



City of Broken Arrow
Minutes
City Council Special Meeting

City Hall
220 S 1st Street
Broken Arrow OK
74012

Mayor Craig Thurmond
Vice Mayor Scott Eudey
Council Member Mike Lester
Council Member Johnnie Parks
Council Member Debra Wimpee

Thursday, February 7, 2019

Time 6:30 p.m.

Council Chambers

1. Call to Order

Council Member Mike Lester called the meeting to order at approximately 6:30 p.m.

2. Roll Call

Present: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

Absent: 2 - Scott Eudey, Craig Thurmond

3. Pledge of Allegiance to the Flag

Council Member Lester led the Pledge of Allegiance to the Flag.

Council Member Lester noted Mayor Craig Thurmond and Vice Mayor Scott Eudey had a conflict with the items being discussed at the Special Meeting and would not be in attendance.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to appoint Mike Lester as the Chairman for the Special Meeting

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

4. Public Hearings, Appeals, Presentations, Recognitions, Awards

A. 19-238 Staff presentation and public hearing on rezoning BAZ-1986 and Planned Unit Development PUD 266 for a proposed 320 unit, multi-family apartment project known as Centennial Crossing

City Attorney, Trevor Dennis, reported the item for consideration before City Council involved 19 acres of undeveloped land located east of North Elm Place and Omaha. He stated the property was currently zoned A1 (agricultural) and the applicant requested the zoning be changed from A1 to PUD-266RM (multifamily residential). He reported on September 15, 2015 City Council changed the Comprehensive Plan from Level 2 to Level 3 for this property; as a result of the change Planning Commission approved a rezoning application on October 12, 2017. He briefly reviewed the history of the rezoning application as it came before City Council on several occasions. He noted on February 20, 2018 Council considered Ordinance No. 3512 which codified the zoning change, which failed with a 2 to 1 vote. He reported there were two law suits involving the present item; the first was filed on January 2, 2018 by Henry and Christina Hanewinkel seeking a declaratory judgment by the Tulsa County District Court that the city's original vote on the application was a denial. He noted the judge dismissed the case on May 25, 2018. He stated the second law suit which was pending, was filed on October 26, 2018 by the applicant, Brown and Perkins, against the city, alleging the city's failure to pass Ordinance No. 3512 following passage of PUD-266 was improper. He reported City Council would reconsider PUD-266 and BAZ-1986, as well as Ordinance No. 3548 which would codify the proposed zoning change. He noted the property had not been platted in reconsideration of the zoning application and ordinance. He indicated this was outside the normal process, but in light of ongoing litigation staff recommended City Council take action on the zoning at this time.

Chairman Lester stated attached to the item was a petition with 62 signatures by residents in opposition of approval.

Plan Development Manager, Larry Curtis, stated he wished to begin by reviewing concerns he received from citizens regarding this project; first of which was the Notice Map did not show the notice radius. He reported proper notice was given: notice was sent to property owners within 1,320 feet (law required 300 feet), 195 individuals were notified, notice was placed in the newspaper, and a sign was posted on the property. He reported the second item of confusion was the number of units: 285 or 320. He explained Phase 1 Area A would have 285 units and Phase 2 Area B would have 35 units, totaling 320 units. He noted the city website listed this area as Level 2 in the Comprehensive Plan which confused residents; however, the area was approved to be changed to Level 3 as amended in 2015 by City Council contingent upon the property being rezoned to RM.

Mr. Curtis briefly reviewed the project and zoning requirements; this would be a multifamily unit development consisting of Area A and Area B. He explained normal RM zoning

