

TULSA METROPOLITAN AREA PLANNING COMMISSION
 MINUTES of Special Meeting No. 1449
 Wednesday, March 30, 1983, 1:30 p.m.
 Langenheim Auditorium, City Hall
 Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Benjamin Gardner Draughon Higgins Hinkle, Secretary Kempe, Chairman Petty, 2nd Vice- Chairman C. Young, 1st Vice- Chairman T. Young	Miller Inhofe	Chisum Compton Gardner Wilmoth	Linker, Legal Dept.

The notice and agenda of said Special Meeting were posted in the office of the City Auditor, Room 919, City Hall, at 12:40 p.m., as well as in the Reception Area of the INCOG Offices.

Chairman Kempe called the meeting to order at 1:40 p.m.

L-15761 Robert Flaherty (583) 6700 Block South Florence Avenue (RS-1)

This lot-split application was continued from the previous meeting, in which the Staff recommended approval as submitted. The application is basically an exchange of land between two lots in order to provide an acre of land for the lot to the north and to provide additional frontage on the cul-de-sac for the other lot. Notice is not required for a prior approval; however, this would have a direct bearing on some of the other splits in the area.

Applicant's Comments:

Mr. Richard Cleverdon, 202 West 8th Street, represented Mr. and Mrs. Robert Flaherty, who were also present. Mr. Cleverdon has also represented Mr. and Mrs. Cebuhar in this overall transaction. He appreciated the Commission's willingness to hold this special meeting.

Mr. Cleverdon presented 8 plats of this area (Exhibit "A-1").

Braniff Hills has been subject to many resubdivisions, which have been platted with ordinary processing through the Planning Commission. The problem arises from two sources. All of the owners in Lot 1, Block 1, Braniff Hills entered into a covenant that each parcel be not less than an acre. Mr. Hettinger previously advised the Commission that an effort was made to devise legal descriptions so that Tract 2 and 3 would each contain an acre. Lot 1 includes the property belonging to Mr. Bovaird and the property belonging to the Flahertys. The dashed line on the plat in the exhibit indicates the common boundary line between Lots 1 and 2, so Mr. Huckin has a small amount of land in Lot 2 and the Cebuhar tract has a small parcel in Lot 2. Mr. McKay was the original owner of the three lots and made a conveyance to Mr. Bovaird in 1956 with a good, clear legal description which the engineer says is legally and mathematically certain. The second conveyance in 1962 is the tract designated

as Tract 2, which has some inherent problems. The north boundary line as it is called out in the deed to the owner before Mr. Flaherty (Bob Latch) is not mathematically the same as the drawing presented and cannot be correct according to the original plat.

The call down the western boundary of the Bovaird panhandle is a satisfactory call and is correct. The next call that angles up to the cul-de-sac has no bearing and has no coordinate according to the compass, so it can float many degrees for purposes of identification. The cul-de-sac is reasonably well-defined so that the distance of arc and radii seem to be correct. A generalization is made in the legal description so the coordinate cannot be defined.

Tract 3, now owned by Mr. Huckin, has a legal description starting at the northwest corner of the tract and quite adequately tracks down to an intersection with the southerly line of the cul-de-sac.

Mr. Cleverdon discussed this area with the engineer, Mr. Phil Smith, at the beginning of his representation and was told there is no mathematical way to make Tract 2 close. Tract 3 has a similar problem in that the west line is a clear, ascertainable line, the northerly line is clear but there is a problem with the cul-de-sac. The linking line on the south has a problem similar to the reciprocal line on the Flaherty tract.

When the cul-de-sac was dedicated, there was no coordinate placed upon the straight lines which comprise the sides of the cul-de-sac. Mr. Dale Ashton, who is examining title to the Flaherty property, advised Mr. Cleverdon the discrepancy in the Flaherty title would have been caught at this point even if it had not been brought to his attention earlier.

The engineer made 8 different studies, trying to seek the most reasonable method of having a full cul-de-sac and the land size to meet the restrictions. This Plat does not take care of land size for Mr. Huckin, but Mr. Cleverdon is negotiating with him to see if they could reach an agreement, which has not been settled. All of the shortages in legal descriptions that may result from these transactions must necessarily come out of the Cebuhar tract because it was the resulting tract after the other conveyances and dedications were made.

The engineer also informed Mr. Cleverdon that the City requires 50 feet for the cul-de-sac, therefore, it cannot be reduced to make up any acreage shortages. According to Plat 2 presented by Mr. Cleverdon, the acreage content for the Flaherty lot is 1.0299 acres, 2.385 acres for the Cebuhar lot and .9377 acre for Huckin. This plat was a study plat used by the engineer.

