

**AMENDED
BOARD OF ADJUSTMENT
MINUTES of Special Meeting**
Tuesday, November 17, 2016, 1:00 p.m.
Tulsa City Council Chambers
One Technology Center
175 East 2nd Street

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Bond Van De Wiele, Chair White, Vice Chair	Flanagan, Secretary Back	Miller Moye Sparger	Swiney, Legal Blank, Legal

The notice and agenda of said meeting were posted in the City Clerk's office, City Hall, on Thursday, November 10, 2016, at 10:11 a.m., as well as at the Office of INCOG, 2 West Second Street, Suite 800.

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

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

Mr. Van De Wiele explained to the applicants and interested parties that today's meeting presents a very odd situation. Three of the five Board of Adjustment members must recuse for various reasons, Mr. Van De Wiele included. Mr. Van De Wiele asked City Legal to summarize the situation and what it means.

Mr. Swiney stated there are two items on today's agenda, both are for the same property. One item is an Appeal from the Administrative Official's determination and the other item is a Special Exception. The Zoning Code provides that three affirmative votes are required to grant a Special Exception, a Variance or an Appeal from an Administrative Official's determination. This is a five person Board of which three members are present today so if three affirmative votes are required and one of the three members is going to abstain, obviously, there will not be enough votes to take an action. That does not mean there should not be a public hearing so the Board may proceed to hear from the applicant and from the interested parties as the Board would in a normal course of business and then take a vote.

Mr. Van De Wiele officially abstained at 1:03 P.M. and turned the meeting over to Mr. David White, the Vice Chair.

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UNFINISHED BUSINESS

None.

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NEW APPLICATIONS

22171—Eller & Detrich – Lou Reynolds

Action Requested:

Appeal of an Administrative Official's determination that the proposed Iron Gate facility is a "Governmental Service" under the Zoning Code. **LOCATION:** East of the NE/c of East 8th Street South & South Elgin Avenue East **(CD 4)**

Mr. White stated this is an Appeal of an Administrative Official's decision and he thinks everyone would like to know what that decision was and how it was reached before Mr. Reynolds appeals the decision. Mr. White asked Mr. Paul Enix, City of Tulsa, to come forward and state what the decision was and how it was arrived at.

Paul Enix, City of Tulsa, Senior Code Official for Planning and Development, 175 East 2nd Street, Tulsa, OK; stated the proposed use was categorized under governmental services not elsewhere classified. That is a subcategory under public, civic and institutional use. In Section 15.020-D the Zoning Code states Uses that are not listed in the table and that cannot be reasonably interpreted to fall within any defined Use category are also prohibited. He does not believe in anyway that it was intended in the Zoning Code this Use was to be prohibited because he believes it is found in Section 35.040 – Public, Civic and Institutional Use Category. Mr. Enix stated that he believes this is the correct category because it says this category includes public, quasi-public and private uses that provide unique services that are of benefit to the public at large. He believes the services proposed fit into "the benefit to the public at large". Mr. Enix stated that when you look at the services provided by Iron Gate, shown on exhibit 1.24, under item #2, it states that Iron Gate serves an average of 700 meals each morning in the soup kitchen; serve about 300 families a week with emergency groceries; and hand out about 1,200 kids packs every month. This exhibit gives a good understanding of the activity. Then the City thinks about how they are able to do this and decides there has to be a storage area for the food, an area to feed and hand out the groceries, a food preparation area like a kitchen, and then an area to dine in or a gathering area inside,

and offices to administer the program. The City then goes back to what the principal use is. What was applied for says, "a community soup kitchen and grocery pantry" which is exactly what Iron Gate's brochure states. In Section 35.020-E the Zoning Code itself provides a method and direction on how to determine Uses. In paragraph 2 it states when a Use cannot be reasonably classified into a subcategory the development administrator is to determine the most similar and thus most appropriate based on the actual or projected characteristics of the principal use or activity in relationship in the use category. Mr. Enix stated the City then went back to the principal use which is the soup kitchen and grocery pantry. Then the Zoning Code stated these things must be considered: what are the activities; the equipment and processes; the existence, number and frequency of residents, customers and employees; the parking demands; and other factors deemed relevant. Based on using this process the City went back to the 18 subcategory items under the category of Public, Civic and Institutional use and tried to find a category that fit the soup kitchen. When looking at governmental services or functions not elsewhere or otherwise classified those would be social services. That is what Iron Gate is about. When you focus on the activity, whether it is provided or paid for by the government or a public entity it is still the same activity and it will still function the same way. That is the perspective the City used and the City believes they followed the principles set forth in the Zoning Code and that is how the City arrived at their decision.

Presentation:

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents Iron Gate. Mr. Reynolds stated that Iron Gate is not a governmental service. Mr. Reynolds referred to exhibit 1.3, "Section 35.040-G Governmental Service – local, state or federal government services or functions that are not otherwise classified." Mr. Reynolds stated that Iron Gate is not a local, not a state and is not a federal government service. Iron Gate serves hot meals and gives food away. The City of Tulsa, the County of Tulsa, the State of Oklahoma and the Federal Government does not serve hot meals to anyone. They do not give away food to anyone. Iron Gate is not local, state or federal but are classified somewhere else. Iron Gate is classified under commercial zoning. Iron Gate is a restaurant. The definition of a restaurant in the Zoning Code is an establishment that serves food. Iron Gate serves food. Iron Gate is an office. Iron Gate is a warehouse. Iron Gate stores food, gives food away and serves food. All of those are allowed by right. If a Use can reasonably be classified in multiple categories, referring to exhibit 1.4, restaurant, office, warehouse the development administrator is authorized to categorize such use category, sub-category and specific use type use that provides the most exact, narrowest and most appropriate fit. The United States Constitution and the Oklahoma State Constitution have been interpreted both by the Supreme Court of the United States and Supreme Court of the State of Oklahoma to say that zoning ordinance are derogation of common law property rights and must be strictly construed in favor of the land owner. Zoning Codes should always be interpreted for the freer use and the less restrictive use of property. That is simple black letter law. The City strains for a hardship because Iron Gate is not local, state or federal government. Iron Gate is not government services. Iron Gate is not owned by the government. Iron Gate has no relationship to the government. Iron Gate is a

restaurant, an office and a warehouse. It is that simple. The key operative words are "not elsewhere classified". Any ambiguity favors Iron Gate. It does not favor the more restrictive use of property because Iron Gate is being denied their constitutionally protected rights to use the property in accordance with the law. The law does not look differently at a restaurant that gives food away any differently than a restaurant that sells food. The only place Iron Gate is looked at differently is on the street but not by the law.

