

BOARD OF ADJUSTMENT FOR THE CITY OF BROKEN ARROW

OWNER: D&B PROCESSING, LLC
CASE NUMBERS: ZON-025337-2025 (Citation No. 446451)
ZON-025338-2025 (Citation No. 446454)
ZON-025339-2025 (Citation 446453)
ZON-025340-2025 (Citation 446452)
ADDRESSES: 21900 E. 96TH ST S., BROKEN ARROW, OK 74014
9600 S. 219TH EAST AVE., BROKEN ARROW, OK 74014
9740 S. 219TH EAST AVE., BROKEN ARROW, OK 74014
9750 S. 219TH EAST AVE., BROKEN ARROW, OK 74014

NOTICE OF APPEAL

COMES NOW, D&B Processing, LLC (“D&B”), by and through its attorney, Tadd J.P. Bogan of the law firm of Jones, Gotcher & Bogan, P.C., and hereby provides the following written Notice of Appeal to the Board of Adjustment for the City of Broken Arrow (the “City”) regarding the above-referenced Zoning Notices and Citations, and in support states as follows:

1. D&B’s business is operated out of three (3) plants and a storage yard in an industrial park annexed into the City, which are located at the addresses above.¹
2. On December 5, 2025, the City issued four (4) Zoning Violations to D&B in the above-referenced case numbers for alleged violations of the Industrial Light zoning rules and regulations.
3. The Zoning Violations allege, “[t]he manufacturing being performed is not conducted entirely within an enclosed structure and is producing objectionable noise, and vibrations affecting neighboring properties therefore it is in violation of the IL zoning district.”
4. D&B was given until January 5, 2026, to comply with requirements set forth in the Zoning Violations.

¹ The industrial park also connects to the new amphitheater currently being constructed by Evans Rd. or E Gary Street.

5. On March 9, 2026, the City issued D&B a Citation/Summons, Case No. 444431, alleging D&B violated “Zoning Code 2-1-2 D Commercial and Industrial Districts” (the “Original Citation”).

6. On March 17, 2026, D&B appealed the Original Citation and Zoning Notice ZON-025340-2025 to the City (the “Initial Appeal”).

7. D&B’s Initial Appeal was set for hearing before the City on May 11, 2026, but the hearing was continued to June 8, 2023, due to the City’s failure to properly place signage notifying the public of said hearing. Further, the City staff discovered that D&B erroneously only appealed one (1) of the four (4) Zoning Notices. However, counsel for the City agreed for D&B to file an amended notice of appeal including all four (4) Zoning Notices before the next hearing.

8. On May 12, 2026, D&B filed its *First Amended Notice of Appeal* and included all four (4) Zoning Notices therein, and provided new mailing labels to the City for notice thereof.

9. Notwithstanding the foregoing, and the fact that D&B timely filing an appeal of the Original Citation, on June 8, 2026, the City dismissed D&B’s appeal for failure to file the appeal within fourteen (14) days of its receipt of the Zoning Notices.

10. On June 9, 2026, the day after the City dismissed D&B’s Initial Appeal as untimely, the City issued four (4) new citations to D&B based upon the same initial Zoning Notices, which are set forth above.

11. As stated above, according to the Zoning Notices, “[t]he manufacturing being performed is not conducted entirely within an enclosed structure and is producing objectionable noise, and vibrations affecting neighboring properties therefore is in violation of the IL zoning district.” (emphasis added)

12. Pursuant to the City Zoning Ordinance, as amended 7/1/25, and as set forth in the Zoning Notices, “Manufacturing, Light” is defined as, “[a]n establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, and packaging of such products, and incidental storage, sales, and distribution of such products, but excluding basic industrial processing. The manufacture, assembly... or processing of products and goods occurs entirely within an enclosed structure requiring no outdoor industrial wastewater treatment system, and producing no airborne emissions, objectionable noise, glare, odor, vibrations, smoke or dust associated with the industrial operation. Outdoor storage of raw materials and products is permitted with proper screening. Examples include, but are not limited to: airplane, automobile, or truck assembly, remodeling, or repair... boat building; computer chip manufacturing; machine or blacksmith shops; metalworking or welding shops... paint shops; and printing and publishing shops.”

13. First, the undefined term “objectionable noise” is unconstitutionally vague and ambiguous. The term “objectionable noise” is subjective, and the Zoning Code provides no guidance or other measurable criteria to instruct D&B on what noises and/or noise levels are prohibited. Further, the Zoning Code, and Table 2-2-2-1 therein, provides no use-specific standards. *See Johnson v. U.S.*, 576 U.S. 591 (2015), (“[t]he Government violates the Due Process Clause when... a criminal law [is] so vague that it fails to give ordinary people fair notice of the conduct it punishes, or so standardless that it invites arbitrary enforcement.”)

