charney noted that the Board approved an application for the church to be constructed originally. Mr. Michalopoulos responded they are located in the middle of eight acres. The cemetery would be to the east and south of the church building, surrounded by a wrought iron fence.

12:16:08:343 (3)

2.20

**Interested Parties:**

**Kursten Murray**, 1515 South Utica, Tulsa, Oklahoma, represented Sharp Mortgage Company. His client owns about 700 acres on the west of the subject property. He indicated that this use has potential adverse affect on abutting property. He added the application did not provide a lot of detail. He requested the Board protect the surrounding properties in considering if this use is in harmony with the spirit and intent of the code and to protect the AG district until an orderly transition to urban development can be accomplished. He submitted an article, and map (Exhibits A-2, and A-3). He pointed out that developers are expected to begin projects in the area. Mr. Murray mentioned that South Peoria might be widened in the future. He expressed concerned should the church relocate and if the cemetery were enlarged.

**Comments and Questions:**

Mr. Charney commented that a cemetery is a less intensive use and asked how it is injurious.

**Ben Herring**, 15612 South Peoria, stated he owns the property to the north of the subject property. He stated he built a 1900 sq. ft. permanent residence. He gave a little history of property ownership. He was expecting the area to remain residential and then the church was built, and a mobile home was moved in. He complained that trash blows onto his pasture from the subject property. He informed the Board that his wife has a fear of living next to a cemetery. He questioned why the church did not put this in their original application if this is their common practice. He mentioned the three pipelines on along Peoria, two of which are in use.

**Robert Ranford**, 13150 Oak Street, Glenpool, Oklahoma, stated he recently purchased three acres south of the subject property. He looked for property a long time before he purchased this. He stated that his wife refused to build a home next to a cemetery. They don't object to construction of homes in the area.

**Applicant's Rebuttal:**

Mr. Michalopoulos responded that the mobile home is temporary until they build a stick-built parsonage. He stated the cemetery would be tastefully prepared. He indicated that other areas do not have decreased property values near a cemetery.

**Comments and Questions:**

FILE COPY

Mr. Tyndall noted it was not a part of the original application for the church. Mr. Charney stated there was not enough information in the application. He added that it is a big project and requires a lot of planning and perpetual care. Mr. Hutson stated he could not support the application as submitted and the site plan is totally inadequate. He suggested the applicant should provide more information to the neighborhood for support.

# FILE COPY

**Board Action:**

On Motion of Tyndall, the Board voted 3-0-0 (Tyndall, Charney, Hutson "aye"; no "nays"; "abstained"; Walker, Dillard "absent") to **DENY** a Special Exception to permit a (Use Unit 2) cemetery in an AG district (accessory to an existing church) (Section 310), finding the special exception will not be in harmony with the spirit and intent of the code and would be injurious to the neighborhood, or otherwise detrimental to the public welfare, and insufficient site plan information, on the following described property:

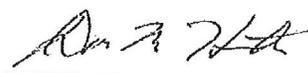
LT 1 BLK 1, HOLY APOSTLES CHURCH, Tulsa County, State of Oklahoma

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There being no further business, the meeting adjourned at 2:41 p.m.

Date approved: 1-20-09

  
\_\_\_\_\_  
Chair



S50 E/2 E/2 NW NE SW & E/2 E/2 SW NE SW&E/2 E/2 NW SE SW & E/2 NE SW SE SW & W/2 NE SW SE SW LESS N280 THEREOF & SE SW SE SW LESS S50 FOR RD SEC 3 16 13 8.751ACS Tulsa County, State of Oklahoma

\*\*\*\*\*

**Case No. 2244**

**Action Requested:**

Modify an approved site plan for church use in an AG district, located: 15710 South Peoria Avenue.

**Presentation:**

Mike McClendon, 4901 South Lyons, Broken Arrow, Oklahoma, proposed to modify a previously approved site plan from 2005. They planned to build a parsonage instead of a multi-purpose building. A site plan was provided (Exhibit B-1).

**Comments and Questions:**

Mr. Charney asked if the parsonage would be a single-family dwelling, to which Mr. McClendon replied that it would be. Mr. Cuthbertson clarified that the Board needs to determine that the modified plan is in keeping with the previously approved special exception. He informed them the parsonage would be accessory to the church.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On Motion of Dillard, the Board voted 3-0-0 (Walker, Tyndall, Dillard, Hutson, Charney "aye"; no "nays"; no "abstentions"; no "absences") to **APPROVE** the modification of an approved site plan for church use in an AG district, with the change of use from a multi-purpose building to a parsonage as presented, finding it in keeping with the previously approved special exception, on the following described property:

Lot 1, Block 1, Holy Apostles Church Addn, Tulsa County, State of Oklahoma

\*\*\*\*\*

**Case No. 2245**

**Action Requested:**

Variance of the minimum permitted land area per dwelling in an AG district from 2.1 acres to 2 acres to permit a lot split (Section 330), located: North of the northwest/corner of East 191<sup>st</sup> and South Yale Avenue.

01:16:07:320 (4)

2.24



Mr. Charney arrived at 1:35 p.m.

**Interested Parties:**

The interested parties were informed of the date and change of the meeting place to the Aaronson Auditorium in the Tulsa Central Library for the next County Board of Adjustment.

**Board Action:**

On Motion of Dillard, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Hutson "absent") to **CONTINUE** Case No. 2151 to the meeting on May 17, 2005 for proper advertising, on the following described property:

S/2 SW NW & S/2 S/2 N/2 SW NW LESS TR BEG SW/c NW TH N500 E900  
S500 W900 TO POB S9 16 13 15.675 ACS M/L Tulsa County, State of  
Oklahoma

\*\*\*\*\*

**Case No. 2141**

**Action Requested:**

Review and approval of a required site plan, located: West side of South Peoria Avenue, at approximately 157th Street South.