Mr. Bond asked Mr. Reynolds if one of the patrons were injured as the alleged cause of negligence by Iron Gate could they seek redress in a civil court. Mr. Reynolds answered affirmatively. Mr. Bond asked Mr. Reynolds if he would exert the nonprofit/good Samaritan exemption as a defense under law. Mr. Reynolds stated he would not exert the governmental exemption because there is no cap on Iron Gate's liability statutorily like the City of Tulsa or the State of Oklahoma. Iron Gate is no different than a private business.

Mr. Bond stated there is a category, Section 35.040 – public, quasi-public and private uses that provide unique services that are of benefit does not seem to be problematic, it is the sub-category that does. Mr. Bond asked Mr. Reynolds and Mr. Enix, as a point of regulation, when that is in possible conflict with the sub-category who wins. Mr. Reynolds stated that whenever there is a conflict in the interpretation of the Code constitutional law states it goes to the freer use of the property. It goes to the land owner not the City. The City does not have the right to place Iron Gate in a Special Exception use because they want to. The City only has the right to do so because of what the law states and the law doesn't give them that right. Everything Iron Gate does is a use by right in the CBD District. Iron Gate is entitled to be treated the same as any other restaurant, any other office use and any other warehouse use. Mr. Reynolds stated that when you see the language "not elsewhere classified" Iron Gate is elsewhere classified.

Mr. White asked Mr. Reynolds if he was saying the Special Exception as requested is not necessary. Mr. Reynolds answered affirmatively and stated Iron Gate is allowed to use the property by right.

Paul Enix came forward and stated that everyone has been to a grocery store deli, bought a sandwich and sat down to eat. Is that a restaurant? They serve food. Is it a warehouse? There is an area in the back for storing food. The grocery store has an office space. Or is the principal use combining all of those into a grocery store? There are shopping malls with many different uses, i.e., barber shop, restaurant, retail business. That is where there can be different uses broken out to identify the individual uses as an example. The Use category in Section 35.040 talks about the unique services, but instructed by Section 35.020 need to find a sub-category that is most similar based on the principal use and the activities. That is how the City reached their conclusion.

Interested Parties:

Mark Petrich, Hall-Estill, 320 South Boston, Suite 200, Tulsa, OK; stated he represents two adjacent property owners to Iron Gate; the owners of The Coliseum Apartments at the corner of 7th and Elgin and the owners of the property next door who are developing a headquarters and training facility for an IT company. The construction of the statutes by the City overwhelming supports the decision made by the City. The City must first look at the Use category before looking at the sub-category, and clearly this Use fits under the Use category of public, civic and institutional use. It fits directly. The fact that there is not a sub-category that perfectly fits this use does not mean the Use category is to be ignored. The City is tasked with the plan of finding the best fit for this use under the category which they have done. Looking at the use, it is like a social service. Mr. Petrich stated that Mr. Reynolds argues that it is a restaurant but before looking at the sub-category of restaurant the Use category must be looked at. Iron Gate has to fit the commercial use category before going to a restaurant sub-category. The Use category says, "uses that provide a business service or involve the selling, leasing or renting of merchandise to the general public". Iron Gate does not fit a commercial use. The City's construction of the statutes is right on point. Mr. Petrich stated that Mr. Reynolds knows he is not going to get the Special Exception so he is trying to challenge the City's categorization of this facility but you cannot ignore that it is not a commercial use. It does not fit that. For that reason the City's construction is correct and the appeal should be denied.

Rebuttal:

Lou Reynolds came forward and stated that he eats at Iron Gate and he pays. The people he goes there with also pay. It is clear what Iron Gate does. Iron Gate is defined as a restaurant in the Zoning Code's very language. Iron Gate cannot be taken out of that definition. Iron Gate is an office which is a commercial use and the Board does not need to take Iron Gate out of that definition. Iron Gate is a warehouse which is a commercial use. It is a strain to say "governmental service not elsewhere classified". The government does not serve hot meals to anyone. The government does not give away food to anyone. The Code states local, state or federal governmental service not elsewhere classified.

Mr. Bond asked Mr. Reynolds if Iron Gate is inspected by the Health Department. Mr. Reynolds answered affirmatively. Mr. Bond asked Mr. Reynolds if Iron Gate is licensed. Mr. Reynolds answered affirmatively. Mr. Bond asked Mr. Reynolds if Iron Gate pays a licensing fee. Mr. Reynolds answered affirmatively. Mr. Bond asked Mr. Reynolds if Iron Gate's principal use is to provide for a meal that is being paid for or is the principal use to provide a free meal to individuals who are less fortunate. Mr. Reynolds stated that Mr. Bond is splitting a hair that is unnecessary because the principal use is a restaurant use which is to serve food. The Code does not state to sell or give away, it does not make that distinction.

Comments and Questions:

Mr. Swiney stated that Section 70.140, Appeals of Administrative Decisions, paragraph four states "in acting on the appeal, the Board of Adjustment must grant to the official's

decision a presumption of correctness, placing the burden of persuasion of error on the appellant." What this means legally is that as everyone walked into the door today we presume that staff's determination is a correct one. That presumption holds unless Mr. Reynolds has met his burden of persuasion.

