

TULSA METROPOLITAN AREA PLANNING COMMISSION

Minutes of Meeting No. 2104

Wednesday, March 12, 1997, 1:30 p.m.

City Council Room, Plaza Level, Tulsa Civic Center

Members Present

Ballard
Boyle
Carnes, Chairman
Doherty, 1st Vice Chairman
Gray
Midget, Mayor's Designee
Pace
Westervelt, Secretary

Members Absent

Dick
Horner
Ledford

Staff Present

Almy
Gardner
Stump

Others Present

Romig, Legal
Counsel

The notice and agenda of said meeting were posted in the Office of the City Clerk on Friday, March 7, 1997 at 12:50 p.m., in the office of the County Clerk at 12:48 p.m., as well as in the Reception Area of the INCOG offices at 1:00 p.m.

After declaring a quorum present, Chairman Carnes called the meeting to order at 1:30 p.m.

Minutes:

Approval of the minutes of February 26, 1997, Meeting No. 2102:

On **MOTION** of **BOYLE**, the TMAPC voted **7-0-0** (Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Ballard, Dick, Horner, Ledford "absent") to **APPROVE** the minutes of the meeting of February 26, 1997 Meeting No. 2102.

REPORTS:

Committee Reports:

Comprehensive Plan Committee

Mr. Doherty stated there is an item on the March 13, 1997 City Council meeting to reclassify the Elm Creek Basin and Whittier School Acquisition Projects from "important" to "critical" in the City of Tulsa Capital Improvement Project requests for 1997.

Rules and Regulations Committee

Mr. Doherty stated Bob Gardner, Jay Stump and himself had attended the Public Safety Committee Meeting of the City Council to discuss private streets. The Council expressed several concerns, in particular, when the City is asked to take over the maintenance of a private street at a future date. He stated there may be a request for a Budget and Work Program item to address this issue.

Community Participation Committee

Ms. Gray stated there is a committee meeting scheduled for March 26, 1997 to review the reports received from participants that attended the training session/workshop.

ZONING TEST AMENDMENT PUBLIC HEARING:

Proposed Amendments to Title 42, Tulsa Revised Ordinances (Tulsa Zoning Code) and to the Tulsa County Zoning Code in regards to regulation of communication towers.

Rules and Regulations Committee Comments:

Mr. Doherty presented the accompanying draft ordinance in regards to regulation of communication towers.

(Published in the Tulsa Daily Commerce
and Legal News,

_____, 1997)

Ordinance No. _____

TITLE

BE IT ORDAINED BY THE CITY OF TULSA:

Section 1. That Title _____, Chapter _____, Section _____, Tulsa Revised Ordinances, be and the same is hereby created to read as follows:

Section 1204 C. Purpose.

The purpose of this section is to establish requirements for the location of wireless communications towers and antennas. The goals of this ordinance are to: (1) protect residential areas and land uses from potential adverse impacts of towers and antennas; (2) encourage the location of towers in non-residential areas; (3) minimize the total number of towers throughout the community; (4) strongly encourage the joint use of new and existing tower sites as a primary option rather than construction of additional single-use towers; (5) encourage users of tower and antennas to locate them, to the extent possible, in areas where the adverse impact on the community is minimal; (6) encourage users of towers and antennas to configure them in a way that minimizes the adverse visual impact of the towers and antennas through careful design, siting, landscape screening and innovative camouflaging techniques; (7) enhance the ability of the providers of telecommunications services to provide such services to the community quickly, effectively, and efficiently; (8) consider the public health and safety of communication towers; and (9) avoid potential damage to adjacent properties from tower failure through engineering and careful siting of tower structures. In furtherance of these goals, City of Tulsa shall give due consideration to the City of Tulsa's master plan, zoning map, existing land uses, and environmentally sensitive areas in approving sites for the location of towers and antennas.

Section 1204 C.1. Exclusions.

The following activities shall be exempt from these regulations:

- a. Amateur radio operators,
- b. Microwave reflectors and parabolic antennas,
- c. Antennas and equipment completely located inside of buildings, and
- d. Minor modifications of existing wireless communications facilities and attached wireless communications facilities, whether emergency or routine, provided there is little or no change in the visual appearance. Minor modifications are those modifications, including the addition of antennas, to conforming wireless and attached wireless communications facilities that meet the performance standards set forth in this document.

Section 1204 C.2. Definitions.

As used in this ordinance, the following terms shall have the meanings set forth below:

- a. "Antenna" means any exterior transmitting or receiving device used in communications to radiate or capture electromagnetic waves, digital signals, analog signals, radio frequencies, wireless telecommunications signals or other communication signals.
- b. "FAA" means the Federal Aviation Administration.
- c. "FCC" means the Federal Communications Commission.
- d. "Height" means, when referring to a tower or other structure, the distance measured from the finished grade of the parcel to the highest point on the tower or other structure, including the base pad.
- e. "Preexisting towers and preexisting antennas" means any tower or antenna which lawfully existed on the effective date of this ordinance, including

permitted towers or antennas that have not yet been constructed so long as such approval is current and not expired.

- f. "Tower" means any structure more than fifteen (15) feet tall that is designed and constructed primarily for the purpose of supporting one or more antennas for telephone, radio and similar communication purposes, including self-supporting lattice towers, guyed towers, or monopole towers.

The term includes radio and television transmission towers, microwave towers, common-carrier towers, cellular telephone towers and the like. The term includes the structure and any support thereto.

Section 1204 C.3. General Requirements for Antennas and Towers

- a. Principal or Accessory Use. Towers may be considered either principal or accessory uses. A different existing use on the same lot shall not preclude the installation of a tower on such lot.
- b. Towers and antennas shall meet the following requirements:
- (1) Towers and antennas shall be designed to blend into the surrounding environment through the use of color, including galvanizing, or camouflaging architectural treatment, except in instances where the color is dictated by federal or state authorities such as the Federal Aviation Administration.
 - (2) Other than in Moderate Industrial or Heavy Industrial zoning districts, communication towers shall be of a monopole design unless the Board of Adjustment determines by special exception that an alternative design would adequately blend into the surrounding environment, or that the required antennas cannot be supported by a monopole.

