

**CITY OF BRIGHTON**  
**BOARD OF ADJUSTMENT**

**MINUTES**

June 27, 2019

**Approved as Presented**

**I. CALL TO ORDER**

Chairman Maslanik called the meeting to order at 6:41 p.m.

**II. ROLL CALL**

Roll call was taken with the following Board Members in attendance: Chris Maslanik, Oliver Shaw, Fidel Balderas and William Leck. Alternate, Steve Ginevan was also present. Giana Rocha and Rex Bell were excused as absent.

**STAFF PRESENT:** Jason Bradford, Planning Manager; Mike Tylka, Senior Planner; Nick Hufford, Associate Planner; Jack Bajorek, City Attorney; Lena McClelland, Assistant City Attorney; Jennifer Holmes, Acting Commission Secretary.

**III. MINUTES OF PREVIOUS MEETINGS**

There were no minutes requiring approval.

**IV. PUBLIC INVITED TO BE HEARD ON ITEMS NOT ON THE AGENDA**

None in attendance

**V. PUBLIC HEARING ITEMS**

1. **Appeal of a Home Occupation Permit Denial for Rodriquez Trucking Services LLC: Mike Tylka presenting**

**Chair invited Staff to present, summarized:**

Mr. Tylka confirmed publication was completed for this hearing. He entered the staff report into public record and discussed the item as outlined in the staff report. Mr. Tylka stood ready for questions.

**Chair called for the Applicant or Counsel for the Applicant to address the Board, summarized:**

Robert Abrams, Applicant's Counsel, (700 17<sup>th</sup> Street Suite 650, Denver, CO 80202). Mr. Abrams comments summarized: Mr. Abrams believes Mr. Tylka misrepresents the nature and use of this business. According to Mr. Abrams, the property is not intended to be a single-family dwelling. The house sits on 8 acres and for 20 years it's had trucks both under construction and not under construction parked on the property. Mr. Abrams believes the City is only going after Mr. Rodriguez because it wants to receive a fee for that which he's been doing for 20 years. Mr. Abrams claims that this agency's denial of a business license is patently egregious. Mr. Abrams stated that the property is zoned as a mixed use property. It is operated by the Fuller Estates West standard PUD (exhibit 3 to his packet). Mr. Abrams claims that the PUD allows these uses: parking, storage and light maintenance of large vehicles including recreational vehicles, tractors, trailers, over-

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the-road tractors and trailers, and similar vehicles and all uses clearly accessory to the allowed uses. Mr. Abrams states that the plain language of the PUD states you can have trucks and tractors everywhere and they can have maintenance done on them and he's been doing that and that's the law and the intent of the Fuller PUD. Mr. Abrams stated that Mr. Rodriguez applied for his home occupation rightfully so that he could take in a fee and income at his property and he has every right to do so under his PUD. Mr. Abrams stated that the City's PUD regulations state that a PUD district intends to encourage mixed use developments including uses such as residential, office and commercial and to encourage higher quality development than possible under traditional standard zoning regulations, which defeats Mr. Tylka's argument of residential only. Counsel went on to read from PUD regarding Mixed Use (at 1:00) (refers to Exhibit 3).

According to Mr. Abrams, the PUD expressly allows for this use. The property owner is trying to comply with Brighton code; he's been your resident, neighbor and property owner for decades. He's paid his taxes for decades and he's tried to comply under his rights. Recently he's been outlandishly harassed. Mr. Rodriguez has been operating a storage use for twenty years without harassment. All of a sudden Brighton cites him with tickets and more tickets. Burlington Ditch crawls out of the woodwork all because there is a tire in the water. He gets charged and thrown in jail. Eighty-five-year-old man. This is what's going on at the Brighton courthouse on this man. Charge after charge after charge. So we tested yards and yards and yards of dirt. Had it sent out to a laboratory for Brighton--an independent third party. Just harassment by the Brighton Municipal County Court, and they cited him and they threw him in jail and fined him a few thousand dollars. Fortunately the court reduced some of that but continue to harass him. He still has a charge up there. That's the bias going against this man.

According to Mr. Abrams, the storage and truck yard use will not create a conflict with the neighboring residential users. Mr. Abrams gave a description of all neighboring properties and it is his understanding that three of the four contain similar commercial businesses and there are empty fields with no houses anywhere. (Mr. Abrams read from Land Use Code.) He stated there is no residential character to interfere with--no homes. Property owner has 8 acres between 2 Sturgeon Electric businesses. Mr. Abrams claimed that the reason for the City's denial is so Sturgeon Electric can get this land. The intended use will not interfere with the residential character of the home or neighborhood because it doesn't touch any. There is no residential character; it's 100% commercial; industrial, trucks, equipment, storage--everything but homes. There's no homes. The PUD allows for outside use of the property. It does not limit the area in which those uses are allowed or where they can be done. The PUD lets them load the property like Sturgeon and all the rest of them--load 8 acres of trucks and fixing them and more trailers and more trucks and in and outs. Mr. Rodriguez can do that by right; he owns that right and Mr. Tylka interfered with that right under the color of his authority for no reason.