Plat 3 presented by Mr. Cleverdon is another study plat in which the premise was to take the maximum extension of acreage content that could be produced, according to current engineering standards under the deed to the property owned by Mr. Huckin that the dotted line on the plat would be the resulting location of Mr. Hickin's boundaries. One of Mr. Huckin's problems, with reference to the cul-de-sac as drawn in on the earlier study plat, is there would have been a boundary line to the cul-de-sac through some of his shrubbery. This was one of the reasons a new study was requested by Mr. Cleverdon. By making this simple transference, it would have resulted in the diminishing of the Flaherty tract to considerably less than an acre.

Mr. Cleverdon is well aware that the Planning Commission is not concerned with deed restrictions, only zoning requirements; however, there is a need to comply with both restrictions. It is the consensus of most attorneys that one supplements the other and one does not prevail over the other insofar as eliminating restrictions on use of the land. Whichever is more restrictive is the one that must be dealt with by the citizen in order to meet title requirements.

The applicant is seeking to resolve many uncertainties created by an earlier standard. Transactions during the 1950's and 1960's went along with the times. A lot of people within this jurisdiction had not learned the importance of legal descriptions and the necessity of closing and he could not really fault this. The engineer stated there is a plausible solution according to the White surveys; however, the White surveys would choke the cul-de-sac and as previously stated the City Engineer would not allow this.

Mr. Cleverdon needed land for Mr. Flaherty to clear title and it was going to come out of the Cebuhar tract. He simply negotiated something with which both sides were willing to agree. The application presented was the outcome. The Subdivision Regulations have been met and presents nothing unique within itself. Nothing will be changed except the boundary lines to accomplish a purpose. No new tracts are being created.

Mr. Ron Main previously represented Mr. John Rupe in the lot-split applications. The problems in the area have occurred because of the way the sale and transfer of land in this area has been transacted. Mr. Main has examined the title to land in the area as attorney for Sooner Federal. He recommended that a survey be required and an engineer take care of the work, particularly on the Cebuhar tract. The engineer's work indicated there were very real problems on the tract, which would not be apparent to an attorney who was examining title, unless the arcs and degrees were tracked out. This has been accomplished by Mr. Phil Smith of Hammond Engineering. When this survey was begun, the problem seemed to be with the Cebuhar and Huckin tracts. As it turned out, Mr. Main decided to accept Mr. Huckin's position on the boundary line. Later it was determined Mr. Huckin was probably right because of the sequence of the transfers from the original owners of the entire tract. By virtue of this sequence, everything shifted and the Flaherty's ended up with less than an acre of land. The Cebuhar tract needed so much land across the front due to restrictions embodied in the deed. The only way out was to request this swap of land.

Commissioner C. Young asked Mr. Flaherty about the sale of his property. Mr. Flaherty explained the home was placed on the market in July and he learned of the survey problem in about October. Since that time, these problems have clouded his title and is unable to sell. He is not involved in any sale to Mr. Rupe or in any of the transactions for the lot splits to the west, only the exchange of these two triangles in order to sell his property.

Protestants' Comments:

Mr. Frank Hettinger represented Mr. Bill Bovaird who owns the tract to the south. The two triangles of land under this application were part of an application for lot-split that was turned down and is under appeal to District Court. It is Mr. Bovaird's position that the lot-split should remain in District Court until it is finally determined. If the lot-split

is finally rejected in court, the need for the small triangle will no longer exist. The Flaherty's need for the large triangle is based on a deed restriction, which provides that no house can be constructed on a lot containing less than one-acre. There are four owners in Lot 1, Block 1 of Braniff Hills - Mr. Rupe, Mr. Flaherty, Mr. Huckin and Mr. Bovaird. Mr. Huckin and Mr. Bovaird are willing to waive the one-acre requirement as to the .04 deficiency. Mr. Hettinger does not feel it is necessary. Mr. Flaherty's tract as now surveyed, if it is within .04 can be rounded to 1.0 acre; however, it cannot be rounded to 1.00 acres. Assuming it is necessary, the two property owners are willing to accept the description made by the engineers and to execute an instrument waiving the requirement. The lot split can pend in court until it is finally determined to be a legitimate or not to be a legitimate split. Mr. Flaherty's problem can now be solved if Mr. Rupe agrees with the waiver of requirements.