- (3) If an antenna is installed on a structure other than a tower, the antenna and supporting electrical and mechanical equipment must be of a color that is identical to, or closely compatible with, the color of the supporting structure so as to make the antenna and related equipment as visually unobtrusive as possible.
- c. Not Essential Services. Towers and antennas shall be regulated and permitted pursuant to this ordinance and shall not be regulated or permitted as essential services, public utilities, or private utilities.
- d. Tower Lighting. Towers shall not be illuminated by artificial means and shall not display strobe lights unless such lighting is specifically required by the Federal Aviation Administration or other federal or state authority for a particular tower. When incorporated into the approved design of the tower, light fixtures used to illuminate ball fields, parking lots, or similar areas may be attached to the tower.
- e. Signs and Advertising. The use of any portion of a tower for signs other than warning or equipment information signs is prohibited.
- f. Accessory Utility Buildings. All utility buildings and structures accessory to a tower shall meet all the requirements of the underlying zoning district. Exterior ground mounted equipment occupying more than 50 square feet shall be screened from view from property within 300 feet used for residential purposes.
- g. The following setback requirements shall apply to all towers; provided, however, that the Board of Adjustment may alter the setback requirements if the goals of this ordinance would be better served thereby;
- (1) Towers must be set back a distance equal to at least one hundred ten percent (110%) of the height of the tower from any adjoining lot line of a residential, office or

agricultural zoned lot, excluding expressway right of ways zoned residential.

(2) Guys and accessory buildings must satisfy the minimum zoning district setback requirements.

h. Security fencing. Towers shall be enclosed by security fencing not less than six (6) feet in height or shall be equipped with an appropriate anti-climbing device; provided, however, that the Board of Adjustment may modify or waive such requirements by special exception.

Section 1204 C.4. Antennas and Towers Permitted by Administrative Approval

Conforming antennas or towers, except those approved or requiring approval by the Board of Adjustment (Section 1204 C.5.), shall comply with the following standards.

a. When located in C, I, or SR zoning districts, provided that towers shall be set back from an R District boundary line one-hundred ten percent (110%) of the height of the tower measured at grade. The setback may be modified by special exception by the Board of Adjustment pursuant to Section 1608 of this code; or,

b. When antennas are to be attached to a roof or wall of buildings in commercial or industrial zones, or to office or multi-family buildings of two or more stories, or to institutional buildings such as schools, churches and hospitals with architectural elements more than thirty-five (35) feet tall, provided that:

(1) An antenna does not extend more than twenty (15) feet above the highest point of the building, or if located on an architectural feature such as a steeple or bell tower does not protrude above that structure; provided, however, that the Board of Adjustment may modify such requirements by special exception; and

- (2) The antennas comply with all applicable FCC and FAA regulations; and
 - (3) The antennas comply with all applicable building codes.
- c. When antennas are to be attached to an existing tower, and/or city owned buildings or structures,
 - d. When the tower is to be modified or reconstructed to accommodate the collocation of antennas, and
 - (1) the tower is of the same type as the existing tower or is to be constructed as a monopole, and
 - (2) the modification or reconstruction does not exceed thirty (30) feet over the height of the existing tower and setback requirements are met.

Section 1204 C.5. Antenna and Towers Requiring Special Exceptions.

If a tower or antenna is not permitted pursuant to Section 1204 C.4 of this Chapter, a special exception shall be required for the construction of a tower or replacement of an antenna in all zoning districts.

- a. Factors to be considered in granting a special exception. In addition to any other requirements of this section, the following factors shall be considered in the determination to grant or deny a special exception for an antenna or tower:
 - (1) Height of the proposed tower;
 - (2) Proximity of the tower to residential structures, residential district boundaries and existing towers;
 - (3) Nature of uses on adjacent and nearby properties;
 - (4) Surrounding topography;

- (5) Surrounding tree coverage and foliage;
 - (6) Design of the tower, with particular reference to design characteristics that have the effect of reducing or eliminating visual obtrusiveness;
 - (7) The total number and size of antennas proposed;
 - (8) Architectural design of utility buildings and accessory structures to blend with the surrounding environment.
 - (9) Proposed ingress and egress;
 - (10) The need for a communication tower within the immediate geographic area to provide an acceptable level of communications service to area residents;
 - (11) In AG districts, the size of the tract and the most likely future development as indicated by the Comprehensive Plan, planned infrastructure, topography and other physical facts.
- b. Colocation. Colocation of facilities should be encouraged wherever practical by allowing reasonable extra height or tower diameter necessary to support multiple antennas, provided that the resulting structure is compatible with the surrounding neighborhood.
- c. Landscaping. The following requirements shall govern the landscaping surrounding towers for which a special exception is required; provided, however, that the Board of Adjustment may modify or waive such requirements by special exception.
- (1) Tower facilities shall be landscaped with a continuously maintained buffer of plant materials that effectively screens the view of the tower compound from property within 300 feet used for residential purposes. The standard buffer shall consist of a landscaped

strip at least four (4) feet wide outside the perimeter of the compound.

- (2) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large, wooded lots, natural growth around the property perimeter may be sufficient buffer.

Section 1204 C.6. Removal of Abandoned Antenna and Towers.

Any antenna or tower that is not operated for a continuous period of six (6) months shall be considered abandoned, and the owner of such antenna or tower shall remove the same within ninety (90) days of receipt of notice from the City of Tulsa notifying the owner of such abandonment. Failure to remove the abandoned antenna or tower within said ninety (90) days shall be grounds for the City of Tulsa to remove the antenna or tower at the owner's expense.