Mr. Abrams cited Code 14-24-20. Mr. Abrams read from the code: Home occupation shall not utilize more than 25% of total gross floor area of principal dwelling. No problem. His commercial activity inside of his residential home is a desk. It is smaller than this desk in his 1100 sq ft home. So by definition, somebody standing in front of him and handing him a hundred dollars for a storage fee, that is far less than 25% and he is 100% compliant. He's only taking money to offer a service--not monitoring those vehicles he's already allowed to store on the property per the PUD. He can store all he wants. And his business isn't occupying or servicing those trucks. The business transactions occur in the home in the form of a payment at a desk--maybe a person comes in once a month and pays their bill. He need not obtain the City's approval to store the vehicles--he applies it by right with the PUD.

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Mr. Abrams stated that: He only needs your approval and he respectfully requests that he receive it today to receive some money-- that you deny or overrule Mr. Tylka's egregious denial—meritless--so that this man can take his payments.

According to Mr. Abrams: The PUD allows for exterior storage on the property, Exterior storage display or work done in conjunction with the home occupation. The PUD expressly allows for outside storage and the like so Mr. Rodriguez's business is taking money for all the trucks he stores he gets as a right from owning his land.

Addressing the Board of Adjustments, Mr. Abrams stated that: Your job, as rightfully and articulate Mr. Tylka, is to make sure the home occupation license application complies with 17-24-20 Home Occupations of the Land Use and Development Code and if the director made an error in denying the home occupation application. Mr. Abrams believes the Director made an error in denying the application.

Mr. Abrams stated that: We wrote a letter articulating this entire position, which I'm reiterating here, 2<sup>nd</sup> paragraph, the property is zoned as a mixed use PUD and regulated by the Fuller Estates which gives all of these considerations. Pursuant to section B, the property may be used for the parking and storage. Next, the applicant submits a license to operate his business in accordance with the Fuller PUD. So his business is now taking money. That's it. Everything else he gets to have out there. The only question is the fee. Also in my letter, the applicant submits his application in accordance with the City of Brighton's Land Use and Development Code. Pursuant to that code, all users shall be compatible with existing residential uses without creating conflict with the neighboring residential uses. According to Mr. Abrams, the surrounding the properties would not be nuisanced by the proposed activity as it is compatible with the neighborhood's current operations. Mr. Abrams presented a Power Point presentation.

Mr. Abrams believes he has demonstrated that the property is zoned as mixed use and, pursuant to the PUD, it allows the storage of trucks and vehicles and that the storage of trucks and vehicles is clearly accessory to the allowed uses. An approved PUD plan shall be binding upon the owners of the land. So, Mr. Rodriguez has his carved out rights.

Mr. Abrams then continued with his PowerPoint presentation: Let's talk about the surrounding neighbors which would be the only logical sticking point. There's no homes—not one! Landscape company, Sturgeon Electric, Sturgeon Electric number 2, storage yard, storage yard for farm and other equipment, open fields. Also, there's another business to the right, identical in character. There's the 2<sup>nd</sup> business which is the landscaping business that's touching my client's property—a complete contradiction to Mr. Tylka. Here's another business—this is Sturgeon touching my client's property, consistent with the nature and character of commercial. But they all get the business occupation license.

Mr. Abrams continued: this is Burlington Ditch that's been harassing Mr. Rodriguez for no reason. There's his allegedly plutonium-filled yard that they cited him for and found nothing. Here's the open field that I told you about and all the way over here we finally have some homes. If my client would try to do what he wants to do here, I wouldn't be here. I'd tell him you're denied. You are changing the character of all of these peoples' neighborhoods, children's schools, church, playground. But you got to go past this open field before you even get to him and he's about commercial activity. To deny him—the prejudice would be shocking. That's what's occurring—prejudice against this fellow. I don't know who “siced” the Brighton Municipal County on this man for pollution contaminants, for 126 parking violations--half of which were fictitious if looked at—how

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Burlington Ditch crawled out of the woodwork all of a sudden but it's our understanding and, if I took some depositions out of it, I would find out that between Burlington, Mr. Tylka's office and Sturgeon Electric that they're trying desperately for Sturgeon's benefit to get rid of Rodriguez and tie Sturgeon's land together. That's what it looks like and I think that's the basis of this denial. So I don't want to go down a collusion argument. Maybe Sturgeon is behind this and applied some pressure to deny the man. I'm going to ask this body to be objective, not biased, give the man his day in court which he just mapped as best as he possibly could that he is 100% in compliance with the nature and character use of his property. That he would like to put a desk in his home to take a small payment from a limited amount of people once a month which is consistent with the intended use of his property.

