

TULSA METROPOLITAN AREA PLANNING COMMISSION  
MINUTES of Meeting No. 1360  
Wednesday, June 3, 1981, 1:30 p.m.  
Langenheim Auditorium, City Hall, Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Freeman Higgins Holliday, Secretary Kempe, 2nd Vice- Chairman Parmele, 1st Vice- Chairman Petty C. Young, Chairman T. Young	Eller Gardner Inhofe	Alberty Gardner Howell Wilmoth	Jackere, Legal Department

The notice and agenda of said meeting were posted in the Office of the City Auditor, Room 919, City Hall, on Tuesday, June 2, 1981, at 11:29 a.m., as well as in the Reception Area of the INCOG Offices.

Chairman C. Young called the meeting to order at 1:30 p.m. and declared a quorum present.

MINUTES:

On MOTION of HOLLIDAY, the Planning Commission voted 7-0-0 (Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Freeman, Gardner, Inhofe "absent") to approve the Minutes of May 20, 1981 (No. 1358).

REPORTS:

DIRECTOR'S REPORT:

Assistant Director, Bob Gardner, advised that renovation of the Center Office Building is continuing. The air conditioning unit has been installed and is operable in the west one-half of the building.

CONTINUED ZONING PUBLIC HEARING:

CZ-18 Donald E. Harris South of the SE corner of Highway #51 and 137th West Avenue AG to RMH

Relationship to the Comprehensive Plan:

The subject tract is within the Sand Springs Fence Line. The Sand Springs Comprehensive Plan designates the subject property Low-Intensity Residential and Development Sensitive. The requested RMH zoning would fall within the Comprehensive Plan guidelines as far as residential density of development.

The Sand Springs Regional Planning Commission recommended on April 21, 1981, by a vote of 4-0-0, to support the requested change in zoning.

The subject tract is located on the east side of 137th West Avenue, south of Highway #51. The property is zoned AG, is vacant and the applicant is requesting RMH zoning to permit the development of a mobile home park.

CZ-18 (continued)

Although the Comprehensive Plan for Sand Springs designates the subject property low-intensity residential, it also has a development sensitive overlay, which in the Staff's opinion, is the primary land use consideration. Based upon the Sand Springs Staff Report, the subject tract is within the 100-year floodplain and a portion of the property is within a floodway. The Tulsa County Zoning Code requires that no change of zoning occur within a designated or required floodway (that portion required to carry the main stream of the flood discharge should remain open and undeveloped). Any obstruction would not only be hazardous to property on the subject tract, but could cause damage to down-stream properties. Those portions of the property outside of the floodway, that can be elevated in accordance with the County Engineer's criteria, may merit consideration for RMH zoning. Any recommendation for RMH zoning should be based on engineering plans approved by the County Engineer showing areas of safe elevation for development. If the applicant does not have the necessary information concerning pad elevations, drainage plan, etc., the Commission may want to continue the application until a detailed drainage analysis is available.

Applicant's Comments:

Jean Harris, owner of the subject tract, presented a map (Exhibit "A-1") of the area showing the floodway and the floodplain, a part of the Flood Insurance Study completed by the U. S. Army Corps of Engineers. The applicant stated she did not feel it was necessary to expend additional funds to hire another engineer to study the area since the Corps already has the information available. The subject tract would have to be raised to the elevation of the 100-year flood level (6.56 feet) for location of the mobile homes and an area for drainage would have to be provided. Mrs. Harris stated she planned to locate 8-10 mobile homes on the front portion of the tract leaving approximately 5-6 acres to allow for water and drainage to leave the area.

Mrs. Harris stated she was aware that members of the Board for the Tulsa Boys Home were opposed to the development because they feel it will down-grade their property; she noted there is an existing mobile home park in the area which has not been a detriment to the surrounding property values. The applicant pointed out that it would be possible to split up the 8-acre tract and sell the lots for mobile home use without a zoning change. She suggested that individual developments on 2½ acre lots might be more detrimental to the property values in the area than the proposed development.

Protestant's Comments:

John Moody, representing the Tulsa Boys Home, advised that the Sand Springs Regional Planning Commission's unanimous vote to recommend approval for the subject application was taken on April 21, 1981. The Annual Banquet and Board meeting of the Tulsa Boys Home was also held on that evening; therefore, the Director and other Board members were unable to appear in opposition to the application at that hearing.

Mr. Moody pointed out that the map presented by the applicant did not answer the specific questions of the Tulsa Boys Home as to the definition of where the actual limits on the subject property of the floodway for the 100-year flood, under fully urbanized conditions, would be located. The protestants also questioned where the mobile homes could be located and to what height the property would have to be raised in order to place

CZ-18 (continued)

mobile home pads and mobile homes. The Tulsa Boys Home had to erect pads of an average elevation of 3-feet above ground level before construction.

The protestants did not feel the mobile home development would be compatible with the existing single family area to the south of the subject tract. Mr. Moody noted that under the present zoning the applicant would possibly be able to locate two mobile homes on the subject tract which would present a far less impact than if the property was to be rezoned RMH.

Mr. Moody presented a protest petition (Exhibit "A-2") signed by 10 couples who are landowners and residents of the area. The petition listed depreciation of property values, drainage problems and the fact that, characteristicly, mobile homes are on small crowded lots detracting from adjacent home sites in the immediate area.

Special Discussion for the Record:

Commissioner Higgins questioned the number of mobile homes which would be placed on the subject tract and was advised by the applicant that she planned to located 8-10 mobile homes on the front, facing the County road. She stated that this would save the expense of putting in a road through the development.

In regard to the Corps of Engineer's map which was presented, Commissioner Parmele questioned if there was any portion of the subject tract which would be prohibited from development.

Bob Gardner advised that the floodway is an area which has to remain open to carry the 100-year runoff; however the floodplain can be filled in, elevated and developed. The map presented from the Corps of Engineers indicated that approximately 90% of the subject tract is located within a floodway.

Mrs. Harris stated that her property is within a floodway as most of the other land in the area. She had been informed by the Corps that the Tulsa Boys Home had been elevated some, but not up to the 100-year flood level.

Bob Gardner advised that, based on the Corps of Engineer's determination referenced map of the floodway, the Staff Recommendation was for DENIAL.

The applicant then pointed out that the map was part of a tentative study and had not officially been approved.

Noting that an official letterhead of the Tulsa Boys Home, including a list of the members of the Board of Directors of the Home, was presented at the last meeting, Commissioner T. Young questioned if Mr. Moody, in representing the Tulsa Boys Home, would be representing the views of the Board of Directors of the Home. Mr. Moody advised that it had been presented to the Board of Directors and the protest authorized by the Board unanimously; however, he had not verified that all of the Board members were in attendance at the meeting.

CZ-18 (continued)

Commissioner Higgins asked if there was any documentation that explains the floodway and the fact that nothing can be built there even if the elevation is raised.