14. Notwithstanding the foregoing, “objectionable noise” is measured by a reasonable person standard. Thus, in order for the noise produced by D&B to be considered objectionable, such noise must be objectionable to a reasonable person.

15. The noise allegedly created by D&B was not objectively objectionable (to a reasonable person), and, for most of the noise in the record in this case, there is insufficient evidence to establish that D&B created such noise.²

16. D&B continuously measures the decibel levels of the noise from its operations. The levels below are the decibel measurements 192 yards (576 feet) from the nearest residence, and essentially at the exterior of D&B Plant 3. The decibel level at D&B's property when it is closed and no activity is occurring is approximately 55-60 decibels (or higher). For comparison, the decibel level of a quiet library is approximately 40 decibels, conversational speech or an air conditioner is approximately 60 decibels, a shower, dishwasher, or traffic is approximately 70 decibels, a toilet flushing or a vacuum cleaner is approximately 75 decibels, an alarm clock or garbage disposal is approximately 80 decibels, a passing diesel truck is 85 decibels, and a lawnmower is approximately 90 decibels. Below is a list of notable decibel readings which have occurred from January 6, 2026, the duration of such levels, and common activities with relative decibel levels³:

Decibel Level	Duration	Associated Activities
72	< 10 Seconds	Dishwasher or shower to a toilet flushing
65	< 10 Seconds	Conversation or air conditioner to a shower
68	< 10 Seconds	Shower, dishwasher, or traffic

17. If the source of the noise was 10 yards from D&B's decibel reader, and the decibel reader recorded 70 decibels, 192 yards away, at the complainant's residence, the decibels would be approximately 44 decibels.⁴

² Other business within the industrial park produce noises, use semi-trucks, and use forklifts.

³ See *Sound Proofing Guide*, <https://soundproofingguide.com/decibels=level-comparison-chart/>, 2006; and Level of Noise in Decibels (dB), American Academy of Audiology, 2023 poster, <https://audiology.org/wp-content/uploads/2023/09/PR23-Poster-Noise-Chart-8.5x11.pdf>.

⁴ See https://hyperphysics.gsu.edu/hbase/Acoustic/isprob2.html?utm_source=copilot.com & <https://sciencedemonstrations.fas.harvard.edu/presentations/inverse-square-intensity>

18. The owner of the nearest residence to D&B's properties does not live in the City of Broken Arrow, and is the only person complaining about D&B's operations.

19. Most of the neighbor's initial complaints related to semi-truck traffic and noise, and/or noise from safety features on D&B forklifts, neither of which violate the Zoning Ordinance at issue in this case. Notwithstanding the foregoing, the neighbor will not stop objecting to D&B's presence in the industrial park until D&B ceases to exist or moves out of the industrial park.

20. The noise at issue in this case, whether created by D&B or someone else located in the industrial park, is not objectionable to an ordinary and reasonable person. The noises which lead to the Citations above are at the same level as noise levels we all make in our homes on a daily basis, only the noises allegedly made by D&B in this case are for much shorter durations.

21. Second, D&B's operations, to the extent required, all occur in enclosed buildings.

22. All of D&B's operations are conducted using large machinery – all of which is located inside D&B's enclosed buildings. D&B does not, and cannot, conduct its manufacturing operations outside because all of its equipment is located inside.

23. Therefore, contrary to the Zoning Notices, all manufacturing is conducted within an enclosed structure.

24. Outdoor storage of raw materials and products for light manufacturing on an IL zoned property is expressly permitted with proper screening by the Zoning Ordinance, and D&B has such screening.

25. Because the Zoning Ordinance allows for the storage of raw material and product outside, it is indisputably contemplated by the zoning code that materials will be moved inside for use and assembly for light manufacturing. Thus, doing so does not mean that the operations are not occurring in entirely enclosed buildings.

26. Further, light manufacturing is not the only permissible use of parcels of land zoned IL. Permissible uses of IL properties include, but are not limited to, boat and/or RV storage, car washes, gas stations, semi-truck and automobile major and minor service and repair shops, general industrial services, fulfillment centers, storage yards, wrecker services, and outdoor or indoor recycling centers. *See* Table 2-2-2-1, Allowed Uses.

27. All four (4) of the Zoning Violations issued to D&B say the same thing: “The manufacturing being performed is not conducted entirely within an enclosed structure and is producing objectionable noise and vibrations affecting neighboring properties therefore is in violation of the IL zoning district.”

28. However, D&B does not perform the same operations in all four (4) properties, and the record does not reflect which parcel had operations outside of an enclosed structure and/or which parcel created the alleged objectionable noise.