Thanks for your time. Do you have any questions for me?

Chair called for questions from the Board to the Staff or to Mr. Abrams, Counsel of the Applicant, summarized:

Mr. Balderas Question for Counsel for the Applicant: My understanding is that home occupation is for a property owner to conduct personal business only and not for others sources to conduct business?

Applicant's counsel responded: that would be impossible because you need customers and under your premise if he didn't have customers he would just be doing business for himself. He would just have a telephone and those customers would be coming. You will always have customers. That's the premise of the business license is so you can have a business with customers coming to and fro, and it's written there. In this application, he's allowed by the PUD to have the vehicles there so he can transact the business with the customers coming to and from his house.

Mr. Balderas – My understanding is if these are his own personal business vehicles that he is utilizing for his business, that would be considered under this process. But if he is storing vehicles that are not of his trucking business or house, those are not allowed to be stored there. It would be a storage facility versus a home-run business.

Applicant's counsel responded: that's where we need you to distinguish that because that's correct. I think you can have one vehicle with one very small sign on your small truck for your business if that's what you're referring to. Except here you have a hybrid. He's allowed to have all of this stuff on his property by right so he could have one additional truck, and I think he does have a pickup truck for his business, but there is no law against receiving the fee for that which he's allowed to have on the property. So if you had a residential neighborhood across the street, my argument loses because across the street he can't have 100 trucks and here he can.

Mr. Balderas – For clarification, if he has a trucking business, how many truck does he own?

Applicant's counsel responded: I don't think he owns but...

Mr. Balderas – So if he does not own any trucks himself and he's a trucking business, technically he's not running a personal home-run business because he's running a business of storing equipment for other people which falls outside the guidelines of our PUD. But if I am storing those trucks for other businesses, then he needs to apply for a storage facility instead of a trucking business. My understanding is they are 2 different things.

Applicant's counsel: He doesn't run a trucking business.

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Mr. Balderas – So he's not applying for the proper permit. You were talking about Sturgeon and other facilities. We don't know what permits they have. My understanding is this is a trucking business—that's he's applying for a home business which he's running and has run for 20 years and collected a fee so he's been doing that and now he wants to do it all legally. He hasn't been compliant with the PUD because he does not own any trucks so he does not run a personal trucking business so therefore he's not compliant with the PUD's rules or ordinance.

Applicant's counsel: He is legal; he easily owns 4 or 5 trucks. The fact that there's a hundred of them out there are his customers. But in addition to the 4 or 5 trucks, he's probably got 8 trailers out there that are his. So he has a bunch of stuff including dump trucks out there for his business so he has this and he's taking income from that.

Mr. Balderas – I think you're contradicting yourself. You just told me he does not own any equipment. (Applicant's Counsel in background: But he does.) Now you're telling me he owns all these trucks so what is it? Does he own the trucks or not own the trucks? You just told me he does not own any equipment, any of the trucks, and now you tell me he owns the equipment, so which is it?

Applicant's counsel responded: There's a misunderstanding.

Mr. Balderas: You're misconstruing things again. It's one thing or another—black and white. You said he does not own any trucks.

Applicant's counsel: I didn't say that.

Mr. Balderas: Yes you did. You said he does not own any trucks. He collects a fee from these other trucks that he's able to park.

Applicant's counsel: I misspoke. He owns some trucks.

Mr. Balderas: Okay. How many trucks does he own?

Applicant's counsel: How many do you have (question to Applicant)?

Mr. Rodriguez: One, two, six (response unclear).

Applicant's counsel: Three now. How many have you had in the last year?

Mr. Rodriguez: Six.

Applicant's counsel: So between 3 and 6.

Mr. Balderas: So you don't have the information you need to provide us. You have to ask the client how many trucks does he own. He just told me he owns trailers, trucks, and equipment that he does not own, and he's collecting a fee from other people.

Applicant's counsel: Right. He owns some trucks and he collects some fees from other customers.

Mr. Balderas: Those are not his trucks. For a home-run business you have to run the business from your home. You cannot provide storage for other customers. So if he has his four trucks and he has them registered, I would not have a problem with him getting the permit, but if he is collecting a fee for other businesses to store their vehicles there, that is not a home-run

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business. That's a business that he tries pass over as a home-run business. These are 2 different things. I can run my business out of my house with 2 or 3, 5, 10 vehicles and comply with the rules because it's my business and I am using all my own equipment but I cannot store equipment for other businesses.