Mr. Bond stated that this is a complicated issue and the reason is because we do not have a clearly defined category for a private social service. He wishes the City did have such a category and he would certainly encourage the City government and the City Council to come forth with such a category. Mr. Bond stated that placing Iron Gate under governmental service is somewhat problematic but he also finds it problematic to place them under commercial service. The Board has to look at the totality of a business or institution. A chemical manufacturing plant has an office but that does not mean it can be zoned as office light because of the principal use that it is designed for and the activities it is directed towards. Mr. Bond thinks that the Iron Gate activity is directed toward the social benefit and based on that he is inclined to say that Mr. Reynolds has met his burden in showing that Iron Gate is not clearly within the parameters of a governmental service. Mr. Bond stated that in his opinion, because the ambiguity exists he believes when the ambiguity is there that is then interpreted toward the benefit of the applicant.

Mr. White stated this is a very complicated situation and the Board's voting structure is adding to that complication.

Board Action:

On **MOTION** of **BOND**, the Board voted 2-0-1 (Bond, White "aye"; no "nays"; Van De Wiele "abstaining"; Back, Flanagan absent) to **GRANT** the Appeal of an Administrative Official's determination that the proposed Iron Gate facility is a "Governmental Service" under the Zoning Code; for the following property:

West 15 feet of Lot 1, Block 169, Part of Lots 2, 3, 8 and 9, beginning Northwest corner Lot 8 thence South 300 feet, East 137.65 feet, North 300.15 feet, West 147.10 feet to the Point of Beginning, Block 169, Part of Lots 2, 9 and 10 and vacated alley between, beginning at the Northeast corner Lot 9, Westerly 52.9 feet; Southerly 300.15 feet, Easterly 62.35 feet, Northerly 150 feet, Northeasterly 15 feet, NW .80, Northeasterly 35 feet, Northwesterly 149.2 feet, Southwesterly 50 feet to the Point of Beginning, Block 169, Tulsa-Original Town, City of Tulsa, Tulsa County, State of Oklahoma

MOTION FAILED

22152—Eller & Detrich – Lou Reynolds

Action Requested:

If the Board of Adjustment does not reverse the determination of the Administrative Official, Iron Gate requests a Special Exception to permit a Governmental Service (Iron Gate – hunger relief agency) in the CBD District (Section 15.020).

LOCATION: East of the NE/c of East 8th Street South & South Elgin Avenue East (CD 4)

Presentation:

Lou Reynolds, Eller & Detrich, 2727 East 21st Street, Tulsa, OK; stated he represents Iron Gate. Iron Gate has been in Tulsa for 38 years. Iron Gate is moving two and a half blocks. Why is Iron Gate moving? Iron Gate is attempting to efficiently serve Tulsa's most needy with dignity. When using the word efficient he uses it broadly, meaning both Iron Gate's operations and how Iron Gate interfaces with the neighborhood and the neighbors. Iron Gate is attempting to do this in the best possible way. Mr. Reynolds referred to a drawing placed on the overhead projector showing the proposed building's location. When people come into the downtown area they will see the east side of the building which is the front side of the building and they will see the north side of the building. The brick design and color and height are compatible with the buildings in the area and there are attractive finishes which are very attractive entry features for the city. In the middle of the location is a courtyard with an entrance for the guests. The entrance and courtyard were purposely designed to draw the guests onto the property. Common things that have been heard are that cuss, people standing in front of the building, people standing in line, standing on neighbor's property, etc. so the guests will be drawn onto the proposed property. The courtyard is more space than Iron Gate has at Trinity Episcopal Church. In the courtyard there will be restrooms so people can wash and there will be a smoking area in the courtyard. No one can smoke on the church property so everything that goes with smoking will not be on the street. The other factor of the courtyard is that it gives an area for people to line up for service and once inside the building there is enough room for 125 people to cue up before being served. Iron Gate typically serves about 250 and at most about 300 people meals from 8:30 to 10:30, Monday through Friday at the church and it is proposed to serve seven days a week at the new site for the two hour period. The proposed building will have a seating capacity for about 200 guests inside. The office will be entered into from the street. There will also be a warehouse. At the church Iron Gate cannot purchase food in bulk and the warehouse will allow Iron Gate to reduce their cost. There will be on site parking and landscaping that complies with the landscaping code standards. There will be a loading dock and enough room to allow the trucks to come onto the property and move around. There will be a gated entrance off 8th Street which will be an exit only so no one attempting to jump Frankfort to come into the property. The hours will be from 8:30 A.M. to 10:30 A.M. to serve food. Groceries will be given away three days a week between 11:45 A.M. and 1:00 P.M. on Tuesday and Thursday, and from 11:00 A.M. to 12:30 P.M. on Saturday. There will not be a lot of use on the property in terms of time. The proposed site has also been designed with all the neighbors in mind. Nobody will look at the property. Nobody faces the property. The building was designed as a nice

entrance into the city. The proposed site is one block away from three bus lines on 6th Street because it is very important that people can get to Iron Gate by bus. Mr. Reynolds presented a video showing the traffic flow and the street crossings to the proposed site. Mr. Reynolds stated that Mr. John Eshelman, retired as head of the City of Tulsa Traffic Engineering, to help with the design because Iron Gate knew there was an issue with pedestrians crossing Frankfort. Iron Gate has proposed mast armed traffic light system with four signals looking north and east, and a signal addressing Frankfort. There is the capacity to stack over 40 cars before getting into the expressway. At peak traffic times there would be 25 cars stopped for a 60 second red light. Mr. Jon Eshelman stated that the proposal would enhance the safety of the area overall. All the downtown traffic signals work in sync with one another and the new signal can either be actuated so that it will only work when there is a pedestrian in cue or it can work with all the other signals. Mr. Reynolds stated that he hears a lot of issues and people's complaints while uniformly he hears that Iron Gate belongs downtown and that they do wonderful things but there is always a but. That comes from supporters and the opposition. The Special Exception use is permitted in this subject district with permission of the Board of Adjustment. The Board must find that the Special Exception will be in harmony with the spirit and intent of the Zoning Code. Iron Gate is that. Iron Gate is downtown. Iron Gate is a permitted use. Iron Gate is in harmony with the spirit and intent of the Code. The Special Exception is not to be injurious to the neighborhood or otherwise detrimental to the public welfare. Iron Gate designed the proposed building to take into consideration every aspect possible with respect of being in harmony with the neighborhood. Iron Gate is fixing a public welfare problem which is the intersection of 7th and Elgin. Iron Gate has designed a very nice looking building to address gateway issues by drawing guests into the property. With the site design Iron Gate should be approved for the Special Exception. Mr. Reynolds thinks Iron Gate has met their goal of officially serving Tulsa's most needy.

