

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 2558

Wednesday, August 26, 2009, 1:30 p.m.

City Council Chambers

One Technology Center – 175 E. 2nd Street, 2nd Floor

| Members Present | Members Absent | Staff Present | Others Present |
|------------------------|-----------------------|----------------------|-----------------------|
| Cantrell | None | Alberty | Boulden, Legal |
| Carnes | | Feddis | Steele, Sr. Eng. |
| Dix | | Fernandez | |
| Leighty | | Huntsinger | |
| Liotta | | Matthews | |
| Marshall | | Sansone | |
| McArtor | | | |
| Midget | | | |
| Shivel | | | |
| Walker | | | |
| Wright | | | |

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, August 20, 2009 at 12:45 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, Chair Cantrell called the meeting to order at 1:30 p.m.

REPORTS:

Director's Report:

Mr. Alberty reported on the BOCC and City Council agendas.

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Ms. Cantrell announced that Items 1, 2 and 4 will be removed from the consent agenda for purposes of abstention.

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CONSENT AGENDA

All matters under "Consent" are considered by the Planning Commission to be routine and will be enacted by one motion. Any Planning Commission member may, however, remove an item by request.

- 3. **LS-20331** – Kyle Hrdlicka (9033)/Lot-Split (County)
West of South 225th Avenue and North of West 51st Street, 22626 West 51st Street South

The Planning Commission considered the consent agenda.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **MCARTOR**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; Midget "absent") to **APPROVE** the consent agenda Item 3, LS-20331 per staff recommendation.

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA

- 1. **LS-20330** – Steve Schuller (9312)/Lot-Split (PD 5) (CD 5)
Northeast corner of East 21st Street and South Memorial Drive, 1939 South Memorial Drive East (Related to Item 2)

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-1-0** (Cantrell, Carnes, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; Dix "abstaining"; Midget "absent") to **APPROVE** the lot-split for LS-20330 per staff recommendation.

2. **LC-204** – Steve Schuller (9312)/Lot Combination (PD 5) (CD 5)
Northeast corner of East 21st Street and South Memorial Drive, 1939
South Memorial Drive East (Related to Item 1)

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-1-0** (Cantrell, Carnes, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; Dix "abstaining"; Midget "absent") to **APPROVE** the lot-combination for LC-204 per staff recommendation.

4. Nickel Creek - (8211) Final Plat (PD 8) (CD 2)
Northwest corner of West 81st Street and U.S. Highway 75

STAFF RECOMMENDATION:

This plat consists of one lot in one block on 15.14 acres.

All release letters have been received. An oil well was identified by the Corporation Commission in the section but it is not on the site in question as certified by the surveyor for the subject property. Staff recommends **APPROVAL** of the final plat.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-1-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Shivel, Wright "aye"; no "nays"; Walker "abstaining"; Midget "absent") to **APPROVE** the final plat for Nickel Creek per staff recommendation.

Ms. Cantrell read the opening statement and rules of conduct for the TMAPC meeting.

Mr. Midget in at 1:34 p.m.

PUBLIC HEARING CITY OF TULSA ZONING CODE

- 5. Consider Possible Amendments to the Zoning Code and/or the City of Tulsa Subdivision Regulations for the City of Tulsa to Regulate Development on and/or near land containing underground pipelines.**

STAFF RECOMMENDATION:

Pursuant to the City Council's request by consensus that the TMAPC hold a public hearing with regard to development issues adjacent to high-pressure pipelines, staff offers the following synopsis and update of a report presented by Wayne Alberty, TMAPC Manager of Land Development Services (memo dated April 11, 2006).

In that memo, Mr. Alberty correctly pointed out two primary issues involving development of properties containing pipeline easements. These two are as follows.

- a. Does the presence of an underground pipeline pose a threat to public safety?
- b. Is the ability of the pipeline owner impaired in his/her ability to conduct the required monitoring and maintenance of the pipeline due to surface development on/near the property?

