

**TULSA METROPOLITAN AREA PLANNING COMMISSION**  
**Minutes of Meeting No. 2388**

Wednesday, August 25, 2004, 1:30 p.m.

Francis Campbell City Council Room  
Plaza Level, Tulsa Civic Center

<b>Members Present</b>	<b>Members Absent</b>	<b>Staff Present</b>	<b>Others Present</b>
Carnes	Bayles	Alberty	
Coutant	Harmon	Huntsinger	
Hill	Horner	Matthews	
Jackson			
Ledford			
Midget			
Miller			
Westervelt			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Friday, August 20, 2004 at 4:40 p.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

After declaring a quorum present, 1<sup>st</sup> Vice Chair Jackson called the meeting to order at 1:40 p.m.

**REPORTS:**

**Worksession Report:**

Mr. Jackson reported that there will be a worksession immediately following today's TMAPC meeting.

**Director's Report:**

Mr. Alberty reported that the July TMAPC receipts indicate that they are down approximately \$8,000 over last year, primarily due to the number of applications being down.

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**CONTINUED ZONING PUBLIC HEARING:**

**Application No.:** CZ-347

**AG TO RE**

**Applicant:** Brian Kellogg

(PD-15) (County)

**Location:** Southwest corner of East 86<sup>th</sup> Street North and east of North Sheridan Road

**STAFF RECOMMENDATION:**

There has been no recent zoning activity in this area.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property contains approximately 160 acres. It is located on the southeast corner of East 86<sup>th</sup> Street North and North Sheridan Road. The property is gently sloping, partially wooded, vacant and zoned AG.

**STREETS:**

Exist. Access	MSHP Design	MSHP R/W	Exist. # Lanes
East 86 <sup>th</sup> Street North	Primary arterial	120'	2 lanes
North Sheridan Road	Secondary arterial	100'	2 lanes

**UTILITIES:** Water is from Rural Water District 3. Sewer could be available from the City of Owasso at the developer's expense in extending the main lines. Otherwise, sewer would have to be by septic or alternative system.

**SURROUNDING AREA:**

The subject property is abutted on the north by vacant property, zoned AG; to the east single-family dwellings, zoned RE, and vacant property, zoned AG; to the south by single-family dwellings and vacant land zoned RE and AG.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The North Tulsa County Plan designates this area as having a ten-acre commercial-office node (Type II) at the intersection of East 86<sup>th</sup> Street North and North Sheridan, with the remainder of the section as residential and development sensitive, in conjunction with the floodplains. The requested RE zoning is in accord with the Comprehensive Plan.

**STAFF RECOMMENDATION:**

Staff can support the requested RE zoning and therefore recommends **APPROVAL** of RE zoning for CZ-347. It should be noted that this case has been

referred to the City of Owasso, and at the time of this writing, the City has indicated it will make no recommendation.

**Ms. Coutant stated that she would be abstaining from this item.**

**Applicant's Comments:**

**Kevin Coutant**, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103, representing Brian Kellogg, cited the various zonings in the subject area. The subject property is part of the Cherokee Special District Plan (Exhibit A-1). Mr. Coutant pointed out the proposed or suggested development on the subject property according to the Cherokee Special District Plan, which is a commercial node on the northwest corner (ten acres) and the balance is called residential with no designation of density. Mr. Coutant read the text of the special district regarding residential (pg. 71). The Plan clarifies the intensity on page 72, paragraph 1, which is RS-3 or six units per acre. His client is requesting RE zoning, which is intensity with two units per acre or half-acre lots.

Mr. Coutant stated that the point of all of this is, as faced with a difficult decision regarding zoning, there are always surrounding uses that are not absolutely consistent with the proposed zoning and property owners in the subject area who are concerned about the consequence of the change. That is why there is a Comprehensive Plan and this plan has been in place since 1977. This is not a case where this is a "may be found" type of use. This application is clearly within the scope of what is contemplated by the plan itself. This is not an application that is seeking to nip around the edges and find the absolute greatest intensity of development that can be consistent with the plan. His client is seeking the least intensive use for the development with low density impact.