A valid and enforceable contract requiring the owner of the property upon which a tower is to be constructed to remove the tower in accordance with the provisions of this ordinance must be executed and delivered to the City of Tulsa prior to the issuance of any building permit or the commencement of any construction. This requirement shall not apply to property that is owned by the City of Tulsa or property that is owned by the operator of the tower. The removal contract shall grant the City of Tulsa the right to place a lien on the property of any owner who defaults on said person's obligation to remove the tower in a timely manner.

Existing Towers and Antenna. Antenna and towers lawfully existing at the time this ordinance is adopted shall be allowed to continue their usage as they presently exist. Routine maintenance shall be permitted on such existing towers. New construction other than routine maintenance shall require compliance with the requirements of this ordinance.

Section 2. PROTECTION OF EXISTING RIGHTS AND REMEDIES.

That nothing in this Ordinance shall be construed to affect any suit or proceeding pending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing under any act or ordinance hereby repealed; nor shall this Ordinance require any changes in work which have been

lawfully authorized prior to the adoption of this Ordinance, so long as such work is actually commenced within sixty (60) days after the adoption of this Ordinance.

The section below is only used when there are numerous sections being amended - per Norma and per Bill N. 9/27/90.

Section . SEVERABILITY. If any section, subsection, paragraph, subparagraph, sentence, clause or phrase of this Ordinance shall be declared invalid for any reason whatsoever, such decision shall not affect the remaining portions of this Ordinance, which shall remain in full force and effect, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. EMERGENCY CLAUSE. That an emergency is hereby declared to exist for the preservation of the public peace, health and safety, by reason whereof this Ordinance shall take effect immediately from and after its passage, approval and publication.

ADOPTED by the Council this ____ day of _____, 1997.

ADOPTED as an emergency measure this ____ day of _____, 1997.

Chairman of the Council

OFFICE OF THE MAYOR

Received by the Mayor this ____ day of _____, 1997, at ____ o'clock __. m.

M. Susan Savage, Mayor

By _____
Secretary

APPROVED by the Mayor of the City of Tulsa, Oklahoma, this ____ day of _____, 1995 at ____ o'clock __.m.

Mayor

—
(Seal)

ATTEST:

City Clerk

APPROVED:

City Attorney

Mr. Doherty pointed out that the changes in the proposed ordinance. Section 1204 C.6., paragraph two, in regards to removal of towers, were included as requested by Councilor Doverspike. Page 3, definition of tower, was amended to place a threshold on the structure. Also, Page 5, Section 1204 C.4.b. was modified to restrict the placement of antennas to taller or larger buildings.

Mr. Doherty stated these are significant changes and other changes or one-word changes. He stated the substance has not changed for the previous draft.

Interested Parties Comments:

Vicky Hale, 100 West 5th, Suite 1000, 74103, stated her comments are limited to the new information that was added after last week's meeting.

Ms. Hale referred to page 7, item 10. She feels this item is too ambiguous and will require interpretation. She feels the item needs to be more concrete or be removed/stricken entirely. She stated a communications company would not be before the BOA seeking a special exception if a tower was not needed in the area.

Ms. Hale referred to page 8, the new provision dealing with removal contracts. The provision requires the property owner to enter into a contract with the City providing for the removal of the tower and permitting the City to place a lien on the property if the property owner defaults on the removal. She expressed concern that the provision places or has the potential to place a heavy burden on the property owner instead of upon the owner of the tower or the communication company. She stated tower removal can be very expensive.

However, if the Commission decides to leave this provision in, Ms. Hale suggested that it be modified to provide that the requirement would not apply when the property owner and the communications company have entered into or included a provision in their lease agreement which provided for removal of the towers. Also, she recommended exempting or limiting this provision to residential areas since this is the area the City is most concerned about in regards to aesthetics.

Kevin Coutant, 320 South Boston, Suite 500, 74103, stated he remains concerned with item b.1., a general requirement for all towers, even those allowable by right, that requires camouflaging architectural treatment and require decisions or interpretation by the building inspector or zoning clearance officer. He suggested this decision or interpretation should be the duty of the Board of Adjustment.

Mr. Coutant stated he is in agreement with Ms. Hale in regards to item 10 on page 7 in that it should be deleted or clarified. He suggested adding the words "by the applicant".

Mr. Coutant stated his biggest concern today is on page 7, the section added in regards to a removal contract. He feels the removal contract has its origin, in his experience, with the City. In instances involving private property, private improvements on public lands and during licensing arrangement there is often a commitment on the part of the property owner to remove the private improvement at such time there is a need for it by the public. He feels this is the idea behind this provisions. He stated communication towers are private improvements on private properties.

Mr. Coutant stated he understands there are concerns with future problems with the removal of the tower, but feels it is conjectural. He feels this provision is burdensome and is based on speculation. He feels there are other structures and uses that are more harmful to the aesthetics of the City. Also, he stated there is not a removal provision for these other structures or uses.

Mr. Coutant feels the provision, if approved, should be applied to other structures and uses across the board and not just communication towers. In his opinion, Mr. Coutant feels the provision should be omitted.

Mr. Coutant stated he provided language to Mr. Doherty in regards to modification of Section 1608 in regards to which items can be considered by the BOA as a special exception in regards to communication towers.

Stan Ewing, 7043 East 15th Street, 74112, stated he represents and works for Cook Inlet Western Wireless. He expressed concern with some of the provision and presented an outline identifying those concerns.

Mr. Ewing suggested Section 1204 C.1.c, in regards to exemptions for antennas, be redrafted to read: "Antennas and associated equipment which are architecturally hidden or completely located inside a building or structure, and". He stated it is extremely difficult to receive or transmit with the antenna completely inside a structure. He feels that antennas can be designed or painted to blend with the architecture of the structure.

Mr. Ewing stated the next area of concern is with Section 1204.C.3.b.1,2 and 3. He feels there are no provisions for administering or interpreting the requirements pertaining to "blending with the surrounding environment", "architectural treatment", "identical color" or "closely compatible with" and other provisions of this section. He feels these sections are requiring the building inspector or zoning office to make certain aesthetic decisions. He feels these decisions should be made by the Board of Adjustment.