In response, Mr. Alberty offered the following. If ruptured or otherwise damaged, pipelines transporting hazardous liquid or gas materials can pose a serious threat to public safety and the environment. Mr. Alberty cites data that indicate the relatively low occurrences of such incidents to date.

By Federal law, the owners/operators of the pipelines are responsible for the upkeep and safety of their lines. Therefore, any surface modifications that impede the pipeline owners' ability to assess the conditions of their lines impair the owners' ability to maintain the lines and pose a potential threat to the public/environmental safety. Such surface modifications may include paving, landscaping, constructing a building or other structure on top of or within a given distance from a pipeline. A few instances of such proposed modifications have occurred within recent years in cases before the TMAPC involving either the PUD process or a subdivision plat.

Based on continued staff research, we offer a third primary issue, and one that may become increasingly critical as more and more development in the City of Tulsa is on infill properties.

- c. How does the presence of an underground pipeline affect the rights and expectations of the owners of the property under which the pipelines have been extended? Is the property owner entitled to remuneration for the use of his/her land?

As Mr. Alberty indicated, there are two main methods of regulating or controlling development on land adjacent to or on top of pipelines, one private and the other public. Private easements, which are negotiated between the property owner and the pipeline owner, are enforceable in court. This is currently the means used within the city limits.

Public regulations, such as setback requirements, restriction of land uses and encouragement of other land uses, are methods used by some communities to control adjacent development. In a comparative study of various communities' setbacks, Mr. Alberty ascertained that the average setback in urban areas was 50', which is the City of Broken Arrow's requirement as contained in the Land Subdivision Code of that city.

An update/further explanation of some of the other communities discussed in Mr. Alberty's memo is given below.

| CITY | REQUIRED SETBACKS/NOTES |
|---------------------|--|
| Norwalk, CT | 40' from pipeline; contained in subdivision regulations |
| Apple Valley, CA | 100' from pipeline |
| Ulysses, KS | 75' from pipeline; contained largely in fuel codes |
| Lincoln, NB | first reported as 220' from pipeline; now reported as only a recommendation from the Health Department |
| Redmond, WA | 25' from edge of "hazardous corridor"; size of hazardous corridor varies with diameter of pipeline |
| Austin, TX (added) | no placement within 25' of hazardous pipeline or within a hazardous pipeline easement; contained within Zoning Code |
| Houston, TX (added) | no building allowed on easement; size of easement depends on type (oil, gas, water, and sewer) of line; if type of easement not indicated, requires 15' building line setback from easement. Easements must be shown on subdivision plats. |

Citing reports from the Transportation Research Board and the American Petroleum Institute regarding pipeline safety and radius of danger, Mr. Alberty's report noted that two-thirds of the deaths and damage and three-fourths of the injuries caused by pipeline failures occurred within 150' of the discharge. The TRB argued that these results could be interpreted to provide support for 150' setbacks from existing pipelines. Uses often prohibited from sitting on or

adjacent to pipelines (“sensitive uses”) are those involving concentrations of persons for long periods of time and presenting difficulties in their evacuation. Examples include prisons and other penal institutions, schools, nursing homes and hospitals.

Mr. Alberty’s report presented two recommendations to be addressed if the City chooses to examine a means other than the current privately negotiated arrangements. The first is to determine if the current means are adequate, and Mr. Alberty correctly pointed out that a study to make that decision is beyond the scope of the 2006 report (and of this report). The second recommendation, if an alternate means of development control is deemed worthy of study, is to appoint a task force made up of representatives of all stakeholders and other affected parties to research and assemble the necessary information. These recommendations still stand, as do the following alternative actions.

1. Amend the Subdivision Regulations to require specific standards for development near pipelines, based on study findings.
2. Adopt an ordinance (an amendment to the Zoning Code) restricting the uses permitted in pipeline easements.
3. Continue to rely on private negotiations between property owners and pipeline owners/operators.

Finally, conditions have changed little since the 2006 report. The urbanization trend within the City continues and increasingly relies on infill development. If policy changes are to be addressed on the issue of development adjacent to pipelines, it is incumbent upon the City to consider all affected viewpoints and the possible consequences of development.

