

**BOARD OF ADJUSTMENT**  
**MINUTES** of Meeting No. 1113  
Tuesday, March 25, 2014, 1:00 p.m.  
Tulsa City Council Chambers  
One Technology Center  
175 East 2<sup>nd</sup> Street

**MEMBERS  
PRESENT**

Henke, Chair  
Snyder  
Tidwell, Secretary  
Van De Wiele  
White, Vice Chair

**MEMBERS ABSENT**

**STAFF PRESENT**

Miller  
Back  
Sparger  
Foster

**OTHERS  
PRESENT**

VanValkenburgh,  
Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, March 20, 2014, at 9:57 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

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**MINUTES**

On **MOTION** of **TIDWELL**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, VanDeWiele, White "aye"; no "nays"; no "abstentions"; none absent) to **APPROVE** the **Minutes** of the March 11, 2014 Board of Adjustment meeting (No. 1112).

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**UNFINISHED BUSINESS**

## **21678—Oakleaf Designs – Walt Tempinski**

### **Action Requested:**

Variance of the required number of parking spaces from 18 to 0 spaces for a change of use and outdoor seating area expansion and partial patio enclosure (Section 1212.C.1.c and Section 1212.D). **LOCATION:** 3421 South Peoria Avenue East **(CD 9)**

**Mr. Henke recused and left the meeting at 1:03 P.M.**

### **Presentation:**

**Walt Tempinski**, 3220 South Peoria Avenue, Suite 103, Tulsa, OK; stated the hardship for the subject property is that the zoning code changed in 1984, and this building was built prior to 1984. The building formerly housed the Blue Rose Restaurant, and now is leased to R Barre. The building has been renovated since the new lease, and it is dramatically improved in appearance. There are four basic areas that are triggering the parking requirements. One is an interior seating expansion of 160 square feet which was previously a mercantile space. The second area is the enclosed outdoor seating area that is on the south side of the building which has always been an outdoor seating area, but in order to bring the building into compliance with the code the space will be enclosed and treat it as an interior space while still maintaining the previous plastic walls. The third area is a new outdoor patio that is 473 square feet. The fourth area is a space that is being leased to a ballet studio and it formerly it was a mercantile space. All four spaces constitute the total of 18 parking spaces requirement, and that triggers today's Variance request.

Mr. Van De Wiele asked Mr. Tempinski where he intended to have the establishment's additional patrons park. Mr. Tempinski stated that parking has been a problem in Brookside for a long time, but they can park in the street as everyone does now. The few patrons the space would generate would not create that much more of a strain on the existing parking. Mr. Van De Wiele asked if the current building had any parking. Mr. Tempinski stated there are two spaces on the south side of the building where someone could park but they are not legal parking spaces because a person is required to back out onto the street to exit the parking space.

Mr. Tidwell asked Mr. Tempinski how many additional people would be predicted in the establishment, on a good day. Mr. Tempinski stated that it could be 37 people because that is the capacity of the proposed expansion.

Ms. Snyder asked Mr. Tempinski asked what the parking requirements are for the current building. Mr. Tempinski stated that currently there are no designated parking spaces, because there were no parking requirements when the building was built.

Ms. Back stated that in the Board's agenda packet there is reference to a Board of Adjustment case, BOA-15895, on December 27, 1991 the Board approved a Variance of the required number of parking spaces for the existing outdoor seating area. At that point in time, there was a 476 square feet of seating area mentioned, and it is assumed that the establishment was balanced at the time. Mr. Van De Wiele asked Ms. Back if it was thought to be the patio on the 35<sup>th</sup> Street side of the building. Ms. Back answered affirmatively and stated that the way the relief was written and the motion was transcribed into the meeting there were no numbers mentioned.

Mr. Tempinski stated that the patio that is being considered as enclosed space has parking already accounted for, so in effect there will be no personnel added and no patrons being added. Mr. Van De Wiele asked if that was because there was more being enclosed than it currently is. Mr. Tempinski stated no. Currently there is plastic on three sides with doors that swing outward, and there was complaint filed by a neighbor regarding curb violation. By installing the doors on the patio area it creates an interior space and the doors cause the area to be considered an indoor space.

Ms. Back stated the way code reads, if there are doors installed on the patio area it then must be considered as if it were an enclosed structure and it must be treated as such. That is for the building code and the zoning code, thus triggering five of the parking spaces. Mr. Van De Wiele asked if those five parking spaces had been dealt with in 1991. Ms. Back answered affirmatively.

Mr. Van De Wiele asked Mr. Tempinski if the ballet studio was for children, adults, or both. Mr. Tempinski stated that he thought it was just classes being held for adults.

Mr. Tidwell asked Mr. Tempinski how large a class was to be. Mr. Tempinski stated that he did not know, but there will less people in the ballet studio than if it were a mercantile establishment. Mr. Tidwell asked if the ballet studio was going to be open in the evening like the bar. Mr. Tempinski did not think so.