Mr. Bill Huckin felt this is not the place to solve boundary line disputes or the problem of the lot needing one acre. There is no boundary line problem. These lands have been bought and sold many times. Surveys have been made before. If there is a boundary line problem and the lines do not close, a court order is all that is needed to get them to close the line. Mr. Bob Latch owned the Flaherty lot prior to the Flahertys and had it surveyed because it was a title requirement and the surveyor said there was more than one acre. If the Flaherty lot is not an acre, the Statutes of Limitations has long since past and no one has complained before. Mr. Huckin felt this application is really for a lot-split that was already turned down. The protestants are not trying to hold up the sale of Mr. Flaherty's land. Mr. Huckin and Mr. Bovaird are willing to waive the one-acre requirement. The only other property owners involved are Mr. Flaherty and Mr. Rupe.

Mr. W. J. Bovaird was the first to purchase land when this lot was divided. By mutual agreement, Mr. Bovaird and the original owners put restrictions on use for the entire tract. The purpose was to preserve the natural beauty and view of the lake. The intent of those restrictions was to keep the lake and allow only four homes on these four lots. Mr. Bovaird feels this application is merely a subterfuge. The small triangle on the cul-de-sac takes away land from the Flaherty's, which would not help to make the acre needed. The restrictive covenants require access from 67th Street to each of these lots. According to the newspaper, Tract A is advertised for sale as one-acre and Tract D is advertised for sale with 1/2 acre.

Commissioner C. Young asked if Mr. Bovaird would consider selling Mr. Flaherty a small strip on the southern boundary of Mr. Flaherty's property. Mr. Bovaird agreed this would accomplish the same purpose. Commissioner C. Young asked if Mr. Bovaird had been approached by the attorney to request this and Mr. Bovaird has not.

Applicant's Comments:

Mr. Cleverdon is aware that the Commission is tired of hearing about the lake; however, it was mentioned by one of the protestants and has been suggested that the applicants are engaged in subterfuge. For that reason, Mr. Cleverdon presented a certified copy of the journal entry of judgment in District Court Case #C70-1056 with highlighted portions which he believes are germane to this hearing and of interest to the Commission (Exhibit "A-2"). As Mr. Bovaird mentioned, there have been various schemes for restricting the use of Lot 1, Block 1 of Braniff Hills. One is the

one-acre restriction and the other was a restriction between Mr. McKay and his grantee of Lot 3, Block 1, which provided that if either sold their property, the other would have an opportunity to purchase the property. There was a breach of this requirement and the owner of Lot 3 brought the suit to void that restrictive covenant so she could sell the property without offering it to the present owners of Lot 1. All of the owners of Lot 1, Block 1 were joined and certain parties answered the court but others remained silent. In their answer, several property owners claimed a right to the lake, the same right to the lake as the grantee of the portion in Lot 3. The court clearly stated that these people had no right to the lake. This has been a matter of judicial determination when all people were present. Mr. Cleverdon could not find that Mr. Bond filed an answer in this case and thought Mr. Bond might have been more willing to recognize the fact that the owners of that lake with the land surrounding it were the proprietors of the lake.

If the boundary lines are not clear, a problem exists. It does not require a surveyor to create the problem. The engineer merely identified the whole cloth of the problem. Mr. Cleverdon examined this in 1964 for a loan made by Mr. McKay with Tulsa Federal. A satisfactory legal description was obtained for loan purposes but not for buyers purposes. If Mr. Cleverdon had been representing a buyer, he would not have passed the title. There is absolutely no doubt a boundary problem existed long before Mr. Rupe was interested in the property and before the recent survey. When Mr. Cebuhar entered into a contract with Mr. Rupe, he thought this was an ordinary residential purchaser and had no idea the business in which Mr. Rupe was engaged. There was no indication of the present problems. Mr. Cleverdon believes that if anyone else had come to the Commission as buyer of the property, there would have been no opposition from the neighborhood. The only issue before the Commission is whether or not the application meets the Subdivision Regulations.

Commissioner C. Young felt there were 5 remedies to this problem - the present application before the Board; purchase land directly from Mr. Rupe and not give him the frontage he is requesting; purchase land from Mr. Bovaird; ask all four owners to amend the covenants to waive the 1-acre requirement on Mr. Flaherty's property; or, take a quiet title to District Court. Mr. Cleverdon agreed these are all remedies and wished to address the suggestion of amending the covenants. The contract for sale has been revised by the Merrill Lynch Company about four times. There are only a certain number of times a contract can be revised and keep the sale. Then there is the question of dollar value, as well as equivalency of land. No one has volunteered to pay for the additional surveying, who will pay for the land to be purchased and who will absorb the losses if less than the full acre is sold to Merrill Lynch.

