

TULSA METROPOLITAN AREA PLANNING COMMISSION
 MINUTES of Special Meeting No. 1471
 Wednesday, August 31, 1983, 11:30 p.m.
 Langenheim Auditorium, City Hall
 Tulsa Civic Center

MEMBERS PRESENT	MEMBERS ABSENT	STAFF PRESENT	OTHERS PRESENT
Beckstrom Draughon Flick Higgins Hinkle, Secretary Kempe, Chairman Woodard T. Young	Petty C. Young Inhofe	Compton Gardner Lasker Martin	Jackere, Legal Department Linker, Legal Department

The notice and agenda of said Special Meeting were posted in the Office of the City Auditor, Room 919, City Hall, at 3:20 p.m., as well as in the Reception Area of the INCOG Offices.

Chairman Kempe called the meeting to order at 11:40 p.m.

MINUTES:

On MOTION of WOODARD, the Planning Commission voted 8-0-0 (Beckstrom, Draughon, Flick, Higgins, Hinkle, Kempe, Woodard, T. Young, "aye"; no "nays"; no "abstentions"; Petty, C. Young, Inhofe, "absent") to approve the Minutes of August 17, 1983 (No. 1469).

A work session ensued with discussions on INCOG organization, comprehensive planning, Development Guidelines, and past zoning decisions and actions.

Open Hearing regarding the delineation of future freeway rights-of-way on the face of subdivision plats located within the path of such planned facilities.

Chairman Kempe opened the public hearing.

Mr. Gardner stated that the Planning Commission previously requested an opinion from the Legal Department as to the procedure of delineating an expressway on the face of subdivision plats. The Legal opinion, submitted June 23, 1983, answered 5 specific questions of the Commission and cited specific cases dealing with the subject matter.

Mr. Gardner advised the current manner in delineating existing or future expressways is shown on the face of every subdivision plat with a small area map in the corner showing where a particular subdivision is located. The purpose for showing it at all is so that an individual might look at the plat and determine which lots are in the path of future expressways and, also, what the relation of the subject lot is to the expressway, if the land were purchased and the expressway built. The Staff is suggesting that the delineation be placed on the face of the plats which would provide more detail for an individual's use. The proposal is merely to delineate the expressways and on/off ramps with notation on the face of the plat stating it may or may not occur, but that it is part of an adopted plan.

Mr. Gardner presented a document entitled "Functional Plans of Expressways" containing aerial photographs, maps, scales and dimensions to aid the Commission in their determination.

Legal Council Linker briefly discussed the legal opinion which was written concerning the delineation of future freeway right-of-ways on the face of subdivision plats which was previously submitted to the Commission.

Commissioner T. Young suggested that as a separate plan adopted by the City and County Commissions, the transportation or traffic plan become a part of the Comprehensive Plan.

This plan was adopted through a series of Public Hearings and is still available to the public and he believes fulfills the public notice requirements.

Roy Johnsen, 324 Main Mall, attorney represented the Land Development Committee of the Metropolitan Tulsa Board of Realtors. Mr. Johnsen stated that the notice in delineating future freeway right-of-way on subdivision plats is appropriate. It was suggested that the present system of notice contains defects because when lines are placed on the face of a subdivision plat it becomes a recorded document and is extremely difficult to change.

Mr. Johnsen suggested that notification be placed in the abstract on an 8½" x 11" piece of paper covering the quarter section where a particular subdivision is located. A document would then be filed in the County Clerk's Office. He felt the document from which the 8½" x 11" paper was inserted in the abstract could be filed of record with appropriate resolution and acknowledgement by this Commission identifying it as being a depiction of proposed right-of-ways of expressways.

Mr. Johnsen concluded and stated whatever form of notification is given that true facts should be stated because many right-of-ways are not yet acquired and the alignment may change. Many times the proposed size and location of the expressways are approximate and should be so stated. Sources should be provided to the public to obtain information about the proposed expressways. He stated he was not persuaded that notice of expressway locations for real estate records is needed, but he merely suggested a better way.

Mrs. Higgins was unsure if the buying public would understand the delineation if phrased "proposed expressway".

Mr. Johnsen advised if there is no reference in the abstract to expressway locations there will be no comment in regard to it. The document which he made reference to is one which hopefully the title lawyer would reference to the purchaser. Mrs. Higgins liked the idea of the document included in the abstract because the normal public is not aware of all terms and if explained by an attorney or included in the abstract it would be much better.

