



City of Broken Arrow

Minutes Planning Commission

City Hall
220 S 1st Street
Broken Arrow OK
74012

Chairperson Lee Whelpley
Vice Chairperson Ricky Jones
Commission Member Fred Dorrell
Commission Member Jaylee Klempa
Commission Member Julea' Marriott

Thursday, October 22, 2020

Time 5:00 p.m.

Council Chambers

1. Call to Order

Chairperson Lee Whelpley called the meeting to order at approximately 5:00 p.m.

2. Roll Call

Present: 4 - Julea' Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley
Absent: 1 - Fred Dorrell

3. Old Business

There was no Old Business.

4. Consideration of Consent Agenda

Staff Planner Amanda Yamaguchi presented this Item.

A. 20-1326 Approval of PT20-112, preliminary plat, The Lakes at Rabbit Run, 35.51 acres, 100 Lots, A-1 to PUD-316/RS-4, one-quarter mile south of New Orleans Street (101st Street), east of Olive Avenue (129th E. Avenue)

Ms. Yamaguchi indicated the applicant was in agreement with the Staff Report.

Chairperson Whelpley asked if there were any items to be removed from the Consent Agenda; there were none. He explained the Consent Agenda consisted of routine items, minor in nature, and was approved in its entirety with a single motion and a single vote, unless an item was removed for discussion.

MOTION: A motion was made by Ricky Jones, seconded by Jaylee Klempa.

Move to approve the Consent Agenda

The motion carried by the following vote:

Aye: 4 - Julea' Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

5. Consideration of Items Removed from Consent Agenda

There were no Items removed from the Consent Agenda; no action was taken or required.

6. Public Hearings

A. 20-1275 Public hearing, consideration, and possible action regarding PUD-94W (Planned Unit Development Amendment) and BAZ-2067 (Rezoning), Honey Springs at Battle Creek, 75.276 acres, PUD-94Q/A-CG (Annexed-Commercial General), A-RD (Annexed-Residential Duplex) and A-R-3 (Annexed-Single-family Residential) to PUD-94W/CG, RD and RS-3 (Single-family Residential), southeast corner of Aspen Avenue (145th E. Avenue) and Dearborn Street (41st Street)

Planning and Development Manager Jill Ferenc noted the applicant requested a continuance until the next meeting.

The applicant, Tim Terral with Tulsa Engineering and Planning (TEP), address 9810 E 42nd Street Suite 100, Tulsa requested a continuance until the November 5, 2020 Planning Commission Meeting. He discussed the reasons for the continuance. He noted the surrounding homeowners were notified of the continuance.

Chairperson Whelpley noted the residents were told by City Council to be present at this meeting; therefore, it was a bit of a surprise for the residents. Mr. Terral agreed.

Vice Chairperson Ricky Jones noted a couple of interested parties spoke with himself and Chairperson Whelpley prior to the meeting about having to come down here. He indicated to the residents it was standard practice to grant one continuance and he apologized to the residents for the inconvenience.

MOTION: A motion was made by Ricky Jones, seconded by Julea' Marriott.

Move to continue this Item until November 5, 2020 per the applicant's request

The motion carried by the following vote:

Aye: 4 - Julea' Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

Chairperson Whelpley indicated this Item would be heard on November 5, 2020 at the Planning Commission Meeting. Assistant City Attorney Tammy Ewing indicated any forms filled out this evening would not be returned, as the City needed to keep records of everything which happened during a meeting; the forms would become part of the public record. She noted if the residents returned on November 5, 2020, said residents would be required to fill out another form to speak.

Citizen Kurt Aras (ph) stated his address was 4612 Sycamore Avenue in Greenbrier. He stated he had three questions for the future meeting.

Community Development Director Larry Curtis explained as this Item was tabled until the next meeting, the Planning Commission was not permitted to hear or answer any questions regarding this Item until the next meeting. He indicated Staff would be happy to speak with Mr. Aras following the meeting to answer questions, but the Planning Commission could not hear any questions at this time. Mr. Aras expressed his displeasure.