allowed many different types of uses including multifamily, boarding homes, daycare centers, etc.; however, the PUD would only allow a multifamily development on the 19 acres. He reported normal RM zoning would allow 389 units on the 19 acres; the PUD only allowed 320 units. He reported normal RM zoning had no building height restriction; the PUD had a three story height limit. Council Member Wimpee asked if changes could be made to the site plan when the site plan was reviewed by staff. Mr. Curtis responded in the affirmative. He explained since this was a PUD, City Council could require the site plan to be approved by City Council within the PUD; however, typically site plans were approved at the staff level. He stated the plat would come before City Council for approval. Council Member Parks asked if PUD-266 was the conceptual PUD or the actual PUD. Mr. Curtis responded the PUD before Council (PUD-266) was the actual PUD; the site plan was a conceptual layout. He reviewed the minimal building setbacks and the conceptual site plan. He reviewed zoning ordinance building length requirements of 160 feet maximum and noted the PUD requested building lengths of 200 feet maximum. He noted zoning ordinance required 2 parking spaces per unit, and the PUD requested 1.5 parking spaces per 1 bedroom unit and 2 parking spaces per 2 bedroom units. He stated this type of request had been approved in the past and allowed for less impervious area. He indicated zoning ordinance allowed buildings to be constructed on up to 50% of the property; the PUD allowed for construction on up to 30% of the property which allowed for 70% of open land space, some of which would be parking. He reported zoning ordinance required 20% of the building surface to be brick or block masonry. He noted the PUD required a higher percentage of the brick or block masonry which was more visibly appealing. He reported zoning code required a minimum of 250 feet between centerline and centerline of driveways; the PUD asked for this to be waived. He noted the conceptual site plan showed 245 feet from centerline to centerline of driveways. He explained fire code required a minimum of two access points into the development and zoning code required 200 feet of frontage; therefore, in order to accommodate the necessary two access points per fire code the driveway centerline minimum would be reduced. Chairman Lester asked if a deceleration lane would be associated with the development. Mr. Curtis responded a study would be associated with the site to determine if a deceleration lane was needed.

Mr. Curtis reported zoning code required a minimum of a 5 foot wide sidewalk along arterial roads and a 4 foot wide sidewalk along other streets. He stated sidewalks would be constructed along Elm (required by zoning), on the south side of Kansas (required by zoning) and on the northern side of Kansas (required by PUD) to ensure a safe walking path to school for children, as well as a sidewalk to the west. Chairman Lester asked if a crossing lane would be constructed for children crossing Kansas. Mr. Curtis responded the city would consider this to ensure proper safety. Council Member Wimpee asked if there was a developer for this property. Mr. Curtis responded in the negative. He reported zoning code required a landscape buffer 35 feet wide to surround the perimeter; standard tree requirements were 1 tree per 50 feet, 2 trees per unit, and 1 tree per 10 parking spaces. He explained the PUD required the same number of trees, but requested a reduction in landscaping buffer width from 35 feet to 25 feet along the south and east sides of the property. He explained there was an apartment complex on the south side of this property which had a 35 foot landscaping buffer in place, and a large green space for retention was located to the east of the property. Chairman Lester asked how wide the green space was. Mr. Curtis responded approximately 100 feet which would give 125 feet of separation. Chairman Lester asked if any notice was sent to residents in Tulsa. Mr. Curtis responded in the negative; this was unnecessary as the notice boundary did not extend into Tulsa.

Assistant City Manager, Kenny Schwab, stated while Mr. Curtis had covered zoning he would cover infrastructure. He reviewed the General Water System associated with this property. He noted the Main Pressure Plane fed off of Tiger Hill tanks, Battle Creek tank and a direct feed from Tulsa's system. He noted there was a 12 inch water main which ran along Elm Avenue, as well as 6 inch and 8 inch water mains within the surrounding additions. He stated the location would have sufficient water pressure and more than adequate water could be supplied for projected demand. He stated potentially the development would improve water circulation and distribution in the vicinity, as well as improve water quality during periods when school was not in session.

Mr. Schwab reported wastewater would tie into the Country Lane existing collection system and would be a part of the Lynn Lane Wastewater Treatment Facility. He explained it would flow to the east to the Greens Lift Station. He noted the system had sufficient capacity. He indicated there were no wastewater concerns. He reported in terms of stormwater and drainage, the site was a part of the upper reaches of Adams Creek watershed; Adams Creek drained east of town to the Verdigris River. He noted stormwater runoff from the site in question would drain to the northeast to the Country Lane Bypass Channel located along the far northern boundary of the subdivision and then east to Nienhuis Park and then to Adams Creek. He reported the property owner proposed a "combined" detention facility be constructed on property owned in part by the Broken Arrow Public Schools and in part on the 19 acre property. He explained the facility would be constructed in the northeast corner of the development and be sized to detain the combination of the existing stormwater runoff from the southeast area of the school property plus the increase of the new proposed