**Presentation:**

John Sames, 2418 East 25<sup>th</sup> Place, represented the Holy Apostles Church. He submitted a site plan (Exhibit A-1). They proposed to build in phases. This phase they proposed to build a multi-purpose building 60' X 40' and the church 80' x 50'. They intended to build parking spaces for 75 to 100 cars. The plans are to keep it as rural and pristine as possible with a lot of landscaping.

**Comments and Questions:**

Mr. Walker reminded Mr. Sames that the parking requirement is one parking space per 40 sq. ft. of sanctuary area. He asked if they planned to comply with that requirement. Mr. Sames replied they plan to comply. Mr. Walker reminded him there is a restriction of no parking in the required front yard. Mr. West pointed out that striping for parking spaces would have to be shown on the plans for a building permit.

**Interested Parties:**

There were no interested parties who wished to speak.

**Board Action:**

On Motion of Charney, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Hutson "absent") to **APPROVE** a required site plan for a church and accessory uses, with conditions: site plan to include precise

04:19:05:299 (2)

2.26

location of parking spaces per code requirement; and no improvements in the front yard area, on the following described property:

PRT NE SE BEG 336S & 24.75W NEC NE SE TH W661.26 S 525.96 E661.24 N525.96 TO POB LESS E24.75 FOR RD S EC 24 17 12 7.685ACS, Tulsa County, State of Oklahoma

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Case No. 2152

Action Requested:

A variance of the required street frontage on a public street or dedicated right-of-way from 30 ft to 0 ft in order to obtain a building permit to remodel an existing dwelling. (Section 207), located: 7618 East 164<sup>th</sup> Street North.

Presentation:

Robert J. Majka, Jr., represented his parents, Mr. and Mrs. Robert J. Majka, Sr., 7618 East 164<sup>th</sup> Street North, Collinsville, Oklahoma. They want to build an addition to the house and need access to a public road. There is a gravel road that is not maintained by the county.

Comments and Questions:

Mr. Walker noted this is a pre-existing condition.

Interested Parties:

There were no interested parties who wished to speak.

Board Action:

On Motion of Charney, the Board voted 4-0-0 (Walker, Tyndall, Dillard, Charney "aye"; no "nays"; no "abstentions"; Hutson "absent") to APPROVE a Variance of the required street frontage on a public street or dedicated right-of-way from 30 ft to 0 ft in order to obtain a building permit to remodel an existing dwelling. (Section 207), finding there is no other access to the subject property, on the following described property:

PRT SW NE BEG SWC NE TH E1319.84 N1321.04 W659.87S330.23 W659.89 S990.55 POB SEC 14 22 13 35.023ACS, Tulsa County, State of Oklahoma

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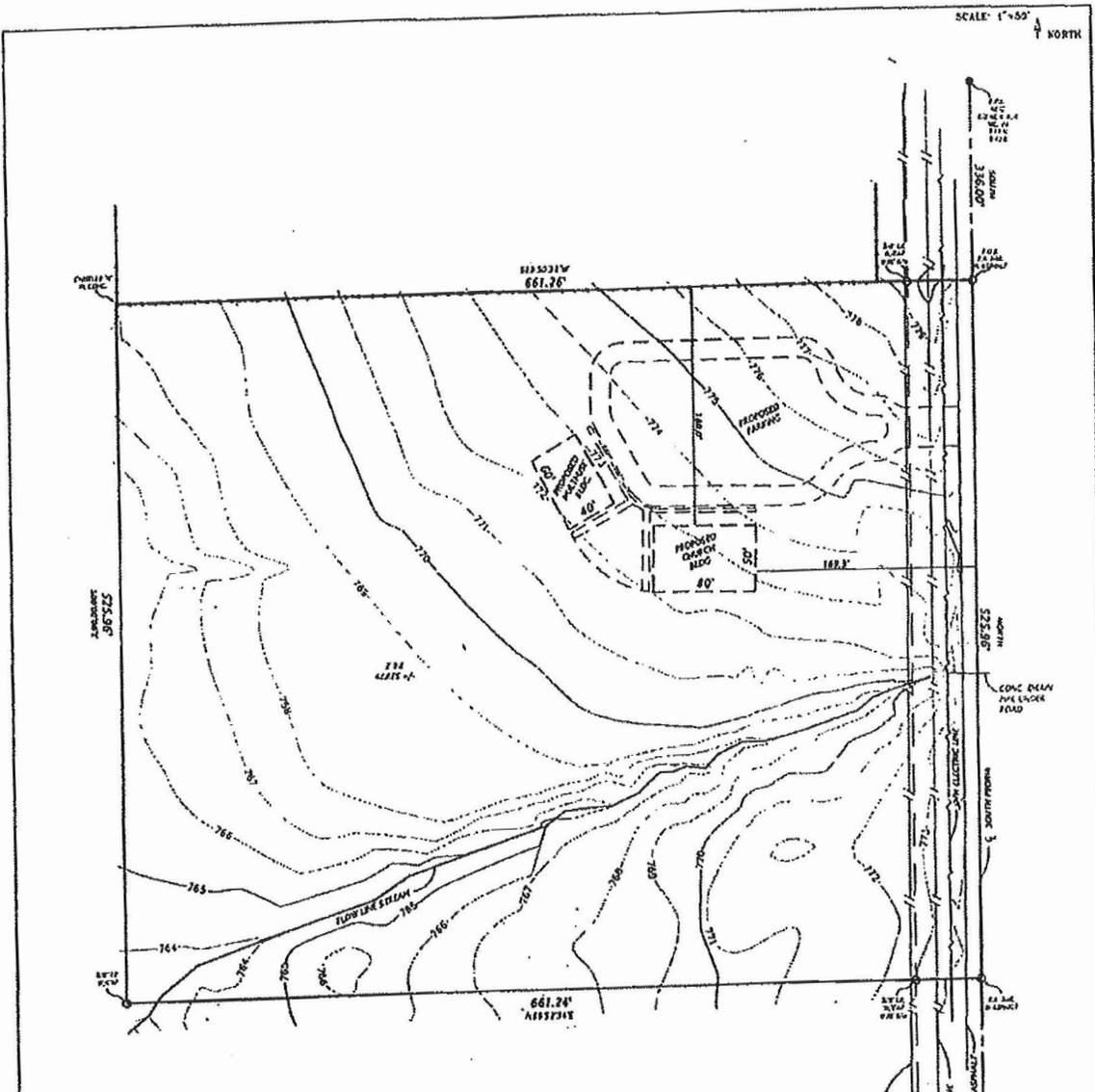
Case No. 2153