**Interested Parties:**

**Bill Grant**, 3421 South Peoria Avenue, Tulsa, OK; stated he is one of the three owners of the subject establishment, R Barre and Grill. The ballet studio operation will be primarily in the morning and ending early afternoon. The ballet studio patrons will not be there when the bar is open. When the complaint was issued and the City Inspectors came out, they determined that the outdoor patio with the plastic walls and doors will be now be classified as indoor seating. One of the requirements from the City is that fire doors between the building and the patio will be installed that will automatically deploy in the event of a fire. There was an additional five feet added to the existing outdoor seating on the southwest corner, and this was done to be consistent with the other outdoor patios on Peoria. Now that Brookside has been revitalized parking has become a bigger issue, and the people that purchase homes in the area realize that Brookside comes with traffic.

**Brad Sanditen**, C. B. Kerr Realty, 3314 East 51<sup>st</sup> Street, Suite 200-A, Tulsa, OK; stated he owns the property to the east of the subject property. He does not see hardship in this case other than an economic one. The true hardship falls on the surrounding business owners and their tenants. Silex Interiors, behind the subject property, sent an e-mail stating the parking is a full time battle in their lot, and they are open in the daytime. They have no place for their customers or their personnel to park, and the parking is supposed to be for the tenants only.

Mr. Van De Wiele asked Mr. Sanditen if there was signage in the lot that limits the parking. Mr. Sanditen answered affirmatively. The tenants have stickers for cars that are illegally parked so the car can be towed.

**Rebuttal:**

Mr. Tempinski came forward. Mr. Van De Wiele wanted to hear from the applicant as to what they may do to alleviate the parking burden that seems to overflow from the subject establishment. Mr. Tempinski stated that Brookside has always had a parking problem, even before the zoning code was changed. There are proposals that can be presented but it would involve a tram. This resolution needs to be an area wide solution that involves all the businesses in the area.

Mr. Grant came forward and stated there are six designated parking spaces for Silex, and his establishment works with Silex to police the parking lot. There is parking to the northeast of the subject property, which is Arvest Bank property, and his employees use that parking lot. Mr. Van De Wiele asked Mr. Grant if that was by agreement. Mr. Grant stated that it is not by agreement. There are no posted restrictions for the parking lot with the exception of a few spaces that Arvest has marked. People also use the church parking lot that is across the street. Mr. Grant stated that he does have an agreement with Mr. Hayes, who has property to the east of the subject property that says he will lease the subject establishment parking spaces but he would prefer not to do that.

Ms. Snyder asked Mr. Grant to tell the Board his hardship and why he needs the Variance. Mr. Grant stated that he leased the property with the understanding that there were three parking spaces required. So he entered into a bilateral contract with the property owner and the lessor with that understanding. The hardship would be the fact that he entered into the arrangement with understanding that the previous operating procedures would be in effect.

Ms. Back stated that the building was built before the code was adopted in 1984. This building was built to the property line, so there is nowhere to put parking.

**Comments and Questions:**

Mr. Van De Wiele stated that based on the previous approvals it sounds like the Board may have already approved five parking spaces, thus leaving 13 parking spaces. The R Barre and Grill's premium parking hours are different than the ballet studio's premium parking hours. The Board has certainly looked at that in other areas in Brookside for breakfast and/or lunch establishments, so there is some mitigation there. For the new

exterior space and the new interior space he estimates that about nine parking spaces are actually being discussed and some of those spots will not be used year round. He does see the case being a full blown 18 parking space burden on the neighborhood but he does see it to be greater than zero. Parking in Brookside is only going to become more and more of a problem. Mr. Van De Wiele asked staff if there was any movement at the City level to address Brookside in a zoning way. Susan Miller stated there is a new code under review, but there are a lot of alternatives to recognize the amount of parking required today is too much. But Brookside is not specifically being addressed. Mr. Van De Wiele stated that he could be swayed to support this request after listening to Ms. Miller's statement regarding parking.

Ms. Snyder stated that she has been studying what has happened in the past, and she does want to see empty spaces. Her concern is that the establishment is adding onto the parking burden.

Mr. Tidwell agrees with Mr. Van De Wiele in that the real number of parking spaces is only about seven or eight, not the 18 requested.