TMAPC COMMENTS:

Mr. Marshall pointed out that the Nickel Creek plat that was on the consent agenda has a pipeline easement on it. This might give everyone a visual of what is being discussed today. Ms. Matthews reminded Mr. Marshall that the easement was privately negotiated by the owner and pipeline company.

Interested Parties Comments:

Brian Green, Enogex, LLC, P.O. Box 24300, Oklahoma City, 73124, stated that his company has several pipelines and does negotiate with developers individually if they have knowledge. However, there are times that developers commence their development plans and get approvals from the Planning Commission without the pipeline’s knowledge and they do not include the pipelines on their plans. He doesn’t know how to charge that with the Planning Commission, but the City of Broken Arrow does notice when there is a planning hearing that involves pipelines. The developers have to inform the City that the pipelines are present when they are presenting their applications. He doesn’t know if this Planning Commission’s task would be to investigate whether there are any easements or not within a development area.

Mr. Green stated that the plat Mr. Marshall requested to be displayed shows a plat that a developer did with his company's pipeline there. Although the plat accurately depicts the easement, it doesn't show three roads that do cross the pipeline easement. His company did sign off on the plat based on the easement being accurately represented. The roads are not accurately depicted and he understands that this will be handled during the building permit phase.

Mr. Green stated that the recommendation he would have is that there be notices to the pipeline companies when there is a proposed development on the properties with pipelines to allow the pipeline companies sign off on them. This would ensure that there are negotiations with the developer going on.

TMAPC COMMENTS:

Ms. Cantrell asked Mr. Green if the 50-foot easement has been helpful in the City of Broken Arrow. Mr. Green stated that his opinion is that the building setback requirement of Broken Arrow creates a 100-foot wide corridor that no one can build within. For an existing pipeline it is one thing, but if one needs to build and improve infrastructure or create new infrastructure, there are opportunities that Tulsa may have in the future for new pipelines to be constructed within the City limits. If these types of building setbacks are set, then when a pipeline company comes through to acquire rights-of-way, they would have to acquire right-of-way for that width and it may not be possible. Rules and regulations like this would limit the ability to have infrastructure to come into the City.

Mr. Marshall asked Mr. Green if his easements are shown in the abstract and recordable. Mr. Green answered affirmatively. Mr. Marshall stated that the attorneys should pick this up during a title opinion and should be a red flag for the developer. Mr. Green agreed with Mr. Marshall's comment. Mr. Green stated that his company has changed names multiple times over the years, but it is not difficult for anybody to figure out. Mr. Green stated that the easements are good as long as they are used for the transporting of gas or liquids. Mr. Green further stated that his company transports natural gas. He explained that all pipelines have leaks from time to time, which are repaired, but pipeline safety is deemed to be an extraordinarily safe means of transporting hazardous materials. The occurrences of leaks in the pipelines are quite often due to third party strikes on the pipeline during some development activity that his company is not aware of. The pipelines have their own encroachment programs and diligently try to monitor that. There is a tremendous amount of energy to avoid those third party strikes, but some choose to excavate without calling first. There are signs to indicate the pipelines' presence. The Department of Transportation requires transmission lines to have appropriate signage. The 50-foot setback that Broken Arrow has imposed would be for each side of the pipeline, which would be 100 feet total.

Mr. Leighty asked Mr. Green to expand on opportunities for new pipelines within the City of Tulsa. Mr. Green stated that he is assuming Tulsa has industrial areas and he knows of one particular occurrence that he is not at liberty to talk about. His company has been asked to look at the possibility of a potential pipeline going into the Tulsa metropolitan area. If the 50-foot setback were in place, it would make that routing very difficult, if not virtually impossible.

Ms. Cantrell asked Mr. Green if he would object to some limit as long as it wasn't extraordinary. Does he believe that having some public regulation is a good thing or is he against it all together? Mr. Green stated that in the industry there are people that would like it to be 300 feet so that nobody could get close to it. But that is narrow-minded and a new pipeline would be impossible. There are pipeline easements with specified widths and those widths are what the industry feels that they can tolerate and operate, maintain and repair or replace. He doesn't believe additional width is needed to operate within or else his company would request a wider easement to start with. Anything wider would be whatever the City feels they would benefit from.