Mr. Coutant stated that the subject application is a good application that he feels is worthy of favorable consideration. Mr. Coutant submitted a conceptual site plan (Exhibit A-1) and indicated the open space, streets, and phases of development. He stated that the conceptual site plan does show the significant topography that runs through the center of the subject property (NE/SW). This is a standard layout for an RE-sized project. The lots meet the RE requirements of a 22,500 SF lot-size minimum. He explained that the subject property may not be developed to the maximum, but the conceptual site plan was made to show the maximum number of lots that would be allowed. The conceptual site plan indicates approximately 190 lots.

Mr. Coutant stated that the subject proposal falls in the middle of the Comprehensive Plan and it is not on fringe, which has been contemplated for over 25 years.

### **INTERESTED PARTIES:**

**John Palovik**, 7302 East 86<sup>th</sup> Street North, Owasso, Oklahoma 74055 (Submitted Opposition Summary (Exhibit A-2)); **John West**, 7077 East 76<sup>th</sup> Street North, Owasso, Oklahoma 74055; **Steve Monte**, 6705 East 80<sup>th</sup> Street North, Owasso, Oklahoma 74055; **Mike Maxwell**, 6622 East 80<sup>th</sup> Street North, Owasso, Oklahoma 74055.

### **COMMENTS OF INTERESTED PARTIES:**

Reviewed issues from the last meeting; read various minutes and letters from submittal Exhibit A-2); claims that the applicant misled the Planning Commission on numerous issues; the adjoining land owners feel that there has been a failure to communicate between the applicant and the neighbors; no consistency with the information given and no full disclosure of the development plan; there has been no study to indicate that housing is needed in the subject area; no sewer, police or fire protection in the subject area; neighbors moved in area to have country living with space and freedom; the Comprehensive Plan doesn't have a date of when it is appropriate for residential development; aerobic system would overload the subject area; a developer is wanting to make money at the neighbors' expense; continuation was for a decision regarding rezoning or submitting a PUD, not to hear new information; aerobic systems would all turn on at the same time every night and there would be 190 houses with this system; rain triggers the aerobic system to turn on; septic systems do not work well on half-acre lots; the existing RE districts have covenants that do not allow division of the property; it is approximately three miles in any direction from the subject property before you see this type of concentration of housing that is proposed; all interested parties requested the Planning Commission to deny this application.

### **Applicant's Rebuttal:**

Mr. Coutant stated that the issues related to Owasso are not really before the Planning Commission today. The subject property is in Tulsa County and subject to the Tulsa County Zoning Code and the Comprehensive Plan. This is a land use issue that is before the TMAPC today and that is where the focus should stay.

Mr. Coutant stated that the issues that have been raised with regard to utility services would be dealt with during the platting process. He understands that quality water service and taking care of the utility needs in the subject area are essential parts to successfully platting the subject property. He reiterated that today's issue is land use issues.

### **TMAPC COMMENTS:**

Mr. Midget asked Mr. Coutant if his client ever considered a PUD or AG-R zoning for this proposal. In response, Mr. Coutant stated that this was considered and discussed. A PUD is not consistent with the scheduling and the budgeting of the applicant. He stated that his client has attempted to give as much information as possible regarding the density.

Mr. Carnes stated that he thought today Mr. Kellogg would be presenting this application with a PUD. The RE zoning in the subject area is in place, but the actual use on both the north and south RE-zoned property has 2.5-acre tracts. Mr. Carnes asked Mr. Coutant if it is time to zone this large of an area to RE without sewer and water. In response, Mr. Coutant stated that his client believes that it is time and he is ready, or he wouldn't have made the application to go forward with the process that would assure the quality water. There are solutions and engineering answers to the questions that have been raised with regard to water quantity and pressure. The sewers will have to be addressed as part of the platting process. As with any application that comes before the Planning Commission, the applicant doesn't always come with completely engineered responses to every issue that might be dealt with the platting process, but his client is committed to the successful conclusion to that process.

Mr. Westervelt asked Mr. Coutant what his choices as a developer would be if the newly-rezoned RE property is not able to perc. In response, Mr. Coutant stated that there are several choices. He further stated that he is not able to address those choices in a technical way, but one possibility is to extend the lines or lift stations to existing infrastructure improvements. There are alternative wastewater treatment technologies on a site-by-site basis. Aerobic is one type that is used, which disperses treated water. All these questions would have to be answered satisfactorily during the platting process and his client believes he has all of those issues under control that would be satisfactory to the community and the marketplace.