Action Requested:

Variance of street frontage requirement from 30' to 0' to permit a lot split. (Section 207), located: 18968 E. 64 Hwy.

04:19:05:299 (3)

2.27



**Legal Description**  
 A tract of land in the East Half of the Northern Quarter of the Southeast Quarter (E/2 NE/4 SE/4) of Section Twenty-four (24), Township Seventeen (17) North, Range Twelve (12) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma according to the United States Government Survey thereof; more particularly described as follows, to wit: Commencing at the Northeast Corner of said E/2 NE/4 SE/4; thence south along the East line of said E/2 NE/4 SE/4 336.00 feet to the point of beginning; thence South 00° 19 degrees 30'33" West 661.16 feet to a point on the West line of said E/2 NE/4 SE/4; thence South 00° 19 degrees 00'00" East along said line 525.96 feet; thence North 89 degrees 52'31" East 661.24 feet to a point on the East line of said E/2 NE/4 SE/4; thence North along said line 525.96 feet to the point of beginning.

**TULSA COUNTY BOARD OF ADJUSTMENT**  
 CASE NO. 2141  
**OFFICIAL RECORD: EXHIBIT A-1**  
 ENTERED IN THE 4-19-05  
**MINUTES OF THE TULSA COUNTY BOARD OF ADJUSTMENT.**

THIS PLAN IS MADE FOR AND AT THE REQUEST OF:  
**John Santos: Holy Apostles Orthodox Church**  
 THIS PLAN OF SURVEY MEETS THE OKLAHOMA BOARD STANDARDS FOR THE PRACTICE OF LAND SURVEYING AS ADOPTED BY THE OKLAHOMA STATE BOARD OF REGULATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS.

**CERTIFICATE**  
 I, K.S. COLLINS, REGISTERED LAND SURVEYOR, HEREBY CERTIFY AND FOR THE STATE OF OKLAHOMA, HEREBY CERTIFY THAT THE ABOVE PLAN AND LEGAL DESCRIPTION REPRESENTS A BOUNDARY SURVEY PERFORMED UNDER MY CLOSE SUPERVISION. THE ABOVE PLAN MAY BE SUBJECT TO EASEMENTS AND/OR RIGHTS OF WAY OF RECORD AS RESEARCHED BY ABSTRACT OR RECORD OFFICER HAS BEEN CONDUCTED.

- LEGEND**
- = T.C. BOUNDARY
  - = SET BACK LINE
  - = ROAD R/W
  - = CURBLINE OF ROAD
  - = FENCE
  - = FENCE
  - = FENCE

**COLLINS LAND SURVEYING, INC.**  
 115 East Street, Suite 104  
 Tulsa, OK 74104  
 OFFICE (918) 244-1122 FAX (918) 244-1122  
 CELL (918) 244-1122  
 ROBERT W. MCGUIRE, SURVEYOR  
 Holy Apostles Orthodox Church  
 22 No. 25-10-114 DATE 4/19/05

*K.S. Collins*  
 K.S. COLLINS  
 OKLAHOMA REGISTERED  
 LAND SURVEYOR NO. 1229

*CBOA 2315*

*2.28*

Exception to permit a home occupation (mail order) in an AG-R district, finding 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 MOTION of Hutson, the Board voted 5-0-0 (Walker, Tyndall, Dillard, Charney, Hutson "aye"; no "nays"; no "abstentions"; no "absences") to APPROVE a Variance of home occupation guidelines limiting a home business to 500 sq ft of floor area to allow 896 sq ft for the home occupation on a tract of 4.81 acres, finding the size of the property allows for increased square footage, on the following described property:

N330 E/2 SE NW LESS W25 THEREOF FOR RD SEC 19 22 13 4.81ACS,  
Tulsa County, State of Oklahoma

\*.\*.\*.\*.\*.\*.\*.\*

The Chair called a brief recess, after which the hearing reconvened.

Case No. 2141

Action Requested:

Special Exception to permit church and accessory church uses in an AG District -- Section 310. Community Services & Similar Uses -- Use Unit 5, located: West side of South Peoria Avenue, at approximately 157th Street South.

Presentation:

John Sames, P.O. Box 4484, Tulsa, stated he represented the Holy Apostle Orthodox Christian Church. They started a mission church about one and one-half years ago and now seek to obtain property to build. Phase One of the church development would be a 2,500 sq. ft. metal building with brick or stone façade for sanctuary, classes and office space. The membership is about 300 people and services would be on Wednesday evening, Saturday evening, and Sunday morning. They plan to improve the land to a park-like setting. The applicant provided exhibits (Exhibit C-1) to the Board.