Mr. Ewing suggested the second sentence of Section 1204.C.3.f be revised to read as follows: "Exterior ground-mounted equipment occupying more than 75 square feet shall be screened if located within 300' of and may be seen from property used for residential purposes." He stated the technology that Cook Inlet Western Wireless is using is a GSM cabinetry that consists of two units approximately five feet in height, five feet in length and two feet wide each. With the pedestal for electrical/telephone service, the entire unit will be the approximate size as currently proposed. He feels this should be increased to 75 feet to allow some leadway.

Mr. Ewing suggested that the 110% setback in the Agricultural District be from the nearest residential structure rather than property line in Section 1204.C.h.1.

Mr. Ewing presented some photographs in regards to landscaping. He suggested that Section 1204.C.5.C - Landscaping be revised to read: "Screening. The following requirements shall govern the visual screening of the tower compound for which a special exception is required; provided, however, that the Board of Adjustment may modify or waive such requirements by special exception.

(1) Tower compound facilities shall be screened from view of property within 300 feet being used for residential purposes. Screening may consist of either a screening wall or fences as described in Section 212. Screening wall or fence or a landscape strip at least four (4) feet wide shall be placed along the perimeter of the compound.

(2) Existing mature tree growth and natural land forms on the site shall be preserved to the maximum extent possible. In some cases, such as towers sited on large wooded lots, natural growth around the property may be sufficient screening."

Mr. Ewing feels vegetative landscaping is a difficult material to use to provide effective screening. It has to be irrigated and maintained. He feels vegetative landscaping is not appropriate for screening. The screening fence provides adequate screening with minimum maintenance.

In regards to the removal contract, Mr. Ewing feels this provision will cause a very significant impact on Cook Inlet. He feels the provision will cause the cost of leasing the property to increase significantly due to the owner wanting additional monies to cover the cost of removal. With Cook Inlet being new to the communication market, they will have an extreme competitive disadvantage in the market.

Mr. Ewing reminded the Commission of the four criteria of the 1996 Act for the consideration of zoning. The first criterion states: "Local zoning requirements may not unreasonably discriminate among wireless communication buyers that compete against each other." Number two, "Local zoning requirements may not prohibit or have the effect of prohibiting the provision of wireless telecommunication services." Three, "Local government must act on a request for permission to place or construct wireless telecommunication facilities within a reasonable time period." Finally, "Any City Council or Zoning Board decision denying request for permission to install or construct a wireless telecommunication facilities must be in writing and must be based on evidence in written record before the Council or Board."

Mr. Ewing feels the first criterion specifically states to make non-competitive decisions on the ordinance for telecommunication facilities.

Roy Johnsen, 201 West 5th, Suite 440, stated he represents AT&T Wireless. He stated it is difficult to get an ordinance at a meeting and fully understand it. However, he feels it is much improved from previous drafts. He stated he understands most of the important changes have been made and he has only minor concerns he wishes to discuss. He stated that, preliminarily, he is in agreement with the previous comments made by interested parties.

Mr. Johnsen requested clarification in regard to definition of towers height. He stated previous discussions was for a height of 20 feet.

Mr. Johnsen stated Section 1204.C.3.g the structure of the section seems to be backwards. He feels the requirement should be listed first and then the requirement may be modified. He stated this section is too vague and requires the building inspector to make a judgment or decisions. He feels the Board of Adjustment should make the decisions.

In regard to Section 1204.C.5.a.10, Mr. Johnsen feels the Telecommunication Act recognizes there will be some geographic locations that are mandatory to provide the service and if a City, by whatever means in their zoning ordinance, excludes the telecommunication company from ever making the service in the subject geographic location, it would run afoul of the act. He feels Mr. Norman was trying to say this provision is a relevant factor in the entire list of factors as to why a location may be appropriately granted.

Section 1204 C.5.b. - Collocation, Mr. Johnsen feels the last clause, which says, "provided that the resulting structure is compatible with the surrounding neighborhood" should be omitted, due to being too verbose with words like "provided that" and "compatible". He suggested the wording "the resulting structure is not inconsistent with the standards and purposes of this chapter."

In regards to the removal contract, Mr. Johnsen stated AT&T opposes this provision. He feels the removal contract should be by the provider of the tower and not the property owner. He questioned whether the lien will be placed upon the property where the tower is located or the owner's entire property.

TMAPC Comments:

Mr. Midget requested clarification of Section 1204 C.4.b.(1) in regards to twenty (15) feet. Mr. Doherty replied the number in parenthesis should read 20.

Mr. Midget asked what time limit was placed on the removal of towers, in regard to Councilor Doverspike's section. Mr. Doherty replied twelve months.

Mr. Romig, City Legal, stated that a question was asked earlier in regard to adding a new section b to Section 1204 C.5., and re-lettering accordingly. This involves the Telecommunications Act and written findings by the Board of Adjustment. Mr. Romig suggested the following language: "The findings of the Board of Adjustment, as to each of these factors, shall be made on the record and contained in the written minutes of the meeting".

Chairman Carnes feels the provision for removal is appropriate due to its being on the property, and an owner of the property will always be in existence, while the communication companies may not.

Mr. Midget reminded the Commission that the Rules and Regulations Committee is currently addressing the removal of outdoor advertising signs. He feels the removal of communication towers needs to be addressed and assurance given that the towers will be removed upon abandonment.

Mr. Doherty commented, in regards to Mr. Ewing's comments on landscaping, the section on landscaping was subsequently moved to the Use By Exception section. He noted the language the states the Board of Adjustment may modify or waive the requirements.

Mr. Doherty stated the definition of towers, in this proposal, is 15 feet in regards to height; however, after discussion with several interested parties, he does not oppose 20 feet in height since this will encourage placement on the top of buildings.

Mr. Boyle feels the provision on collocation has been misunderstood. He stated what the provision says is that it will encourage the collocation by permitting certain items.