Mr. Dix stated that in his experience, the pipeline companies have been very responsive to work with and further regulation wasn't necessary. He believes that the public and private sectors working together on this is great and he is not sure what further regulation would accomplish.

Mr. Carnes stated that the system is working and it should be left alone. Any restrictions that the Planning Commission could put on this would kill infill development projects. It is difficult to predict the future and right-of-way regulations could prevent infill development. Let the public and private work this out on a case-by-case basis.

Mr. Liotta stated that he spent 18 years surveying pipelines and installing cathodic protection systems on pipelines. During that time he saw a lot of buildings and various things encroaching on the line, but DOT significantly regulates the pipeline operations. He asked if there are not some minimum setbacks that DOT requires when a pipeline is constructed. In response, Mr. Green stated that he doesn't believe there are prerequisite setbacks through DOT. Mr. Liotta stated that the pipeline companies would need enough room to service their pipelines and the width of possibly a pickup and a half is needed. In response, Mr. Green stated that they try to hold the position that his company needs adequate room to dig the ditch and have working space, but in general his company sticks to a 50-foot wide strip.

Ms. Cantrell reminded everyone that there will not be a decision made today. The issue today is to determine if there should be a public restriction.

Ms. Wright asked who pays for the maintenance of roads that cross pipelines. In response, Mr. Green stated that his pipeline company would incur any costs if

needed in order to do maintenance. If there is a road crossing the pipeline and there is a damaged area under that roadway, his company usually will do a directional bore drill to repair that pipeline without destroying the road, but if the road has to be removed, his company then repairs the road after the pipeline is repaired. Mr. Green explained that encasements are no longer used for pipelines because it was found to be the weakest link in the pipelines. Ms. Wright commented that the plat doesn't show the roads that will be going over the pipeline and perhaps the Planning Commission should be requiring that to be done. Mr. Green stated that it would be good if the Planning Commission notified him every time that there is a plat that involves one of his company's easements. Many times he has already talked with the developers before the platting process because they have done their due diligence, but there are times that doesn't happen.

Ms. Cantrell asked Mrs. Fernandez if she would like to speak to this since she is the expert on platting.

Mrs. Fernandez stated that she would like to clarify a few things. Staff has a list of 36 people who are notified for all subdivision plats. There are probably five pipeline companies that are routinely notified. Staff also notifies them if they show up on a PUD. Two years ago there were some explosions in the northern part of the country that caused the pipeline companies to change the way that they do business. The way they do their easement is different and most of the time now they won't allow any sort of street crossings or any type of paving at all over any easement that they might have out in the world. On the Nickel Creek plat staff has spent several hours last week before the release letter from the Enogex Company ever came to staff. If there is a pipeline company out there and that pipeline easement is huge, then staff is going to make sure that there is an agreement from that particular company that everything is all right. After several attorneys, a lot of hours and communication with a very large bureaucracy, Mr. Case, and his engineer, a release letter was finally provided by the Enogex Company. Mrs. Fernandez wanted the Planning Commission to be assured that there was a lot of communication about the Nickel Creek project and there always will be, especially when there is an easement this large. The developer is trying to get their project done and they want the plat released and they are not able sometimes to work things out with entities, such as PSO, ONG or a pipeline company. The Nickel Creek project was very tense but it was eventually worked out. Apparently there were some construction oversights on the subject project that will have to be litigated and that added to some of the tension on this particular project. Staff did receive a release letter for Nickel Creek and staff will always get a release letter from a company if there is an easement on the plat before it comes before the Planning Commission. Mrs. Fernandez informed Ms. Wright that normally the types of crossings that Mr. Green is talking about are building permit issues at this point. All of the accesses are shown on the perimeter of the property and this particular easement does not interfere with the general utility easement. This project was not an infill project

and is on brand-new land. Any time there is a pipeline or anything unusual, including the airports and their flight patterns, they are all notified and staff will get release letters from them. The Nickel Creek plat just happens to be on the same agenda as this item and there was some litigation and miscommunication, but staff did receive the release letter from Enogex.