Interested Parties:

Dan Bridgewater, 15810 South Peoria, indicated that because the surrounding properties are five to ten acre lots the notice to property owners within a 300' radius was minimal. He informed other property owners outside the 300' radius. He stated that he was representing the five owners directly impacted and another 15 to 20 owners in the area. He was concerned there are no plans for road improvement. He informed the Board there have been a number of traffic accidents with fatalities in the past two years. He suggested that the church would bring a lot more traffic but being tax-exempt would not contribute to the improvement of the roads. They have problems with speeding and a lack of the presence of law enforcement. The only ingress and egress is from Peoria. He stated the road would not handle the heavy construction equipment, as it is already

11:16:04:294

2.29

in poor condition. He also pointed out that the back of the property is in a 100 year waterway. They had concerns regarding the sewage system that would be used.

Cliff Weaver, 15809 North Peoria, expressed objections in agreement with those previously stated by Mr. Bridgewater.

A petition of opposition and a map (Exhibit C-2, C-3) were provided.

**Applicant's Rebuttal:**

Mr. Sames felt that roads tend to be improved when the properties are improved. He stated the quality of the improvements they would make on this property would increase the surrounding property values. The church would be supportive of road improvements and their members are tax payers. Churches are like a buffer for neighborhoods to crime and to businesses that sell liquor and promote adult entertainment. He did not believe that the church would change the volume of traffic extremely. They plan to follow the code and laws governing a sewage system. He mentioned property at 161<sup>st</sup> and Yale that was approved for church use.

**Comments and Questions:**

Mr. Hutson asked why they chose this area. Mr. Sames replied that it was geographically appropriate to the parishioners of the church.

Mr. Hutson recognized an Interested Party who wished to speak.

Daniel Bridgewater, 15810 South Peoria, disagreed that the surrounding properties would increase in value because of a pretty church. He stated that the subject property and the property at 161<sup>st</sup> and Yale were not comparable. The roadways and the proximity of residential homes were very different.

Cliff Weaver, 15809 South Peoria, stated he did not believe the presence of a church would help them get better roads. He did not want a church to move in next to his property.

**Board Action:**

On MOTION of Dillard, the Board voted 5-0-0 (Walker, Kyndall, Dillard, Charney, Hutson "aye"; no "nays"; no "abstentions"; no "absences") to APPROVE a Special Exception to permit church and accessory church uses in an AG District, subject to a more detailed site plan submitted to the Board when plans are finalized, finding 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:

PRT NE SE BEG 336S & 24.75W NEC NE SE TH W661.26 S 525.96 E661.24 N525.96 TO POB LESS E24.75 FOR RD S EC 24 17 12 7.685ACS, Tulsa County, State of Oklahoma

11:16:04:294 (9)

2.30

purposes; and subject to signage limited to a small sign at the front of the property, to be permitted; on the following described property:

**BEG SWC N/2 SE TH E829.4 N400 W829.4 S400 TO POB & BEG 829.4E SWC N/2 SE TH E460 CRV RT APROX137 ALG HWY 75 ROW TH W APROX460 S137 TO POB SEC 34 17 12 9.04ACS**

\*\*\*\*\*

**NEW APPLICATIONS**

**FILE COPY**

**Case No. 2369-Sack & Associates/Ted Sack**

**ACTION REQUESTED:** *Amendment to a previously approved site plan to permit an expansion to an existing church use in the AG district; Special Exception to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property.* **LOCATION:** 15710 S PEORIA AV E

**PRESENTATION:** Ted Sack, Sack & Associates, 111 South Elgin, Tulsa, OK; on behalf of the Holy Apostle Church, 15710 South Peoria Avenue, requested a continuance to the next meeting time on June 15, 2010.

**Comments and Questions:**

Four interested parties were present at this hearing; only two wanted to speak to the board.

**Interested Parties:**

**Ben Herring**, 15612 South Peoria, Bixby, OK; expressed that this is the second time to appear at a meeting on same subject; it was denied the first time. Mr. Herring wondered what the process is before it is tabled to a later date; how common is it to have all five members present. Mr. Alberty stated there is no guarantee because the board is all volunteer members and they have business commitments sometimes that prevent them from being here. Also there is no policy or state law that says you have to wait so many times. They can file an application every month if they so desire. The Chairman asked if it would be agreeable if we continue this until June 15<sup>th</sup> and if we still do not have five members present we can move ahead regardless. Mr. Herring stated that he would like to see this happen today because this is the day that was picked and the day he made accommodations to be available. Mr. Cuthbertson offered Mr. Herring the opportunity to provide any comments in writing prior to the hearing and he would make sure they would be provided to all members of the board. Mr. Herring stated he would not be interested in that because he would prefer to be here in person.

**Kurston McMurray**, 1515 South Utica, Tulsa, OK; asked for an agreement from the Board that they will proceed at the next hearing even if there are fewer than five members present. The Chairman agreed.

05/18/2010/#360 (3)

No other interested parties preferred to have a comment.

**Board Action:**

On **MOTION** of Tyndall, the Board voted 3-0-0 (Tyndall, Walker, Dillard, "aye"; no "nays"; no "abstentions") to **CONTINUE** the Amendment to a previously approved site plan to permit an expansion to an existing church use in the AG district; and the Special Exception to permit a (Use Unit 2) cemetery in an AG district (Section 301) on an existing church property until the next Board meeting on June 15, 2010, providing that there would be no further continuations; on the following described property:

**BEG 2885W & 370N SECR SE TH W150 N335 E150 S335 POB LESS S176.5 SEC 33  
19 12**

\*\*\*\*\*

**Case No. 02367-Coy & Kim Casey**

**ACTION REQUESTED:** *Variance to permit a detached accessory building in a side yard in an RS zoned district (420.2.A.2) and a Variance of the maximum permitted floor area for a detached accessory building in an RS district from 750 sq. ft. to 1,111 sq. ft. (Section 240.2.E).*

**LOCATION:** 4136 W 59TH ST

**PRESENTATION:** Coy & Kim Casey, 4136 West 59<sup>th</sup> Street, Tulsa, OK; presented the request to construct a detached garage on the side of their property. Mr. Casey presented a documentation of support by four neighbors.