After hearing from the interested parties, the Commission and staff, Mr. Doherty suggested removing the section in regards to the removal contract and making it a footnote, but not including it in the recommendation to the City Council.

Mr. Doherty reminded the Commission that this public hearing was advertised for both City and County Zoning Codes. He feels the County Zoning Hearing should be continued for two weeks to allow time for changes and adjustments to the County Zoning Code for mat..

Ms. Pace stated she still has problems with the definitions of towers and antennas. She read a definition of antenna. She suggested for purpose of clarity to refer to the antenna as the antenna support structure. She stated her reasoning is due to the antenna and the height of the supporting structure, that there is an extra, unregulated 20 feet of height. Mr. Doherty feels the definition Ms. Pace provided is very dated, back to the days of wires. He stated an antenna varies in size and shape. Some could be six inches wide and eight feet tall. Ms. Pace feels the antenna or the antenna support structure should be monitored.

Ms. Pace stated amateur radio operators are allowed by right and feels they should be exempt. Mr. Doherty replied amateur radio operators are exempt under Section 1204 C.1.a. Ms. Pace expressed concern with these operators leasing their tower space to telecommunication companies. Mr. Doherty replied leasing is not allowed under the current zoning code.

Ms. Pace expressed concern with the security fence or screening fence in that the fence should not be allowed to use razor wire when adjacent to a public street or sidewalk.

Mr. Boyle stated, in regards to Section 1204.C.1.c, the purpose of this section is to exclude certain items, and he feels this is appropriate.

Mr. Boyle stated, in regards to Section 1204.C.3.b.1, the purpose of this section is to camouflage the towers and feels the definition is sufficient.

Mr. Boyle stated he would support the 20 feet limitation for the height of the structure in Section 1204.C.2.f.

Mr. Boyle expressed he would not change the language of Section 1204.C.3.f. in regards to accessory utility buildings. He feels 50 square feet is appropriate and is supported by the majority of the telecommunication industry.

Mr. Boyle suggested the following change to Section 1204.C.3.g: "The following setback requirements shall apply to all towers; provided, however, that the Board of Adjustment may modify the requirements by special exceptions."

Mr. Boyle expressed concern with the introductory language on Section 1204.C.5 in regards to requiring a special exception with replacement of an antenna as opposed to the replacement of a tower. He feels if an old antenna is malfunctioning and needs to be replaced, then a special exception should not be required. Mr. Doherty replied it was not the intent to regulate the antenna and stated the language needs to be changed accordingly. Mr. Boyle feels the phrase "or replacement of an antenna" needs to be omitted. Mr. Doherty agreed that "replacement" needs to be omitted.

In regards to factors to be considered in granting a special exception, Mr. Boyle stated the concept of collocation was not included. He feels item 7 was an attempt to address collocation. He suggested item 7 be modified by adding "and ability of the proposed tower to accommodate collocation." He feels this would give the Board of Adjustment the power to consider possible collocation as a factor.

Mr. Boyle addressed the concerns with item 10 of the factors to be considered in granting a special exception. He feels the standard set forth in this provision is not any less exact or precise than standards set forth in the other provisions. The provisions are intended to give the Board of Adjustment the power to review this item and make judgments. He feels it is appropriate to make the provision specific to the applicant. He suggested using the language: "The need of the applicant for a communication tower within the immediate geographic area to provide an acceptable level of communications service to the area."

In regard to factor 11, Mr. Boyle expressed concern with the specificity suggesting that the Comprehensive Plan will only be considered if located in an AG district. He feel the point of the provision is a good one; however, it restricts it to AG districts. He suggested factor 11 should read as follows: "Provisions of the Comprehensive Plan, planned infrastructure, topography and other physical facts."

In Section 1204.C.5.b - Collocation, Mr. Boyle suggested omitting the "provided" clause, as discussed earlier.

Mr. Boyle commented on Section 1204.C.6. in regard that twelve months is the proper period of time for abandonment. He feels six months lack of use could be due to technological problems and feels twelve months is more appropriate.

In regard to the removal contract, Mr. Boyle feels the concept of the section is good, but expressed problems with imposing the burden of removal on the property owner. He stated this is a difficult problem to solve. However, he does not have concerns with the concept of the cost being increased to the buyer of the service for the removal. He suggested a two-cent tax to be allocated for the removal of the towers.

Mr. Doherty stated again he would remove the section on removal contract from the ordinance, make it a footnote and express the concerns of the Commission and interested parties to the City Council.

Mr. Boyle feels the section on Existing Towers and Antenna should be clarified and moved to another section. Mr. Doherty replied this section should be moved to Section 1204.C.7.

Mr. Doherty stated the Rules and Regulations Committee had previously unanimously voted to support this direction of regulations, although the details have changed after hearing from the interested parties. He feels in the spirit of the recommendation, it would be appropriate to move the recommendation to the City Council for the adoption of this amendment to the Zoning Code as outlined by Mr. Boyle.

Mr. Westervelt stated he will support the motion; however, he commented that if there is a desire to rewrite the ordinance by the City Council, that the ordinance be sent back through the Planning Commission process. Secondly, he expressed concern that one of the responsibilities of the Planning Commission is to protect the administration of the Zoning Code. He is concerned that the manner in which this ordinance was written, as requested by City Legal, can or may compromise the administration of the Zoning Code. He stated his preference is to incorporate the ordinance in the current format of the Zoning Code.

Mr. Boyle noted the letter from several of the City Councilors suggesting their goals in regards to telecommunication towers. He stated the TMAPC adopted the ordinance, as presented today, not for the benefit of the telecommunication industry, but that the Commission feels it is the correct approach. He feels the Commission has not been unduly influenced by the industry, or anyone else, for that matter. He feels the ordinance is workable and also includes the input of the Board of Adjustment, which was another concern expressed by the Council. He feels these two facts should be reviewed in considering the adoption of the ordinance.