Bob Gardner advised that there are certain things that could be permitted in a floodway; i.e., parking with Board of Adjustment approval, but no construction, commercial, residential or industrial type uses.

Commissioner Parmele questioned why the Sand Springs Regional Planning Commission would approve the rezoning request unanimously if it was in a floodway. It was noted that the approval was based on the requirement that the lowest flood elevation be elevated 1-foot above the base flood elevation and all utility and sanitary facilities be flood proofed.

Commissioner Petty noted that the Tulsa County Zoning Code would be applicable in this case rather than the City Ordinances of Sand Springs.

On MOTION of PETTY, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no abstentions"; Eller, Gardner, Inhofe "absent") to deny the requested zoning change for CZ-18.

PUD #231-A John Moody (Oxford Place) North and West of the NW corner of 66th Street and Sheridan Road (RS-3)

A letter (Exhibit "B-1") was presented from John Moody stating that pursuant to the agreement with the area residents, it is requested that PUD #231-A be withdrawn. The City Commission has approved OL zoning on the subject tract; therefore, the applicant will not pursue the PUD application.

On MOTION of PARMELE, the Planning Commission voted 7-0-0 (Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Freeman, Gardner, Inhofe "absent") to withdraw PUD #231-A.

SUBDIVISIONS:

Deer Hollow Estates II (1183) 78th Street and South 69th East Avenue (RS-3)

Mr. Wilmoth presented the plat noting that the applicant, engineer (Lloyd Abbott) and attorney were present. Roy Johnsen, attorney, advised that there was no objection to the eight conditions.

The Staff advised the Commission that this is being replatted in order to create larger lots for duplex use. A Board of Adjustment application is pending for duplex use, but this plat meets all requirements for a plat and could be processed even if not approved for duplexes, since the lots all exceed the RS-3 requirements.

The Technical Advisory Committee and Staff recommended approval of the Preliminary Plat of Deer Hollow Estates II, subject to the conditions:

On MOTION of HOLLIDAY, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary plat of Deer Hollow Estates II, subject to the following conditions:

1. The previous plat should be properly vacated prior to filing the new plat, if necessary. (may not be required)
2. In the covenants the applicant should be sure items A & C reflect the square footages and restrictions they wish to impose on the lots. (Not a condition for approval of plat.)
3. In covenants, third paragraph from bottom, add: "Time limit not applicable to paragraphs K, L, & M."
4. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements should be tied to or related to property and/or lot lines.
5. Paving and/or drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission. (if required) (may be covered on previous plat)
6. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
7. A "letter of assurance" regarding installation of improvements shall be submitted prior to release of final plat. (Including documents required under Section 3.6 (5) of the Subdivision Regulations.)
8. All Subdivision Regulations shall be met prior to release of final plat.

West Park Plaza (2992) SW corner of West 46th Street and South 53rd West Ave.  
(IM)

The Staff advised that the applicant had not presented the list of abutting property owners in time; therefore, the notices have not been mailed and it would be necessary to continue the plat.

On MOTION of KEMPE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to continue West Park Plaza to June 17, 1981, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

Braeswood Addition (483) 61st Street and South Oswego Avenue (RS-1)

The Staff advised the Commission that this plat had a sketch plat approval, but the improvements had already been installed under an option of the Subdivision Regulations that permits construction of improvements, then filing of the plat.

The Technical Advisory Committee recommended approval of the preliminary Plat of Braeswood Addition, subject to the conditions.

On MOTION of HIGGINS, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary plat of Braeswood Addition, subject to the following conditions:

1. Utility easements shall meet the approval of the utility companies. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required (11' back to back).
2. Water plans shall be approved by the Water and Sewer Department prior to release of final plat.
3. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat.
4. A request for a Privately Financed Public Improvement (PFPI) shall be submitted to the City Engineer.
5. Paving and drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission.
6. A Corporation Commission letter (or Certificate of Nondevelopment) shall be submitted concerning any oil and/or gas wells before plat is released. (A building line shall be shown on plat on any wells not officially plugged.)
7. In covenants, Page 1, Paragraph 4; add: "Except where easements are greater." Also add language required by Water and Sewer Department. Add language that specifies the uses and maintenance of the reserve area. (Drainage) If monuments are required in the drainage area, include the applicable language in covenants. (Include access relinquishment paragraph in covenants.)

Braeswood Addition (continued)

8. Identify land to the east of this Plat as LIVINGSTON PARK SOUTH, (on main map and location map).
9. Show 35' building lines in accordance with RS-1 zoning.
10. All Subdivision Regulations shall be met prior to release of final plat.

Shamrock Industrial Park (2103) West side of North Toledo Avenue, between Apache Street and 36th Street North (IL)

The Staff presented the plat noting that the parcel is part of a 30-acre development. The applicant was not represented, but had been present at the Technical Advisory Committee review.

The Technical Advisory Committee and Staff recommended approval of the preliminary plat of Shamrock Industrial Park, subject to the conditions.

On MOTION of HOLLIDAY, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary Plat of Shamrock Industrial Park, subject to the following conditions:

1. On location map show Gilcrease Expressway.
2. Omit references to access, since this is a nonarterial. Show break in dimension to  $\frac{1}{4}$  corner if not to scale. Identify East 29th Street North.
3. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. (17 $\frac{1}{2}$ ') Existing easements should be tied to or related to property and/or lot lines.
4. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat.
5. A request for a Privately Financed Public Improvement (PFPI) shall be submitted to the City Engineer. (if required)
6. Paving and/or drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission.
7. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
8. A Corporation Commission letter (or Certificate of Nondevelopment) shall be submitted concerning any oil and/or gas wells before plat is released. (A building line shall be shown on plat on any wells not officially plugged.)

Shamrock Industrial Park (continued)

9. The Zoning Application (Z-5548) shall be approved before final plat is released, or if not approved for IL, a revised plan(s) should be submitted conforming to the applicable zone.
10. A "letter of assurance" regarding installation of improvements shall be submitted prior to release of final plat. (Including documents required under Section 3.6 (5) of the Subdivision Regulations.)
11. All Subdivision Regulations shall be met prior to release of final plat.

Delaware Crossing Patio Homes (1783) NE corner of 90th Street and South  
Delaware Avenue (RM-T)

The Staff presented the plat with the applicant represented by Tom Tannehill.

The City Engineer advised the applicant to use the same language that was used in the Covenants for Cedarcrest relating to the drainage easements.