Mr. White stated that the properties east of the Silex building are not in the CH zone. There have always been parking problems in Brookside, and there is the same problem on Cherry Street. This is an area where it has developed with no guarantees for parking, so the market will take care of itself. This is not a question of choice but a matter of just how things are.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 4-0-1 (Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; Henke "abstaining"; none absent) to **APPROVE** the request for a Variance of the required number of parking spaces from 18 to 0 spaces for a change of use and outdoor seating area expansion and partial patio enclosure (Section 1212.C.1.c and Section 1212.D), subject to conceptual plan 2.22 and 2.23. Finding that a portion of the expansion in question has previously been considered and approved by this Board. The operational hours of the businesses in the applicant's space also have to mitigate the impact of the parking burden on the area, as well as potential foot traffic and the seasonal nature of a portion of the seating for the expanded space. That coupled with the fact that the building was constructed prior to the change in the zoning code, and that the building is built to the lot lines and provides no legal parking. The Board will recommend the applicant take steps to alleviate the burden of his parking on his neighboring property owner to the east. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**S20 W70 LT 2 & W70 LT 1 BLK 2, OLIVERS ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Henke re-entered the meeting at 1:52 P.M.**

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**NEW BUSINESS**

**21683—Gary Larsen**

**Action Requested:**

Variance to allow 2 ground signs per 150 feet of major street frontage (Section 1221.D.3); Variance to increase the height of a ground sign from 50 feet to 95 feet in a highway corridor (Section 1221.D.1); Variance to increase the display surface area from 150 square feet to 375 square feet in a CS District (Section 1221.C.8.a).

**LOCATION:** 1533 North Peoria Avenue East **(CD 1)**

**Mr. White recused himself at 1:58 P.M.**

**Presentation:**

**Gerald Oney**, 299 Wolf Road, Walnut Shade, MO; stated he is the engineer that has done all the projects for K-Mac Enterprises since 1987. His firm has built at least ten Taco Bell stores in the Tulsa area, and he has been involved with the City on each of those projects. Visibility for a Taco Bell is very important as is the location. Taco Bell is more of an impulse type restaurant as compared to a destination type restaurant. The subject property, in the Gateway Plaza, is the closest location to Highway 75 that could be obtained. At this location there is a visibility problem for traffic traveling Highway 75. The subject property was flagged with a local sign company and found that a 95 foot sign would be visible from Highway 75 and Pine Street. The normal 35 foot sign cannot be seen from Highway 75. K-Mac Enterprises has found that high rise signs work the best on interstate properties or high traffic volume areas. K-Mac Enterprises think this high rise sign is critical to this location and thinks it is important in this instance. The sign will be set 244 feet from Peoria Avenue and behind the Fiesta Mart.

**Interested Parties:**

**Gary Larsen**, Claude Neon Federal Signs, 1225 North Lansing Avenue, Tulsa, OK; stated the visibility issue is due to the terrain, because Highway 75 is below the elevation of the subject property. To see the restaurant from Pine while traveling west and traveling Highway 75 north the sign needs to be this tall to allow a driver ample time to exit from the Highway.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **SNYDER**, the Board voted 3-1-1 (Henke, Snyder, Tidwell “aye”; Van De Wiele “nay”; White “abstaining”; none absent) to **APPROVE** the request for a Variance to allow 2 ground signs per 150 feet of major street frontage (Section 1221.D.3); Variance to increase the height of a ground sign from 50 feet to 95 feet in a highway corridor (Section 1221.D.1); Variance to increase the display surface area from 150 square feet to 375 square feet in a CS District (Section 1221.C.8.a), subject to conceptual plans 3.9, 3.10 and 3.11. finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**LT 2, T DICKSON ADDN, GATEWAY PLAZA RSB PT HUNTER PT BROADVIEW PT  
T DICKSON, HUNTER ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF  
OKLAHOMA**

**Mr. White re-entered the meeting at 2:08 P.M.**

**21684—Tyler Outdoor Advertising – Daxton Neal**

**Action Requested:**

Verification of the spacing requirement for an outdoor advertising sign of 1,200 feet from another outdoor advertising sign on the same side of the highway (Section 1221.F.2); Verification of the spacing requirement for a digital outdoor advertising sign of 1,200 feet from any other digital outdoor advertising sign facing the same traveled way (Section 1221.G.10). **LOCATION:** NW/c of Highway 75 and 41<sup>st</sup> Street South **(CD 2)**

**Presentation:**

**Daxton Neal**, 1416 East 19<sup>th</sup> Street, Tulsa, OK; no presentation was made but the applicant was present for any questions.

Mr. Henke stated that the Board is in receipt of the applicant’s survey.

**Interested Parties:**

**Toske Willits**, 1620 West 41<sup>st</sup> Street, Tulsa, OK; stated that he is in opposition to this sign.

Mr. Henke informed Mr. Willits that today's case is strictly for the spacing verification of the proposed sign, it is not whether anyone is opposed or interested in the sign. The Board would require testimony from Mr. Willits that there is a sign within the 1,200 feet that Mr. Neal has provided in his survey.

Mr. Willits he lives across the street from where the sign will be erected. There was a person that was going to install a sign on the subject property and he was turned down because the property is three feet too short.

Mr. Henke stated the Board does not make the rules and Mr. Neal has provided a survey to the Board stating the location of various signs. Based on the review of the survey it appears the zoning code will allow the proposed sign.