Mr. Gardner stated staff still has concerns with Section 1204.C.4.b and b.(1) in regards to allowing a 15- or 20-foot tower, while a 5-foot antenna mounted on the ground is not allowed because it is a principal use and is prohibited in an office or residential district. The fact that the tower and antenna can be placed on a building administratively, without anyone's review, is a concern.

Mr. Doherty replied the purpose of this section is to have antennas mounted on top of buildings where the antenna will be less visible instead of on the ground. Mr. Boyle stated he supports the section as written. Mr. Gardner continued expressing concern with the support structure of the antenna mounted on top of buildings. Mr. Boyle and Mr. Doherty felt the structure on top of a building more preferable than a 60-foot monopole beside the building, and this is the intent of this section.

Mr. Stump stated staff still has concerns with Section 1204.C.3.b(1) in regards to color and blending in with the surrounding environment. Staff feels this section is still very vague and requires the administrative person to make a judgment or decision on whether the tower blends with the surrounding environment. Mr. Boyle stated the purpose of the provision is to require camouflaging and unless it is included, the administrative person will not have an obligation to address the issue.

Ms. Pace stated she will support the passage of the ordinance to the City Council for their consideration; however, she concurs with staff's objections or concerns in regards to Section 1204.C.4.b and b(1) and Section 1204.C.3.b(1).

Mr. Westervelt thanked the telecommunication industry, staff, Jim Doherty, Gary Boyle and the Rules and Regulations Committee for their hard work and the constructive manner in which these conversations were engaged.

TMAPC Action; 8 members present:

On **MOTION** of **DOHERTY**, the TMAPC voted **8-0-0** (Ballard, Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Dick, Horner, Ledford "absent ") to **CONTINUE** of the Zoning Text Amendment Public Hearing for proposed amendments to the Tulsa County Zoning Code in regards to regulation of communication towers to March 26, 1997.

TMAPC Action; 8 members present:

On **MOTION** of **DOHERTY**, the TMAPC voted **8-0-0** (Ballard, Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Dick, Horner, Ledford "absent") to recommend **APPROVAL** of the Amendments to Title 42, Tulsa Revised Ordinances (Tulsa Zoning Code) in regards to regulation of communication towers as modified at the TMAPC meeting.

ZONING PUBLIC HEARING:

Application No.: Z-6034-SP-1

(PD-18) (CD-8)

Applicant: Sack & Associates

Location: East of northeast corner East 81st Street and South Mingo Road
(Detail Corridor Site Plan for a credit union.)

Staff Recommendation:

The proposed Corridor Site Plan is for a 9,000 SF credit union building on a 5-acre tract one-quarter mile east of the northeast corner of 81st Street South and Mingo Road. This is also development area B of PUD-531. On January 29, 1997 this same site plan was given PUD Detail Site Plan approval. The credit union has also filed for approval to allow the PUD sign and landscaping plans to provide the detail information about these two features without having that detail shown on the Corridor Site Plan.

The Corridor Site Plan conforms to the PUD conditions and the previously approved PUD Detail Site Plan and staff has no objection to the PUD sign and landscape plans providing the detail information on these two items. Therefore, staff recommends **APPROVAL** of Z-6034-SP-1 as submitted.

There were no interested parties wishing to speak.

TMAPC Action; 7 members present:

On **MOTION** of **BOYLE**, the TMAPC voted **7-0-0** (Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Ballard, Dick, Horner, Ledford "absent ") to recommend **APPROVAL** of the Corridor Site Plan Z-6034-SP-1 for a credit union as recommended by staff.

Legal Description for Z-6034-SP-1:

A tract of land that is part of Government Lot 4, Section 7, T-18-N, R-14-E, City of Tulsa, Tulsa County, Oklahoma, said tract of land being more particularly described as follows, to-wit: starting at the Southeast corner of said Government Lot 4; thence N 89°35'38" W along the Southerly line of Section 7 for 240.00' to the Point of Beginning of said tract of land; thence continuing N 89°35'38" W along said Southerly line for 135.00'; thence N 00°09'54" E and parallel with the Easterly line of Government Lot 4 for 580.00'; thence S 89°35'38" E and parallel with the Southerly line of Section 7 for 375.00' to a point on the Easterly line of Government Lot 4; thence S 00°09'54" W along said Easterly line for 506.95' to a point, said point being 73.05' Northerly of the Southeast corner of Government Lot 4; thence S 84°54'48" W for 240.80'; thence S 00°24'22" W for 50.00' to the Point of Beginning, less and except the South 50' of the West 135' thereof, and located East of the Northeast corner of East 81st Street South and South Mingo Road, Tulsa, Oklahoma.

* * * * *

Application No.: Z-6588

Applicant: John W. Moody

Location: Southwest corner East 45th Street and South Harvard

OL/RS-1 to OL

(PD-6) (CD-9)

Staff Recommendation:

Relationship to the Comprehensive Plan:

The District 6 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the subject tract as Low Intensity - Linear Development.

According to the Zoning Matrix the requested OL zoning **may be found** in accordance with the Plan Map.

Staff Comments:

Site Analysis: The subject property is approximately one acre in size and located on the southwest corner of East 45th Street South and South Harvard Avenue. It is gently sloping, non-wooded, vacant and zoned OL and RS-1.

Surrounding Area Analysis: The subject tract is abutted on the north, south and east by office uses, zoned OL; to the northeast by a single-family dwelling, zoned OL; and to the west by single-family dwellings, zoned RS-1.

Zoning and BOA Historical Summary: The north 117' of the subject tract was rezoned from RS-1 to OL in 1996 leaving a 30' strip between the north and south half of Lot 1, this was due to the curvature of the platted lot.

Conclusion: The requested OL zoning is to correct a discrepancy of the legal description of the property which was approved for OL zoning in April, 1996, omitting the south 30' due to the curvature of the northern end of the lot. Staff recommends **APPROVAL** of OL zoning for Z-6588.

There were no interested parties wishing to speak.

TMAPC Action; 7 members present:

On **MOTION** of **BOYLE**, the TMAPC voted **7-0-0** (Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Ballard, Dick, Horner, Ledford "absent ") to recommend **APPROVAL** of the OL zoning for Z-6588 as recommended by staff.