development. He indicated the facility would be designed in such a manner as to allow the detention facility release discharge to drain directly into the Country Lane Bypass Channel. He explained the property owner worked out a memo of understanding which addressed the "combined" detention facility. He noted one benefit was the "combined" detention facility would be designed in such a manner as to allow a sidewalk across the eastern boundary that would connect the school property, the new development and Country Lane Estates. Chairman Lester asked if the new detention area would alleviate some of the water drainage issues currently in the area. Mr. Schwab responded in the affirmative. He reported the "combined" detention facility was also designed as a dry detention facility which allowed for a play area in the bottom end of the pond. Council Member Wimpee noted the current soccer field in this location was often under water. She asked if this new detention facility would alleviate the soccer field flooding. Mr. Schwab responded in the affirmative. Discussion ensued regarding the sidewalk leading to the school, the possibility of a slight increase in developable property as a result of the combined detention area, and the memorandum of understanding between the property owner and the school.

Mr. Schwab reported, in terms of traffic and transportation, the site in question was directly accessed by Elm Avenue to the west and indirectly by Omaha Street (East 51st Street South) to the north. He stated the site planned to be accessed from Elm Avenue via two access points. He reviewed the two access points on the map and discussed traffic directional flow. He indicated a full, single stop controlled intersection would be constructed and the property owner would be required to conduct a Traffic Impact Analysis in order to evaluate the necessity for a signalized intersection at this location. He noted city policy required 125% of the MUTCD (Manual on Uniform Traffic Control Devices) standard signalization warrants be met in order to require a mid-mile signal. Discussion ensued regarding the corridor needing a signal to slow down traffic, school traffic in this location, traffic signal construction, the curve of the road and visibility. Mr. Schwab indicated sight distance as measured along the travel way to the north for southbound traffic was 1,300 feet, while sight distance as measured along the travel way to the south for northbound traffic was 1,150 feet; this was more than adequate visibility for safety concerns and traffic signal installation.

Mr. Schwab stated the southern access point was a private limited use drive with right turn in and right turn out only access. He stated a deceleration lane would be required if the Traffic Impact Analysis demonstrated one was needed. He noted sight distance from the southern access point as measured along the travel way to the north for southbound traffic was 1,600 feet while sight distance as measured along the travel way to the south for northbound traffic was 850 feet which was more than adequate for safety concerns.

Mr. Schwab stated the site would consist of a residential collector street (Kansas) running along the northern boundary of the property and then heading in a southeasterly direction. He explained the public street would be 30 feet wide with a sidewalk along the north and south side of the road. He noted a median was planned for a portion of the road near the intersection; however, the Planning Commission preferred no median in this location which needed to be discussed. He noted Phase I construction would conclude with a turn-around approximately 1,000 feet from Elm Avenue and Phase II construction would remove the turn-around, extend the road southeasterly to Indianapolis Street, and tie into Country Lane Estates. He stated there was discussion regarding tying Kansas Street to the north in the future. He stated a roundabout would be constructed in connection with the school from the public street to the southern portion of the school's bus loop. The connection would be gated and vehicular access would be controlled by the schools. He explained this connection was negotiated by the schools in exchange for use of the land for the combined detention facility. Discussion ensued regarding the existing substreets, Elm Street being designed to tie into the existing substreets, and existing Kansas Street school pickup traffic problems.

He reviewed the traffic counts. He reported a 2018 Traffic Count was conducted; however, he was unable to access the information. He noted according to the 2015 Traffic Count Report Elm Avenue south of Omaha Street had 11,235 vehicles per day, Aspen Avenue south of Omaha Street had 21,093 vehicles per day, 9th Street south of Omaha Street had 26,837 vehicles per day, Elm Place and Albany had 20,389 vehicles per day.