B. 20-1328 Public hearing, consideration, and possible action regarding PUD-301A (Planned Unit Development Minor Amendment), The Colony at Cedar Ridge, 78.12 acres, A-1 (Agricultural) to CM (Community Mixed-Use), RS-3 (Single-Family Residential) and PUD-301, located one-quarter mile east of Olive Avenue (129th East Avenue), south of New Orleans Street (101st Street)

Vice Chairperson Ricky Jones recused himself for this Item due to a conflict of interest. He left the chambers prior to and returned following the discussion and vote for this Item.

Ms. Amanda Yamaguchi reported Planned Unit Development (PUD)-301A, minor amendment to PUD-301 involved a 78.12-acre undeveloped tract located one-quarter mile east of Olive Avenue (129th East Avenue), south of New Orleans Street (101st Street). She reported PUD-301 and BAZ-2045 were approved on this property by the City Council on March 17, 2020. She stated the Colony at Cedar Ridge development contained a mixed-use with a commercial market concept in Development Area A and variety of housing types including an area of private, gated streets, larger estate lots, and alley-loaded homes in Development Area B. She explained with this minor amendment, the applicant was requesting to decrease the front setback on the gated-cottage lots in Development Area B from 30-feet to 22-feet; the 22-foot setback would allow for a 20-foot driveway length. She noted sidewalks along the street will be located on the property line with two feet in the reserve area and two feet in the front setback. She indicated sidewalk easements would need to be provided on the plat for the portions of the sidewalks located on private property. She stated rear setbacks were requested to be reduced from 15-feet to 13-feet only for the gated-cottage lots in Development Area B. She explained these adjustments were to accommodate the footprint of the homes being constructed within this area of the development. She stated also proposed with this amendment was the removal of the side yard options. She explained multiple layouts for side yards abutting a street as described in the text were not planned and setbacks were being removed from the PUD; all setbacks for side yards abutting a street shall be set at 15-feet and all other provisions of PUD-301 shall remain as previously approved. She stated based on the Comprehensive Plan, location of the property and the surrounding land uses, Staff recommended PUD-301A be approved subject to the property being platted.

The applicant, Erik Enyart with Tanner Consulting, address 5323 S. Lewis Avenue, Tulsa indicated he was in agreement with Staff recommendations.

Chairperson Whelpley opened the public hearing; there were no public comments. He closed the public hearing.

MOTION: A motion was made by Jaylee Klempa, seconded by Julea' Marriott.

Move to approve Item 6B per Staff recommendation

The motion carried by the following vote:

Aye: 3 - Julea' Marriott, Jaylee Klempa, Lee Whelpley
Recused: 1 - Ricky Jones

C. 20-1333 Public hearing, consideration, and possible action regarding BAZ-2069 (Rezoning), Robson North, 69.47 acres, A-1 to RS-3, one-eighth mile north of Kenosha Street (71st Street), one-quarter mile east of 65th Street (241st E. Avenue/Oneta Road)

Senior Planner Brent Murphy reported BAZ-2069 was a request to change the zoning designation on 69.47 acres from A-1 (Agricultural) to RS-3 (Single Family Residential). He reported the unplatted property was located one-eighth mile north of Kenosha Street (71st Street), one-quarter mile east of 65th Street (241st E. Avenue/Oneta Road). He stated BACP-

172, a request to change the Comprehensive Plan designation on this property from Level 2, Level 3, Level 4, and Greenway/Floodplain to Level 2 and Greenway/Floodplain was recommended for approval by the Planning Commission on October 8, 2020; it was approved by City Council subject to the property being platted. He stated the north part of the property, as well as along the west edge of the property, was in the 100-year floodplain of Adams Creek. He indicated when the property was platted, any property in the 100-year floodplain would be required to be placed in a reserve area. He indicated the RS-3 zoning requested was in accordance with the Comprehensive Plan in Level 2, which was approved by City Council. He stated Staff recommended BAZ-2069 be approved subject to the property being platted. He noted once the plat was recorded, the portions of the property located in the 100-year floodplain would be zoned FD and the portions of the property located outside the 100-year floodplain would be zoned RS-3.