Mr. Willits stated that he can see three different signs from his driveway. There have been four new signs erected from 41<sup>st</sup> to 71<sup>st</sup> Streets in the last year.

Mr. Van De Wiele asked Mr. Neal to show the Board on the survey about the signs. Mr. Van De Wiele stated that all that is required of Mr. Neal is for him to tell the Board the measurements between his proposed sign and the closest sign on the same side of the highway as his proposed sign and the other side of the highway. If the spacing is greater than 1,200 feet the zoning code will allow the new sign to be erected. Mr. Willits asked if there was any protesting of the proposed sign allowed. Mr. Van De Wiele stated that he would need to present evidence that there is a sign within 1,200 feet of the proposed sign.

Mr. Neal came forward and stated that if someone previously attempted to erect a sign on the subject property and they were turned down, they may have done something incorrect. Or they attempted to place their sign in a position that would not comply with the zoning code.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) that based upon the facts in this matter as they presently exist, the Board **ACCEPTS** the applicant's Verification of the spacing requirement for an outdoor advertising signs, for a digital or conventional billboard, subject to the action of the Board being void should another outdoor advertising sign be constructed within the spacing requirement prior to this sign; for the following property:

**Property 1: The East 180 feet of Lot Fifteen (15), Block Six (6), Interurban Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, less and except the South 25 feet thereof. Property 2: Lot Fifteen**



(14), Block Six (6), Interurban Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, less and except the South 10 feet of the West 150 feet thereof. Property 3: Lot Fifteen (13), Block Six (6), Interurban Addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, less and except the following: Beginning at the southeast corner of said Lot 13; thence North 12'23'59" West a distance of 112.25 feet to a point on the north line of said Lot 13; thence East along the north line of said Lot 13 a distance of 22.38 feet to the northeast corner of said Lot 13; thence South along the east line of Lot 13, a distance of 110 feet the point of the beginning, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA

**21685—E Z Corp**

**Action Requested:**

Verification of the spacing requirement for the expansion of an existing pawn shop of 300 feet from blood banks, plasma centers, day labor hiring centers, liquor stores, bail bond offices, and other pawn shops (Section 1214.C.3). **LOCATION:** 2120 South Sheridan Road East – **Tenant Space:** 2198 South Sheridan Road East (CD 5)

**Presentation:**

**Mike Wilson**, DSM Contracting, 10010 N. E. State Route 6, Easton, MO; no presentation was made but the applicant was present for any questions.

Mr. Henke stated that the Board is in receipt of the applicant's survey.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) that based upon the facts in this matter as they presently exist, the Board **ACCEPTS** the applicant's Verification of the spacing requirement for the expansion of an existing pawn shop of 300 feet from blood banks, plasma centers, day labor hiring centers, liquor stores, bail bond offices, and other pawn shops, subject to the action of the Board being void should another above referenced conflicting use be established prior to this pawn shop. This approval is limited to the address of the proposed pawn shop, 2198 South Sheridan Road in Tulsa, Oklahoma; for the following property:

**BEG 50W & 250S NEC NE TH S1012.56 W630.88 N1211.54 E440 S200 E200 POB  
SEC 15 19 13 16.76ACS, MARY FRANCES ADDN, CITY OF TULSA, TULSA  
COUNTY, STATE OF OKLAHOMA**

**21686—Jeff Ogilvie**

**Action Requested:**

Special Exception to permit tent sales (Use Unit 2) for produce and bedding plants in the CS District portion of subject property for 10 years (Section 701); Special Exception to permit gravel parking material (Section 1202.C.1); Variance to increase the maximum number of days in a calendar year from 179 to 200 days for tent sales (Section 1202.C.1). **LOCATION:** 3212 East 91<sup>st</sup> Street South **(CD 2)**

**Presentation:**

**Jeff Ogilvie**, 3212 East 91<sup>st</sup> Street, Tulsa, OK; no presentation was made but the applicant was present for any questions.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **SNYDER**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit tent sales (Use Unit 2) for produce and bedding plants in the CS District portion of subject property for 10 years (Section 701); Special Exception to permit gravel parking material (Section 1202.C.1); Variance to increase the maximum number of days in a calendar year from 179 to 200 days for tent sales (Section 1202.C.1), subject to conceptual plan 6.10. Finding the Special Exceptions 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. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**NE NE NE LESS N24.75 & E24.75 THEREOF & LESS BEG 24.75W & 24.75S NEC  
NE TH S638.67 W5.25 N572.16 NW46.92 W380.15 NWLY50.64 W167.53 N25.25  
E636.22 TO POB SEC 20 18 13 8.728ACS, WOODSIDE VILLAGE IV REPLAT PRT  
WOODSIDE VILLAGE I, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21687—Jeff Ogilvie**

### **Action Requested:**

Special Exception to permit tent sales (Use Unit 2) for produce and bedding plants in a CH district for 10 years (Section 701); Variance to increase the maximum number of days in a calendar year from 179 to 200 days for tent sales (Section 1202.C.1). **LOCATION:** 2614 South Harvard Avenue East – **Tenant Space:** 2622 South Harvard Avenue East, Suite A **(CD 4)**

### **Presentation:**

**Jeff Ogilvie**, 3212 East 91<sup>st</sup> Street, Tulsa, OK; no presentation was made but the applicant was present for any questions.