**Comments and Questions:**

The Chairman stated there are several similar situations in the area and not a whole lot of thoroughfare there is there? Ms. Casey responded their street is a dead end street. The Chairman asked if the building was going to be located in the treed area to the west. Mr. Casey responded that it would be approximately three feet west of the existing garage and home.

Mr. Tyndall asked what the building was going to be used for and Mr. Casey stated he will be using the building as a garage for a boat and a ½-ton pickup truck; protection from the hail.

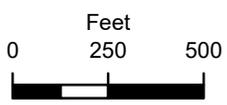
Mr. Dillard asked the property was on sewer system or septic tank. Mr. Casey responded the property is on the sewer system.

Mr. Casey explained the hardship will be the clearing of three large diameter trees. Also, the activities will be held in the backyard and for the side there will be a loss of trees and picnic table. The lot is 158'-0" deep.



E 161st ST S

S PEORIA AVE



Subject Tract

**CBOA-2952**

17-12 24

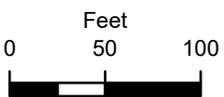
Note: Graphic overlays may not precisely align with physical features on the ground.

Aerial Photo Date: 2020/2021





**S PEORIA AVE**



**Subject Tract**

**CBOA-2952**

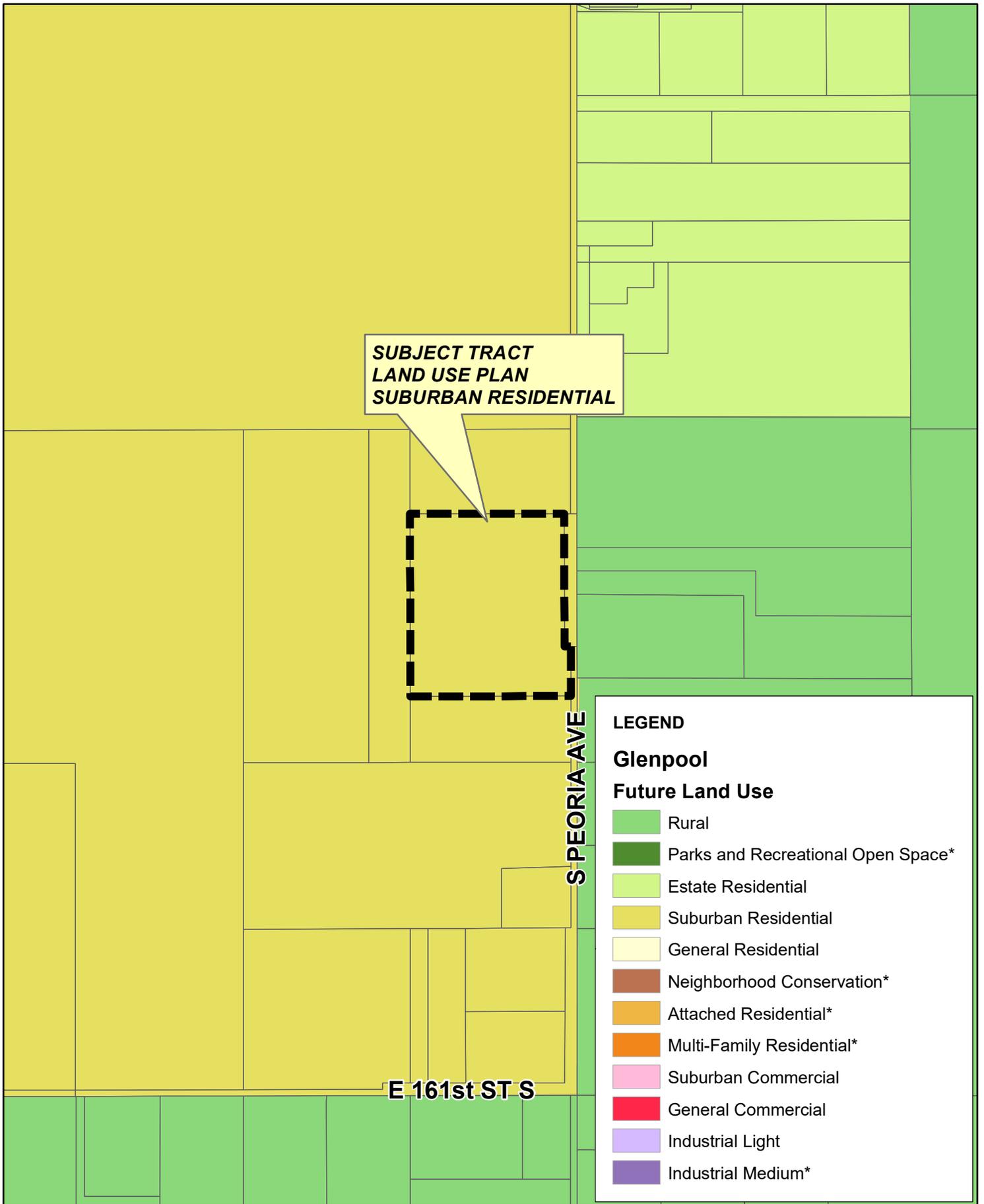
17-12 24

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

Aerial Photo Date: 2020/2021

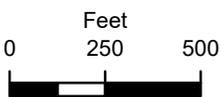


**CBOA-2952 4.35**



**CBOA-2952**

17-12 24



## Jones, Robi

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**From:** Patty Chumbley <PChumbley@waterstonemortgage.com>  
**Sent:** Monday, February 28, 2022 7:18 PM  
**To:** esubmit  
**Subject:** Case #CBOA-2952

What rights do the neighborhood occupants have to limit the light pollution that this church is already imposing on the neighborhood? Aren't there any restrictions on lighting in an area that is zoned AG and is residential? The parking lot that they currently have has lights on all night. Are they going to be able to put up more lights with their extra buildings and parking lot? Don't you have any obligation to the current residents?