The applicant, Tim Terral, address 9810 E. 42nd Street Suite 100, Tulsa indicated he was in agreement with Staff recommendations. He stated he felt RS-3 was a better fit for the land; previously multifamily, commercial, office, and duplex could be developed in this area; now only single family detached homes would be developed. He indicated he felt this would help with the stormwater drainage in the area as commercial development would include more impervious area than single family homes.

Chairperson Whelpley opened the public hearing; he noted there were no public comments. He closed the public hearing.

MOTION: A motion was made by Jaylee Klempa, seconded by Julea' Marriott.

Move to approve Item 6C per Staff recommendation

The motion carried by the following vote:

Aye: **4 -** Julea' Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

Chairperson Whelpley indicated this Item would go before City Council on November 3, 2020 at 6:30 p.m.

D. 20-1345 Public hearing, consideration, and possible action regarding the proposed changes to Section 3.1.E (Uses Permitted in a Planned Unit Development); Section 3.1.F (Table 3.1-1) Table of Allowed Uses; Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts; Section 10.1 General Rules of Construction; and Section 10.3 Definitions of General Use Categories and Specific Use Types of the Broken Arrow Zoning Ordinance

Community Development Director Larry Curtis reported almost two years ago the City of Broken Arrow adopted zoning ordinances in relation to medical marijuana within the Community. He reported Broken Arrow was the first in the State to adopt such zoning ordinances, and being the first to adopt, Broken Arrow was the first to be sued. He stated being sued put Broken Arrow into a limbo state for a year during which time Broken Arrow was unable to enforce its ordinances until the case was heard by District Court and then in the Supreme Court. He reported in the end, the City of Broken Arrow won and was able to enforce the ordinances originally enacted. He stated since that time, Broken Arrow had spent a year enforcing these ordinances and observing the situation. He noted City Council held a work session in regard to medical marijuana and had questions regarding effectiveness of the ordinances, and what additional ordinances should be enacted in the future. He stated with the information provided, Staff reviewed Broken Arrow ordinances in relation to other communities and prepared an update to the zoning ordinance. He reviewed the updates:

- Section 3.1.E Uses Permitted in a Planned Unit Development (PUD): In order to not require a PUD major amendment for each commercial growing facility or retail dispensary proposing to locate within an established PUD, staff recommends adding a provision that allows medical marijuana commercial growing/cultivation and medical marijuana retail sales to be permissible by right in any PUD prior to November 3, 2020 provided that the PUD has the corresponding underlying zoning district and has not been specifically forbidden by the PUD.

Mr. Curtis explained with over 300 PUDs in the City of Broken Arrow, to prevent the necessity of having the Planning Commission and City Council review each and every PUD which came through needing an amendment, Staff recommended adding this caveat. He stated the next change was a minor clerical change within the chart itself. He reviewed the next change in Section 5.7.C General Sign Standards in All Nonresidential Zoning Districts. He noted case law before the Supreme Court ruled no community within the United States had the authority to regulate content of signage; however, State Law included language per Title 63, Section 427.21 of the Oklahoma State Statutes, indicating “advertising for medical marijuana and medical marijuana products shall not contain any statements, illustrations, or other material that: 1. Is deceptive, false, or misleading; 2. Promotes overconsumption; 3. Represents that the use of marijuana has curative or therapeutic effects; 4. Depicts a child or other person under legal age consuming marijuana; 5. Depicts objects such as toys, cartoons, cartoon characters, or similar images, which suggest the presence of a child, or any other

depiction designed in any manner to be especially appealing to children or other persons under legal age to consume marijuana; or 6. Has any manner or design that would be especially appealing to children or other persons under eighteen (18) years of age.” He stated, therefore, Staff recommended incorporation of this language into the Forbidden Lights and Representations section of the Zoning Ordinance (Section 5.7.C) in order to allow local enforcement of the State Statute.

He noted Section 8.3 would have no changes; however, it affected those existing medical marijuana facilities operating within the City of Broken Arrow which would become nonconforming but would be allowed to continue operating per the nonconforming clause, specifically allowing the business to continue as long as the business did not discontinue operation for six months or longer.