The Technical Advisory Committee and Staff recommended approval of the preliminary plat of Delaware Crossing Patio Homes, subject to the listed conditions:

On MOTION of T. YOUNG, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary plat of Delaware Crossing Patio Homes, subject to the following conditions:

1. In covenants, add paragraph or statement that "Time limit does not apply to items "H" & "I".
2. Show limits-of-no-access on 91st Street. Show corner radii.
3. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements should be tied to or related to property and/or lot lines.
4. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat. (if required)
5. Paving and/or drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission.
6. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
7. A "letter of assurance" regarding installation of improvements shall be submitted prior to release of final plat. (Including documents required under Section 3.6 (5) of the Subdivision Regulations.)
8. All Subdivision Regulations shall be met prior to release of final plat.

Delaware Crossing Condominiums (PUD #256) (1783) SW corner of 90th Street  
and South College Avenue (CS, RM-2 & RM-0)

The Staff noted that the applicant was represented by Tom Tannehill.

No covenants had been received prior to this review. Since covenants are required for a preliminary approval, SKETCH PLAT approval only could be recommended until the necessary information is received.

Since this is a PUD subject to a "Site Plan Review" it is suggested that both the Site Plan and preliminary Plat be reviewed at the same time.

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to continue Delaware Crossing Condominiums to June 17, 1981, 1:30 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

Croman Heights (PUD #255) (683) 6300 Block of South Peoria Avenue (CS & RM-2)

The Staff presented the plat with the applicant represented by Ted Sack.

Ted Sack advised the Technical Advisory Committee that there was an existing easement that was platted on the ORCHARD PARK development that would need to be vacated if no one was using it. Otherwise the easement would be shown on the new plat and the buildings would have to be moved so they wouldn't encroach.

In regard to the drainage plans for this subdivision, Mr. Sack stated that he was just contacted to start work on the project last week. Meetings have been held with the City Hydrologist. The City Engineer originally recommended some sand-point type drainage to take care of the increased runoff due to the development. There are no storm sewers in the area. The sand-point type drainage concept has been revised and a type of lateral system will be constructed. The drainage across the property is through the center of the tract.

C. H. Medearis and other interested residents of the area were present at the meeting to register their concerns of water runoff and drainage in the area. It was suggested that Mr. Sack apprise the citizens of the drainage plans for the subject tract.

Bob Gardner advised that the increased rate of runoff must be trapped on the subject tract, but not all the water will be trapped.

Mr. Sack stated that not all of the drainage problems of the area will be solved, but the runoff will not be increased due to the proposed development.

Mr. Wilmoth noted that the plat will not be presented to the Commission for final approval and release without the approval and release of the City Engineer.

The Technical Advisory Committee and Staff recommended approval of the preliminary plat of Croman Heights, subject to eleven conditions.

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary Plat of Croman Heights, subject to the following conditions:

Croman Heights (PUD #255) (continued)

1. All conditions of PUD #255 shall be met prior to release of final plat, including any applicable provisions in the covenants or on the face of the plat. Include PUD approval date and references to Sections 1100-1170 of the Zoning Code, in the covenants.
2. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements should be tied to or related to property and/or lot lines.
3. Water plans shall be approved by the Water and Sewer Department prior to release of final plat. (Include language in covenants.)
4. Pavement repair within restricted water line easements as a result of water line repairs due to breaks and failures shall be borne by the owner of the lot(s).
5. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat.
6. Paving and/or drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission. (Make sure fences do not obstruct drainage.)
7. Access point shall be approved by City and/or Traffic Engineer.
8. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
9. The Zoning Application (Z-5503 & PUD #255) shall be approved before final plat is released. (Make sure Ordinance is published.)
10. A "letter of assurance" regarding installation of improvements shall be submitted prior to release of final plat. (Including documents required under Section 3.6 (5) of the Subdivision Regulations.)
11. All Subdivision Regulations shall be met prior to release of final plat.

Laurenwood Addition (683) NW corner of 71st Street and South Utica Avenue (OM)

The Staff presented the plat noting the applicant was not represented, but had been present for the Technical Advisory Committee review.

This tract is presently zoned RM-1 with a zoning application pending for OM (Z-5549). There were a number of discrepancies in the plat, as well as the fact that Board of Adjustment and zoning cases were pending when the T.A.C. was to review this on April 23, 1981. The T.A.C. tabled the plat at that time without any action. Applicant has had time now to assemble additional data on the plat and it is being resubmitted.

The zoning application was heard and recommended for approval by the TMAPC on May 27, 1981.

Laurenwood Addition (continued)

The Technical Advisory Committee and Staff recommended approval of the preliminary Plat of Laurenwood, subject to the conditions.

On MOTION of KEMPE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the preliminary plat of Laurenwood Addition, subject to the following listed conditions:

1. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements should be tied to or related to property and/or lot lines.
2. Water plans shall be approved by the Water and Sewer Department prior to release of final plat.
3. Pavement repair within restricted water line easements as a result of water line repairs due to breaks and failures shall be borne by the owner of the lot(s).
4. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat.
5. A request for a Privately Financed Public Improvement (PFPI) shall be submitted to the City Engineer.
6. Paving and/or drainage plans shall be approved by the City Engineer, including storm drainage and detention design (and Earth Change Permit where applicable), subject to criteria approved by City Commission.
7. Street names shall be approved by City/County Engineer. Show on plat as required.
8. All curve data shall be shown on final plat where applicable. (Including corner radii.)
9. Bearings, or true north-south, etc., shall be shown on perimeter of land being platted or other bearings as directed by City and/or County Engineer.
10. Access points shall be approved by City and/or Traffic Engineer. (Show LNA on 71st Street.)
11. It is recommended that the developer coordinate with Traffic Engineering during the early stages of street construction concerning the ordering, purchase, and installation of street marker signs. (Advisory, not a condition for release of plat.)
12. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
13. In covenants, omit all references to PUD. This is not a PUD.

Laurenwood Addition (continued)

14. Show book and page dedication on 71st (4057-921). Show 35' building line on 71st Street unless otherwise modified by Board of Adjustment.
15. A "letter of assurance" regarding installation of improvements shall be submitted prior to release of final plat. (Including documents required under Section 3.6 (5) of the Subdivision Regulations.)
16. All Subdivision Regulations shall be met prior to release of final plat.

Garnett Center (3294) SE corner of 51st Street and Garnett Road (IL)  
and  
Woodland Springs (PUD #179-F) (1283) 71st Street and South 92nd E. Ave. (RM-1)

The Staff advised that all letters of approval are in the file and final approval and release was recommended.

On MOTION of HIGGINS, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") for final approval and release of Garnett Center and Woodland Springs.

LOT-SPLITS:

L-15186	Philip B. Roberts	(2484)	L-15219	Ken's Pizza Parlors, Inc.	(2383)
15212	T.U.R.A.	(3602)	15220	INB Properties, Inc.	(3094)
15214	David L. Carpenter	(1293)	15221	George D. Monroe	(2502)
15217	Darrell E. Williams	(3294)	15222	Jones Truck Lines, Inc.	(2593)
15218	Harry Aschan	(1893)	15224	Robert M. Lukken	(3194)

On MOTION of HOLLIDAY, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") for ratification of prior approval of the above-listed lot-splits.