He reported as of December 5, 2018 the Tulsa County Improvements to Omaha Street (E. 51st Street South) from Elm Avenue to 9th Street Designs were approximately 65% complete. He stated the county was currently seeking the Environmental Clearance (EC) from the State since the Federal Surface Transportation Program (STP) funds were being used for the project. He stated the county expected this to take about 6 to 9 months, Right of Way (ROW) acquisition would not begin until EC was obtained, the county expected the ROW acquisition phase to take approximately 6 to 9 months, and construction would begin around the fall of 2020. Council Member Wimpee reported she received an email from the Tulsa County Commissioners Office today and the county planned to complete the roundabouts first. Mr. Schwab concurred. City Manager Spurgeon asked if the county had the funds in place. Mr. Schwab responded in the affirmative.

Mr. Schwab stated Phase II of the construction would improve traffic flow and access to Country Lane once the connection was constructed. He noted Staff believed that a connection to Kansas Street in Phase II would also aide in the traffic flow and provide additional pathways for emergency vehicles to reach the northwest quadrant of the Country Lane subdivision. Discussion ensued regarding traffic patterns, Kansas connecting to the sub street on the south end, and concerns regarding through-neighborhood traffic. Mr. Schwab noted the benefits also included sidewalk construction during Phase I which allowed for a sidewalk to connect the existing pedestrian trail along the eastern side of Elm Avenue to the school property directly. He noted currently, walkers from Crown Village, the existing apartment complex to the south of the site, must walk along the existing pedestrian trail to Omaha Street and then east to the school property. He explained the current system required students to walk approximately three quarters of a mile to reach the school building, whereas the proposed pathway was less than a quarter of a mile.

Mr. Schwab reviewed the Community impact this development would have. He stated the Broken Arrow Public School District currently had more than 19,000 students and approximately 38,000 homes, which averaged one student per two homes. He stated this was standard in the school system, except in high end apartment home complexes where the ratio was closer to one student per ten homes. He stated the Crown Village apartments (248 units) immediately to the south of the development and comparable in rental value had thirty-one students throughout the entire school system for the school year 2017- 2018 and twenty-four students this current school year. He reported The Park at Mission Hills apartments (594 units) located south of the school complex along 7th Street just north of Albany Street and comparable in rental value had ninety-three students within the entire school system for school year 2017-2018. He noted this equaled approximately one student per every ten units in Crown Village and two students per every thirteen units at Park at Mission Hills.

Mr. Schwab reported Country Lane Campus, which included an elementary and middle school, had approximately 2,800 students with a capacity of 3,000 students. He noted when a new school was built the city was re-districted to better distribute the students and two new schools were due to be built, one on the south side of the city and one on the north side of the city. He explained this would alleviate potential overcrowding. He stated the School System was also considering re-districting soon to balance out the under capacity of Timber Ridge Elementary as compared with the near capacity of Country Lane Elementary.

Mr. Curtis reported he contacted the Police Department regarding crime rates in this area. He stated the Police Department noted the apartment complexes in the area, totaling 965 residential apartment units, had 32 incidents, 6 of which were violent crimes and 26 were nonviolent crimes. He reported the single family residential homes within the area, totaling 754 residential units, had 45 reports, 14 of which were violent crimes, and 31 were nonviolent crimes.

Council Member Parks asked if the Planning Commission recommended approval. Mr. Curtis responded in the affirmative; with a vote of 4 to 1. Council Member Parks noted he received many questions and concerns from residents in the area, one of which was “what would you do if you lived next to an area where an apartment complex was being built?” He stated he lived in Kenwood; his street was a dead end street which eventually would come out of Kenwood and go back into Elm Place which would cause traffic to flow directly past his home. He stated north of his home was 70 acres of vacant land which was Level 3 and would eventually be apartments. He indicated he was not afraid of this as he had confidence in the city’s ability to use a PUD to control what the apartments would look like and the types of materials used. He explained the PUD ensured the apartments would remain quality apartments for years to come. He stated he had faith the City would protect the residents living near future apartment complexes and would ensure the complexes were high quality.

Chairman Lester reported he had a similar experience years ago when he was on the Planning Commission. He stated there was an apartment complex on Houston, just east of Aspen, which was a quarter mile from his house. He stated the surrounding neighborhoods were very concerned about the proposed apartments and the Planning Commission put in restrictions regarding setbacks and landscaping. He reported today, 20 years later, the apartments still looked wonderful. He stated he believed the Broken Arrow community did a wonderful job keeping its apartment complexes well maintained and attractive. Mr. Curtis stated Staff was going through the Comprehensive Plan process currently, which provided opportunities to update the Comprehensive Plan and possibly add new standards.