Interested Parties:

Tom Baker, Executive Director, Tulsa Downtown Coordinating Council, 1323 East 19th Street, Tulsa, OK; stated that after the press conference announcing the Iron Gate facility the Council received telephone calls expressing concern and that is when it was decided that it would be appropriate for DCC to hold a public meeting inviting the Iron Gate representatives and downtown interests to attend. The people that contacted DCC stated they had not heard anything about it and there were adjacent property owners that had not been approached or made aware of it at all. On November 9th there was a special meeting scheduled of the Downtown Coordinating Council and Mr. Reynolds provided an overview similar to today's presentation. The meeting was opened for discussion with downtown property owners and representatives. After the discussion it was the motion and the decision of the DCC to recommend denial, as stated in the letter presented to the Board, but DCC also pledged to work with Iron Gate to assist them in finding a location which is in the area that is defined in the Tulsa Downtown Area Master Plan as themed for social services and law enforcement. Whether this is a commercial restaurant it is certainly sure the non-charitable classification is for social services. To that extent there has been testimony that it would be beneficial to be guided by the Downtown Area Master Plan which is one of the

documents DCC tries to follow and implement. DCC thinks Iron Gate should be located in a site within the Master Plan outlined for social and law enforcement services. DCC did an investigation and there are at least three sites in that area, around the jail and the day center and others, that is available for acquisition for remodel or razing and rebuilding. Members of DCC focused on three things: the potential safety hazard for pedestrians and vehicles coming off the IDL onto 7th Street. It is not uncommon to observe people casually walking across the street and not responding to the safety environment of a crosswalk at current Iron Gate facility. The second item was a desire to find a location that provides better access to other social services utilized by Iron Gate clients, and that is in the area that is identified in the Downtown Area Master Plan. The third item was to focus and consider being consistent and being guided by the Downtown Area Master Plan. It was stated repeatedly the importance and value of these services to the Iron Gate clients and DCC's focus was on public safety, the location and to be consistent with the Downtown Area Master Plan.

Patrick Fox, Fox Allen Realty, 624 South Boston Avenue, Suite 700, Tulsa, OK; stated he is the real estate broker representing Iron Gate. In regards to Mr. Baker's statement about the site selection and the process used to make an offer on the proposed site, certainly there are a number of properties for sale in downtown Tulsa at various prices. Property in downtown Tulsa has seen a significant increase in value over the last five years and it was found through a search that Iron Gate could not pursue some of those options, and some of the options that were available were not available to Iron Gate because the owners did not want to deal with Iron Gate because of the controversies. He has spoke with several of the property owners in the area and they asked if another site could be considered and Iron Gate has spent a long time looking at other sites. The other sites that have been presented to Iron Gate are sites that were either considered or they did not meet the needs, or they were too big or the land was too small or Iron Gate was concerned about be located near a residential neighborhood. That was part of the criteria in the search. Iron Gate wanted to measure the impact, have self realization after the last experience, and wanted to select a site that was felt would benefit Iron Gate and not be injurious to a neighborhood or detrimental to the public welfare. Iron Gate thinks they have found a site that is not near a residential district which was the intent of the Zoning Code, which is to protect residential districts from certain uses. Mr. Fox stated that Iron Gate did not want the impression to be that Iron Gate's board and staff made a decision and went forth with this single mindedly. In regards to the argument about the concerns for pedestrian safety at the proposed location, Mr. Fox stated there is 1.6 acre piece of property that will eventually be developed and in case there will pedestrian activity at the location. So it is interesting that there is concern over the homeless and poor's well being, because he assumes that if it were a mixed use development with restaurants for profit and apartments there would be less concern about pedestrian activity at the location. Mr. Fox stated that what this is about is less about use than "us versus them". That is the problem he personally has with the entire argument.

Michael Sager, 851 East Admiral Boulevard, Tulsa, OK; stated he is the rare bird in the room as he asked Iron Gate to join his neighborhood at 3rd and Peoria. This Board

turned down the Special Exception for parking. Had that not happened this discussion would not be taking place. The public welfare in his opinion is the customer in this case and Mr. Reynolds showed an exhibit today that stated Iron Gate feeds 700 people a day while in his presentation Mr. Reynolds stated Iron Gate feeds 200 people a day. Which is it? How does it work? Mr. Sager stated that whether Iron Gate feeds 700 or 200 it makes no difference because the majority of them are on foot so they are traveling a distance to the proposed location. They are the public welfare not the adjacent land owner. Mr. Sager stated that comes up 7th Street from Highway 75 everyday and goes past Iron Gate and one day there was a person crossing in the middle of the street very slowly and about ten feet behind the person is a puppy walking at the same pace so these two blocked most of the street as people stopped to respect the life of the person and the puppy. His only argument is that the proposed site puts a lot of people on foot on freeway off ramps, and he would take exception to Patrick Fox whom he respects a great deal. Downtown is a residential neighborhood. Investors are building and promoting thousands of residential units in downtown, so downtown is a residential area.

Wilson White, 5508 South Lewis, Tulsa, OK; stated his family has owned property in the area for 72 years. His grandfather purchased the contiguous piece of property directly across the street to the north 58 years ago. His grandfather Bill White, Sr. came to downtown Tulsa in 1944, started a Chevrolet dealership and at one time owned property from 7th Street to 1st Street so he believes that gives him and his family some ability, rights and knowledge to speak about some of these things. Mr. White stated that he opposes the proposed location and even Rev. Steve Whitaker who spoke at the last meeting because he basically said he was for the premise of feeding the homeless just not at the proposed location. If the Board is going to give a Special Exception you must first make sure that it is not going to negatively affect the surrounding businesses. He has grown up and been in this area and used the off ramps thousands of times and if he understands the exhibit correctly the proposed stop light is at the wrong location. He believes the stop light was placed over the intersection of 7th and Frankfort, but all the stop lights are always behind the intersection, and he believes they have it there obviously so they can talk about putting as many cars as possible without stacking up the ramp. When he comes into downtown Tulsa during rush hour it is a flight path; from the north there are two lanes coming in and from the south there are two lanes coming in, and every 60 seconds there will be cars stopping at that corner bottle necking and shutting down a highway and it will be detrimental to the public welfare. This area has been identified as an area of growth and it is the entire East Village. The ballpark and the infill is working and the major goal of areas of growth is to increase economic activity in the areas that benefit existing residences, existing businesses, and where necessary to provide the stimulus to redevelop. Looking at the properties to the east, that is the economic growth and development that is going to infill 7th Street all the way down. This is a bottle neck, it is not the highest and best use and he is opposed to this and does not believe it is in the best interest of Tulsa.