He reported for Section 10.3.D.9 Definitions of General Use Categories and Specific Use Types the following changes were being proposed:

- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any other Medical Marijuana Dispensary. The distance specified shall be measured from any entrance of a current facility to the nearest entrance to the facility dispensary.

He explained Tulsa currently had this ordinance in place to distribute the medical marijuana dispensaries and prevent clustering. He continued:

- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any preschool. The distance specified shall be measured from any entrance of the school to the nearest property line point of the dispensary.

He explained State Law protected preschools, but it was felt necessary to add the protection to the ordinance as well. He stated, in addition, the following would also be added:

- A Medical Marijuana Dispensary license will not be granted to any applicant where the proposed location would be located within one thousand (1,000) feet from any state licensed childcare facility. The distance specified shall be measured from any entrance of the daycare to the nearest property line point of the dispensary.

He discussed the legislation which did not pass the house by a very narrow margin which specifically referenced daycare facilities; therefore, Staff felt comfortable with this addition. He stated the last change was as follows:

- Drive-through windows and drive-through lanes are prohibited for Medical Marijuana Dispensaries.

He noted this was currently part of the City of Tulsa’s ordinance as well.

Commissioner Klempa asked if existing facilities which were within 1,000 feet of each other and/or state licensed childcare facilities would be permitted to continue. Mr. Curtis responded in the affirmative; the existing facilities would be permitted to continue as long as services were not discontinued for six months or more.

Chairperson Whelpley asked if the “facilities” included dispensaries, manufacturing and growing. Mr. Curtis responded in the negative; specifically, this referred to medical marijuana dispensaries. He explained processing facilities and growing facilities were located within enclosed facilities, were not open to the public, and as such Staff did not feel the need to incorporate those facilities into this distance requirement. He noted these ordinance changes would not prohibit the establishment of new medical marijuana dispensary businesses in the City of Broken Arrow.

Chairperson Whelpley opened the public hearing; he noted there were no public comments. He closed the public hearing.

Vice Chairperson Ricky Jones commented these changes brought Broken Arrow zoning code more in line with State Statute.

MOTION: A motion was made by Ricky Jones, seconded by Julea’ Marriott.

Move to approve Item 6D as recommended by Staff

The motion carried by the following vote:

Aye: 4 - Julea’ Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley

Chairperson Whelpley indicated this Item would go before City Council on November 3,

2020 at 6:30 p.m.

Mr. Curtis noted due to the election being held on November 3, 2020, there was a possibility this Item could go before City Council on November 16, 2020. He recommended interested parties to contact the City Office at 918-259-2400 for confirmation.

7. Appeals

There were no Appeals.

8. General Commission Business

A. 20-1332 **Consideration and possible action regarding PT20-115, preliminary plat, Estates at Lynn Lane, 68.30 acres, 255 Lots, R-2 to PUD-315/RS-3, located one-quarter mile north of New Orleans Street (101st Street), east of 9th Street (177th E. Avenue/Lynn Lane Road)**

Vice Chairperson Ricky Jones recused himself from this Item. He left the chambers prior to and returned following the discussion and vote for this Item.

Brent Murphy, Senior Planner, reported PT20-115, the preliminary plat for the Estates at Lynn Lane, contained 68.30 acres with 255 proposed lots; the property, which was presently zoned R-2, was located one-quarter mile north of New Orleans Street (101st Street), east of 9th Street (177th E. Avenue/Lynn Lane Road). He reported on October 3, 2017, BAZ-1984, a request to change the zoning on this property from R-2 to RS-3 was approved by the City Council; BAZ-1984 was approved subject to the property being platted. He noted the property had not been platted, so the zoning today remains R-2. He reported on September 15, 2020, the City Council approved PUD-315 on the property associated with this preliminary plat. He indicated with PUD-315, applicant requested to keep the RS-3 zoning classification approved with BAZ-1984 and add PUD-315 as an overlay; PUD-315 was approved subject to the property being platted.