### **Patty Chumbley**

#### **Loan Originator**

NMLS #233637

12133 South Yukon Ave, Suite 200 Glenpool, OK 74033

O: 918.236.2943 M: 918.230.2233

F: 918.515.4561 TF: 800.354.1149

Email: [PChumbley@WaterstoneMortgage.com](mailto:PChumbley@WaterstoneMortgage.com)

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## Jones, Robi

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**From:** R T <godskid07@hotmail.com>  
**Sent:** Thursday, March 3, 2022 3:38 PM  
**To:** esubmit  
**Subject:** Case No. CBOA-2952

To Whom It May Concern,

My name is Robin Taylor and my family and I live directly across the street from the church and location that is up for modification.

When we moved in, I thought it was beautiful to live across the street from the church. We have, for the last year or so, have not liked that they have started burying people in the front yard of their church, but I assumed it was legal since they are a church as there was nothing I could do about it.

Now that we see the diagram for development, I see that they are planning to continue to expand this "cemetery". It is a little unsettling to go from finding peace and joy across the street, to seeing death in the very obvious, cannot be missed, area of their location. I do not mind the expansion, they have always been great neighbors. I simply would request a different location for their graves, somewhere other than front and center and impossible to miss. Thank you for your interest to hear your neighbors wishes.

**Clinton and Robin Taylor & Family**

## Jones, Robi

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**From:** Kurt Townsend <townsendkurt@gmail.com>  
**Sent:** Saturday, March 5, 2022 3:53 PM  
**To:** Jones, Robi; esubmit  
**Subject:** Case No. CBOA-2952 / Questions and Concerns  
**Attachments:** Aerial Photo CBOA-2952.pdf

Mr. Jones,

My father-in-law, George Sharp, owns approximately 600 acres that joins the subject property to the west. He also owns the residence property that joins the subject property to the south. There is a creek that runs through the subject property and feeds his cattle pond. Upon information and belief, the owners of the subject property have blocked or diverted the natural flow of water and the cattle pond is drying up. I understand this issue is outside of this matter and will be addressed accordingly.

I wanted to let you know of one of the issues my father-in-law has had with the subject property after the previous site plan was approved. Now with the proposed modification, my father-in-law has additional questions and concerns, specifically regarding the proposed aerobic system and detention area and its effect on his properties. I have attached a PDF of an aerial for reference.

Could we schedule a conference call before the public hearing scheduled for March 15th? I was hoping you will have some answers or information that may relieve my father-in-law's concerns. Please let me know at your earliest convenience via email or my cell phone (918) 625-9343.

