City of Broken Arrow

Request for Action

File #: 18-180, **Version:** 1

Broken Arrow City Council
Meeting of: 1-16-2018

To: **Mayor and City Council Members**
From: **Development Services Department**
Title:

Consideration, discussion, 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 North Elm Avenue, one-quarter mile south of Omaha Street

Background:

Planned Unit Development (PUD) 266 and BAZ-1986 involve a 19.64-acre undeveloped tract located east of North Elm Avenue, one-quarter mile south of Omaha Street. Applicant is requesting that the zoning on the unplatted property be changed from A-1 to PUD 266/RM (Multi-family Residential).

On September 15, 2015, the City Council approved BACP 146 to change the Comprehensive Plan designation on the property from Level 2 to Level 3, subject to the property being platted and a PUD being submitted that was similar in context to the draft PUD submitted with BACP 146.

PUD 266 is similar in context to the draft PUD submitted with BACP 146. A summary of the differences between the draft PUD, PUD 266, and what the Zoning Ordinance requires is provided below.

Category	Zoning Ordinance	Draft PUD submitted with BACP 146	PUD 266
Permitted Uses	As allowed in the RM District	Limited to multifamily dwellings and customary accessory uses	Limited to multifamily dwellings and customary accessory uses
Maximum Number of Dwelling Units	389 (19.64 x 43,560 ÷ 2,200 = 388.9)	300 units in Phase I 20 units in Phase II Total 320 units	285 units in Development Area A 35 units in Development Area B Total 320 units
Minimum Livability Open Space per unit	1,200 square feet	1,200 square feet	1,200 square feet

Maximum Building Height	No restriction	45 feet, buildings limited to 3 stories in height, except for building that are located within 100 feet of the north, east, and west boundaries ae limited to two stories. In Phase II, building limited to two stories.	*Development Area A* - 3 stories, except buildings located within 100 feet of the north, east, and west boundary limited to 2 stories. *Development Area B* - 3 stories, except buildings located within 100 feet of the east boundary limited to 2 stories.
Minimum building setbacks	35 feet unpaved, 75 feet with parking	North property line - 40 feet West property line - 50 feet East property line - 60 feet South property line - 25 feet Internal property lines - 0 feet	*Development Area A* North property line - 35 feet West property line - 50 feet East property line - 35 feet South property line - 25 feet Internal property lines - 25 feet *Development Area B* North property line - 25 feet West property line - 35 feet with no parking, 75 feet with parking East property line - 25 feet South property line - 25 feet
Maximum building length	160 feet	200 feet	*Development Area A* 200 feet *Development Area B* 160 feet
Minimum distance between buildings	20 feet	20 feet	20 feet
Minimum off-street parking	2 per unit	1.5 per one bedroom and 2 per two bedroom unit	1.5 per one bedroom and 2 per two bedroom unit
Maximum building coverage	50%	50%	30%

Building design requirements	At least 60% of the exterior of the building, excluding doors and windows, shall be constructed of but not limited to masonry, concrete panels, Exterior Insulated Finished Systems, and/or stucco. In addition, 20% of the street facing façade shall be constructed of natural brick or masonry rock.	Exterior building walls within 150' of north and west boundary shall have a minimum masonry finish of either brick and/or stone of not less than 65% excluding windows and doors at perimeter facing walls and associated sidewalls. All other exterior building walls shall have a minimum masonry finish of either brick and/or stone of not less than 25% excluding windows and doors.	*Development Area A* Exterior walls within 150' of the north or west boundary of the Development Area shall have a minimum masonry finish of not less than 65% of brick or masonry rock of perimeter facing walls. All other walls shall be constructed of not less than 25% of brick or masonry rock, excluding windows and doors. *Development Area B* Exterior walls within 100' of the west boundary or 50' of the north boundary of the Development Area shall have a minimum masonry finish of not less than 65% of brick or masonry rock for perimeter facing walls. All other walls shall be constructed of not less than 25% of brick or masonry rock, excluding windows or doors.
Street design and access	Curb cuts on the same side of an arterial street are to be spaced at least 250 feet apart, centerline to centerline.	Access points shall meet the requirements of the Zoning Ordinance.	With the existing raised median, the requirement to have access points on the same side of the street be spaced 250 feet apart, centerline to centerline, will not be required.