FOR WAIVER OF CONDITIONS:

L-15210 Erick Stiller (1993) 32nd Place, west of South Rockford Ave. (RS-3)

The Staff made the following report:

This is a request to split a 1¼ acre tract into two lots, one with the existing residence, containing 15,800 square feet and the remainder containing 38,650 square feet. The smaller lot, with the existing house will have 10' of frontage at the end of 32nd Place with remainder having 40' of frontage. (Thirty-Second Place dead-ends here, but due to development to the west, can not be extended through to Peoria.) The 15' "handle" on the south is for sewer connection at the SE corner of the property. The frontage will require Board of Adjustment approval as a minor variance.

The applicant was represented by Ted Sack.

The Technical Advisory Committee and Staff recommended approval of L-15210, subject to one condition.

L-15210 (continued)

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the waiver of conditions on L-15210, subject to the Board of Adjustment approval of the minor variance.

L-15207 Jean Barrett (983) SE corner of 74rd Street and South Harvard Avenue  
(RS-3, PUD #114)

Noting the applicant was not present, Mr. Wilmoth advised that this is a request to split an existing duplex along the common party wall. The applicant has informed the Staff that the duplex has separate water meters. It appears that separate ownership is already provided through a condominium, but this split will allow conveyance in fee of the land also. Since this is a PUD, a minor variance may be required to complete the process. (No new additional dwelling units are being created.)

Water and Sewer Department noted that numerous applications are now being received which split duplexes on the common party walls. Their recommendation is to split the sewer services so each has a separate connection.

The Technical Advisory Committee and Staff recommended approval of L-15207, subject to the conditions.

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the waiver of conditions for L-15207, subject to the following conditions:

- (a) Minor variance of PUD to allow the split and sewer.
- (b) Split sewer services and/or approval of Water Department.

L-15201 Roland Weirick (294) East 11th Street and South 173rd East Avenue (AG)

Mr. Wilmoth advised that this is a request to split a one acre tract from the original 10-acre parcel. The acre contains an existing house on City water and septic system. The applicant will be selling the remaining nine acres and retaining the one acre. Since the frontage will only be 165' a waiver of the frontage will be required. There are similar frontages in the area and the Staff sees no disruptive affect of the split.

The Technical Advisory Committee and Staff recommended approval of L-15201, subject to the conditions.

The applicant was represented by Mr. Davis.

On MOTION of HIGGINS, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve L-15201, subject to the following conditions:

- (a) Board of Adjustment approval of minor variance.
- (b) Health Department approval of septic system.

OTHER BUSINESS:

PUD #256 Tom Tannehill (Never Fail Builders) North of the NE corner of 91st Street and Delaware Avenue

Consider approving Site Plan Review.

The Staff made the following report:

Planned Unit Development #256 is located north and east of the NE corner of 91st Street and Delaware Avenue. The property was approved for 196 condominiums and is zoned CS, RM-2 and RM-0. One of the conditions of approval was that a minimum livability area of 253,178 square feet be provided. The applicant is requesting relief from that requirement, since an error in calculations was made by the architect. The detailed site plan reflects 135,705 square feet of open space including the clubhouse and pool which is permitted to be calculated as livability area.

The Zoning Ordinance would require a minimum of 78,200 square feet of livability area, since the amount provided is in excess of the minimum required the Staff can recommend APPROVAL of the site plan for PUD #256, subject to the conditions.

Tom Tannehill advised that the developer would landscape the right-of-way in this project just as he did in the Shadow Mountain Addition.

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve the site plan for PUD #256, subject to the following conditions:

- 1) That the maximum number of dwelling units not exceed 196.
- 2) That the minimum parking spaces be 360, the site plan shows 373 (223 covered spaces; 150 open spaces), however, some may be lost due to the T.A.C. requirements.
- 3) That the minimum open space area including clubhouse and pool be 135,705 square feet and that the open area be landscaped with sod and plant materials and the sidewalks be constructed as shown in the preliminary site plan.
- 4) That a homeowner's association be formed for maintenance of all open space areas, private streets and clubhouse and pool.

PUD #166 SE corner of 91st Street and Sheridan Road

Consider approving Minor Amendment to permit free-standing sign, 20-foot in height.

The Staff recommended tabling this item since the necessary information and plans were not received prior to the meeting.

The Chairman, without objection, tabled PUD #166.

PUD #114 Bruce Berman SE corner of 73rd Street and Harvard Avenue

Consider approving Minor Amendment to permit a lot-split.

Mr. Alberty advised that Planned Unit Development #114 is located on the southeast corner of 71st Street and Harvard Avenue. The development consists of 20 duplex units on 20 lots. The applicant is requesting a lot-split of Lot 10, Block 2, to permit individual ownership of each dwelling unit. The duplex unit is constructed and there will be no change to the development or appearance of the unit. The Staff recommends APPROVAL of the requested Minor Amendment to permit the lot-split of Lot 10, Block 2, Sherrelwood South (L-15207).

On MOTION of PARMELE, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve a minor amendment to permit the lot-split of Lot 10, Block 2, Sherrelwood South, PUD #114.

PUD #207 Bob Goble West of Sheridan Avenue on 98th Place South

Consider approving Minor Amendment to permit a 1.8 foot encroachment of the front setback and a 1.7 foot encroachment of a side yard.

The Staff reported that Planned Unit Development #207 is located on the west side of Sheridan Road, at 98th Street. The applicant is requesting a minor amendment to permit a modification of the front setback and side yard. The front setback will be encroached by 1.8 feet and the side yard by 1.7 feet. The Staff considers both of these encroachments minor in nature, and therefore, recommends APPROVAL of the requested Minor Amendment on Lot 27, Block 4, Mill Creek Pond, PUD #207.

On MOTION of HIGGINS, the Planning Commission voted 8-0-0 (Freeman, Higgins, Holliday, Kempe, Parmele, Petty, C. Young, T. Young "aye"; no "nays"; no "abstentions"; Eller, Gardner, Inhofe "absent") to approve a Minor Amendment to permit a 1.8 foot encroachment of the front setback and a 1.7 foot encroachment of a side yard on Lot 27, Block 4, Mill Creek Pond, PUD #207.