### **Interested Parties:**

There were no interested parties present.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **SNYDER**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit tent sales (Use Unit 2) for produce and bedding plants in a CH district for 10 years (Section 701); Variance to increase the maximum number of days in a calendar year from 179 to 200 days for tent sales (Section 1202.C.1), subject to conceptual plan 7.7. 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. Finding by reason of extraordinary or exceptional conditions or circumstances, which are peculiar to the land, structure or building involved, the literal enforcement of the terms of the Code would result in unnecessary hardship; that such extraordinary or exceptional conditions or circumstances do not apply generally to other property in the same use district; and that the variance to be granted will not cause substantial detriment to the public good or impair the purposes, spirit, and intent of the Code, or the Comprehensive Plan; for the following property:

**BLK 5 & N30 VAC ST ADJ ON S THEREOF, SHEILA TERRACE, CITY OF TULSA,  
TULSA COUNTY, STATE OF OKLAHOMA**

## **21688—Bruce Powers**

### **Action Requested:**

Appeal of an Administrative Official determining that there is a home occupation at this residence (Section 1605). **LOCATION:** 8323 East 12<sup>th</sup> Street South (CD 5)

### **Presentation:**

**Bruce Powers**, Attorney-at-Law, 4845 South Sheridan Road, Suite 501, Tulsa, OK; stated he represents the property owner, Steve Hahn and his employer EFH. EFH does business as the American Sprint Car Series and The Chili Bowl National. Mr. Powers presentation to the Board was a series of questions that he asked Mr. Steve Hahn. Mr. Hahn confirmed that 8323 East 12<sup>th</sup> Street was his home address where he resided with his wife and son. Mr. Hahn denied operating a business from the subject property and stated he was employed by EFH. Mr. Hahn stated that he did not perform any functions for EFH from the subject property. Mr. Hahn stated that he does have one recreational vehicle and trailer at the subject property. Mr. Hahn stated that in January, during the Chili Bowl, he had several race cars and trailers parked on the subject property. Mr. Steve Hahn stated that one of those cars was marked as Hahn Racing and it is owned by his father, Emmitt Hahn. Mr. Powers stated that the City has cited a racing website to be operated from the subject property, and he asked Mr. Steve Hahn to comment. Mr. Steve Hahn stated that Brandon Hahn's, his son, website is based out of South Dakota and a contract was presented for a racing hobby. Mr. Powers asked Mr. Steve Hahn if Brandon raced a car and if it was his business. Mr. Steve Hahn stated that his son races as a hobby. Mr. Powers asked Mr. Steve Hahn if Brandon Hahn was employed and he stated no. Mr. Powers asked if the sprint car had ever been owned by a corporation or any LLC, or had any commercial use. Mr. Steve Hahn answered no but the car does have sponsors. Mr. Powers asked Mr. Steve Hahn if the sponsors benefited from the advertising placed on the car at his house and Mr. Steve Hahn stated that it did not. Mr. Powers asked Mr. Steve Hahn if the car was garaged at his house and Mr. Hahn answered affirmatively. Mr. Powers pointed out similarities between today's case and Board of Adjustment case #BOA-21601 which was heard last year, which the Board rejected the home occupation concept.

Mr. Van De Wiele asked where Mr. Steve Hahn's employment through EFH officed. Mr. Steve Hahn stated the address for EFH is 1141 South 83<sup>rd</sup> East Avenue. Mr. Van De Wiele asked where the Hahn racing equipment was stored or kept. Mr. Steve Hahn stated that the equipment is at his sister's house in Glenpool.

### **Interested Parties:**

**Lloyd Adams**, City of Tulsa Neighborhood Investigator, 175 East 2<sup>nd</sup> Street, Tulsa, OK; stated it is the City's contention that there is a business being ran out at the subject property in conjunction with 1141 South 83<sup>rd</sup> East Avenue, which has been admitted. All of the functions are connected which would make a business being ran at 8323 East 12<sup>th</sup> Street.

Mr. Van De Wiele asked Mr. Adams what business activities did he think were being conducted on the subject property. Mr. Adams stated that the racing equipment is being stored at 8323 East 12<sup>th</sup> Street.