Mr. Westervelt asked Mr. Coutant if his client would have to satisfy the County, DEQ, Fire and Water departments before using the alternative systems. In response, Mr. Coutant answered affirmatively.

Ms. Matthews read the purposes of a PUD in the County Zoning Code. She explained that there are four main purposes for a PUD in the County Zone and she feels that comfortable that any way that this property is platted, it could be done with straight zoning because of the topography constraints and because of the various features that are inherent in the land itself.

Mr. Coutant stated that a PUD can do a lot of things and PUD are usually vehicles that are used to generate more dense use, and that the net effect is acceptable because of the creativity that is exercised in the implementation of the PUD. The subject land is planned for single-family residential use and through straight zoning is the approach used elsewhere in our community, which works very well. This applicant is not asking for any creative exception to the bulk and area requirements in order to accomplish the development; in fact, the application of those bulk and area requirements is what causes the net density to be closer to one per acre, as opposed to two per acre.

**TMAPC COMMENTS:**

Mr. Carnes stated that last week he made the comment that he thought it would be spot zoning, with everything around it being 2.5-acre tracts. He believed that the application would be back today to discuss a PUD. Mr. Carnes indicated that he would find it difficult to vote in favor of this application.

Mr. Ledford stated that he has had an opportunity to review this, and based on the Comprehensive Plan and staff being comfortable with the RE zoning, by looking at the sketch plan there may be half-acre to  $\frac{3}{4}$  quarter-acre lots. He indicated that he would be comfortable with the RE zoning.

Mr. Midget stated that he is concerned about the density that seems to be crowded without the proper infrastructure. There may be at some point adequate sewer and other utilities in the subject area, but right now, based on the information available today, he is not comfortable with supporting this much development at this particular time.

Mr. Westervelt stated that he understood Mr. Coutant speak about the Special District of the Comprehensive Plan that encourages balanced growth and this type activity to occur. Existing RE zoning on two-sides and AG zoning is a holding-pattern zoning in which everything is blanket-zoned until such time it is ready for development. The developer will have to deal with infrastructure issues to satisfy the County Engineer. This is what is done week in and week out when dealing with land use issues. If the applicant is unable to satisfy those extensions economically by running adequate sewer, then he would have to deal with DEQ to make sure he comes up a system that is indeed approved. He commented that he is going to keep his focus on the land use decision and he doesn't believe the Planning Commission has any choice but to uphold a request for RE zoning. RE zoning is adjacent to the subject property. Mr. Westervelt indicated that he would be supporting the application today.

County Commissioner Miller stated that she didn't have the pleasure of attending last week's meeting due to a conflict. She asked if it is uncommon for the Planning Commission to request that some of the engineering concerns be addressed. There are some concerns with the 160 acres and whether it would perc, as well as concerns regarding fire and police protection and adequate water. This may be an uncommon request, but it is difficult for her to make a decision without knowing if these things could be provided. She feels this should be looked at before allowing zoning in areas where the services cannot be provided.

Mr. Alberty stated that, in response to Commissioner Miller's comments, he feels he should emphasize that zoning is only the first step in the development process. Whether or not the facilities can or will be brought to it is addressed at a subsequent level. There is no question that the project can develop, but it does depend on the size of the lots. If the lots cannot be accommodated in the way it

is proposed, then the lot size will have to be increased or else development will have to be delayed until such time that appropriate utilities can be brought to the property. The Planning Commission's responsibility is to look at the zoning and whether it is appropriate. The comment was made that the Comprehensive Plan was proposed in 1977 and that is what planning is all about. Eventually the market will dictate when property can develop. The most important decision that the Planning Commission can make is "what is the appropriate zoning". Staff feels that the Comprehensive Plan is still appropriate and it is demonstrated, not only by a previous study and then followed up by the Comprehensive Plan for North Tulsa County, which also recognized that density was going to increase. This is the whole process of urbanization and he would like to emphasize that the subject zoning application is probably within the alternatives and in the middle with respect to density, which is a market decision. Staff feels that the infrastructure for properties that are more dense is money better spent than low density development.