Mr. Gardner stated he did not feel the public should rely on their attorneys in interpreting the abstract if the document was included therein, as every title attorney is not an expert. It has been a requirement in the subdivision requirements that a location map be included and the Staff does not feel that has been adequate notice and feel it should be placed on the face of the plat to adequately notify the public. Mr. Johnsen felt it should be placed on the map for the attorney to examine and advise his client.

Mr. Linker addressed the change being difficult and advised there is a procedure for removing it from the face of the plat. He stated that the City

Legal Department feels the buying public is entitled to clear and explicit notice. They feel it would be misleading to leave it off the face of the subdivision plat if other planned facilities are placed thereon.

Discussion ensued as to removing the delineation off the face of the subdivision plat once placed on that plat. Mr. Johnsen stated there may be a document that verbally states the Major Street Plan as been changed, but the document will always depict the right-of-way when a plat is filled.

Chairman Kempe advised the Subdivision Regulations presently require that these things be shown and it must be decided if the Subdivision Regulations will be enforced or amended.

There was some discussion in distinguishing between planned and proposed expressways. Mrs. Higgins felt if it was placed on the face of subdivision plats it would be taking rights away from the potential or present property owner by making him pay for that highway before he receives compensation. Mr. Linker stated the courts have said no. Mr. Flick felt it was the method of disclosure more so than the fact if disclosure is necessary.

Roger Reinhardt, 11545 East 33rd Street, represented Builder's Association of Metropolitan Tulsa and the Land Developers' Council of that Association. Mr. Reinhardt advised the Commission that they had submitted a letter stating their concerns (Exhibit "A-1"). He stated the Builder's Association basically supports the concerns of the Board of Realtors as expressed by Mr. Johnsen. He felt that showing the delineation of future expressways on the face of subdivision plats may not be the best solution. It was suggested in giving adequate notice that a small disclaimer document containing an explanation be included with the quarter section on the abstract.

Charles Norman, 909 Kennedy Building, attorney, stated he appeared as a concerned attorney. He stated various examples of how plans do get changed which is appropriate in the planning process. His concern is that notice be given fairly to everyone, both the present and future owner of the subject property. He has seen numerous changes made in the highway plans while practicing law and he wanted to voice objection in imposing notice in a permanent form which puts upon the owner of the property the burden and expense of taking it off in the future. He stated we tend to focus only on the first buyer of the property, but if the plan is changed after the plat is filed the adverse affect is extended down to the second buyer. The Subdivision Regulations require that you show on the plat proposed drainageways, parks and other proposed facilities which may be appropriate, but if notice is given to those additional type of improvements the method suggested earlier would be workable for that type of notice also.

William Jones, 201 West 5th Street, attorney, represented many developers and himself as an interested citizen and wished to express his view points. He stated he concurred with Mr. Norman's position.

Mr. Jones began his presentation by indicating various problems with placing proposed expressways on the face of subdivision plats and sketched various circumstances for the Commission's consideration. If the delineation is shown on the subdivision plats it will kill the sale of those properties. The question which the Commission must answer is if notice needs to be given and the manner which it should be done. Mr. Jones did state that a better method could be established other than placing the proposal on a map which is almost impossible to remove.

Mr. Jones advised if a proposed expressway is placed on a subdivision plat many times the expressway will never be constructed. He felt that developers are being abused by the possibility of an obscure statement being placed on a subdivision plat which states an expressway might be developed in 10-15 years. He felt the whole procedure is a catch 22. He felt a responsibility to indicate to his client the proposed expressway plan, but also stated that every proposal is not always carried out. He stated he would never suggest that anyone purchase property if it is located within a proposed expressway if it is shown on the plat.

Mr. T. Young stated he wished that the ultimate recommendation of the Planning Commission would be that the adoption of the Transportation Plan which then becomes part of the Comprehensive Plan that is adopted and filed of record in the County Clerk's Office would be considered proper notification. However, if this is not considered to be enough he would recommend a notation with bold type that would be placed on the face of the plat with very simple language that the Major Street and Highway Plan as adopted, may have an impact on this subdivision plat. By that notice we are cross referencing a public file and adopted document which a good title attorney will draw reference to in making a conclusion on a title search.

Mr. T. Young suggested that the Planning Commission consider amending the Subdivision Regulations through a public hearing to delete the provision all together. If that could not be done he suggested that the Subdivision Regulations be amended to add a notation as just described above.

The City's position is that proposed expressways should be placed on the face of subdivision plats and the feeling is very strong that the notice be given. Mr. Linker disagreed that it is difficult to remove a delineation from the face of the plat. It can be done by instrument which is approved by the City Commission and is circulated among the owners or through the District Court by filing a law suit to remove it from the face of the subdivision plat. As Mr. Johnsen stated it does not actually remove it from the face, but it is an instrument filed that shows it is not a valid designation on the face of the plat.