Mr. Van De Wiele asked if the City was contending that the father is operating the business of the American Sprint Car Series out of the home, or is it the son's racing business? Mr. Adams stated the City believes it is the son's racing business. The entire family is involved in the business. Mr. Van De Wiele asked if that was based primarily on the storage of the equipment on the subject property. Mr. Adams answered affirmatively and stated that research of the EFH company showing they all have the address of 1141 South 83<sup>rd</sup> East Avenue; and the actual office being located at 1140 South 83<sup>rd</sup> East Avenue, and they are all owned by Mr. Emmitt Hahn.

Mr. White asked Mr. Adams if the offices were located on the opposite side of the street from the subject property. Mr. Adams answered affirmatively, and stated the equipment for the business is stored at 8323 East 12<sup>th</sup> Street. Mr. Adams pointed out the close proximity of the subject address and the business location on a map placed on the overhead projector.

Mr. Henke asked Mr. Adams what the zoning was for the subject property. Mr. Adams stated it is all zoned RS.

Ms. Back stated that the actual parcel which is the subject tract is the one that was cited for today's particular citation. This citation pertains to that piece of property which is 8323 East 12<sup>th</sup> Street. Mr. Henke asked why the other piece of property was not cited as well. Ms. Back stated that a citation was issued at different times and the other property will be coming before the Board in the future. Using a map on the overhead projector Ms. Back pointed out two houses that are owned by Mr. Emmitt Hahn and the third house is the house that will be coming before the Board in the future for a citation of home occupation use. The only subject before the Board today is the outlined property on the map, and it is the only matter before the Board today.

Mr. Henke asked why these Appeals were not being dealt with all at one time. Mr. Back stated they were not filed at the same time.

Ms. VanValkenburgh stated the Board may wish to consider to continue today's Appeal.

Mr. Van De Wiele asked Ms. Back if the property with the tan roof on the map had been cited for anything. Ms. Back stated that she was not aware of any citations. Mr. Adams stated that as far as the City was concerned there was nothing being run out of 1141 South 83<sup>rd</sup> East Avenue. Ms. Snyder stated that 1141 is the address on the EFH W-2 statement. Mr. Adams stated 1141 is the address on record for all three properties.

Ms. Back stated when viewing the zoning map, which she placed on the overhead projector, the subject property and the other two houses is in the residential zoning but it does abutt against the CS to the north and the OL kitty-corner. It would be best to view

these together but they were not filed together nor were they cited together. The subject property before the Board today is an Appeal determining that there is a home occupation at the residence. In her opinion, as staff, it does not have anything to do with the house located across the street that has been cited for a home occupation. That is a completely different structure and different scenario as no one lives there, and there is operation of the racing business out of that structure. Mr. Henke asked what date the 1141 address was to come before the Board. Ms. Back stated it is slated for May 13<sup>th</sup>.

Mr. Van De Wiele asked Ms. Back if the case coming before the Board in May was the western most piece of property. Ms. Back stated that was correct and it is the 1140 South 83<sup>rd</sup> East Avenue property. Mr. Van De Wiele asked if the property in between today's subject property and the case coming in May has been cited. Ms. Back answered affirmatively.

Mr. Van De Wiele asked Mr. Adams what type of activity does he typically see going on at the other two properties, 1140 and 1141. Mr. Adams stated the actual offices are at 1140. Mr. Van De Wiele asked Mr. Adams if the property located at 8323 East 12<sup>th</sup> Street is equipment storage. Mr. Adams answered affirmatively.

Mr. Tidwell asked Mr. Adams how much equipment was being stored on the subject property, other than the time when the race was in Tulsa. Mr. Adams stated the day of his inspection there were four or five trailers on the subject property.

**Bobby Webster**, 2110 East 73<sup>rd</sup> Street North, Tulsa, OK; stated he owns the property west of the subject property, which on the corner of 83<sup>rd</sup> and 12<sup>th</sup> Street. Mr. Emmitt Hahn lives behind his property and his son, Steve, lives to the east. Since Mr. Emmitt Hahn has owned the property he has cleaned it up and installed a fence between the properties. Mr. Webster stated that Mr. Emmitt Hahn has never been a problem to him or any of his renters. He does think there is a business being run out of the subject property because no one ever comes in or goes out. Mr. Webster stated that he does not see any reason to change any of the activities that are going on.

**Rebuttal:**

Mr. Powers came forward and stated that for clarification the photographs the Board viewed on the overhead projector today were shot on February 5<sup>th</sup>. One of the vehicles seen in the photos is owned by Mr. Tommy Hahn who is in Sapulpa. Tommy Hahn is Mr. Emmitt Hahn's son. The only issue before the Board today is the question is there a home occupation at the house on 12<sup>th</sup> Street, and Ms. Back indicated that should be decided today as opposed to continued to a later date.