PUBLIC HEARING TO CONSIDER AMENDING THE OFFICIAL COMPREHENSIVE MASTER PLAN FOR DEVELOPMENT OF THE TULSA METROPOLITAN AREA BY ADDING THERETO POLICIES AND STANDARDS FOR PROCESSING AND EVALUATING DOWNZONING REQUESTS

Chairman Carl Young opened the Public Hearing on downzoning policies and procedures. The policy question is the result of a request by residents between 31st and 41st Streets from Harvard to Lewis Avenues that their area be zoned RS-1, the lowest intensity residential zoning category. The catalyst for the rezoning petition by the area residents was the Planned Unit Development which was filed on a property in the immediate area currently zoned RS-2. A petition supporting the requested downzoning was signed by more than 600 people of the area in an effort to prevent the proposed PUD at 38th Street and Birmingham Avenue where 11 homes would be placed on a 2.7 acre lot now occupied by only one home. Chairman C. Young advised that previous action by the TMAPC recommended that those property owners that wish to rezone be allowed to file an application for rezoning and fees for the application be waived. The City Commission then referred the matter back to the TMAPC for public hearing and the Staff was directed to design guidelines to be used in connection with petition approach for downzoning.

Assistant City Attorney, Alan Jackere, advised that legally, the City Commission and the TMAPC have the right to downzone property. However, the question arises, what are the policies, what should the procedure be and how do the Commissions review and analyze a request from property owners for downzoning.

Commissioner Petty questioned if downzoning, the power to downzone by municipality, has ever been tested in a court of law. Mr. Jackere advised that he was not familiar with any specific case; however, the textbooks indicate that downzoning, like upzoning, is a valid legislative decision if its based on standards and criteria - the physical facts.

Sam Hollinger, 10624 South 69th East Avenue, President of the Builders Association of Metro Tulsa, Inc., represented the views of 1,000 members of the organization and 50,000 people in the City of Tulsa associated through the industry. Mr. Hollinger presented a prepared policy statement (Exhibit "C-1") from the Builders Association as follows:

1. INTRODUCTION:

In response to the official NOTICE TO THE PUBLIC of a public hearing on the policy of DOWNZONING posted on May 15, 1981, and a request for written responses on behalf of the entire BUILDERS ASSOCIATION OF METROPOLITAN TULSA, we hereby present our views as follows:

2. BASIC CONCEPT OF ZONING:

Zoning is a limitation on an individual's use of his own property, imposed by the local authority under its delegated police power in order to preserve and promote the public health, safety, morals and general welfare. It is basic to American property law that the landowner has an inherent right to be the initiating party when it comes to any changes to his own property.

3. DEFINITION OF DOWNZONING:

A change in zoning which increases the restrictions on development of property is generally termed "DOWNZONING" as it decreases the intensity or the amount of use allowed. For the landowner-developer, the higher or more intense the use allowed, the greater will be the value. Zoning

PUBLIC HEARING TO CONSIDER AMENDING THE OFFICIAL COMPREHENSIVE MASTER PLAN  
(Continued)

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restrictions and techniques are diverse, but in downzoning the end result is the same --- increased restrictions on development and lower allowable intensity of use.

4. DISCUSSION OF DOWNZONING:

As the word implies, downzoning occurs after an area has already been zoned. It, therefore, differs from typical zoning legislation where a comprehensive plan is implemented for the first time. As a result of this difference, the landowner who purchased the lot under the impression that, along with the deed, he had acquired a vested right to property values under the present zoning classification, may be sadly mistaken. That is, the use of his land becomes more restricted. Therefore, the continuity of land uses and the predicability of contracts is thwarted by the use of DOWNZONING.

5. OFFICIAL POSITION:

The Board of Directors of the BUILDERS ASSOCIATION OF METROPOLITAN TULSA, on behalf of the membership of over 1,000, representing over 50,000 persons in allied industries, unanimously voted to oppose any policy allowing DOWNZONING.

Mr. Hollinger pointed out that everyone in the room is a property owner and all have several motives for being property owners. He suggested that the primary mobile of all concerns the point of investment, the soundness of the investment in those properties. If the authority is given to the TMAPC or the City Commission to arbitrarily downzone, or in turn, devalue property without the consent of the legal owner of that private property, then the value of that property is substantially changed without his consent or knowledge. The Builder's Association does not feel this is in the realm of authority of either the TMAPC or the City Commission. Mr. Hollinger pointed out that purchases of property are made based on the use and if the individual pays a certain amount per square foot for a property with a specific zoning use on it and that property is downzoned, the value of the tract is drastically affected. It was his opinion, that there is a real question of constitutionality of the authority to do that.

Commissioner T. Young expressed concern with Mr. Hollinger's statement that purchases of property are made based on the use of the property. He noted that just a week ago TMAPC received a request for downzoning for the prospective buyer of the land in an area where CH or some commercial category was the predominant zoning, but the use was clearly residential. The Commission approved the request downzoning to an RS-3 category. Most people, in the process of going through a mortgage and closing a sale, do not know the zoning classification at the time of closing. The prospective buyer has the option to question the zoning category, but most people do not do so. They presume if they drive into a neighborhood full of houses it is a residential area, which is not always the case. Commissioner T. Young advised that, in the event that Mr. Hollinger's statement is true, that people buy based upon the use, a home could be purchased in an area which is developed residential, but is zoned for commercial use. In the light of something occurring in the neighborhood which would drastically and negatively impact the area, would the property owner then have the right to expect the use they saw in place to remain in place even over the objections of a legal landowner?

Sam Hollinger was of the opinion that there is a precedent to determine and a guideline to follow in the Master Plan on zoning. The homeowners have several rights and first of all they have the right to purchase the property at a fair market value and make whatever kind of use they choose to out of the property.

Commissioner T. Young pointed out that if they tied up all their money in improving the houses they bought, based upon the residential use, and didn't have the money to use for an alternative, could there be a set of circumstances that one could envision in which the authority, police power, could be invoked.

Sam Hollinger stated that there should be some way to establish compensation and resolve the situation between the two parties without a police action dominating the situation and completely controlling it, possibly to the detriment of the individual who owned this parcel of land. What establishes the value of the property? If it is established solely on zoning there is a right for everyone to own whatever they choose to own and to protect what they own. Mr. Hollinger advised that for someone; i.e., City Commission, TMAPC, police action, to arbitrarily through whatever pressures are brought to bear, choose to alter that, that is inconceivable. He stated that he understood the homeowner's situation and there are several alternatives available to them. First, they have the right to investigate all of the surrounding properties and to know everything about the surrounding area. This is very wise for a prospective property owner to do prior to committing themselves.

Robert J. Nichols, 111 West 5th Street, presented a prepared statement (Exhibit "C-2") expressing the position of the Metropolitan Tulsa Board of Realtors concerning the downzoning of property. Mr. Nichols advised that he recognized that there are several legal concepts involved in a discussion such as this; i.e., vested rights, equal protection and inverse condemnation, but he did not feel that this should be a forum to discuss the legal issues since the Commission was a public body more concerned with planning, land use economics and public policy.