Council Member Wimpee reported she contacted Crown Village apartments to check occupancy rates; Crown Village was at 93% occupancy currently, but had just lowered its rental rates to draw in residents. She stated this was a concern.

Chairman Lester indicated there were many who wished to speak regarding this item and six individuals signed up in opposition of the Item who did not wish to speak.

Citizen Anne Cunningham stated her address was 5009 S. 163 East Avenue, Tulsa. She stated Country Lane had 62 petition signatures in protest, Trinity Creek had 108 signatures, and Battle Creek had 16 signatures, which totaled 186 signatures in protest. She stated within a 2 mile radius of this site there were 3,038 apartments. She stated building had been going on in this area from 1999 until 2015. She stated there had been four apartment complexes built since she moved into Trinity Creek which she found disheartening. She stated when she moved into the area there was nothing but beautiful trees and now over 3,000 apartments had been built and the congestion was getting worse. She stated while the presentation looked and sounded nice, she lived in this area and saw the traffic and congestion. She stated another apartment complex would only make the situation worse. She asked if the city could wait until the street widening was completed before considering the apartments. She stated she believed a traffic light in this location would not help the situation and would only worsen it. She noted there was a significant blind spot when traveling north in this location which would make it difficult to see the proposed traffic light. She stated the area did not need more apartments.

Citizen Rebekah Lawrence stated her address was 4905 S. 165th East Avenue, Tulsa. She stated Councilor Connie Dodson sent an email to Broken Arrow City Council with a note of caution in consideration of the proposal. Ms. Lawrence made a power point presentation. She stated zoning was in place so residents could understand what types of homes or businesses would be permitted in an area. She stated she bought her home with the knowledge that apartments would not be allowed in this location, as it was not zoned for apartments. She stated the zoning should not be changed. She stated the recent Citizen Survey indicated the top four subjects which concerned citizens were street congestion and traffic, schools and education, public safety and crime, and planning and zoning. She stated there were already 3,000 apartments in this area; no more were needed. She displayed a map which demonstrated where the apartments were located. She stated Tulsa's most dangerous intersection was 71st and Mingo due to the 3,600 apartments and schools in the area; now Tulsa was scrambling to fix the problem it had created. She encouraged Broken Arrow to avoid creating a problem by building sufficient infrastructure, road widening, etc. prior to constructing additional apartments. She asked City Council to keep the present zoning, keep the area as originally intended; however, if City Council were to approve the rezoning to please wait until the roads and schools were improved and prepared to handle this type of population volume.

Citizen Erin Duin stated her address was 524 East Helena Street, Broken Arrow, in Country Lane Estates. She stated she had spoken before City Council regarding this matter on five occasions, sent in letters, and sent out petitions. She noted she had unanswered questions regarding sidewalks, drainage and the road which would lead into Country Lane Estates. She stated she was concerned about potential traffic through her neighborhood. She stated the Fire Department would appreciate the access to her neighborhood; however, during football season and lacrosse season 51st Street was extremely crowded and she worried this would lead to parents taking "short cuts" through her neighborhood. She stated there was only one stop sign in her neighborhood and through-traffic would be able to achieve dangerous speeds. She stated she worried about her children playing outside and riding bikes. Chairman Lester noted any concerns regarding sidewalk construction and drainage could be addressed during the planning and platting process. Ms. Duin stated when this first went through the Comprehensive Plan Mr. Leinbach intended to be the property manager; however, Mr. Leinbach no longer desired to be a part of the project. She stated it was difficult to know for certain that the complex would be well maintained if you did not know who would manage the property.