Applicant's Counsel: Where does it say that?

Chairman Maslanik: Mr. Balderas, is this a question for Staff to substantiate?

Mr. Balderas: Can you clarify? Are you allowed to store equipment for non-owners of the equipment or just the owners' equipment?

Mr. Tylka responded: Outdoor storage is not permitted as a home occupation; all business is to be conducted within the home only, not outside. This is a commercial operation and it would need to be zoned for commercial and platted before a commercial business would be approved at this location.

City Attorney Bajorek gave clarification on the home occupation permit matter at hand, and asked Tylka what steps would get them into compliance if we assume this is a use-by-right. How are those other properties in that area in compliance? I know one is not even in the City but I don't know what the zoning is for the other properties. Mr. Bajorek states that the question to the Board tonight is the denial of the home occupation application.

Mr. Maslanik – spoke about the application dated 4/5/19 (stamped as received by Community Development Department 5/9/19) and a 4/17/19 document for a license or permit regarding what parts of the home will be used for the home occupation. The answer is “approximately 5 of the 9 acres owned by the applicant shall be used for the intended use according to the allowed uses under the Fuller Estates PUD (see attached letter for further explanation).” Floor area used: it shows 304,920 sq feet--outside yard area. That's the area for the occupation license for home occupation. Signed on 4/17.

Applicant's Counsel: Refers again to the uses allowed by the Fuller Estates PUD.

City Attorney Bajorek asked Applicant's Counsel if they ever submitted an application for an outside storage yard.

Applicant's Counsel: No.

City Attorney Bajorek continued about outside storage issue and asked Tylka to explain neighboring properties and what they had to do to be in compliance.

Mr. Tylka responded that some were zoned for commercial uses, some are outside of the City limits, and most are rural residential, with details about some of the properties.

Mr. Balderas – asked Tylka: what needs to be done to get them into compliance. Tylka gave examples which included rezoning, platting, development agreement, a site plan or use-by-right and a business license.

Applicant's Counsel stated that all of these processes are too time consuming and expensive and they need a simpler way or permit to achieve compliance for outside storage for trucks.

Mr. Balderas asked Mr. Tylka if surrounding properties are in compliance with their use. Tylka explained that they are.

**Chair called for Questions from the Board to the Applicant, summarized:**

Mr. Shaw – asked applicant’s Counsel to clarify how many trucks he has, what type they are, and who owns them.

Counsel for the Applicant and Applicant respond. He’s always had trucks. Right now, he’s reduced the number because of all the fines and ticketing from the Brighton Municipal Court. A year ago, he had 6; now he’s down to 3 and he has 8 trailers.

Mr. Ginevan – question to Tylka – Land Use 17-24-20, PUD, and other regs – which one takes precedence? Tylka repeated the basic requirements for compliance and that the proposed use is not allowed as a home occupation, which is the application that was presented to the City.

Mr. Leck – asked Mr. Tylka if the applicant could become compliant with proper process.

Mr. Bradford responded that the applicant and City Staff disagree fundamentally with the Applicant and the Applicants attorney regarding the uses that are allowed under the PUD. Staff does not agree that outdoor storage or a trucking company or a storage company is an allowed business under the PUD. However, the applicant has the right to apply for these uses in the proper fashion. Staff would likely recommend denial of that application, but the Applicant has the right to apply for the correct type of application (a rezoning application). The Applicant has applied for the wrong type of application in this case. The proposed and existing use at this property is an illegal business and is not a home occupation. They have the right to apply for the correct application (a rezoning, plat, development agreement, site plan review, and business license). They have the right to seek a rezoning for the property and, should the City Council deny their rezoning application, to appeal that decision.

Chairman Maslanik Read the Applicant’s appeal. The argument in front of us is whether the application that’s presented to us should be denied by the Board. He called for a motion.

**Motion to Deny the Application:**

**Motion by Leck  
Second by Balderas**

**Chair called for Discussion among the Board, summarized:**

**None.**

Chairman Maslanik addressed Applicant and Counsel for Applicant: I’ve heard your testimony and read your applications and am having a problem following the intent. And the way the application is structured leads me to think you are trying to circumvent the proper City of Brighton process. Cites many examples and defends process and staff.

**Chair called for Vote on the Motion by the Board:**

**Voting Aye: All Present  
Motion passes: 5-0**

**VI. OLD BUSINESS  
None**

**VII. NEW BUSINESS**

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None

**VIII. REPORTS**  
None

**IX. ADJOURNMENT**

**Motion to adjourn at 8:01 p.m.**

**Motion by Balderas**  
**Second by Leck**

**Voting Aye: All Present**  
**Motion passes: 5-0**