County Commissioner Miller stated that she agrees with Mr. Alberty's comments, but to look at the entire picture, could the Planning Commission legally request a meeting with the County Engineer. In response, Mr. Alberty stated that the Planning Commission can do whatever they desire with regards to delaying a decision, but typically those decisions are handled after a developer or an owner of property doesn't want to invest an exorbitant amount of money until he knows what he is dealing with. In response, Commissioner Miller stated that she believes that is why it would help to talk with the County Engineer for his expertise and who would actually grant the permit.

Mr. Jackson asked Mr. Alberty to explain how the process would work regarding this recommendation. In response, Mr. Alberty stated that this case is a County case and the Planning Commission would make a recommendation today. If it is recommended for approval, it would automatically be transmitted to the County Commission (BOCC) at the appropriate meeting in the future for their decision. If the recommendation is for denial, then it would not be transmitted to the BOCC unless the applicant would appeal it, which he would have 15 days to appeal. Once the BOCC has made a decision, if it is favorable, it stands, but either side could contest it, which would be in District Court.

Mr. Westervelt stated that because the Planning Commission has a recommendation from staff and it is consistent with the County Comprehensive Plan and the Cherokee Special District Plan, and the developer will have to deal with the utility issues through the platting process and the fact that the Planning Commission is merely making a zoning recommendation to the BOCC it would be appropriate to recommend approval of the RE zoning for CZ-347.

Mr. Ledford stated that the County is not in the water and sewer business, but the County Engineer will be looking at drainage and streets. The County Engineer will determine how much onsite detention and impervious area is going

to be affected and what the size of the detention area to mitigate downstream flooding. The water and sewer will have to be with an onsite sewer system or go back to the DEQ requirements, which allow several different types of systems that have been approved by Tulsa County. Water is a different issue and the applicant may have to work with Tulsa, Owasso or the Rural Water District. This is not a County function, but a function of those other bodies.

**TMAPC Action; 8 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 4-3-1 (Hill, Jackson, Ledford, Westervelt "aye"; Carnes, Midget, Miller "nays"; Coutant "abstaining"; Bayles, Harmon, Horner "absent") to recommend **APPROVAL** the RE zoning for CZ-347 per staff recommendation.

**Legal Description for CZ-347:**

The Northwest Quarter (NW/4) of Section 26, T-21-N, R-13-E of the IBM, Tulsa County, State of Oklahoma, according to the U. S. Government survey thereof, and located on the southeast corner of East 86<sup>th</sup> Street North and North Sheridan Road, Tulsa, Oklahoma **From AG (Agriculture District) To RE (Residential Single-Family, Estate District).**

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**ZONING PUBLIC HEARING**

**Application No.:** PUD-387-2

**MINOR AMENDMENT**

**Applicant:** R.L. Reynolds

(PD-18) (CD-2)

**Location:** 6655 South Lewis

**STAFF RECOMMENDATION:**

The application is to clear title to an existing development, to make the as-built property and the requirements of the PUD agree. The changes involve increasing the allowable building height one foot (from 43' to 44') and amending building setbacks on all four sides: from the centerline of South Lewis to 115' from 122', from the centerline of East 67<sup>th</sup> Street to 89' from 94', from the northerly boundary from 63' to 59', and from the east boundary from 58' to 55'. Minor amendment PUD-387-1 in 1985 was approved to change the building height from 42' to 43' in order to accommodate use of precut granite panels.

While these amendments seem minor (in the range of 5% deviations), it should be pointed out that this building was completed to the originally requested specifications in PUD-387, January, 1985. Those were not, however, the conditions approved by the TMAPC and City, which bodies did allow a 5%

variance in setbacks, height, etc. Staff therefore reluctantly recommends **APPROVAL** of PUD-387-2, with the caveat that this should not set a precedent for future cases in which the developer may choose to not adhere to the TMAPC'S and City's approved conditions. Staff points out that with the current method of PUD inspections, such deviations are much less likely to occur.

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC COMMENTS:**

Mr. Westervelt asked Mr. Reynolds to explain how this all occurred.

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, Oklahoma 74114, stated that the survey indicates that this building was built over the building setback lines and the title insurance company escrowed money for a minor amendment to clear the title. This is necessary in order to issue title insurance around this defect.