Ms. Cantrell asked Mrs. Fernandez if she believes having something on the front end of land use regulation would make her job easier or would it be an unnecessary since staff is already dealing with the easements. Mrs. Fernandez stated that because the City of Broken Arrow has the 50-foot requirement on their easements, it would make it easier for the Planning Commission if they decided to do this. Usually these issues are worked out before platting. It is her understanding that the easement requirement in Broken Arrow was brought up because it was in a residential development with existing homes on either side of an existing pipeline, which makes for a very volatile situation. She believes that staff can work out easement requests and setback requests. Most of the time, especially on the older PSO easements, they have more than enough easement for maintenance and are usually 100 feet. Mrs. Fernandez encouraged the Planning Commission to get more information from the pipeline companies and she assured the Planning Commission that when they are notified they all show up for the meetings with a field developer, engineer and an attorney. Mrs. Fernandez stated that they are all very good to deal with.

Mr. Midget asked Mrs. Fernandez if it is requirement to notify the pipeline companies or does staff simply send out notices because they know these companies should be notified. Mrs. Fernandez stated that it is extra notice and it is routinely done.

Interested Parties Comments:

Bill Sanders, Explorer Pipeline Company, P.O. Box 2650, 74101, stated that he is attending today to answer any questions that the Planning Commission might have. He informed the Planning Commission that is currently serving on a committee that was formed by Congress called "PIPA" (Pipelines Informed Planning Alliance) and their charter was to study exactly the same thing that the Planning Commission is doing today. The committee was supposed to have results by the end of this summer and it is still dragging on without any firm results. When there are finally some results, they will be available for any community of any size to review and adopt at their discretion.

TMAPC COMMENTS:

Mr. Midget asked Mr. Sanders if he thought the committee would have any resolution by the end of the year. Mr. Sanders stated that this committee has been meeting since 2008 and had hoped to confirm their findings in early 2009.

Mr. McArtor asked Mr. Sanders if his committee sees a trend regarding easements. In response, Mr. Sanders stated that there are two factions in this

group, the local communities and the industry. Currently, the two factions do not see eye-to-eye on the easements and he can't say that he sees a consensus. The suspicion is that once this document is released, then there will be a trend. The hold-up is that the industry doesn't believe that the results are not risk-result oriented enough and the local communities do not believe that it is end-result oriented enough. The fear is that once the results are released, a lot of communities will adopt it point-blank because they trust the committee has already gone through all of this and for that reason they are being very careful to go through everything and not send out the wrong message or be too overly conservative.

Ms. Wright asked Mr. Sanders to explain the risk-oriented and end-result-oriented meanings. Mr. Sanders stated that risk-oriented, which was the charter from Congress, is that if the risk so small, then it needs to be addressed so that people are not forced to do things that the cost benefit analysis doesn't justify. Then there is the end-result orientation, where they say regardless of the risk, if there ever was an accident of some sort, developers should minimize the damage that this could cause. Mr. Sanders explained the order in which the committee was formed and he indicated they are about the 5th tier of the committee and others before them did the research regarding the number of accidents, death, damage, costs, etc. His committee was requested to not revisit the research since it has already been completed.

Interested Parties Comments:

Paul Kane, 11545 East 43rd Street, 74146, representing the Homebuilder's Association of Greater Tulsa, stated that he represents homebuilders and land developers. He wanted to make sure that the Planning Commission is keeping certain things in mind in terms of this being a private property owner right. He commented that caution should be taken that there is not a solution for something that is not a problem. There is no reason to believe that the current easements are insufficient. When Mr. Green was speaking he addressing the fact that sometimes one has smaller lines that have certain size easements and bigger lines maybe get bigger easements and that makes sense to him. If a certain arbitrary number is set, then it might be overkill for some and not enough for others. The oil and gas companies for years have purchased easements that they know and believe are sufficient for their needs for installation, repair and safety. At the end of the day it will be the gas company that answers to the call when something goes wrong. Picking an arbitrary number for a corridor, which is basically taking developable property out of commission without any sort of due process and in affect it be a regulatory taking. Developers purchase property knowing that easements are in place and knowing that they can work with the companies regarding those easements, but it is expanded with any sort of just compensation, then that is a taking. If more space is needed for the pipeline or company, then that can be freely and openly negotiated through our free enterprise system, which makes our Country great. Mr. Kane recommended that they leave the setback issues privately, as it is done today.

