



City of Broken Arrow

Request for Action

File #: 19-239, Version: 1

**Broken Arrow City Council
Meeting of: 02-07-2019**

Title:

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

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 Broken Arrow City Council approved a change in the Comprehensive Plan designation on an undeveloped tract of land located east of North Elm Avenue, and one-quarter mile south of Omaha Street, in Broken Arrow, Tulsa County, Oklahoma. The approval changed the designation 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. Following approval of the Comprehensive Plan, the applicants filed a rezoning application seeking approval of BAZ-1986 and PUD-266, which would have changed the property from A-1 to multi-family.

In their meeting of October 12, 2017, the Planning Commission recommended approval 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 the applications had failed because a three-fifths favorable vote of all members was required to approve the zoning change.

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 Statutes) 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 proposed reconsideration before the Broken Arrow City Council. Notice of this reconsideration was mailed to all residents within a 300-foot radius.

On January 2, 2018, Henry and Vestina Hanewinkel, filed suit against the City of Broken Arrow and the developers Brown and Perkins, L.L.C requesting a declaratory judgment that the November 21, 2017 vote was a denial of PUD-266 and BAZ 1986 and the City was prohibited from reconsidering the matter for one year.

On January 16, 2018, the City Council reconsidered and approved PUD-266 and BAZ-1986 on 19.64 acres located east of North Elm Avenue, one-quarter mile south of Omaha Street. BAZ-1986 involved a request to change the zoning from A-1 (Agriculture) to RM (Residential Multifamily). PUD-266 and BAZ 1986 were approved subject to the property being platted.

On February 20, 2018, City Council considered Ordinance No 3512 that would amend the zoning ordinance of the City of Broken Arrow BAZ-1986, grant PUD-266 and place Residential Multi-Family zoning classification upon the tracts, repeal all ordinances or parts of ordinances in conflict therewith and declare an emergency. The City Council failed to pass Ordinance No. 3512 in a 2-1 vote pursuant to 11 O.S. §14-102.

On May 25, 2018 Tulsa County District Court Judge Mary Fitzgerald dismissed the Hanewinkel’s lawsuit against the City of Broken Arrow.

On September 13, 2018, Brown & Perkins submitted its development plans. On October 26, 2018 Brown & Perkins, LLC (applicant for BAZ-1986 & PUD-266) filed a civil action against the City of Broken Arrow challenging the failure of Ordinance No. 3512.

On December 20, 2018, Brown & Perkins submitted information for staff to review. This information included

street layout and initial site development. The applicant for BAZ-1986 and PUD-266 believes with this information that the concerns raised at the January 16 and February 20, 2018 meetings have been solved.

On December 28, 2018, the City mailed notice of consideration of BAZ-1986 and PUD-266 at the regularly scheduled City Council meeting on Tuesday, February 5, 2019. On January 28, 2019, the City mailed notice that the February 5, 2019 public hearing was rescheduled to Thursday, February 7, 2019 at 6:30p.m. due to a scheduling conflict. Both notices were mailed to all residents within a 300 foot radius of this project.

Staff has reviewed the submitted information and found that it corrects concerns of traffic congestions, pick-up safety concerns for children. It is noted that the proposed submitted PUD must be amended in order to alleviate these concerns. On page 3 of the design statement of the PUD, the requirement for 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 property” will need to be removed. The reason for this is to allow for better traffic flow and emergency access/turnaround.

The property has obviously not yet been platted and advancement of the Ordinance is outside the normal process. However, in order to eliminate the need for additional legal action and briefing, it is recommended that the Council take action on the zoning at this time.

Cost: Recording Fees

Funding Source: Operating Funds

Requested By: Trevor Dennis, City Attorney

Approved By: Michael L. Spurgeon, City Manager

Attachments: Ordinance No. 3548

Recommendation:
As Council Directs.