The position of the Metropolitan Tulsa Board of Realtors is as follows:

As part of our involvement in the growth and development of the Tulsa area, the Metropolitan Tulsa Board of REALTORS has constantly supported the establishment of a rational and equitable land use system that affords predictability for the expectations of property owners, developer, neighbors and public officials. The consideration of policy which may lead to a case by case imposition of greater land use restrictions (dezoning) initiated without the consent or acquiescence of the private property owner contradicts the current and past policies. Further dezoning will create an unstable market which will have a negative effect on investor confidence.

It is our firm position that the initiation of rezoning hearings on property that has once been through the public hearing process, unless requested by the property owner, should continue to be limited to those instances in which it has been utilized in the past, i.e.,

- (i) zoning map corrections,
- (ii) blanket restrictions for the public protection.
- (iii) reclassification of publicly owned or controlled properties.

Further, based upon current trends of

- (i) increasing land and housing cost,
- (ii) under utilization of in-place utilities and public streets,

sewers and water lines,  
(iii) loss of inner city population

with the attending decrease in ad valorem tax base and the realization that urban infill and redevelopment of older areas generally occurs at densities higher than those at which the City originally developed, it is inadvisable economically and socially to dezone property. It would adversely affect the infill process.

Mr. Nichols stated that to initiate a policy which would allow properties to be reconsidered for zoning, without the property owner's consent, would frustrate the efforts to redevelop and infill the community to take full advantage of those in-place utilities. This would also erode investor confidence in our community in purchasing properties. In addition, Mr. Nichols pointed out that downzoning is not in the spirit of Tulsa because it would be inconsistent with past zoning practices.

Commissioner T. Young questioned, "what did the buyer come to depend upon when he purchased the house - what was his thinking before and after the purchase?" As an example, Commissioner T. Young cited an area which is obvious by use, a residential area. Fifty of the lots are zoned residential, but in the corner there is commercial zoning on four lots which have developed residential in the exact same manner as the other homes in the neighborhood. At some point in time, something begins to occur that would cause the four commercially zoned lots to develop in a way that would completely and negatively destroy the character of the neighborhood. Do those homeowners or the TMAPC or City Commission have the right to initiate a rezoning of those commercial properties without the property owner's permission, to cause the area to remain as it was when the other properties were purchased?

Bob Nichols was of the opinion that the City Commission has the right to initiate a rezoning on any property. He brought up another question - under what circumstances should the homeowners in the area pursue a change in zoning? There are some legal questions such as vested rights and constructive notice. When a zoning classification is granted, it is a vested right that the property owner who purchases the tract can henceforth rely on? The Zoning Ordinances are published in the paper, everyone has access to them and that buyer of a property is put on constructive notice that the house next door may be zoned commercially, RM or otherwise. There will be times when the legal rights must be compared with the economic rights.

Roy Johnsen, 324 Main Mall, advised that he was appearing on his own behalf as a citizen of the community and, in addition, represents the owners of the property that started the controversy. Mr. Johnsen suggested to the Commission that the initial effort be to address the overall policy of whether or not downzoning should be engaged in by the City of Tulsa.

The City of Tulsa has the right to rezone property. Mr. Johnsen stated he agrees with that statement; however, it needs explanation. They have the power to zone - that power can be arbitrarily exercised. The reason there have not been any cases in Oklahoma where property has been downzoned and upheld by the courts, is that in almost every instance, it is arbitrary. He recommended that the Commission adopt a policy, "it is the policy of this Commission not to engage in downzoning." The real issue, Mr. Johnsen pointed out, is when an irate neighborhood comes before the Commission and advises they they do not like a proposed development in the area and want to stop it by de zoning the whole area.

Two negative implications of downzoning presented by Mr. Johnsen were: 1) the infill philosophy would be stifled; and 2) the question of no growth. He did not feel that infill could be achieved and the status quo maintained. The City of Tulsa is a "growth city" it needs to meet standards, needs to be controlled, etc., but it is a growing City. Mr. Johnsen pointed out that there is an instability which comes if you feel that you are subjected to an attack on what has already been zoned - that someone can come in and insist, the whole hearing process commences and you are subject to your property being dezoned. He stated that this would undermine and effectively result in "no growth." Mr. Johnsen did not feel that an effective downzoning policy could be achieved that would have any beneficial affect that would outweigh the negative consequences.

Mr. Johnsen was not sure of the hearing procedure, but stated he would like to reserve the right to speak again in later hearings.

In answer to Chairman C Young's question, Mr. Johnsen stated he disagreed on the concept of time limits. Very often early determinations have been made; i.e., corners which have been zoned commercially, which then puts people on notice of the potential use at that particular corner. The time limit serves little purpose and brings in an unstable, rather than a stabilizing influence, to the zoning patterns and is unnecessary in view of the guidelines and planning process.

Commissioner T. Young reiterated the example of commercially zoned lots developed residentially in a residential neighborhood, and questioned if the infill on the vacant lots should be allowed to develop to an intensity greater than the surrounding area.

Mr. Johnsen pointed out that this type of mixed zoning could not happen under today's zoning laws. However, if the tract had all been zoned commercially to start with there would perhaps be some question that may be the initial zoning contemplated that there was going to be a redevelopment of the area to commercial. In the event that happened there is a process where there would be some residential and commercial as the redevelopment occurs. This cannot happen all at once, there will be parts that are more intense and others less intense.

Caroline Robertson, 1404 East 35th Street, representing Downtown Tulsa Unlimited, advised that DTU is very concerned about residential development, particularly in the center city. She noted that if the downzoning issue negatively affects immigration and infill, DTU would have a very definite concern. The center city has lost 17.5% of its population in the last decade. Tulsa cannot afford the abandonment of the infrastructure which is already in place, an effort should be made to regenerate the declining tax base, the declining school population negatively impacts the schools in the center city. Ms. Robertson stated that for those reasons we cannot afford to abandon the center city. The needs of the 1980's, rising energy costs, need to maximize the resources, and the need to continue the fiscal soundness of the city. We need to take into consideration the changing lifestyles - people are tending towards smaller homes located closer to their places of employment. The concern of the Commission should be for the protection and continued concern for the residential character of the center city neighborhoods. Downtown Tulsa Unlimited feels that if infill is compatible with the present zoning of the neighborhood and if the neighborhood's essential character is maintained, it is positive. Ms. Robertson urged that the Commission consider these points when the criteria is developed: 1) consider the aspects of downzoning and other issues related to zoning on a case by case basis, possibly a PUD for each case; 2) providing positive incentives for

inmigration; 3) recognize and support neighborhood rehabilitation and the neighborhood's ability to rejuvenate itself; 4) seriously and deeply consider the role of infill; and 5) always consider the rights and needs of the individual property owners.

Speaking to Commissioner T. Young's question concerning the downzoning case considered by the Commission recently, Ms. Robertson stated that she was familiar with the area and was of the opinion that the neighborhood is residential in character and that the overall plan should be considered. The Plan does indicate that the area be residential and the area should be retained as residential.