Don Maynard, 2211 East 6th Street, Tulsa, OK; asked the Board why there was no public discussion for the previous category.

Mr. Swiney stated that Item #1 was an interpretation for an appeal of the City's staff's interpretation of the Zoning Code. That judgment really has to be by the Board and public discussion would not be pertinent.

Mr. Maynard stated that in regards to this request for a Special Exception, this property has been on the market for about 12 years. About eight years ago QuikTrip looked at the property for a convenience store. They did a study and determined that the property was not safe for a convenience store location. To build a soup kitchen in an area that has been designated residential development seems to be contrary to the popular development of this area. Mr. Maynard stated that he did some calculations on the public traveling from the far northwest quadrant all way through downtown to the East Village along the south edge seems to be a disregard of the public safety. To force the guests to move from one end of the City to the other to get a free meal everyday seems to be contrary to public safety. Mr. Maynard strongly believes that this proposal is not in harmony with the spirit or the intent of the Code and will be injurious to the further development of the neighborhood and detrimental to public safety. The ramp next to the proposed site has a blind curve and the exit comes off a hill and people come off that ramp in excess of 50 mph. They can barely get stopped by the time they reach Elgin and they move between traffic lanes so he does not see that as being conducive to pedestrian traffic.

Mark Petrich, 320 South Boston, Suite 200, Tulsa, OK; stated he represents the owners of the Coliseum Apartments across the street of the proposed of the location, and he represents the owner and developer of the property adjacent to the Coliseum Apartments. There is no question that this space or use would not be in harmony with the existing plan. The existing plan is a growth area and the whole idea, as part of the East Village, is to have a mixed retail and residential high quality development. There has been a great job done. The elephant in the room is what it is. It is not that the people need to be put somewhere else. It is not that we want to hide them but any use in this area, this area of growth that is going to attract hundreds of homeless people every day, to come, to walk through the neighborhood, to be around is going to adversely affect that neighborhood particularly where there are residences it is clearly a safety issue. Mr. Petrich stated that what he would like to focus on is the injury to the neighborhood, this particular neighborhood. His clients that own the Coliseum Apartments invested \$3 million dollars in revamping the apartments. It is virtually fully occupied with students, Teachers of America, teachers and young professionals. It is very nice affordable housing. The minute these residents start seeing hundreds of homeless people in their backyard, across the street, and in their parking lot hanging around whether we like it or not the fact of the matter is that people feel intimidated, feel unsafe, or scared when they see that. Mr. Petrich is not saying that it is right but is their perception. For most people perception is reality. So what is going to happen for that apartment complex is those residents are going to say they are going to find somewhere else to live. So the owners have to attract new tenants, place ads, reduce the rent, and the people come but the minute they see hundreds of homeless people hanging in the vicinity they will not even go into the apartments. That is the reality.

That is the elephant in the room. It will directly adversely impact the owners of the Coliseum Apartments. Likewise, it will affect the other properties that ready and prime for development. Do you think more investors will come in and build more residential units under those circumstances? No. They are not going to. If they do it will not be the quality of residential construction and business construction that the Comprehensive Plan and the City of Tulsa envisioned. It is not going to happen. That is the detriment on the residential side. It will also deter retail development and business development. The whole idea of the plan is to get people to live downtown and businesses feed off that. It is a circular thing. Whether we like it or not to bring that many homeless people into a congested area in this particular neighborhood it will adversely affect it. It cannot be denied and he does not think anyone in the room can really strongly argue against that. We are not here to figure out the social problem. We all know it is a social problem. We all know that it is unfortunate that we have this problem and Iron Gate is doing something about but that is only relevant here. You must focus on the neighborhood. You must focus on the Comprehensive Plan. There is no way you can install a stop sign on that corner and not have accidents and even with a stop sign there will still be problems. Bringing hundreds of people on foot everyday is going to be a problem. This is not a good location for Iron Gate. Mr. Petrich stated that his other client, who is developing a headquarters and training center right next to the Coliseum Apartments, is investing \$7 million dollars. They are relying on the Comprehensive Plan. They are relying on the fact that around them there will also be development. If the soup kitchen had been there before the decision had been made to develop the property it would not have happened. Just like the other people who are not going to develop the property that is ready for development if this soup kitchen goes in at the proposed location. Mr. Petrich would urge the Board to deny the application. The applicant is the burden. They have not established it. They cannot establish it. So it should be denied.

Mr. Bond asked Mr. Petrich if he believed that based on the nature and purpose of the proposed facility it presents a particularized harm to the abutting neighbors of the subject property. Mr. Petrich answered affirmatively. Mr. Petrich stated that it presents a harm to the extent, people that come to the area, that live in the area decide to develop that area there will be a general perception whether it is based on good fact or not it will injure the neighborhood because people will want to stay away. That is just the reality.

Mr. Bond stated that it is not germane to this discussion and he appreciates Mr. Petrich's candor about the elephant in the room, but where would the location not pose a particularized harm to its neighbors. Mr. Petrich stated that he thinks it would be in the northwest quadrant. He thinks that under the old plan that is what was envisioned. A lot of the people that come to the soup kitchen spend time there anyway so it seems like it is a natural fit. There are properties there that are available. It is not that we want to hide these folks it just makes sense in connection with the Comprehensive Plan to continue what is being done in downtown Tulsa. Mr. Petrich thinks there would be this issue any other place, short of the downtown area, because we have done so well in developing downtown. Mr. Petrich stated that he can see the subject area being very

successful over the next five years unless the Board says go ahead and build the soup kitchen. If that happens the subject property will not develop like it otherwise would.