Mr. Murphy reported with PUD-315, the minimum lot width was reduced from 60 feet to 55 feet, minimum lot size was reduced from 7,000 square feet to 6,500 square feet, and on lots with no vehicular access, the building line setback was established at 20 feet. He noted PUD-315, however, also stipulated that at least 60% of the lots within the PUD would meet the minimum lot size, lot width, and building setback requirements of the RS-3 district; PUD-315 also required a 10-foot wide landscape reserve area adjacent to 9th Street. He reported with PUD-315 City Council stipulated surrounding property owners be notified when a plat was submitted which was why this plat was not included on the Consent Agenda. He indicated this was done; however, a revised preliminary plat was received after notice was sent. He explained the only change was the initial preliminary plat showed the project being developed in three phases, while the newly presented preliminary plat showed the project being developed in two phases.

Mr. Murphy reviewed the platting process. He stated the first step was to have the preliminary plat reviewed by Planning Commission; this included the preliminary engineering plans which were reviewed by City of Broken Arrow licensed professional engineers. He noted the preliminary plat was being presented tonight. Step two was submission of the conditional final plat which included detailed engineering plans which were reviewed by Staff, Planning Commission, and City Council. He explained the detailed engineering plans were reviewed by Broken Arrow's Civil Engineers licensed in the State of Oklahoma. He noted if the detailed engineering plans were approved, the approval would be subject to a checklist. He indicated if the conditional final plat was approved by City Council, the third step would be to make the changes on the checklist; submit NET engineering plans; have the revised conditional final plat reviewed by the utility companies which were required to approve; and submit the utility company approvals to the City. He indicated once this was completed, the developer had permission have the plat prepared by a licensed surveyor, signed by the mayor, and recorded with the County.

The applicant, Erik Enyart with Tanner Consulting, address 5323 S. Lewis Avenue, Tulsa, indicated he was in agreement with Staff recommendations. He noted Tanner Consulting worked closely with Broken Arrow Staff and he thanked Staff for the professional quality of the review. He noted there was a lot of discussion during the PUD process about the concerns from adjoining property owners regarding drainage and traffic. He noted the conditions placed upon the PUD were intended to address and mitigate these concerns.

Chairperson Whelpley noted several Citizens requested to speak. He noted each Citizen would have three minutes to speak.

Citizen Kelly Blanton stated her address was 9905 S. Lynn Lane Road. She distributed maps to the Planning Commission. She reported her property was directly south of the proposed Estates at Lynn Lane. She noted the proposed stormwater pond for the Estates at Lynn Lane would drain directly into her pond, and in turn spill over into the BA Creek. She stated she and her family had concerns about the conservation of natural resources and the water quality

of her pond and the BA Creek. She reported after researching the waters of the U.S. and the U.S. wetlands she found that her pond, as well as the pond for the proposed stormwater retention, were on the National Wetlands inventory. She noted both ponds were freshwater ponds (marked on the maps provided) which spilled into the BA Creek and the freshwater emergent wetland to the west (marked on the maps provided). She indicated the maps also showed the ponds were at the head of the flow to the Arkansas River via the BA Creek. She noted after this discovery, the Secretary of Environment for the State of Oklahoma, and a local Corp of Civil Engineer, directed her to the Tulsa District Director of the Corp of Engineers with whom she spoke about maintaining a National Wetland. She stated she felt certain the City would see the need to properly mitigate this project to preserve the quality of water, dam integrity, vegetation, and wildlife involved. She stated although she had many concerns with the number of homes, traffic, loss of property value, etc., there was now even more concern about the disruption of the federally regulated water and land. She asked if the developers had filed for a Section 404 permit from the Corp of Engineers, and if so, what plans were in place to ensure that the Clean Water Act was upheld.

Citizen Don Partrich stated his address was 18606 E. 96th Street. He noted when it rained, he had a large gully which flowed through his property (over which he built a bridge) and his two adjoining neighbors' properties. He stated when Seven Oaks was built, the stormwater flow increased across his property and he did not need any additional water flow. He stated he was also concerned about 96th Street which was not a road which could handle any additional traffic and already was challenging to navigate. He asked why there was only one entrance for this development. He asked if the development intended to utilize other neighborhoods for an entrance. He commented the surrounding neighborhoods all had two entrances. He noted he did not object to development of a housing addition here; however, he was concerned about 270 homes utilizing one entrance. He recommended the developer buy the church next door and build a second entrance.