Bob Green, General Manager of Grupe Development Company, stated they were opposed to any notification of proposed freeway right-of-ways on the face of subdivision plats because of the key word "proposed". He felt that placing lines on subdivision plats could cause real damage to the public. He advised the Grupe Company spent many hours in researching the proposed expressway question on the subject property and made inquiries to the Planning Commission, INCOG and City Engineering Department concerning the expressway. The Planning Commission and City Commission approved the project setforth by the Grupe Company and the minutes indicate that they would not be required to show the delineation on the plat.

Discussion ensued as to a disclaimer or disclosure on the plat showing the proposed street or expressway.

Mr. Beckstrom stated that the delineation by lines on the face of the plat is a very serious matter and he felt the Commission would do better by giving notice in written form as of the date of filing the subdivision and advise the owner to investigate the matter.

Ed Lineback stated that he feels it is the responsibility of the real estate industry to notify individuals concerning these matters. He does not oppose

the disclosure in some form, but is opposed to placing it on the face of the plat.

Monty Murphy, Assistant Director of Planning and Research with the Oklahoma Department of Transportation, was present and stated he was responsible for planning in the State of Oklahoma. There is a lot at issue in protecting the planned future right-of-ways and he suggested that the Commission look at it carefully. He felt that by placing it on the plat it would only be drawing attention to the potential of an expressway.

The Commission decided to continue the hearing concerning this issue.

TMAPC Action: 6 members present.

On MOTION of DRAUGHON, the Planning Commission voted 5-1-0 (Draughon, Flick, Hinkle, Kempe, Woodard, "aye"; Higgins, "nay"; no "abstentions"; Beckstrom, Petty, C. Young, T. Young, Inhofe, "absent") to continue consideration of the delineation of future freeway rights-of-way on the face of subdivision plats until September 21, 1983, in Langenheim Auditorium, City Hall, Tulsa Civic Center.

Open Hearing regarding minor amendments concerning variances and encroachments to bulk and area requirements and PUD.

Mr. Gardner explained that this Commission has had problems with being requested to approve developments which are partially constructed that encroach into building setbacks. The Building Inspection Department is aware of the problem and the Commission wished to know the feeling of the development community. There was no one representing this issue.

Mr. Gardner advised the Commission had requested a legal opinion concerning Zoning Code enforcement being handled by INCOG. A letter containing the legal opinion was submitted by Alan Jackere, Assistant City Attorney and was read by Mr. Gardner (Exhibit "B-1").

The legal opinion indicated that the Commission has no power to act in such a manner under the present statutes. Chairman Kempe advised the purpose of this hearing was to obtain the legal opinion and then make a decision on the encroachments. Mr. Gardner suggested that the Staff prepare a letter addressed to the Tulsa Home Builder's Association advising them of this problem and the restrictions which the Commission must adhere to. He suggested that this item also be continued to September 21, 1983, to allow some input from the building and development community.

There was some discussion as to the number of errors made by the building industry in comparison to the number of building starts which have been made. Mr. Gardner advised the number of building units constructed per year is approximately 5,000, but the number of times that encroachment is being made is increasing.

Mr. Gardner suggested one solution would be a stiffer penalty if there is encroachment. Mrs. Hinkle suggested that all encroachment should be considered a major amendment which would be more costly to the applicant.

Mr. Gardner stated we are trying to get to the problem and keep open the option for both minor and major amendments. We are trying to remain flexible so those who honestly made the mistake should not suffer severely.

The Commission is seeking a solution to prevent the number of encroachments from increasing. The Building Inspector will consider the applications more

carefully and if there is any question of encroachment a survey at the time of the plumbing inspection will be required.

It was decided by the Commission to continue this item to allow further input from the development community. It was suggested that this item be heard prior to the hearing concerning delineation of future right-of-ways.

TMAPC Action: 6 members present.

On MOTION of FLICK, the Planning Commission voted 6-0-0 (Draughon, Flick, Higgins, Hinkle, Kempe, Woodard, "aye"; no "nays"; no "abstentions"; Beckstrom, Petty, C. Young, T. Young, Inhofe, "absent") to continue consideration of minor amendments concerning variances and encroachments to bulk and area requirements and PUD until September 21, 1983, in Langenheim Auditorium, City Hall, Tulsa Civic Center.

The Chair adjourned the meeting at 4:32 p.m.

Date Approved September 14, 1983

Cherry Kempe
Chairman

ATTEST:

ACTING Secretary