Legal Description for Z-6588:

Lot 1, Block 3, less and except the South 117' thereof, Villa Grove Park, a subdivision of Tulsa County, State of Oklahoma, and located on the southwest corner of East 45th Street South and South Harvard Avenue, Tulsa, Oklahoma.

Application No.: Z-6589

Applicant: John W. Moody

Location: South of southwest corner West 71st Street and South U.S. Highway 75

Presented to TMAPC: John W. Moody

AG to CS

(PD-8) (CD-2)

Staff Recommendation:

Relationship to the Comprehensive Plan:

The District 8 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the subject tract as Lot Intensity - Corridor.

According to the Zoning Matrix the requested CS zoning **is not** in accordance with the Plan Map.

Staff Comments:

Site Analysis: The subject property is approximately 5.83 acres in size and located south of the southwest corner of West 71st Street South and South U.S. Highway 75. It is sloping, wooded, vacant, and zoned AG.

Surrounding Area Analysis: The subject tract is abutted on the north by vacant land, zoned AG; to the south and west by vacant land, zoned AG and CO; and to the east by U.S. 75 highway, zoned AG.

Zoning and BOA Historical Summary: The tract abutting the subject tract to the south was rezoned from AG to CO in 1975.

Conclusion: The Comprehensive Plan designates the property as Low Intensity - Corridor and the requested CS zoning is not in accordance with the Plan Map. Staff therefore, recommends **DENIAL** of CS zoning for Z-6589.

Applicant's Comments:

John Moody, 7146 South Canton, 74136, stated he is representing the trustees of the property. He stated he understands the basis of staff's recommendation and that is what he will discuss today. He stated his client feels he should be considered for some commercial zoning other than what was previously approved on the front portion of the property.

Mr. Moody stated the reason for the request is because the District Eight Comprehensive Plan did not designate any portion of the subject or adjacent property for Medium-Intensity Use. He believes after his presentation that the Commission may agree that the approved designation should not apply in this instance. He believes he has a firm basis for requesting the approval and modification of the District Plan, if necessary, to conform.

Mr. Moody presented a topographical map of the subject property. He stated the subject tract, prior to taking by the Highway Department, was 330 feet in width and 1,320 feet in depth, as is the adjacent property. The property was originally occupied. He presented a case map used for BOA Case No. 17388, which approved a communication tower on the adjacent property. There is also a lease on the adjacent property to use the road to access the communication tower. This road also provides access to the subject property, as well as the tract to the west of the subject property.

Mr. Moody pointed out the shaded area on the topographical map and indicated the shaded area is below the 770 feet elevation level. He feels the area is the low or drainage area that starts at the high point on the subject property and then drains towards the west. There are existing ponds in the area to the west. He stated there are no existing houses in this drainage/pond area. He stated this area is designated to a depth of 900 feet, south of 71st Street, for Medium-Intensity development. He feels this area, due to the creek and development constraints imposed, is not appropriate for development. He feels the remainder of the property has development potential with access to 71st Street.

Mr. Moody stated he understands when the original District Eight Plan was developed the primary reason for the Medium-Intensity designation was due to the low-lying areas. He displayed the District Eight Plan and pointed out the areas designated as Medium-Intensity use as indicated in orange shading. He stated these areas are also in the low-lying areas indicated on the topographical map. Additionally, due to the corridor along 71st Street, it was recognized and the frontage of the property has commercial zoning. He feels the ravine was the deciding factor that did not allow Medium-Intensity development. Mr. Moody feels the physical features and constraints of the property do not limit the property for development of Medium-Intensity zoning.

Mr. Moody stated he had discussed with staff the possibility of amending the application requesting zoning change to include depth only to the adjacent Medium-Intensity zoning under the District Eight Comprehensive Plan, in lieu of the entire tract. The amended application would omit the southern portion of the property and line the zoning up with the adjacent Medium-Intensity zoning. He feels if the property is zoned according to the Comprehensive Plan to the 900-foot depth and commercial zoning is on 71st Street, it will create a parcel of land, the subject property, with commercial abutting on the 71st Street side and on Union Avenue and an expressway on the third side. He stated the access to the subject property is via commercially-zoned property. He feels lining the commercial zoning across the subject property is a reasonable request.

Mr. Moody feels the approval of the request will allow the owner to develop the tract as a Planned Unit Development. He stated the adjacent property owner indicated he would also develop as a PUD. Given the topography in the area, the medium-intensity zoning on the intersection of 71st and Union, the existence of US Highway 75 and the existing CS zoning on the north end of the subject property, which is under contract for a QuikTrip store, he believes this is an appropriate land use pattern. Mr. Westervelt stated due to the property being a potential QuikTrip site, he would be abstaining from the discussion and vote.

Interested Parties Comments:

Councilor Hall pointed out that the address indicates East 71st Street, when in fact it is West 71st Street.

Councilor Hall expressed concern with the request. She stated she has not had the opportunity to discuss the request with the past District Planning Chairman or the neighborhood. She feels this may not be the best use of the property.

Applicant's Rebuttal:

Mr. Moody expressed concern with the zoning being limited to the existing south line due to the Comprehensive Plan indicating medium-intensity on the abutting tract. He feels the CS zoning is logical to extend from Union Avenue to the expressway.

Mr. Moody stated most expressways and highway are designated as medium-intensity and feels this is an appropriate zoning.

TMAPC Comments:

Mr. Boyle requested clarification of the CS zoning line that Mr. Moody referenced in his proposed amendment to the application. Mr. Moody replied he would amend the application to reflect CS zoning on the subject property to align with the CS zoning line on Union.

Mr. Gardner stated the triangular piece of property is a City Fire Station. He stated that if the Planning Commission chooses to approve CS zoning on a portion of the property, the CS zoning should not go any farther south than 660 feet. He informed the Commission

that the legal description provided by the applicant shows a portion of the property on the expressway on-ramp. Mr. Moody stated he would have to verify the legal description with the owner; however, the request is to rezone only the property owned by his client, less and except the right-of-way for the highway.