Ron Dingman, 816 South Troost Street, Tulsa, OK; stated that what Iron Gate is trying to do is a great thing. He is sad to hear people angry and bitter and worry about their big financial pocket instead of human lives. There are great people that come to Iron Gate including Veterans. The Iron Gate gives food away. They do not sell food. It is not a restaurant. It is a compassionate place. In the Pearl District where he lives the street has not been repaired in 20 years and the sidewalks are broken out. He wants to see the whole city repaired not just one area. It is not just for the billionaires. It should be done. He went before the City Council a few years ago on behalf of the homeless the Police, and Tulsa Transit. Nothing has been done. Police have not had a decent raise and there are not enough Police officers. The whole city needs fixed not just one area. Iron Gate is trying to build a beautiful place. The off ramp should have been fixed two years ago with flashing lights to slow down because everyone comes off the ramp like a race car. The City needs to fix it, it is not Iron Gate's problem it is the City's problem. People push their way through because they are in a hurry. People have to slow down and look at human life. What Iron Gate does is beautiful. Mr. Dingman stated that he sees men in business suits flick their cigarettes down onto the street and he doesn't want to see the public do that anymore, whether they are in suits or plain clothes. He would like the Board to look not at what Iron Gate wants but look at the people they are helping. The people are not there all day. The people are there to get something to eat and then they go to the handicap apartments at 11th and Utica. People are saying that to make you feel guilty. Two years ago he asked the City Council to institute a work program to teach people how to cook, how to take of the rent, how to take care their money, get them into a work program. Don't put your values on the big money people put the value in people's lives. Don't look at one area; look at the whole city because Tulsa is a great place.

Jeff Scott, 15 East 5th Street, Tulsa, OK; stated he is the Chairman of the Downtown Coordinating Council. He cannot look at the drawing of Iron Gate and say it isn't splendid. He thinks they have done a great job of planning the facility. Nobody has ever said the Iron Gate ministry is not filling a significant need for the community or downtown. Mr. Scott stated that his issue and the DCC's issue isn't what happens on the 1.6 acres, it is an issue that he became keenly aware of during the study that Patrick Fox referred to, the walkability study. In May he, Jeff Speck and Tom Baker had meetings and they were the only ones that attended the meetings and it became by the end of the week really clear to him the issue is what Patrick Fox called migration. The DCC met with each of the districts, whether it was the Blue Dome, the East Village, the Deco District, Brady District, Greenwood, the Cathedral District, and the group responsible for tourism and the hotels and Jeff Speck spoke about what the study was to be and what his observations were and with no particular angling Jeff Speck what was going on in the neighborhoods. With two exceptions it came up repeatedly the issue of homelessness being a significant issue. It is not the homelessness but the homeless. It was said that the employees, the customers, the hotel guests were uncomfortable walking around them. They are a problem and being panhandled is not

the issue. In the meetings the homelessness and the Brady and Greenwood area never entered the conversation, and that is because they are outside of the migration pattern. It isn't what happens on the 1.6 acres it is that the Special Exception is not to be injurious to the neighborhood or otherwise detrimental to the public welfare. That is where the issue is. It isn't what happens within the building but what happens in between. Iron Gate's clients, customers, or guests come to and go back from Iron Gate on a daily basis and it is that that is the detrimental issue. DCC not only recommended denial but they offered to work with Iron Gate. DCC is not working with Iron Gate directly because they have not engaged DCC to do that. Mr. Scott stated that he has been engaged in three conversations in the last 24 hours about other possible locations that might be good for Iron Gate and might be good for downtown. Mr. Scott stated that DCC is continuing to pursue that and he urges the Board to allow them the opportunity to do that while in the meantime declining the request.

Jack Barnes, 705 South Elgin, Tulsa, OK; stated he owns the property next to the subject property. He would reiterate some of the comments said by previous speakers concerning safety issues and other things like that. It was mentioned about some things that might happen near the apartment complexes and he would like to mention some things that have happened to him as a business owner before Iron Gate has even arrived. In the last 60 days the occupancy of his building, a self storage facility, has went down 10.6% and it is primarily from tenants that are concerned about what is coming into the area. He also has issues with losing employees that are concerned about their safety in the area. There were previous employees from the company he purchased the self storage facility from that had security issues and assault. Not only is it the public safety and the security of the city development that everyone has spoke about, he is already seeing effects affecting his company before Iron Gate is even there.

Tom Wright, 720 South Kenosha Avenue, Tulsa, OK; stated he and his wife own the piece of property that is directly to the east of the subject property and he runs the Broadway Event Center. He and his wife have lived there for approximately 90 days and he will be erecting an eight foot fence to have a courtyard for his family. Everyone has been pressing the issue of the off ramp but they totally forget the on ramp. When you are using the off ramp you are coming off the expressway at a high rate of speed but when you are getting onto the expressway you are accelerating, and he knows this because he has owned the building for about 20 years and operated the Event Center for about seven years and has to cross the street to go to Home Depot. To go across that street you better be ready to go because you will get hit. Mr. Wright stated that he had to call security because there were people camping in the greenbelt. If you miss the entrance to the proposed site and cross Kenosha you must make a left turn at the base of the off ramp. Once again, he avoids that area like the plague and he lives there and he goes out of his way to stay away from that area. Mr. Wright stated that he would suggest to the Board to deny this request due to nothing more than public safety. This concern will only increase because Iron Gate has admitted they want to grow this to a larger facility.