Sincerely,

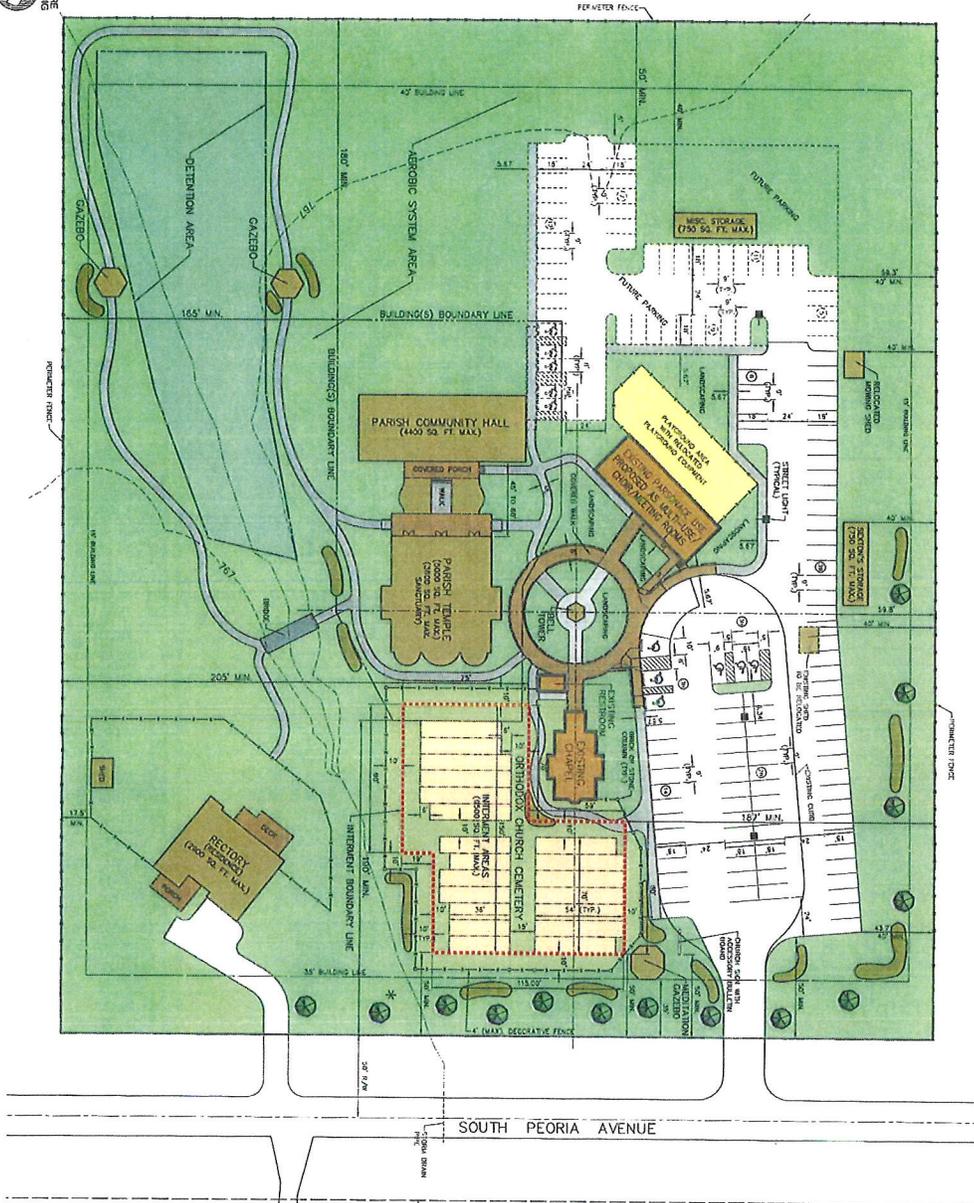
Kurt K. Townsend



# CBOA-2369 Approved Site Plan - 2.13



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**Parking Requirements**

Use	Ratio	Required Parking	Proposed Parking
Place of Worship	1 to 2.5*	90 Spaces	90 Spaces
Other (Office, Warehouse)	1 to 2.5*	00 Spaces	00 Spaces

**Legend**

- Landscaped Running (CVR)

\*NOTE: 1 to 2.5 ratio of 2.5:1 ratio is to be installed with 10% of the total area of the site. The remaining 90% of the site shall be landscaped with 10% of the total area of the site. The remaining 90% of the site shall be landscaped with 10% of the total area of the site.

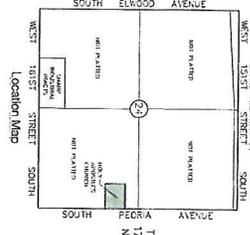


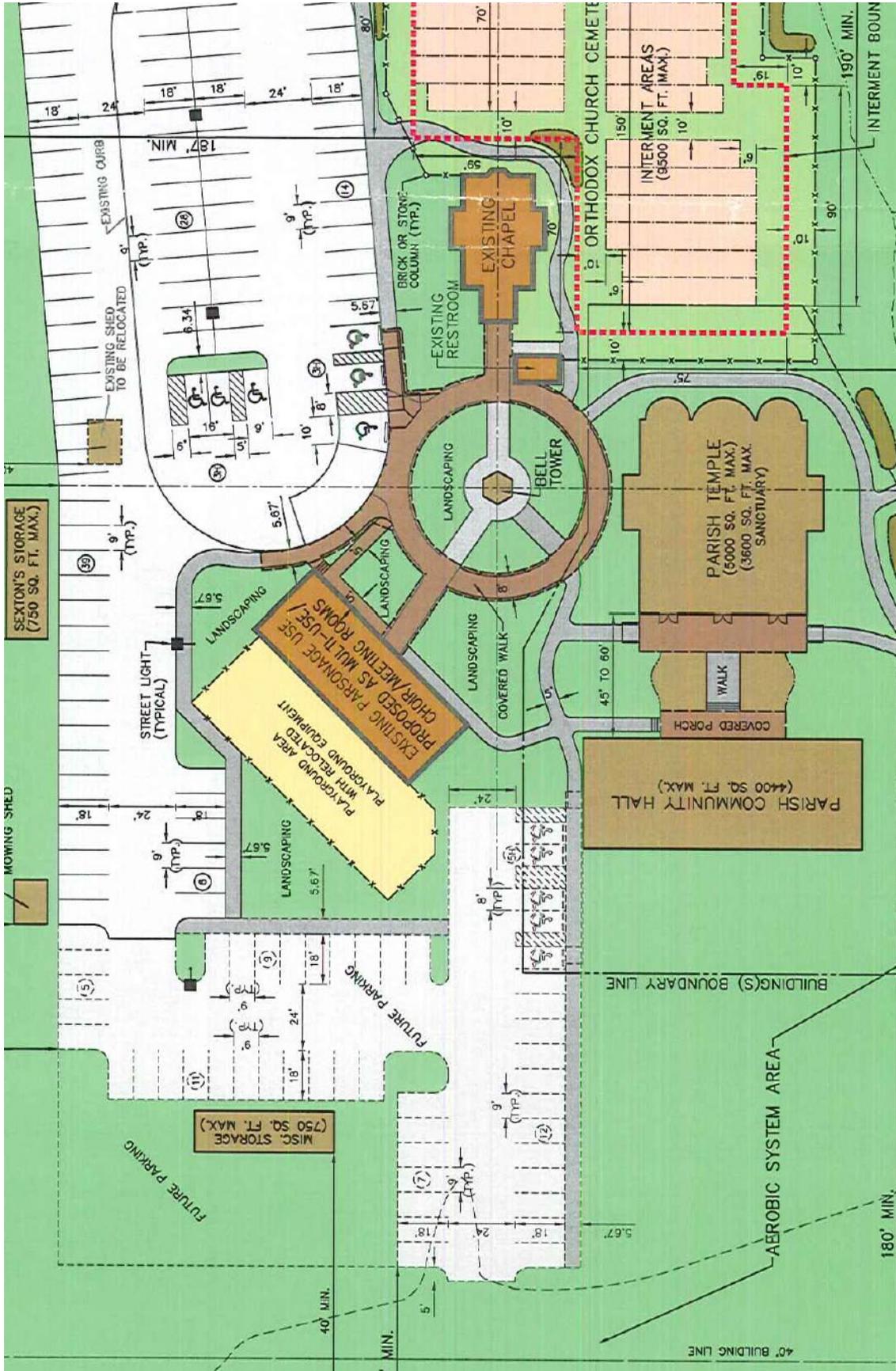
EXHIBIT  
FOR  
COUNCIL BOARD OF ADJUSTMENT  
FOR  
MASTER DEVELOPMENT PLAN  
FOR  
LOT 1 IN BLOCK 1  
OF  
'HOLY APOSTLES CHURCH'  
SECTION 24 T-17N R-12E  
TULSA COUNTY, OKLAHOMA