Citizen Melissa Ruby stated her address was 5016 S. 168th East Avenue, Tulsa. She stated she considered herself a Broken Arrow Citizen; she actively volunteered and she was deeply involved in the Broken Arrow community. She stated 30% of all calls for emergency service in the City of Broken Arrow came from this particular area, 25% of all Broken Arrow accidents occurred in this area, and 23% of all incident reports were from this area. She stated adding density would only worsen these numbers. She stated the student to teacher ratio at Centennial Middle School was 20 to 1; the national average was 16 to 1 and Oklahoma's average was 16 to 1. She stated there was a direct correlation between this ratio and the success of Broken Arrow students. She read an email she received from one of her son's teachers: "I understand your son needs special one on one instruction, but I also have to attend to 25 other students. I do spend time with your son, but have to move on to other students as well." She noted schools in the area were already overcrowded and the addition of 10 more students in the area was 10 too many. She stated the intermediate and primary schools were just as crowded as Centennial. She stated Centennial middle school was in the bottom 50% of all middle schools in Oklahoma on proficiency testing. She stated she opposed this item and did not believe the area needed more apartments; additional apartments would only adversely affect the area.

Citizen Colin Potter stated his address was 700 W. Granger Street, Broken Arrow. He stated he felt there was duplicity in the notification process. He stated originally the rezoning notification did not have the 300 foot radius; his neighbors were not made aware of this

rezoning. He stated every single notification he received indicated 285 units. He stated the drainage was a concern of his. He stated he felt it was a direct theft from a school to put drainage and detention onto the school property for the sole purpose of increasing the value of a private development. He stated you could not compare building a sidewalk to building additional revenue producing apartment units. He stated he felt deceived regarding the access points as well; the city was granting a variance to break the 250 foot rule, the 300 foot rule regarding the apartments, and adding a left turn out access which he noted was new information. He stated the PUD indicated the access point would be median bound, but now there was talk about removing the median and adding a light which would be the eighth light in one mile of road. He stated the light would not be paid for by the developer; it would be paid for by the residents. He stated he was not against development. He encouraged City Council to hold the development to the original PUD with 285 units. He stated he believed it was deceptive that a site plan had not been presented with the PUD, only a road plan. He stated due to the setback for Kansas the conceptual site plan was incorrect and the 100 foot setback should be enforced with building height restrictions. He stated he was opposed to this item and asked City Council to vote against it. Chairman Lester asked if Mr. Potter understood site plans were not under discussion at this point in the process. Mr. Potter responded in the affirmative.

5. General Council Business

A. 19-236 Consideration and possible action regarding PUD 266 (Planned Unit Development) and BAZ-1986 (rezoning), Centennial Crossing, 19.64 acres, A-1 to PUD 266/RM, east of N. Elm Avenue, one-quarter mile south of Omaha Street

Chairman Lester asked if there was any additional presentation to be made. Mr. Curtis responded in the negative.

Chairman Lester stated there was no developer for the site currently. He stated the cost to develop apartment complexes today were \$20 million dollars or more which prevented opportunists from taking advantage. He noted a developer had investors to which the developer was held accountable and certain criteria was required to be met prior to beginning development. He stated City Council did not dictate if an apartment complex was viable; City Council would ensure the complex was built to Broken Arrow standards. He indicated developers were required to perform due diligence and would only construct in areas where there was a demand. He stated he understood there were 3,000 units in the area; however, if a developer was willing to construct another apartment complex, said developer had surely researched the area and determined there was a demand.

Council Member Parks stated he could understand there were already many apartments in the area. He stated he did not know how many was too many apartments. He stated he did know this was a preferred location for apartments; apartments ideally should be located near expressways to prevent traffic congestion through city. He stated he agreed with Chairman Lester; the market drove development. He noted a developer was not going to invest in an area which did not have a demand. He stated he was concerned about Council Member Wimpee's comment regarding the drop in rental rates due to low capacity. He stated if it was approved it was important to have access to the site plan during an open meeting. He stated he had no contact with any developer or property owner; he only received information from the City regarding the PUD and the attorney regarding the law suit. He stated City Council did not visit with developers; City Council reviewed the fact sheets. He noted this was a difficult decision to make; it was one of the most difficult and most prolonged decisions he had encountered as a City Council Member. He stated many apartment complexes had been approved without complications in the past, but for some reason this apartment complex was problematic. He noted he had voted against it in the past. He stated he voted against the complex which was built on 111th and Elm Place, not because of the apartments, but because of the traffic flow, and today the apartments were nice. He explained City Council did not approve everything that came before it; City Council fairly considered items prior to the vote. He stated the PUD, if approved, would be enforced in its entirety.