Mr. Doherty asked whether the subject property fronts 71st Street with an adequate frontage under the Subdivision Regulations. Mr. Moody replied the property currently fronts 71st Street with adequate frontage.

Mr. Doherty stated the aerial photo makes it look like the frontage of the property is derived through the expressway right-of-way. Mr. Moody replied the map he obtained from INCOG does not indicate the frontage is derived through the expressway right-of-way. Mr. Stump stated he believes the property owner owns some of the CS-zoned property along the expressway right-of-way.

Chairman Carnes feels the PUD and zoning request should be presented together. He does not recall a previous request where the owner has another tract of land zoned and requesting the abutting tract to be rezoned with the intentions of a PUD.

Mr. Doherty stated due to the fact that Highway 75 is so close to Union it causes problems by creating a node by Highway 75 and 71st Street and another node by Union and 71st. He feels the Comprehensive Plan recognized these nodes and tried to avoid stripping the area. He expressed concern with allowing the CS zoning line from Union to the river.

Mr. Westervelt stated he discovered that QuikTrip Corporation is not aware of a contract pending on the subject property and he will in fact be voting.

TMAPC Action; 8 members present:

On **MOTION** of **BOYLE**, the TMAPC voted **5-3-0** (Ballard, Boyle, Gray, Midget, Pace "aye"; Carnes, Doherty, Westervelt "nays"; none "abstaining"; Dick, Horner, Ledford "absent") to recommend **APPROVAL** of the CS zoning to a depth 660 feet south of the section line on 71st Street.

Legal Description for Z-6589:

The E/2, E/2, NW/4, NW/4 of Section 11, T-18-N, R-12-E of the IBM, Tulsa County, State of Oklahoma, less and except the following described tract and less and except the right-of-way for U.S. Highway 75: A tract of land being a portion of the North 660' of the E/2, E/2, NW/4, NW/4, Section 11, T-18-N, R-12-E, Tulsa County, Oklahoma, being more particularly described as follows, to-wit: Commencing at the northwest corner of said E/2, E/2, NW/4, NW/4, thence S 1°16'00" E and along the West line of said E/2, E/2, NW/4, NW/4 a distance of 60.00' to a point on the South line of Highway right-of-way, said point being the Point of Beginning, thence N 89°09'38" E parallel to the North line of said E/2, E/2, NW/4, NW/4 and along said right-of-way line a distance of 206.70', thence S 11°23'00" E along said right-of-way line a distance of 381.43', thence S 89°09'38" W parallel to the North line of said E/2, E/2, NW/4, NW/4 a distance of 273.70' to a point on the West line of said E/2, E/2, NW/4, NW/4, thence N 1°16'00" W and along said West line a distance of 375.00' to the Point of Beginning, and located south of the southwest corner of East 71st Street South and South U.S. Highway 75, Tulsa, Oklahoma.

Application No.: PUD-541-2

(PD-6) (CD-9)

Applicant: Michael Dankbar

Location: 43rd and Peoria

(Minor Amendment to permit the reduction in the required rear yard setback.)

Staff Recommendation:

The applicant is requesting Minor Amendment approval to permit the reduction in the rear yard setback of Lot 29 from the required 20 feet to 18 feet. The request is based on an inaccurate grading and site survey which incorrectly indicated the south side yard dimension as 125.5 feet rather than the actual 123.50. The builder sited the house from the front lot pins based on the inaccurate grading survey. Due to an eight-foot concrete wall at the rear of the lot, dimensions were not verified from the rear property line.

Staff has reviewed the request, including asking for and receiving a copy of the incorrect site survey, and has conducted a field check of the building site. The footings and all mechanical lines have been placed and a slab is ready to be poured. The footings and clearance on the slab were approved by the City; the City inspector later identified a 1.56 foot encroachment on the rear building setback and advised the builder.

The staff field check revealed that the single-story house will utilize more rear yard than a two-story house two lots to the east. Staff is of the opinion that the two foot encroachment on the rear yard building setback will not be noticeable for the 2,200 SF single-story home under construction. Staff further believes that the modifications to the rear footing, and subsequently, to all mechanical lines throughout the house would present an unwarranted cost to the builder. Finally, the character and integrity of the PUD are not altered or modified by the Minor Amendment request.

Staff, therefore, recommends **APPROVAL** of the request to reduce the required rear yard for Lot 39, Block 4, from the required 20 feet to 18 feet with one condition:

The approval applies only to Lot 39 and in no way alters or changes the rear yard setback requirements contained in the PUD Outline Development Plan or the underlying RS-3 District.

There were no interested parties wishing to speak.

TMAPC Action; 8 members present:

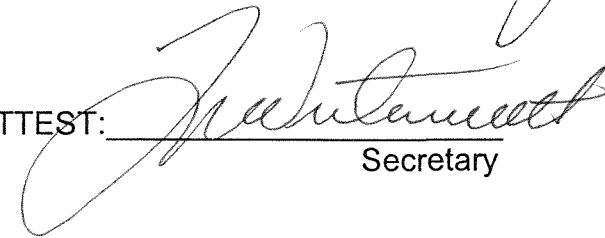
On **MOTION** of **DOHERTY**, the TMAPC voted **8-0-0** (Ballard, Boyle, Carnes, Doherty, Gray, Midget, Pace, Westervelt "aye"; no "nays"; none "abstaining"; Dick, Horner, Ledford "absent") to **APPROVE** the Minor Amendment for PUD-541-2 to reduce the required rear yard to 18' for Lot 39, Block 4.

Mr. John Moody clarified that QuikTrip does not currently have a contract on the property in regards to Z-6589.

There being no further business, the Chairman declared the meeting adjourned at 3:37 p.m.

Date Approved: 3/26/97

 Chairman

ATTEST: 
Secretary