0 50 100  
SCALE IN FEET

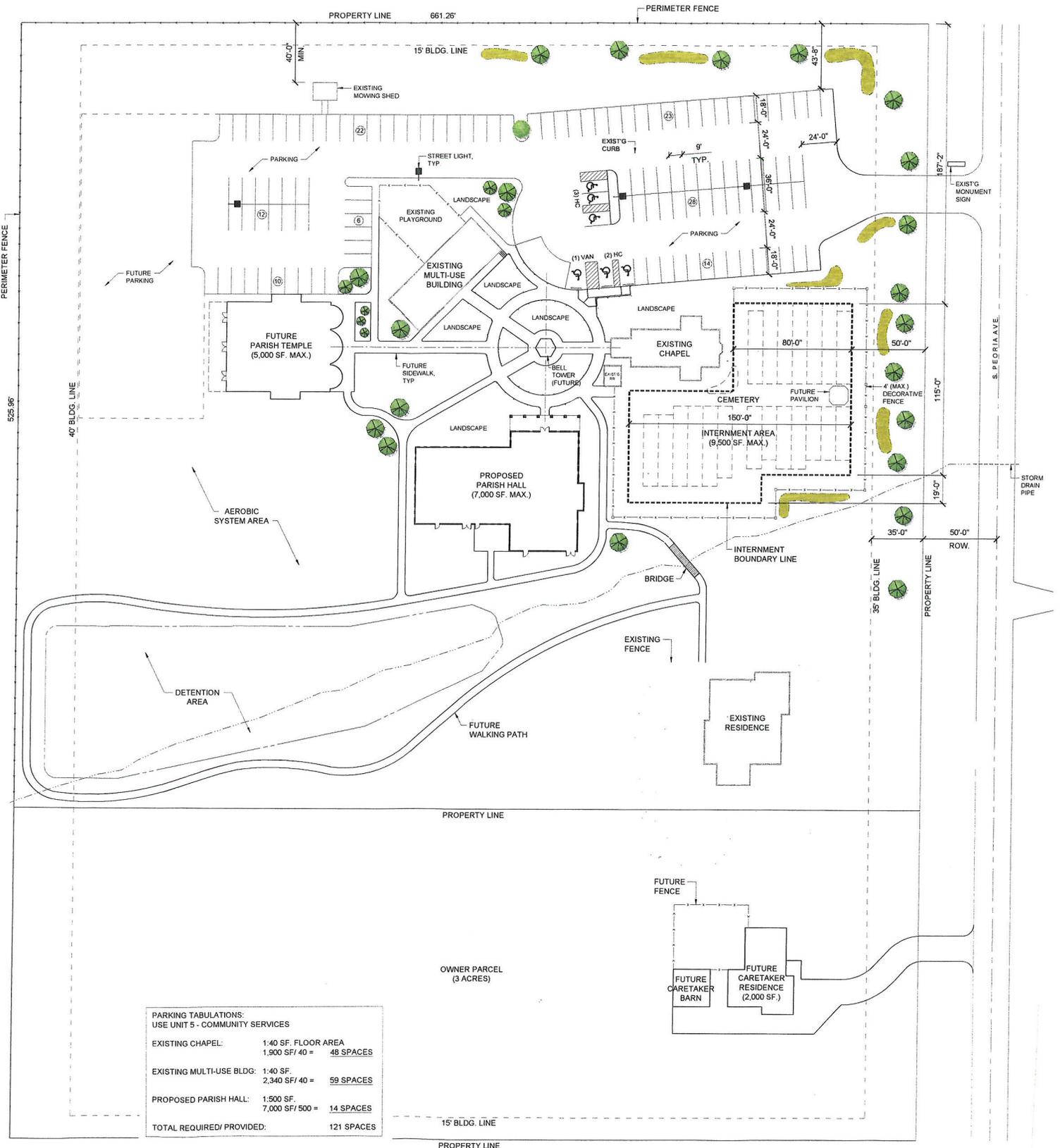
**SAOK AND ASSOCIATES, INC.**  
CIVIL ENGINEER

2.13

Approved Site Plan - CBOA-2369



# CBOA-2952 Proposed Site Plan



PARKING TABULATIONS: USE UNIT 5 - COMMUNITY SERVICES		
EXISTING CHAPEL:	1:40 SF. FLOOR AREA 1,900 SF/ 40 =	48 SPACES
EXISTING MULTI-USE BLDG:	1:40 SF. 2,340 SF/ 40 =	59 SPACES
PROPOSED PARISH HALL:	1:500 SF. 7,000 SF/ 500 =	14 SPACES
TOTAL REQUIRED/ PROVIDED:		121 SPACES

1 MASTER SITE PLAN  
SCALE: 1" = 40'-0"



# Proposed Site Plan - CBOA-2952