Mr. Van De Wiele asked Mr. Powers to explain where the equipment seen in the photos that were shown today is typically kept and what are they doing on the property in the pictures, and what is being done with the backhoe. Mr. Powers deferred to Mr. Steve Hahn who came forward for the explanation. Mr. Steve Hahn stated the cars that are in the photos Mr. Van De Wiele was referring to were being unloaded for storage the day

the picture was taken. Mr. Van De Wiele asked Mr. Steve Hahn whose cars they are. Mr. Steve Hahn stated they were his and his brother's cars. The cars are either undergoing maintenance or being stored. Mr. Van De Wiele asked Mr. Steve Hahn what he did with the backhoe. Mr. Steve Hahn stated the backhoe is stored in a building that is on the subject property.

**Emmitt Hahn**, 1141 South 83<sup>rd</sup> East Avenue, Tulsa, OK; came forward and stated the backhoe is his and he keeps it in a shed on the subject property. The shed does not have a door on it but the backhoe is kept in the shed. He takes the backhoe to the fairgrounds in Tulsa, about mid-December for preparing for the Chili Bowl. He uses it to bring the dirt in and move the dirt for the Chili Bowl races. It is usually the third week in January before he brings the backhoe back to the subject property. The white Hahn racing tractor-trailer seen one of the photos is his. It has been there and he did not know that it was an issue, but he has taken it to his daughter's house in Glenpool for storing. The rigs will be brought onto the subject property for loading for taking cars to races, then it will be gone.

#### **Comments and Questions:**

Mr. Henke stated he thinks there has been enough testimony presented today to rule on this case.

Mr. White stated that he is trying to break this case down into a home occupation. Is the client selling anything, manufacturing anything, etc., and he hasn't seen that at this address. He cannot see a business being operated from the subject property. It appears the subject property is being used for storage. Mr. Van De Wiele stated storage may be part of the business, if it were a construction company with the office on one side of the street and the equipment yard across the street. Mr. White stated if this case is taken on face value he cannot see it as a business per se.

Mr. Tidwell stated he does not see a business being operated out of the subject property if the Board is looking at just this case.

Mr. Van De Wiele thinks there are blurred line between the grandfather's business, the father's business, and the son's hobby or business. The Board has heard that the backhoe is used in preparation of the dirt track that the American Sprint Car Series entity hosts. The backhoe is stored on the subject property. His thought would be to hear all of the cases together. What appears to have spark the City's interest may be a very extensive hobby that the family is involved in. Certainly having hobby vehicles is not a business but this is certainly close with the office address being just across the street.

Mr. Van De Wiele asked staff if this case were to be continued can the applicant continue as status quo? Ms. Back stated it will allow the applicant to continue as status quo. The City's Working In Neighborhoods Department would realize that the cases are still pending. Ms. Back stated that she cannot divulge all the details of the upcoming

case but she is not sure the case will come before the Board, and that is why she encouraged the Board to listen to this case on it's own merit as presented.

Ms. Miller stated the Board has heard the applicant state he is running a business at 1140. There are other applications that can made to legitimize the home occupation business. So something can change in the upcoming case prior to it's appearance on the May agenda. The Board will have more information in May, whether it is a zoning change request or a request for a home occupation, so it is whatever the Board is comfortable with in their decision today.

Ms. Snyder stated the evidence shows the business to be located at 1141. It sounds like there is a hobby that is directly related to the business but it is still a hobby. If the Board were presented all the cases together she may change her mind, but with just the subject property being presented one can make the argument that this is just a hobby.

Mr. Van De Wiele asked Mr. Emmitt Hahn to come forward for a couple of questions. Mr. Van De Wiele asked Mr. Emmitt Hahn to explain what EFH's business is. Mr. Emmitt Hahn stated that EFH company is the umbrella. ASCS, American Sprint Car Series, is one of the entities. Creek County Speedway is another entity that falls under EFH. Mr. Van De Wiele asked if the business promoted racing, hold races, or is it a racing entity that owns cars and races those cars. Mr. Emmitt Hahn stated that EFH does not race anything. EFH employees are on the telephone, run about 250 races every summer from coast to coast. There is competition in the Washington, Oregon, Arizona areas, the Dakotas, and Montana; there are nine different regions. EFH is on the telephone booking the races with promoters. Then he has a crew that comes in and runs the race, i.e., a race in Billings, Montana. Mr. Emmitt Hahn stated EFH is similar to a small NASCAR. They book the races, they bring the cars, they run the show, and they pay the point fund at the end of the year. He has the property for the grandsons that race so they work on the cars and maintain the cars. The run ASCS races, NCRA races, Power-I races, and its just the grandkids spending what money I make at the Chili Bowl is what this boils down to.

Mr. White asked Mr. Emmitt Hahn how many races cars are at the location. Mr. Emmitt Hahn stated there are three; he owns one of the three, his son owns one and Mr. Bruce Griffith owns the third.

Mr. Van De Wiele stated that it sounds, to him, that at this location there is a very extensive hobby with the business being operated from another location.

Mr. Tidwell stated that there is a legitimate business with a hobby tied to the business.