Sidewalks	5-foot wide sidewalk required along arterial streets, 4-foot wide required along other streets.	Public sidewalks to be constructed on both sides of the boulevard street by the developer.	Sidewalks to be constructed per the Subdivision Regulations. In addition, a sidewalk will be constructed by the developer along the side of the proposed road extension where the extension directly abuts the Broken Arrow Public School property. Sidewalk will be constructed at the same time as the road extension along the north property line.
Landscaping	35-foot wide landscape buffer required around the perimeter of the property. Tree requirements consist of one tree per 50 feet of street frontage, two trees per unit, and one tree per 10 parking spaces. In addition, five shrubs shall be provided per dwelling unit.	Per the Zoning Ordinance, except that only one 3-inch caliper tree required per dwelling unit. In addition, 7.5 three gallon and 5 one gallon shrubs required per dwelling unit. Landscape edge required to be 50 feet along west boundary, 35 feet along north boundary, and 25 feet along remaining boundaries. In addition, the landscape islands in the parking lot can be replaced with walkways that connect to breezeways.	Per the Zoning Ordinance, except that along the south boundary of Development Area A and north and east boundary of Development Area B, the width of the landscape edge is reduced from 35 feet to 25 feet. In addition, the landscape islands in the parking lot can be replaced with walkways that connect to breezeways.

According to the FEMA maps, none of the property associated with PUD 266/BAZ-1986 is located within a 100-year floodplain area. According to the design statement for PUD 266, a detention facility will be constructed at the northeast corner of the property and extend onto the Broken Arrow school property. The detention facility will be designed to accommodate the needs of the Broken Arrow school property, the proposed multifamily developments, and the future single family residential tracts.

In their meeting of October 12, 2017, the Planning Commission recommended approval (4-1 vote) of PUD 266 and BAZ-1986, subject to the property being platted. During the Public Hearing, one speaker spoke in support

of the application. The property owner to the south expressed support for the application, but was concerned about the reduction in the width of the landscape buffer along the south boundary from 35 feet to 25 feet. Three residents in the Country Lane addition to the east expressed concern about the impacts (increase in traffic and crime) the proposed development could have on their neighborhood.

PUD-266 and BAZ-1986 were placed on the November 7, 2017 City Council meeting agenda for consideration. The items were then continued to the Council Meeting of November 21, 2017. At that meeting, two of the Council Members left the meeting and did not participate in the discussion or the vote. At least seven (7) residents were present at the meeting and expressed concerns about this project. Two (2) of the remaining Council Members voted in favor of the project. One of the remaining Members voted against it. At the time of the vote, it was announced that a three-fifths favorable vote of all members was required to approve the zoning change. It was announced at the meeting the motion for approval had failed.

Following the meeting City Staff, including the Legal Department, began the process of evaluating the law and the process involved in this matter and on November 29, 2017, the applicant requested that the City review the decision. Section 6.3.D.g.iii of the City of Broken Arrow Zoning Ordinance states in regards to protests: "Any owner of property effected by a proposed (map) amendment may protest the amendment pursuant to the statutory requirements of O.S. (Oklahoma Statues) Title 11 Section 43-105."

Title 11, Section 43-105 of the Oklahoma State Statutes provides as follows:

A. Regulations, restrictions and district boundaries of municipalities may be amended, supplemented, changed, modified or repealed. The requirements of Section 11-43-104 of this title on public hearings and notice shall apply to all proposed amendments or changes to regulations, restrictions or district boundaries.

B. Protests against proposed changes shall be filed at least three (3) days before the date of the public hearings. If protests are filed by:

1. the owners of twenty percent (20%) or more of the area of the lots included in a proposed change, or
2. the owners of fifty percent (50%) or more of the area of the lots within a three hundred (300) foot radius of the exterior boundary of the territory included in a proposed change; then the proposed change or amendment shall not become effective except by the favorable vote of three-fourths of all the members of the municipal governing body where there are more than seven members in the governing body, and by three-fifths favorable vote where there are seven or less members in the governing body.

In accordance with State Law, the public hearing was held by the Planning Commission on October 12, 2017. No protests were filed with the City Clerk's office three (3) days before the date of the public hearing.

As such, a three-fifths vote was not required for conditional approval of BAZ-1986 and PUD-266. However, to maximize transparency and to avoid the appearance of action outside of the public view, City Staff is proposing reconsideration of this matter before the Broken Arrow City Council. Notice of this reconsideration was mailed to all residents within a 300-foot radius and is attached for the Council's review.

On December 13, 2017, the City Attorney received a letter from Scott Hathaway, an attorney with the firm of Conner & Winters, LLP. Mr. Hathaway is representing a number of the residents that are protesting rezoning of

this area. He took the position that at the November 21st Council Meeting, that the two (2) Council Members who left the room abstained and therefore the measure should have been denied by three (3) as the abstentions would count as a "no" vote. The Legal Department takes the position that because the two (2) Members left the room, there were no abstentions. This position is supported by the independent opinion of well-respected municipal attorney Margaret McMorrow-Love in Oklahoma City and the Oklahoma Municipal League's General Counsel.