29. Furthermore, Zoning Notice ZON-025339-2025 / Citation 446453, relates to a parcel where D&B does not operate its manufacturing business. Rather, the foregoing parcel is strictly a storage yard. As set forth above, storage yards are expressly permitted on IL zoned properties. There is absolutely no evidence in the record to support a finding that noise was created at or on this parcel of land; however, the City nonetheless issued a citation relating to that parcel.⁵

30. D&B’s Plant 3 operations are located on an 11-acre tract of land that includes a 20,981 square foot building constructed in 1984, with a 3,500 office building built in 1994, and there is a 7-acre tract of land sharing a boundary with Plant 3 that is zoned Agricultural. D&B has

⁵ Upon information and belief, the City dismissed this citation after D&B notified the City of the use of this parcel. However, D&B’s use of this parcel information the City should have discovered and known prior to issuing D&B a citation.

a plant that is west of Plant 3 across S. 219th Street East Pl., is on 2.8 acres of land, and includes a 16,850 square foot building constructed in 1984.

31. As a result of complaints from someone who does not live in the City of Broken Arrow, the City has arbitrarily and capriciously applied the Zoning Ordinances to D&B in this matter in violation of state and local laws.

32. When D&B moved into Plants 1, 2 & 3, the properties were already zoned as Industrial Light. Further, D&B moved into Plants 1, 2 & 3 prior to the City amending the Zoning Code.

33. Pursuant to Chapter 7 of the Zoning Code, any alleged nonconforming use of the property by D&B is not a violation of the Zoning Code.

34. While it is D&B's burden to establish non-conforming use, prior versions of the Zoning Ordinances are not available online. However, D&B plans to present evidence and argument of non-conforming use at the time of the hearing on this Notice of Appeal.

35. Although D&B was at all times compliant with the Zoning Ordinance at issue in this case, it nonetheless took numerous remedial measures in an attempt to be a good neighbor and pacify the complainant. In doing so, it exceeded that which was required by the Zoning Notices for compliance.

36. The remedial measures taken by D&B include, but are not limited to, the following:
- a. Moving all materials from the east side of its building to the west side of the building to reduce forklift and other noises created by the movement of materials into D&B's building;
 - b. Moving scrap metal containers for recycling from the east side of its building to the west side to reduce noise caused by placing scrap metal into said containers;

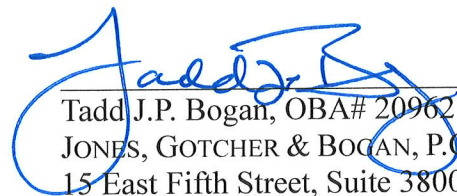
- c. Prohibiting the playing of music at all times;
- d. Prohibiting the dumping of scrap materials for recycling at night;
- e. Limiting the use of forklifts at night and modifying the safety indicators thereon;
- f. Limiting the time(s) when overhead doors may be opened to only allow them to be open when materials are being moved in and out of the building;
- g. Purchasing a water truck to reduce dust from graveled surfaces (although not part of the Zoning Notices);
- h. Turned equipment fan duct from facing east to south;
- i. Continuous monitoring of noise levels using a decibel reader;
- j. Leasing a yard outside of the industrial park to store loaded trailers to reduce semi-truck traffic and noise in the industrial park;
- k. Changing the way that it loads I-Beams to reduce noise caused by the way the beams were previously loaded;
- l. Purchasing product that will be applied to gravel surfaces to further eliminate dust from the same during high winds (although not part of the Zoning Notices); and
- m. On April 20, 2026, the City of Broken Arrow approved plans for D&B to construct 760' long, 10' tall, and 6" thick concrete sound barrier wall along the property line between 21900 E. 96th Street and the neighboring property zoned Agricultural General District and the property beyond that, zoned Agricultural General District RS2.1. The wall will be constructed at a cost of approximately \$300,000 if D&B is not able to find a suitable replacement property outside the City of Broken Arrow where it can relocate its operations.

37. D&B is currently in the process of trying to find a location outside the City of Broken Arrow where it can relocate its operations. However, it is difficult to find a facility suitable for 101 employees and which is large enough to house operations that are currently housed in 3 plants, a storage yard, and a trailer yard (which although outside of the industrial park, will also need to be relocated).

38. D&B is not relocating because it concedes that it cannot comply with the Zoning Ordinance, as set forth above, D&B is in compliance with the Zoning Ordinance. Rather, D&B is seeking to relocate its business outside the City of Broken Arrow due to the arbitrary and capricious actions by the City to appease a non-resident – rather than simply applying the law impartially and informing the neighbor that D&B's operations comply with the Zoning Ordinance and that the noises she is recording are not objectionable to a reasonable person.

WHEREFORE, premises considered, D&B Processing, LLC hereby appeals the above-referenced Zoning Notices/Citations, and requests that the same be overturned due to D&B's compliance with the applicable Zoning Ordinance.

Respectfully submitted,



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