Commissioner Petty asked why people are leaving the center city. Ms. Robertson advised that more attractive, newer housing is being built on the fringe areas and within the smaller communities outside the city. People have had an ability to be able to drive easily outside the city and have become accustomed to that life style. She pointed out that this feeling has changed within the past five years and now it is understood that the inner city is the more desirable place to live because of energy costs and the older homes which are able to be rehabed.

Commissioner T. Young questioned if infill is encouraged, the Commission should not allow development to occur in those areas to such an extent that it will put a strain on the infrastructure and negatively affect those people who already rely on the infrastructure. Ms. Robertson stated that she agreed, but would point out that the infill would have a positive affect on the school system.

Eugene Coleoni, 1534 South Delaware Avenue, Chairman of District No. 4, agreed with a previous speaker concerning downzoning actions - it is an attack on what is already zoned. However, Mr. Coleoni pointed out that upzoning is also an attack on the property values of the surrounding property owners. In some cases upzoning is not an asset to the community. He noted that some sensible, medium ground must be found where infill can be controlled. Mr. Coleoni suggested that serious thought be given to the downzoning question with the scope of controlling any infill that would be detrimental to either the residential area or to any other type of area.

Commissioner Parmele asked Mr. Coleoni if he would support downzoning without owner consent. Mr. Coleoni stated that it was a difficult question because he was a great believer in the individual's rights; however, there are times when an individual has to surrender rights. It was Mr. Coleoni's opinion that the rule of the majority should prevail and that downzoning should be incorporated as a policy to preserve a neighborhood such as the one in question.

Commissioner Parmele then asked if Mr. Coleoni would support the upzoning of his property and was advised that if a similar set of circumstances would occur, he would support it. Mr. Coleoni stated that if his neighborhood was to change in characteristics to such an extent that upzoning would permit 3, 4, or 5 more land uses, his property would become more valuable and the character of the neighborhood would, simultaneously, change. Mr. Coleoni noted that it should be taken into consideration that Tulsa is not going to stand still.

Robert Burlingame, 3883 South Birmingham Place, a homeowner in the area which precipitated the downzoning question, advised the Commission that he was irate, negative and was trying to protect his property. In some way, people's rights must be protected.

Mr. Burlingame expressed appreciation for the points made by the previous speakers and stated that everyone of their ideas emphasizes the argument of the homeowners. He stated, "I must have some kind of right to expect my neighborhood to remain the same in the near future." Over 600 signatures of residents in Mr. Burlingame's area were obtained on the petition for down-zoning of their property. He pointed out that the homeowners must have some kind of recourse if someone attempts to drastically change the neighborhood.

Commissioner T. Young advised that he understood Mr. Burlingame to say that we may be best served by a policy which examines an existing neighborhood and then applies a philosophy which may include downzoning to preserving that area, but it is not to arbitrarily exclude redevelopment or any infill. Mr. Burlingame stated that was correct and he felt the whole purpose is to keep the neighborhood as the residents bought into it.

Addressing Mr. Burlingame, Commissioner Petty asked if he felt this Board, in its infinite wisdom, knows more about what to do with his property than he did since he was just the owner and the Commission has all the vast knowledge available to them. Mr. Burlingame stated that in some respects they did because they are on the Commission and he respected the position. Commissioner Petty advised that he has some questions as to whether this Board or any other governmental agency or body can tell a person what to do with his property.

Chairman C. Young noted that the Commission does that every week; Commissioner Petty agreed, but pointed out that most of the time the action is initiated by the property owner.

Judge Paul Brightmire, 4041 South Birmingham Place, a homeowner in the area, suggested the Commission should see if, prima facia, the area in which he resides is miszoned and if it is, public hearings should be undertaken to correct the zoning. Judge Brightmire presented a chart (Exhibit "C-3") of the area located between 31st and 41st Streets from Harvard to Lewis Avenues, noting that arbitrary and capricious zoning appears to be apparent on the chart. He stated that he was shocked to find that the property along Birmingham was zoned RS-2. Pointing out that he resides on the northeast corner of 41st and Birmingham, zoned RS-1, and owns the property next door, the northwest corner of that same intersection, a tract which is almost twice as large and is zoned RS-2. Judge Brightmire was in agreement that a person should have constructive notice before purchasing a property; however, he advised that he looked at his property before purchase and it never dawned on him that the tract would be anything other than the lowest zoning, RS-1. He also stated that he did not receive notice, nor did anyone else in the neighborhood, when the entire area was rezoned in 1970. The criteria of the issue is does it appear on the face of it that the neighborhood has been erroneously zoned? The Judge did not feel there should be a concern about an avalanche of cases all over the city unless the zoning all over the city is as bad as this particular area.

Judge Brightmire pointed out that if there was a mass zoning program in 1970, it is obvious there are going to be mistakes that were made which should be corrected as they surface.

The Judge advised that he was not against making profit or development of the city and felt that the Planned Unit Development was acceptable; however, Birmingham Place had some kind of distinctive, attractive beauty that does not lend itself to the crowding of 11 additional homes in the area. He strongly recommended that the Commission adopt a policy to consider each petition on its merit and determine if it should be heard.

Chairman C. Young, noting that the property owner, could level his large home and, without even coming before the Planning Commission, construct a number of homes on that tract, pointed out that the surrounding property owners are on notice of what his property is zoned, thus constructive notice.

Judge Brightmire agreed that there is a problem but we all buy property, subject to the superior right of the state, under its police powers to take care of the general welfare of the people. As long as the legislative bodies, TMAPC and the City Commission, act in a reasonable manner and not in an arbitrary manner, the zoning laws will stand up. He charged that his particular neighborhood had been arbitrarily zoned since he had not had actual notice of the 1970 action of the TMAPC. If its arbitrary, then it has to be corrected.

Commissioner T. Young asked Judge Brightmire how he would define "police power" and was advised that there is no short definition of police power, but to state it simply, it is the power of the state to make laws to protect the health and welfare of the citizenry.

Robert G. Walker, 3855 South Birmingham Place, referring to the zoning map which was presented, pointed out that 82% of the homeowners in the area meet or exceed RS-1 standards. This is an error of zoning, either of mapping or transition. Mr. Walker advised that when he drove through the area before the purchase of his home eight years ago and found all of the homes located on lots of 120-125 feet or larger, it was a significant element in his decision to invest in the area.