Citizen Rodger Sanford stated his address was 25922 Willow Street. He stated he understood this property would be developed. He encouraged the developer to mitigate all problems. He listed some items he hoped could be added to the PUD: 1) Surcharge on the water bill in the new subdivision for pond maintenance; 2) Retaining wall built between his neighborhood and the new subdivision; 3) Bond from the builder for \$1 million dollars during construction and for 24 months after construction for losses and damages to surrounding residences; and 4) Engineering to prevent pollution runoff. He stated it was important to do things right the first time.

Mr. Erik Enyart stated he appreciated the input from the Citizens. He noted he would provide his contact information to the Citizens following the meeting. He stated many of the concerns were regarding environmental concerns. He stated the developer was very sensitive to environmental quality and the quality of the stormwater which would flow from the pond which would be engineered, rebuilt, and enhanced. He stated he was working with City Staff to ensure a stormwater quality program was provided which met the expectations of the City and the City Council. He stated a number of other concerns were already addressed through the codes, standards and regulations Broken Arrow had in place.

Chairperson Whelpley asked about the entrance. Mr. Enyart responded the main entrance would be off of 9th Street/Lynn Lane, but there was a minimum of two other street connections, one into Washington Lane to the north and one into Seven Oaks to the east. He stated the one on 96th Street would be gated as per the PUD. He indicated there was also a connection to 13th Street and Washington Lane, but there was a complication at this connection.

Chairperson Whelpley noted when housing additions were constructed, often there were stub streets which were intended to be used as connections with the next housing addition which was built. Mr. Enyart concurred.

Mr. Curtis asked whether the developer had applied for a 404 permit. Mr. Enyart responded he was unsure; the developer would go through any environmental steps which were necessary and would apply for a 404 permit if required. Mr. Curtis stated if a 404 permit were required, the City would be enforcing the permit as a part of the design standards with the City. He asked if Mr. Enyart agreed the City put on the checklist a requirement to have mitigation for stormwater in regard to clean water, specifically additional buffers to clean out the water as it entered the pond. Mr. Enyart responded in the affirmative; there was an engineering review comment which specifically called for mitigation measures and in the Technical Advisory Committee meeting different options were discussed. He stated he would continue to work with City Staff and specifically discuss the mitigation plans.

Mr. Curtis asked, in regard to bonding, if Mr. Enyart agreed as part of the development process the City required by ordinance a bond be put in place for the maintenance and construction of this development, specifically the construction, to ensure it was constructed to City Standards and maintenance was in place for one year to ensure if there were any issues

with the construction, the maintenance bond was in place to resolve said issues. Mr. Enyart responded in the affirmative; bonding was obtained for every project.

MOTION: A motion was made by Jaylee Klempa, seconded by Julea’ Marriott.

Move to approve Item 8A as recommended by Staff

The motion carried by the following vote:

Aye: 3 - Julea’ Marriott, Jaylee Klempa, Lee Whelpley
Recused: 1 - Ricky Jones

9. Remarks, Inquiries, and Comments by Planning Commission and Staff (No Action)

Mr. Curtis reported City Council approved the process going forward for three items: 1) The creation of a new subcommittee for Elm and New Orleans, specifically an advisory committee. The old advisory committee was dissolved, and a new seven-member committee was being formed (five members would be appointed by City Council, one by the City Manager and one by the Chamber). 2) City Council has approved moving forward with an RFQ (request for qualifications) for an Overlay District for New Orleans Square. 3) City Council approved moving forward with an RFP (request for proposal) for a transportation, walkability, streetscape, and intersection study for the New Orleans Square area.

Ms. Jill Ferenc reported City Council, for the first time in recent history, approved a Proclamation to celebrate October as the National Community Planning Month. She commended and thanked the Planning Commission.

10. Adjournment

The meeting adjourned at approximately 5:57 p.m.

MOTION: A motion was made by Ricky Jones, seconded by Julea’ Marriott.

Move to adjourn

The motion carried by the following vote:

Aye: 4 - Julea’ Marriott, Jaylee Klempa, Ricky Jones, Lee Whelpley