TMAPC COMMENTS:

Ms. Wright asked Mr. Boulden who would be responsible if an explosion occurred from a pipeline. In response, Mr. Boulden stated that it would depend on the situation at hand. If it is an explosion from a failure of the pipeline, it would more likely be the responsibility of the pipeline industry. He doesn't believe that there is any liability for the City or Planning Commission under the Tort Claims Acts, which are exempt for regulatory functions. The pipeline industry would be liable if one assumes it was negligence and not caused by someone else.

Ms. Cantrell asked Mr. Boulden if the Planning Commission created a setback on pipeline easements would that constitute a "taking" of one's land. In response, Mr. Boulden stated that he appreciates Mr. Kane being an advocate, but he doesn't believe it would be considered a "taking".

Mr. Midget stated that he remembers this issue when it came up a while back with Councilor Sullivan. He is comfortable that staff does notify the pipeline companies and that is important in order to give the pipeline industry an opportunity to be heard. He concurs with Mr. Carnes regarding being too restrictive. We need to caution ourselves from any restrictive government regulations that will have a negative impact, particularly on infill development. Mr. Midget commented that he likes the system where developers can go out and speak with the pipeline company and work things out without government getting involved.

Mr. Shivel stated that he takes the position of "if it is not broken don't try to fix it". He sees that as the case here and the involvement with Mrs. Fernandez, the TAC members, pipeline people and the developers it appears that the current process is working and he would hate to get in the way arbitrarily because of someone's feeling rather than historical reference to the success of how it has been handled.

Mr. Carnes stated that he totally agrees with Mr. Shivel. However, if the Planning Commission has to do something, then possibly it would help Mrs. Fernandez by putting this in our rules requiring all pipelines be recorded on the plat. She is doing that now on her own, but it could be requirement. That is as far as he can see the Planning Commission going.

Mr. Dix stated that whatever is done is needed for the ones who don't follow protocol correctly and not to punish the ones who do.

Mr. McArtor stated that he is assuming that nothing is going to be decided today as far as regulation. He doesn't believe he has heard enough information. He isn't sure that there is a problem, but a City Councilor requested the Planning Commission to hold a public hearing to gather information to see if there is a

safety issue. He is not sure that he has heard enough information today to make a decision. Mr. McArtor commented that he believes in the free enterprise system and private negotiations because people have a right to do that, but a community has a right to preserve its safety and the Planning Commission would be doing their job if they simply laid down that right because of hearing somebody else's right. He doesn't believe that to say it is the free enterprise system makes it a trump card and that everyone has to hush and stop doing their job. After hearing from Mr. Sanders about PIPA, which hasn't come to a decision yet, tells him that it is evidently more of a problem than to just say that private easements work and everything is fine. He agrees with Mr. Midget that the last thing anyone would want to do in Tulsa is stop infill development or put a hamper on it. Mr. McArtor concluded that he would like to hear more before making any decisions.

In response to Ms. Wright, Ms. Matthews reiterated the charge that the Planning Commission has been given by the City Council, which was to hold a public hearing to gather information and hear from the public regarding underground pipelines and to update the 2006 report.

Ms. Wright suggested that this be postponed until PIPA comes to some conclusions and releases their study.