Mr. Walker advised that it is the spread between the existing area and what is proposed that has created such a furor, not only in the immediate area, but in the entire region. The homeowners come before the TMAPC and the City Commission to seek a correction of zoning, an area which is miszoned. He proposed that a policy be set up which would allow the TMAPC and the City Commission to administer what amounts to a wholesale rezoning effort. The policy might restrict the wholesale zoning for certain conditions: 1) the size of the area be at least 150 acres and contain at least 200 residents; 2) more than 60% of the area proposed to be rezoned would meet the proposed zoning standard; and 3) at least 30% of the landowner's petition for relief of this error of zoning. This should be accomplished without burdensome work which would come to the TMAPC Staff, but still leave the opportunity to correct unrecognized errors that might come before the group. Following this action there should be hearings in which all existing landowners can be heard and landowners that have objections to the zoning change should be given individual consideration based on the merits of the area and the merits of their own situation.

Commissioner T. Young asked Mr. Walker if he believed that the issue of downzoning should have an option for the Commissions, on their own motion, to initiate a downzoning action; in recognition of a transition error in going from one zoning code to a new zoning code if the transition failed to consider the difference between the original classification and the way an area developed. Mr. Walker stated that he believed that anytime there is 82% of the people that would meet an RS-1 classification and want their area zoned RS-1 to protect the nature of that area, upon becoming aware of the problem it should be corrected.

G. C. Spillers, 3836 South Birmingham Place, referring to the specific downzoning request of residents in the Lewis and Harvard Avenue area, advised that there are 906 lots that are developed which are, by standard, properly RS-1. There are approximately 12 houses in the area which are RS-3, a low density commercial property where an insurance company is located, a church and the Public

Service Company. All of the area was developed prior to 1970. This is one of the loveliest areas of Tulsa and homeowners feel the proposed PUD development would be incompatible in the neighborhood.

Mr. Spillers pointed out that when you consider the zoning of a whole city, as in 1970, there is not as much public interest because the matter become so diffused, such a large and complex matter, that the ordinary citizen doesn't come to the meeting. During the process by which all of this is accomplished, a lot of things happen that people do not realize.

Mr. Spillers stated he was in favor of infill and PUD's within the inner city; however, the area of 38th and Birmingham is in the suburbs. It is not a decayed, downgraded, dejected area which might not have the capacity to rehabilitate itself. He advised that he was not against infill, but did not want it in one of the loveliest areas of Tulsa, the area close to the city should be infilled and there is plenty of land around for that purpose.

Chairman C. Young asked Mr. Spillers if he viewed the change in zoning of the area as a mapping error. Mr. Spillers was of the opinion that it was not just a mapping error it was done deliberately by somebody.

Robert Paddock, 2215 East 25th Street, Chairman of District 6, the District in which the area of 38th and Birmingham is located, stated that the beginning of this particular problem and many others like it in the city, in residential and commercial zoning, is the change from the old Zoning Code adopted in August 1956, to the 1970, Zoning Code adopted in February 1970, effective July 1, 1970. Immediately upon adoption of the new Ordinance, the City Commission passed a joint Resolution. Mr. Paddock presented a copy of the joint Resolution (Exhibit "C-4") passed by City Commission and subsequently approved by the Planning Commission on February 11, 1970. This Resolution was an effort to set out, in writing, the guidelines that were to be used by the planning Staff and others involved in the total remapping of the city. There were no individual notices set to affected property owners as to how to make the conversion from the old Code designations to the new ones. Some of the requirements of the old use districts; i.e., 1-A, 1-B, 1-C in residential, were changed in certain significant respects with regard to the amount of square footage that would be allowed in these residential districts. Mr. Paddock pointed out that the Resolution stated "...the establishment of zoning district boundaries will be effectuated by the adoption of ordinances classifying properties in the zoning district most comparable to or more liberal than the zoning district classifications existing at the time of the adoption of the Tulsa Zoning Code," followed by a table of the existing zoning and the proposed new zoning. Either by mapping error or oversight, some of the properties were not zoned in accordance with the new coding classifications of the 1970 law.

Mr. Paddock stated that where there already is a standard, the subject property, fully developed, meets that standard, but the property is not zoned as such, this is a special situation where the property should be rezoned with or without the owner's consent. He also was of the opinion that if an area is zoned for one use, but after a reasonable length of time (5 years) has not developed to meet that use, the property should be rezoned to conform with the actual use.

In answer to Commissioner Petty's question, Mr. Paddock advised that he supported a concept of flexibility. The Zoning Code sets forth the option for the Commission, on motion, to rezone properties. Downzoning has a bad conotation, but Mr. Paddock stated he did know of instances when the Planning Commission, on recommendation of the Staff, did downzone some properties.

Chairman C. Young directed Mr. Paddock to bring background material concerning these rezoning items.

Commissioner T. Young asked if rezoning occurred and all facts are fairly considered and opportunity for all affected citizens to present their cases was afforded, would arbitrariness be more difficult to discover. Mr. Paddock stated that it would be.

Milton Phillips, 2648 East 48th Street, a resident of the Lewis and Harvard Avenue area, advised that he purchased his home from a prominent attorney in Tulsa who owned at that time almost three acres of land. The attorney sold one acre to a gentlemen who built next door; he then obtained signatures of agreement of abutting neighbors to divide the land. Mr. Phillips did not feel the man had any idea that anyone would think of putting that many houses in the area.

Mr. Phillips questioned if a common citizen ever feels like he has any weight in the City. He noted that the quality of life in Tulsa was the reason his family had decided to live here the rest of their lives. As an ordinary citizen, Mr. Phillips was of the opinion that his rights should also be protected. He recommended that Tulsa have a policy setting forth certain areas for homes, areas for apartments, condominiums, etc. Decisions can be made for shopping centers, office buildings, etc., in the areas which are not built up. Sometimes it may be legal, but its not right and if its not right it needs to be changed to make it right.

Sandra Tinsley, 1144 North Denver Avenue, advised that she represents the Brady Heights Neighborhood Association. She advised that this neighborhood is the first one in Tulsa to be put on the National Register of Historic Places. The area contains large houses and as a result of the current multifamily zoning the neighborhood has attracted a lot of nonresident slum landlords. There is much unsightliness, cars parked in the front yard, many transients and disruption of the neighborhood serenity due to a large home which has been converted to apartment use.

Ms. Tinsley stated that in order to achieve the goal of revitalizing the area and attracting high caliber residents, the cooperation of the City is needed in considering the homeowner's request for downzoning.

A letter (Exhibit "C-5") was presented from the District 16 Steering Committee advising that the members are opposed to an amendment for downzoning as a part of the Master Plan.

Bob Gardner Advised that it was the Staff's intent to prepare the recommendations to be distributed to the Commission members and all parties who spoke at this meeting prior to the next public hearing on June 15, 1981, 7:00 p.m., Langenheim Auditorium, City Hall, Tulsa Civic Center.

There being no further business, the Chair adjourned the meeting at 5:30 p.m.

Date Approved \_\_\_\_\_

*June 17, 1981*

*Bob Gardner*

12 Vice-Chairman

ATTEST:

*Marian E. Holliday*  
Secretary