Rebuttal:

Lou Reynolds came forward and stated there are two small things he would like to clarify, they are small but they are very big. The first one is, and no one has ever said it, Iron Gate has no desire to grow. The simple fact is that Iron Gate wishes they did not have the need for their facility. If Iron Gate did not have to feed anyone they would sell what they have and donate the assets to a charity. Iron Gate is here because they are feeding 200 or 300 people in a space smaller than the proposed courtyard. It is not about growing. The Iron Gate brochure states "700 meals" it did not say 700 people. If there were 700 people it would like Black Friday at the mall in the morning at the church. It is 200 to 300 people. It is totally inaccurate to characterize Iron Gate as the homeless and that every homeless person seen is from Iron Gate. St. Paul or St. James Church at 15th and Peoria feed people and when they walk past him (Mr. Reynolds) as goes into The Palace he does not think of those people as Iron Gaters or anything else. The neat thing about Iron Gate is the people that are fed hot meals only about a third are truly homeless and that is a conservative number. Most of the people that are fed a hot meal are working poor. It is some person trying to make ends meet a little better. Iron Gate serves two meals. Breakfast starts at 8:30 A.M. and ends with lunch at 10:30 A.M. Some people eat two meals and some people carry a meal out for their buddy or whatever they can do. The reason no one ever paid any attention to 8th Street is there is no activity on 8th Street. Iron Gate gives groceries away and the people and they are finished by 1:00 P.M. There is no rush hour rush to get out of downtown when Iron Gate is finished giving away groceries. Iron Gate fits the proposed site. Iron Gate is addressing a City of Tulsa problem and they wish they did not have to. When the Iron Gate guests are taken out of the mix the biggest thank you deserved is from the City of Tulsa and the next group that owes Iron Gate a thank you are the downtown property owners. Things would be a lot worse downtown without Iron Gate. Mr. Reynolds stated that the person he spoke to a few mornings ago had just left his job at the airport and he was there to have breakfast. He was not a freeloader, just poor. The people that come to Iron Gate for groceries do not need to go to the jail to pick up their groceries. Mr. Reynolds stated that idea embarrasses him, that mothers have to bring their families within a block of the jail or the Corrections Corporation Pre-release Center to pick up a bag of groceries once a month. A person does not need to look to the plan, look to the zoning. Iron Gate is a permitted use if you find what Iron Gate is doing is reasonable. Iron Gate is moving two and a half blocks. Within this same distance, people are talking about all the new things that have to happen, people just down the street spent \$10 million dollars bringing an office building up to Class A and it is loaded with tenants and everybody knew Iron Gate was a block away. Iron Gate has been a block away from that building for 38 years, the old Avanti Building. It is all speculative to say people will or won't do this. The things that are not speculative are the simple facts. Iron Gate has been in existence for 38 years and they are moving two and a half blocks. Iron Gate has designed a facility that addresses the complaints that they know of and they have done a very respectful job of that. The last place Iron Gate belongs is the northwest quadrant. Iron Gate went there. They looked at those buildings. They were economically off the charts. That is not where a man that has a job and just to get an extra meal does not need to be going up to the jail. It is rough up there. Certainly mothers do not need to bring their families there to get groceries. Mr.

Reynolds stated that it embarrasses him that people dodge around the question. Iron Gate belongs downtown. There is not a person here that would dispute that. But everyone says "not here". Well is it a block away, two blocks away, is it three blocks away? Mr. Reynolds thinks that everyone would have similar kind of response. The Board is guided by the Special Exception standards. People have come up with every reason, and a few people have said it and he appreciates that honesty, to say we don't like those poor people on our sidewalks with us. That is not what this Special Exception is about. This particular use, the building on the subject property is what this is about. Iron Gate is moving two and a half blocks and they have been in Tulsa for 38 years. Iron Gate is rock solid. There is not a single Iron Gater that wishes they had not been able to close last year.

Don Maynard came forward and asked Mr. Reynolds if the current neighbors of Iron Gate are happy with their current location. Mr. Reynolds stated he thinks the current neighbors appreciate the need and appreciate what Iron Gate does and understand that it is not too burdensome of a use. They also see this as betterment; both for downtown and Iron Gate, and that is what this is about. Mr., Reynolds stated that he spoke with the neighbors to find out what they did not like about Iron Gate. The neighbors did not like the cigarette butts on their properties and Iron Gate put the cigarette butts on their own property. The neighbors did not like seeing the lines of people standing to get into Iron Gate so we brought the lines into a courtyard into the building. The kinds of things the neighbors did not like is where Iron Gate learned what they needed to do. This is a downtown issue it is not a northwest quadrant issue. No one needs to look to the plan Iron Gate is zoned for this. That is what is important and Iron Gate has done it and they are trying to execute it in a very respectful responsible way.

Mr. Bond asked Mr. Reynolds if he thought the City could designate a particular quadrant of the City for a particular type of social service. Mr. Reynolds answered no and stated that the City can plan it that way but a plan is just a guide it is not a regulatory document. The biggest social service that is going on around the jail is the anti-social service for out on the street. There is the Salvation Army that is doing a wonderful job. The Day Center for the Homeless is doing a wonderful job. Mr. Reynolds stated that he just recently visited that property because he went before the Board for a Special Exception from the County for the Family & Juvenile Justice Center, and when he was there he decided he would rely on INCOG's photos of the property because it was too tough when he was there. Mr. Reynolds stated that he is not a coward but it did not make good sense to get out of his truck and that is just the simple facts. There is a jail. There are bail bondsmen. There is the Salvation Army. There is the Day Center for the Homeless. There is the prison pre-release center. Hopefully there will soon be a Family & Juvenile Justice Center. It is not like there are the other services there that needed by the people that visit Iron Gate unless they need a bail bondsman. He represented John 3:16 when they received permission to expand they were sued by their neighbors to stop the expansion. Tulsa is pitifully short of social services and to the extent that we have them they are spread out all over town. Iron Gate is very unique, they have raised over \$9 million dollars. Iron Gate has the money. That is not just enough to build a building; that endows Iron Gate. The operating costs

will go down in the much more efficient proposed facility. Iron Gate has listened to the complaints and they have addressed the complaints. It is really down to the fact that are you so uncomfortable to share a public sidewalk with somebody that may or may not leaving Iron Gate. Can you share the public spaces of the City? That is his point to DCC because they have basically said Iron Gaters can ride the back of the bus. Mr. David Boren didn't stand for that and Iron Gate is not going to stand for that. Iron Gate is not going anywhere; we are going to be here.