On January 2, 2018, on behalf of Henry and Vestina Hanewinkel, Mr. Hathaway filed this action against the City of Broken Arrow and the developers Brown and Perkins, L.L.C. The City has been served with this suit and the answer is due on January 28, 2018. The Plaintiffs take the position that the measure should have been denied. They also allege that the matter should not be reconsidered by the Council for a full year pursuant to the Broken Arrow Zoning Code. Staff takes the position that the Council possesses the ability to reconsider the PUD and rezoning request. First, reconsideration is recommended due to the contradictory announcement and to maximize transparency. Second, the Council possesses the ability to waive City ordinances when appropriate. In the instant case, the one (1) year requirement was initiated to keep applicants from re-submitting applications repeatedly on issues that had been denied. That is not the case with this particular reconsideration.

In January 11, 2018, Concerned Residents of Broken Arrow submitted a "Letter in Protest" of this development. It included a cover letter and the signature of 36 individuals. The packet also included letters to the Planning Commission and a Protest with numerous signatures that were presented in 2015 during the process to change the Comprehensive Plan. A copy of this packet is attached for the Council's review.

The developers are being represented by Laurence Pinkerton. They take the position that the re-zoning and the PUD were approved so there is no need for reconsideration. They also take the position that denial of the applications are arbitrary and capricious and will seek district court action if the re-zoning and the PUD are not granted.

The City of Broken Arrow handles rezoning applications somewhat differently than other cities. Rezoning and PUD's receive essential conditional approval by the City Council. Once the requirements of re-zoning have been met, formal approval is presented to the Council in ordinance form. In this case, the applicant was required to plat the property before BAZ-1986 and PUD-266 will be finally approved. This process is utilized to ensure compliance with various conditions prior to formal approval.

Importantly, a majority vote of all the members of the City Council are required to adopt an ordinance. This provision is contained in 11 O.S., Section 14-102 of the Oklahoma Statutes. As a result, even if the conditional rezoning and PUD approval were approved by a 2-1 vote, the measures would not be approved if fewer than three (3) Council Members declined to adopt the ordinance.

Further complicating this situation is Section 6.3.D of the Broken Arrow Zoning Code which addresses platting and the subsequent adoption of zoning ordinances. It provides in pertinent part:

> "(A) All land that has been rezoned shall be platted in accordance with the requirements of the Broken Arrow Subdivision Ordinance in order to provide for the proper arrangement of streets, assure the adequacy of open space for traffic, provide for utilities, and allow access of emergency vehicles. No map amendment for a zoning change, nor the ordinance proclaiming this change, may be approved by the City Council until the property has been platted in accordance with the Subdivision Ordinance. However, the City Council may waive the platting

requirement in those instances in which nothing would be accomplished through enforcement of the platting requirement, such as in those instances in which the land is included within the existing plat of record that adequately provides for the necessary public features, or where these public features have been previously provided by other instruments."

Importantly, however, consideration of the ordinance under these circumstances at some time in the future places the City at risk, particularly if the developer elects to move forward with activities on the property such as engineering, platting, and possible site work. At that time, the developer or a subsequent landowner would certainly claim that the City had deprived them of the use of their property by failing to adopt the ordinance and rezoning the property. Damages could be substantial. For that reason and also due to the pending litigation, if the conditional rezoning is approved, Staff will place the ordinance on for consideration at the next City Council meeting. This will be a noted deviation from practice, but in the opinion of the City Attorney, failure to consider it and address it at an early stage puts the City at risk. The pending litigation will also be on for consideration in Executive Session at the next meeting.

The City Attorney will review this item in detail and will be prepared to answer any questions.

Cost: **$0**

Prepared By: **Brent Murphy, Senior Planner**

Reviewed By: **Development Services Department**
Assistant City Manager, Operations
Legal Department

Approved By: **Michael L. Spurgeon, City Manager**

Attachments: **1-FACT SHEET.PLANNING COMMISSION**
2-CASE MAP.PUD 266/BAZ-1986
3-AERIAL PHOTO.PUD 266/BAZ-1986
4-CASE MAP.BACP 96
5-PUD 266 DESIGN STATEMENT AND SITE PLAN
6-DRAFT DESIGN STATEMENT SUBMITTED WITH BACP 146
7-APARTMENTS NORTH OF BROKEN ARROW EXPRESSWAY
8-INFORMATION SUBMITTED BY CONCERNED RESIDENTS

Recommendation:

As directed by the City Council.

LRC:BDM