Council Member Wimpee stated it was indeed a difficult decision to make. She stated she agreed with Mr. Potter and wondered if there was a way to amend the number of units down to 285. She stated she was extremely concerned about the neighboring apartment complex lowering its rates. She stated she also disapproved of how the landowners communicated with the residents. She stated she had heard there had been harassment and intimidation. She stated no matter how City Council voted this evening; the issue did not end with the Meeting. She stated there was a pending law suit which could affect the outcome regardless of the vote. City Attorney Dennis concurred; the city might not be the final arbiter of this issue due to the pending litigation.

Council Member Parks stated he did not like losing law suits regarding zoning, especially as this took zoning out of the hands of City Council and he did not want the Court System to decide Broken Arrow zoning. He stated the Broken Arrow Planning Commission, which was an excellent Planning Commission, recommended approval. He noted Staff recommended approval. He stated he agreed, if approved, the site plan should be required to come before City Council for review. He stated he did not believe notice was sent regarding site plan review. He asked if a sign-up sheet requesting notification could be used. City Attorney Dennis responded in the affirmative; any notice City Council desired could be posted, if City Council wished and made a motion notification could be resent to the quarter mile notification zone regarding the site plan review. Council

Member Parks approved. City Manager Spurgeon stated notification could also be sent to the residents who signed the petitions in Broken Arrow and Tulsa. City Council agreed.

Council Member Wimpee stated she agreed it would be prudent to have 51st widened prior to development of the apartment complex, if this was possible. She indicated she had presented the concerns she heard from residents to the landowner, and the landowner did address every item of concern she had expressed.

Council Member Parks stated many areas of concern would be addressed during the site plan review, including who the developer and property manager would be.

City Manager Spurgeon stated he asked Mr. Schwab and Mr. Mills to set up a periodic check with Tulsa County regarding the status of the road project. He stated he would keep City Council informed. Chairman Lester recommended putting this information on the city website. City Manager Spurgeon reviewed a couple of the projects Broken Arrow and Tulsa County would be working on together. He stated he would keep City Council and the community updated on these projects. Mr. Schwab stated the City of Broken Arrow planned to launch a web page which would track the General Obligation Bond Projects, as well as the Tulsa Projects which affected Broken Arrow.

Council Member Parks stated the recommended motion had three conditions: “1) Removal of the road extension along the northern property line to be constructed with a raised landscape median between Elm Street and the drive connection to the school, 2) the drainage infrastructure shall conform to the City Code requirement, and design standards, the layout and design shall be coordinated through the City Staff, and 3) the layout of the facility shall allow for additional sidewalk access along the eastern side of the property for pedestrian use; this layout shall be coordinated with City Staff.”

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.
Move to approve PUD-266 and BAZ-1986 as recommended by the Planning Commission and Staff with the three listed conditions and in addition we will require that the site plan come back before the City Council and before that happens the people be notified according to the quarter mile notification zone and according to the list

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

6. Ordinances

A. 19-239 **Consideration, discussion, and possible adoption of Ordinance No. 3548, an ordinance amending the zoning ordinance of the City of Broken Arrow, Oklahoma, approving BAZ-1986, granting PUD-266 (Planned Unit Development) and Residential Multi-Family zoning classification be placed upon the tracts, repealing all ordinances or parts of ordinances in conflict herewith**

City Attorney Dennis reported this was the codification of the zoning which was just passed. He indicated specifically it provided the legal description for BAZ-1986 and PUD-266 as modified by Council’s approval. He explained it would incorporate the conditions in the motion.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.
Move to adopt Ordinance No. 3548

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

City Attorney Dennis stated there were not enough members of City Council present to pass an emergency clause. He indicated the ordinance would therefore take effect 30 days from today.

Council Member Wimpee asked if an amendment to lower the number of units could be made. City Attorney Dennis stated the amendment should have been included in the conditions of the previous motion for Item 5A. He stated a motion could be made to reopen debate on the previous item.

MOTION: A motion was made by Debra Wimpee, seconded by Johnnie Parks.
Move to reconsider Item 5A

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

Council Member Wimpee stated one of the biggest concerns was the number of units. She stated she hoped to amend PUD-266 to restrict the number of units to 285 units as the residents had been under the impression this would be the allowed number of units. City Attorney Dennis asked if Council would hear from the potential developer. Council agreed to hear from the developer.