Comments and Questions:

Mr. White stated that he commends Iron Gate for this new design compared to the previous design at 3rd and Peoria. This is a significant improvement. Mr. White stated that he had some objections to the previous application and that is why voted against it. Some of the objections that he had at the time the concepts have been remedied with this new design, but he still has concerns for the public safety and the safety of the Iron Gate clientele. Previously the safety concerns were regarding the railroad right-of-way and this time there is a situation where this proposed building is situated between an on ramp and an off ramp of the Inner Dispersal Loop. It is bad enough being in a vehicle let alone navigating it on foot which most of the Iron Gate clients are. Mr. White thinks this is a great design but he can't go with the location. Iron Gate does a wonderful job and he hopes they can come up with a solution but he does not think this is the place for the solution.

Mr. Bond stated that he is truly torn on this decision. There are a lot of issues that have come up today. Mr. Bond stated that he agrees that we need to talk about the whole issue; it is not just about traffic safety or parking. There are other larger issues. He does not think that migration issue is necessarily bad. Mr. Bond stated that he is reminded of when he returned from Afghanistan and was trying to build his life back he met someone who was living in his truck, Vietnam veteran who had earned the Distinguished Service Cross. Mr. Reynolds stated this is a City of Tulsa problem and he (Mr. Bond) disagrees. Homeless in Tulsa is a City of Tulsa failure. It has been a failure since the end of World War II. We have not addressed it. We all know there are issues that go hand in hand with homelessness; mental health, job skills, security. We, not just the elected officials, have failed to address that. Mr. Bond truly believes that when you feed and clothe the homeless you are doing God's work. It is not enough to say that Iron Gate is a great ministry and does good things. Iron Gate does essential things that make the community a better place. Mr. Bond stated that it give him great reservation to think about placing individuals who may be homeless or may be working poor in one part of the City. Mr. Bond stated that in his mind the question is can the City of Tulsa properly designate areas for a social service. He has to ask as a voter, are we doing that to hide people that we do not want to look at? Or are we doing that to better serve them? Mr. Bond does not think anyone in this room could really give an honest answer about what we are going to do as a community. Mr. Bond stated that he devotes a significant portion of his time to help the homeless veterans and knows he needs to devote some time to helping all homeless people; everyone in Tulsa does. The question is where is the proper place for Iron Gate? What he has heard today are the surrounding property owners describe a particularized harm. The City in their

master plan designated a quadrant for social services and can they come through on that? Mr. Bond does not think they have because if you go to the northwest corner downtown he thinks it has largely been forgotten. Mr. Bond thinks that wherever Iron Gate is placed there is going to be an issue and thinks that when this is eventually appealed to District Court a judge, who is wiser than any of us, is going to have to answer the question of can the City zone a particular area for a particular class of individuals or a particular class of services. That is the legal answer. Mr. Bond stated that realizing that this is an effort for not, because this must go to Court to be determined, will make a motion.

Board Action:

On **MOTION** of **BOND**, the Board voted 2-0-1 (Bond, White "aye"; no "nays"; Van De Wiele "abstaining"; Back, Flanagan absent) to **DENY** the request for a **Special Exception** to permit a Governmental Service (Iron Gate – hunger relief agency) in the CBD District (Section 15.020); for the following property:

West 15 feet of Lot 1, Block 169, Part of Lots 2, 3, 8 and 9, beginning Northwest corner Lot 8 thence South 300 feet, East 137.65 feet, North 300.15 feet, West 147.10 feet to the Point of Beginning, Block 169, Part of Lots 2, 9 and 10 and vacated alley between, beginning at the Northeast corner Lot 9, Westerly 52.9 feet; Southerly 300.15 feet, Easterly 62.35 feet, Northerly 150 feet, Northeasterly 15 feet, NW .80, Northeasterly 35 feet, Northwesterly 149.2 feet, Southwesterly 50 feet to the Point of Beginning, Block 169, Tulsa-Original Town, City of Tulsa, Tulsa County, State of Oklahoma

MOTION FAILED

Board Action:

On **MOTION** of **BOND**, the Board voted 0-0-1 (no "ayes"; no "nays"; Van De Wiele "abstaining"; Back, Flanagan absent) to **APPROVE** the request for a **Special Exception** to permit a Governmental Service (Iron Gate – hunger relief agency) in the CBD District (Section 15.020). No one voted aye; Mr. White announced there were no votes in favor of the Motion to Approve the request for Special Exception to permit a Governmental Service (Iron Gate – hunger relief agency) in the CBD District (Section 15.020); for the following property:

West 15 feet of Lot 1, Block 169, Part of Lots 2, 3, 8 and 9, beginning Northwest corner Lot 8 thence South 300 feet, East 137.65 feet, North 300.15 feet, West 147.10 feet to the Point of Beginning, Block 169, Part of Lots 2, 9 and 10 and vacated alley between, beginning at the Northeast corner Lot 9, Westerly 52.9 feet; Southerly 300.15 feet, Easterly 62.35 feet, Northerly 150 feet, Northeasterly 15 feet, NW .80, Northeasterly 35 feet, Northwesterly 149.2 feet, Southwesterly 50 feet to the Point of Beginning, Block 169, Tulsa-Original Town, City of Tulsa, Tulsa County, State of Oklahoma

MOTION FAILED

OTHER BUSINESS

None.

NEW BUSINESS

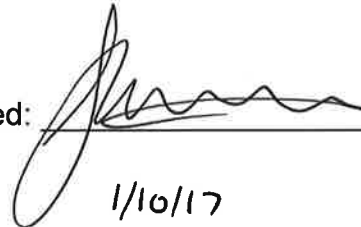
None.

BOARD MEMBER COMMENTS

Mr. Bond stated that we can do better as a City. The people that are investing their time, their talent, their money in downtown in making this a better place deserves a pat on the back. The people that are at Iron Gate every morning serving breakfast also deserve a pat on the back. Where is the rest of Tulsa?

There being no further business, the meeting adjourned at 3:01 p.m.

Date approved:



1/10/17

Chair