**Board Action:**

On **MOTION** of **WHITE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White "aye"; no "nays"; no "abstentions"; none absent) to **UPHOLD** the Appeal of an Admistrative Official determining that there is a home occupation at this residence



(Section 1605) thus reversing the decision of the Administrative Official; for the following property:

**LT 14 BLK 2, FOREST ACRES, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**21689—Joseph Whitecrow**

**Action Requested:**

Special Exception to permit a mixed Martial Arts Gymnasium (Use Unit 19) in an IL District (Section 901, Table 1). **LOCATION:** 5907 East Admiral Place North (CD 5)

**Presentation:**

**Joseph Whitecrow**, 5741 East 2<sup>nd</sup> Street, Tulsa, OK; no presentation was made but the applicant was present for any questions.

Mr. Henke asked the applicant if he was leasing the property, and if so when was the lease up. Mr. Whitecrow stated that he is leasing the property for two years, signed that lease about six months ago, and that it will be about another five months before he can open.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit a mixed Martial Arts Gymnasium (Use Unit 19) in an IL District (Section 901, Table 1). This approval will be for a time limit of five years from today’s date, March 25, 2014. The hours of operation will be 5:00 A.M. to 10:00 P.M., seven days a week. 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 property:

**LTS 8 & 9 LESS S30 THEREOF FOR ST BLK 1, GREENLAWN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

**Mr. Tidwell left the meeting at 3:07 P.M.**

**21690—City of Tulsa – Gary Schellhorn**

**Action Requested:**

Special Exception to permit a public park (Use Unit 5) in an RS-3 District (Jingle Feldman Park). **LOCATION:** 8989 East Independence Street North **(CD 3)**

**Mr. Tidwell re-entered the meeting at 3:10 P.M.**

**Presentation:**

**Gary Schellhorn**, City of Tulsa Engineering Services, 2317 South Jackson, Tulsa, OK; stated the subject property has been under operation as a park facility, it just has not come before the Board for a Special Exception. There is currently a baseball back stop in place and the intent is to provide neighborhood services in the near future.

**Interested Parties:**

There were no interested parties present.

**Comments and Questions:**

None.

**Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit a public park (Use Unit 5) in an RS-3 District (Jingle Feldman Park). Finding that the requested Special Exception to permit a public park located in an RS-3 District will be subject to conceptual plan 10.9 and 10.10. With the conceptual plan on the referenced pages to include future modifications and improvements commensurate with park amenities with no further Board of Adjustment approval required, finding the proposed improvements to be compatible with the neighborhood. 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 property:

**LT 5-8, BLK 6 MINGO VALLEY SUB NO 1, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

## **21691—City of Tulsa – Gary Schellhorn**

### **Action Requested:**

Special Exception to permit a public park (Use Unit 5) in an RS-3 District (Lubell Park). **LOCATION:** 2909 West 56<sup>th</sup> Street South **(CD 2)**

### **Presentation:**

**Gary Schellhorn**, City of Tulsa Engineering Services, 2317 South Jackson, Tulsa, OK; stated this request is for an existing park. The facility is basically a nature wilderness area. There have been a few improvements made which are picnic tables.

### **Interested Parties:**

**Michael Dekker**, 5324 South 30<sup>th</sup> West Avenue, Tulsa, OK; stated he lives a couple of blocks from Lubell Park. He wanted to know if the improvements were to be just along 53<sup>rd</sup> Street, and if there were any plans to build any concrete pads or anything like that. Mr. Schellhorn stated there are no plans for any concrete pads for this park. Mr. Dekker stated that the area is a beautiful wildlife area and that was his only question.

### **Comments and Questions:**

None.

### **Board Action:**

On **MOTION** of **VAN DE WIELE**, the Board voted 5-0-0 (Henke, Snyder, Tidwell, Van De Wiele, White “aye”; no “nays”; no “abstentions”; none absent) to **APPROVE** the request for a Special Exception to permit a public park (Use Unit 5) in an RS-3 District (Lubell Park). Making this motion to approve the requested Special Exception to permit the public park located in an RS-3 zoned district per conceptual plan 11.7 and 11.8 to include future modifications and improvements commensurate with park activities, park amenities with no further Board of Adjustment approval required. Finding the proposed improvements to be compatible with the neighborhood. Finding the Special Exception be harmony with spirit and intent of the code and not to be injurious with the neighborhood or otherwise detrimental to the public welfare; for the following property:

**LT 1-15 BLK 2, LT 1-34 BLK 3, LT 1-13 BLK 4 MOUNTAIN MANOR 2<sup>ND</sup> ADDN, CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA**

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**OTHER BUSINESS**

None.

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**NEW BUSINESS**

None.

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**BOARD MEMBER COMMENTS**

None.

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There being no further business, the meeting adjourned at 3:14 p.m.

Date approved: 4/8/14

Frank X. H. [Signature]  
Chair