Mr. Alberty stated that the 2006 study was conducted with a fairly exhaustive study into requirements. It was clear to staff, after contacting the office of Pipelines Safety and Department of Transportation on the Federal level, that they at that time made no requirements. All had the same position that the responsibility for safety lies entirely with the pipeline company. There have been a few instances, Broken Arrow being the most recent and closest, where communities have set a required setback, but it is only in a few instances that any municipality chose to impose a restriction on the pipelines. He would almost agree that the way the system has worked has been almost flawless. He believes that everyone understands that when a pipeline company purchased the original easements, everyone has been willing to work within that. It might not have always been perfect in terms of how they would prescribe what can be and can't be done, but the owners of the land and the owners of the easements have gotten together and worked it out. In 2006 the study ended after the presentation to the City Council and was left up to them to give the Planning Commission instructions on how to proceed. At that time there were at least three pipelines that were involved and they came to a point that they could agree through the PUD on how much coverage would be permitted over their existing pipelines and it went away. For some reason, Councilor Eagleton brought this issue back up recently and to his knowledge there has only been one incident in the State of Oklahoma, near Perkins, and that was due to a third party rupturing the line. Council requested that this be brought back up for discussion and the Planning Commission received some good information today from some really good sources. He believes it is up to the Planning Commission to decide where to go

from this point. With PIPA being involved and their solutions have not been raised, then the Planning Commission might consider delaying this until PIPA completes their study. Mr. Alberty clarified that the Subdivision Regulations currently require all easements be shown on a plat and specifies that pipelines are one of those.

Ms. Cantrell asked Mr. Alberty if staff has any authority to say if they believe a house is too close to a pipeline. In response, Mr. Alberty stated that structures can go up to and adjacent to the existing easement. If there is a 100-foot easement, then structures can be outside of that easement.

Mr. Leighty stated that City Council asked the Planning Commission to look at this and it has been done. He doesn't believe that there has been any convincing evidence here that there is anything needed to be done. He would be ready to make a motion that this really doesn't need to be pursued any further. It can always be revisited at a later date after PIPA comes out with recommendations. As far as he knows there has never been a fatality in Tulsa and it appears to be a solution looking for a problem. He doesn't believe that there is any need for further regulations and that could be reported to the City Council.

Ms. Cantrell stated that there are some communities that felt it should be regulated. She doesn't believe the Planning Commission has enough information right now to make a decision. There are only two parties negotiating these rights-of-way and ultimately these properties get sold to third parties. People buying homes deserve protection too. Infill is needed, but it doesn't need to be on pipelines or in places where it would be dangerous to people. She would like to see what recommendations PIPA comes out with. Ms. Cantrell commented that she would trust their findings that what is just studied in Tulsa because they are looking nationwide. She assumes that the Planning Commission's response could be that right now there should be no action, but revisit it when PIPA releases their report.

Ms. Wright, Mr. Dix and Mr. McArtor agreed that this should be tabled until PIPA completes their study and has a recommendation.

Mr. McArtor moved to table this matter until such time the Planning Commission receives information from the staff and PIPA's nationwide study.

Mr. Alberty stated that he can't say what the City Council is expecting, but that this is a response and if that is not what they are expecting they will reply.

TMAPC Action; 11 members present:

On **MOTION** of **MCARTOR**, TMAPC voted **11-0-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Shivel, Midget, Walker, Wright "aye"; no "nays"; none "abstaining"; none "absent") to recommend that the possible amendments to the Zoning Code and/or the City of Tulsa Subdivision Regulation for the City of Tulsa to regulate development on and/or near land containing underground pipelines be **TABLED** until PIPA completes their study and the Planning Commission has more information.

Mr. Carnes out at 2:39 p.m.

OTHER BUSINESS:

- 6. Land Use Education & Communication Committee Report and Response
(Continued from 8/19/09).

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **MCARTOR**, TMAPC voted **10-0-0** (Cantrell, Dix, Leighty, Liotta, Marshall, McArtor, Midget, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; Carnes "absent") to **APPROVE** the Land Use Education & Communication Committee report and response per staff recommendation.

Commissioners' Comments

None.

There being no further business, the Chair declared the meeting adjourned at 2:40 p.m.

Date Approved:

P. Michelle Carter

Chairman

ATTEST: Joshua A. Walker
Secretary