Mr. Ron Main commented that the waiver of the one-acre restriction does not solve the problem of locating the property line between the Flaherty and Cebuhar tracts. The problem does not lie on the boundary between the Flaherty's and Mr. Bovaird; the problem is between the Cebuhar and Flaherty tracts and is where the adjustment has to be made. Mr. Main felt this is the proper place to correct the problem. The two parties involved have agreed to the location of the property line in accordance with the advice of the surveyor and engineer.

Also, the restrictive covenants can only be waived on the anniversary date, which is in 1987. Mr. Main wondered why this solution was not proposed at the outset of these applications. There have been no documents prepared to waive these restrictions and the protestants are not bound by statements that they will waive this requirement.

Mr. Main informed the Commission that Mr. Bovaird has only 25 feet of frontage on East 67th Street, which does not meet the covenants; therefore, it would be difficult for Mr. Bovaird to convey a strip of land to Mr. Flaherty when he is in violation of the covenants.

This request has been approved by the Staff and is being recommended for approval to the Commission by the Staff. It is an adjustment that is required to be made in order to ease the problems. Guaranty Abstract and the title insurance companies refuse to issue a title of insurance policy to Mr. Flaherty at this time because of the existing problem.

Commissioner Higgins asked Mr. Main to explain why the title insurance is important. Mr. Main stated that purchasers are requiring that title insurance policies be issued and will accept this in lieu of a title opinion from an attorney. The policies are issued by insurance companies where the title is insured, as well as the boundaries. Financing can then be accomplished through a lending institution. If a policy cannot be obtained, the title is unmarketable and the property is worthless. It cannot be sold because a loan cannot be obtained. Mr. Main had requested that a representative from the title insurance company be present; however, he has not arrived at this point. This insurance company has refused to issue a policy on Mr. Flaherty's property.

Special Discussion for the Record:

Commissioner T. Young submitted a map he had prepared (Exhibit "A-3"). He reminded the Commission that the purpose of the Code is for the furtherances of the health, safety and welfare for the City. There is a way to conduct orderly development. The map submitted shows, if the lake is taken out of the issue, there is a possibility of 11 lots that could be developed in this area if developed under an RS-1 zoning. He is not suggesting these lots be divided, merely showing the possibility. If this application is approved, Commissioner T. Young felt it would not be long before an application is filed for a lot-split on the back of the Flaherty property with a handle to the cul-de-sac.

Commissioner Higgins did not think it is the Commission's decision where the problem is settled. A lot-split has been presented that the Staff says meets the qualifications of the Subdivision Regulations. This is the only matter before the Commission and the only issue on which the Commission can make a decision. If the Regulations are not strong enough, maybe a change is needed; however, this split is presented under the existing Regulations, which have been met.

Commissioner C. Young stated he could support a lot-split but could not support this split that would give more footage on the cul-de-sac.

Commissioner Petty disagreed with Commissioner Higgins. The Commission has to look at the whole picture. Decisions are not all black and white. He cannot support this split because of all the other cases that have been heard in regard to this property.

L-15761 (continued)

Chairman Kempe commented that she supported Commissioner Higgins' position for many of the same reasons. The Commission is called upon to resolve this lot-split and if the Courts decide the Commission has made a wrong decision, the decision will be over-turned.

TMAPC Action: 9 members present.

On MOTION of HIGGINS, the Planning Commission voted 4-5-0 (Gardner, Higgins, Hinkle, Kempe, "aye"; Benjamin, Draughon, Petty, C. Young, T. Young "nay", no "abstentions"; Miller, Inhofe, "absent") to approve L-15761 as presented.

MOTION FAILED.

TMAPC Action: 9 members present.

On MOTION of T. YOUNG, the Planning Commission voted 5-4-0 (Benjamin, Draughon, Petty, C. Young, T. Young, "aye"; Gardner, Higgins, Hinkle, Kempe, "nay"; no "abstentions"; Miller, Inhofe, "absent") to DENY L-15761.

Commissioner C. Young felt the Commission should start looking at every prior approval. Mr. Wilmoth explained this is the first prior approval out of several thousand that has created a problem. Mr. Gardner stated that hundreds of transactions hinge upon receiving a lot-split. The reason the Commission has a policy of prior approval is to not hold up a sale. If the requested split meets the Regulations, there is no reason not to approve the split. Commissioner C. Young suggested this still be studied. Commissioner Higgins suggested a Rules and Regulations Committee meeting to discuss this suggestion.

There being no further business, the Chair adjourned the meeting at 2:45 p.m.

Date Approved

April 13, 1983

Cherry Kempe
Chairman

ATTEST:

Marilyn Hinkle
Secretary