Mr. Westervelt asked Mr. Reynolds how large the building is. In response, Mr. Reynolds stated that the building is three stories with 44,000 SF. The building has been established for 19 years.

**TMAPC Action; 8 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 8-0-0 (Carnes, Coutant, Hill, Jackson, Ledford, Midget, Miller, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Harmon, Horner "absent") to **APPROVE** the minor amendment for PUD-387-2 with the caveat that this should not set a precedent for future cases in which the developer may choose to not adhere to the TMAPC'S and City's approved conditions per staff recommendation.

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**OTHER BUSINESS:**

**Application No.:** PUD-579/Z-6333-SP-2

**DETAIL SITE PLAN**

**Applicant:** Darin Akerman

(PD-18) (CD-8)

**Location:** Northwest corner of East 80<sup>th</sup> Street and South 101<sup>st</sup> East Avenue

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan for a new law office. The proposed use, Use Unit 11, Office, Studios and Support Services, is in conformance with development standards.

Proposed parking, building height, setbacks and floor area comply with the Zoning Code and development standards. Landscaped lot area and street yard area are also in compliance. The dumpster, the location of which is to be approved by TMAPC, is not directly accessible from a public street and, therefore, is in compliance with development standards. No parking lot lighting is proposed.

Access to the site is from a single 26' drive onto South 101<sup>st</sup> E. Avenue. The site plan depicts access from the parking to the adjacent lot to the west. This adjacent lot, as well as those in the general vicinity, has not yet been developed.

Staff recommends **APPROVAL** of PUD-579-A detail site plan as proposed.

(Note: Detail site plan approval does not constitute landscape and sign plan approval.)

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC Action; 8 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 8-0-0 (Carnes, Coutant, Hill, Jackson, Ledford, Midget, Miller, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Harmon, Horner "absent") to **APPROVE** the detail site plan for PUD-579/Z-6333-SP-1 per staff recommendation.

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**Ordinance amending Title 42, Tulsa Revised Ordinances, The Zoning Code of the City of Tulsa, Requiring a public hearing before the Board of Adjustment for all uses that are required to be spaced a minimum distance from other uses; repealing all ordinances and parts in conflict herewith**

**STAFF RECOMMENDATION:**

Mr. Alberty stated that the Planning Commission held a public hearing last April 7, 2004 on this issue. At that time the ordinance had not been prepared because there was discussion on how many provisions of the Zoning Code would have to be amended in order to accomplish what the Planning Commission was trying to accomplish. The Legal Department has come upon a solution, which is to add one paragraph stating "...any use that requires a spacing requirement must file an application before the Board of Adjustment to verify that the spacing has been met." This accomplishes a public hearing and a notice on certain uses that may be considered objectionable by a surrounding neighborhood and it aids the

Permit Office in the fact that they have to have a verification before the Board of Adjustment, which would require a survey depicting the distance from the nearest point on the use to the nearest point on the use that it has to be separated from.

Mr. Alberty stated that there are some additions he would like to make on this draft and would be done prior to it being forwarded to the City Council. The following changes are needed: Chapter 16 rather than Chapter 12; add the word "principal" to Section 1608.E. first paragraph "any principal use".

Staff can recommend **APPROVAL** of this ordinance with the corrections and additions before mentioned.

**There were no interested parties wishing to speak.**

**TMAPC Action; 8 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 8-0-0 (Carnes, Coutant, Hill, Jackson, Ledford, Midget, Miller, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Harmon, Horner "absent") to recommend **APPROVAL** of the Ordinance amending Title 42, Tulsa Revised Ordinances, The Zoning Code of the City of Tulsa, requiring a public hearing before the Board of Adjustment for all use that are required to be spaced a minimum distance from other uses; repealing all ordinances and parts of ordinances in conflict herewith, subject to corrections and additions per staff recommendation. (Words deleted are shown as ~~strikeout~~; words added or substituted are underlined.)

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There being no further business, the Chair declared the meeting adjourned at 2:30 p.m.

Date Approved:

9/22/04

Mary E. Hill  
2nd Vice Chair Chairman

ATTEST: *J. Mulholland*  
*Secretary* - Secretary