Mr. Adam Doverspike stated he was the lawyer representing Brown and Perkins. He stated his

Chairman Lester asked how many documents went out which showed 285 units as the number of units. Mr. Curtis stated the original document to the Planning Commission in 2017 showed 285 units. He stated each additional letter sent out by Staff reflected 285 units, which was an oversight by staff. City Attorney Dennis reported the statutory requirements of notification were met; the number of units was additional information not required to be included in notification. He stated it was an unfortunate oversight, but the notice did meet statutory requirements for notice. Chairman Lester stated he did not want to penalize Brown and Perkins as a result of the city's error.

Chairman Lester stated it was unfortunate from the city's perspective, but the owner was not at fault. He stated while he would not require the owner to have a reduced number of units he would ask the owner to consider reducing the number of units as much as possible. Council Member Parks stated he recognized the proposed number of units was less than zoning requirements; however, he would ask the owner to at least consider further reduction. He apologized to the citizens of Broken Arrow for the error and confusion.

Council Member Parks stated the motion would be made with the previous four conditions and a new fifth condition which encouraged the developer to consider a reduction of the number of units. Discussion ensued regarding the proper way to phrase the new motion.

Move to approve PUD-266 and BAZ-1986 as recommended by the Planning Commission and Staff with the following conditions: 1) Removal of road extension along the northern property line to be constructed with a raised landscape median between Elm Street and the drive connection to the school property of page 3 of the proposed PUD design statement. 2) Drainage and infrastructure shall conform to the City Code requirements and design standards. The layout and design shall be coordinated through City Staff. 3) The layout of the facility shall allow for additional sidewalk access along the eastern side of the property for pedestrian use. This layout shall be coordinated with City Staff. 4) We shall as a City Council require that the site plan come back before the Council for approval and that an invitation be given to those that have signed up and all those in the previous documentation to be notified of the date and time that this is going to be heard. 5) We know there was a misunderstanding on the numbers and we would ask the applicant, if it possible, to consider a reduction in the number of apartment units possibly bringing the number closer to 285 units.

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

7. **Remarks and Inquiries by Governing Body Members**

There were no Remarks and Inquiries by Governing Body Members.

8. **Remarks and updates by City Manager, including Recognition of Recent Accomplishments by Employees and Elected Officials**

There were no Remarks and Updates by City Manager.

At approximately 8:39 p.m. Chairman Lester stated there was an Executive Session and he would entertain a motion for a brief recess to clear the room for the Executive Session.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move for a brief recess to clear the room for the Executive Session

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to enter into the Executive Session

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

9. **Executive Session**

Executive Session for the purpose of confidential communications between the City Council, the City Manager, the City Attorney and other pertinent staff members discussing and conferring on matters pertaining to:

Litigation, including potential resolution, of a matter involving the litigation case of Brown & Perkins, LLC vs. City of Broken Arrow et al., Tulsa County District Court Case Number CV-2018-01338 under 25 O.S. § 307(B)(4).

In the opinion of the City Attorney, the Council is advised that the Executive Session is necessary to process the pending claim, litigation and possible litigation and that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest. After the conclusion of the confidential portion of executive session, the Council will reconvene in open meeting, and the final decision regarding the litigation case of Brown & Perkins, LLC vs. City of Broken Arrow et al., Tulsa County District Court Case Number CV-2018-01338, if any, will be put to a vote.

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to find that the Executive Session was necessary

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

MOTION: A motion was made by Johnnie Parks, seconded by Debra Wimpee.

Move to resolve the matter of Brown and Perkins, LLC v. City of Broken Arrow in accordance with the Settlement Agreement and Release in full and authorize Chairman Lester to sign the Settlement Agreement and Release in full

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

10. **Adjournment**

The meeting adjourned at approximately 9:04 p.m.

MOTION: A motion was made by Debra Wimpee, seconded by Johnnie Parks.

Move to adjourn

The motion carried by the following vote:

Aye: 3 - Debra Wimpee, Johnnie Parks, Mike Lester

Attest:

Chairman

City Clerk