

TULSA METROPOLITAN AREA PLANNING COMMISSION

Minutes of Meeting No. 2459

Wednesday, September 27, 2006, 1:30 p.m.

Francis Campbell City Council Room
Plaza Level, Tulsa Civic Center

Members Present	Members Absent	Staff Present	Others Present
Ard	Carnes	Alberty	Boulden, Legal
Bayles	Collins	Chronister	
Bernard		Fernandez	
Cantees		Huntsinger	
Cantrell		Matthews	
Harmon			
Jackson			
Midget			
Wofford			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Monday, September 25, 2006 at 8:43 a.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

After declaring a quorum present, Chair Bernard called the meeting to order at 1:35 p.m.

Mr. Bernard read the opening statement and rules of conduct for the TMAPC meeting.

Minutes:

Approval of the minutes of August 2, 2006 Meeting No. 2454

On **MOTION** of **ARD**, the TMAPC voted 9-0-0 (Ard, Bayles, Bernard, Cantees, Cantrell, Harmon, Jackson, Midget, Wofford "aye"; no "nays"; none "abstaining"; Carnes, Collins "absent") to **APPROVE** the minutes of the meeting of August 2, 2006, Meeting No. 2454.

REPORTS:

Worksession Report:

Mr. Bernard reported that there will be a worksession immediately following today's meeting.

Director's Report:

Mr. Alberty reported on the BOCC and City Council agendas.

Mr. Alberty reported that he is working on compiling his photographs he took while visiting several cities in Texas and will present them in a future worksession.

CONTINUED ZONING PUBLIC HEARING:

Application No.: Z-7031

RS-3 to CS

Applicant: Roy D. Johnsen

(PD-17) (CD-6)

Location: Northeast corner South 161st East Avenue and East 51st Street
South

STAFF RECOMMENDATION:

Z-6970 February 2005: All concurred in approval of a request to rezone a 10± acre tract located south of the southwest corner of East 49th Street and South 177th East Avenue from AG to RS-3.

PUD-711 February 2005: Approval was granted for a gated single-family development for 38 lots. The property is located west of the northwest corner of East 51st Street and South 177th East Avenue.

Z-6913 October 2003: A request to rezone 11.6 acres, located west of the northwest corner of East 51st Street and South Lynn Lane (South 177th East Avenue) from AG to RS-4. Staff recommended denial on the grounds there were no other zoning and development patterns in the area with RS-4 zoning. Staff recommended the applicant re-submit the application along with a Planned Unit Development.

Z-6911 September 2003: Approval was granted to rezone 160 acres located east of the northeast corner of East 51st Street South and South 161 East Avenue from AG to RS-3 for single-family development.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property is approximately 6.27± acres in size and is located at the northeast corner of South 161st East Avenue and East 51st Street. The property appears to be vacant and is zoned RS-3.

STREETS:

Exist. Access	MSHP Design	MSHP R/W	Exist. # Lanes
South 161 st East Avenue	Secondary arterial	100'	n/a (to be extended to align with City of Tulsa proposed road improvements)
East 51 st Street	Secondary arterial	100'	2 lanes

UTILITIES: The subject tract has municipal water and sewer available.

SURROUNDING AREA: The subject tract is abutted on the east by a vacant land, zoned RS-3; on the north by vacant land, zoned RS-3; on the south by vacant land in Broken Arrow City Limits, and on the west by some vacant land and a single-family residential development in Broken Arrow City Limits.

RELATIONSHIP TO THE COMPREHENSIVE PLAN:

The District 17 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this area as five acres of Medium Intensity – No Specific land use at the corner, surrounded by Low Intensity – No Specific land use. The Broken Arrow Plan shows single-family residential uses on the corners that are within its jurisdiction. However, recent conversations with Broken Arrow officials have indicated that city expects these corners to develop commercially since they are at a major intersection (when South 161st East Avenue is extended as a secondary arterial).

According to the Zoning Matrix, the requested CS zoning **is** in accord with the Comprehensive Plan for the Medium Intensity portion and **is not** in accord with the Low Intensity portion.

STAFF RECOMMENDATION:

Since the original District 17 Plan was developed and adopted, the City of Broken Arrow has annexed the three-quarters of the square mile between East 41st and East 51st Streets from South 145th East Avenue and South 161st East Avenue. The eastern side of South 161st East Avenue from East 41st Street to East 51st Street, and containing the subject property, lies within the City of Tulsa. The area west of South 161st East Avenue and south of East 51st Street is within the City of Broken Arrow. The latter, whose planning purview surrounds the City of Tulsa's in this instance on three sides, has chosen to designate the adjacent properties as single-family residential in use; however, subsequent discussions with Broken Arrow officials indicate that a future Plan update will redesignate these areas for commercial use.

Based on the Comprehensive Plan for District 17 and proposed Broken Arrow Plan amendments, staff can support the request for medium intensity zoning on

the five acres at the intersection of South 161st East Avenue and East 51st South, with the balance (1.268 acres) to remain RS-3 on this property. Staff therefore recommends **APPROVAL** of the request for CS zoning on the five acres only.

Applicant's Comments:

Roy D. Johnsen, 201 West 5th, Suite 501, Tulsa, Oklahoma 74103, representing the Trinity Creek Properties, Inc., stated that Mr. Steve Brown is the principal in this entity. Mr. Johnsen explained that the subject property is on the City of Tulsa's Comprehensive Plan for a five-acre node because 161st and 51st are considered to be arterial streets. He commented that a lot of people didn't believe that it would be opened due to the topography. Mr. Johnsen cited the topography and the location of the existing residential neighborhoods.

Mr. Johnsen explained that many things have changed in Broken Arrow with heavy commercial development. The City of Broken Arrow has now funded the construction of the extension of Elm (161st Street) north from 61st Street to 51st Street. Broken Arrow moved the alignment as it approaches 51st Street to the east to avoid the heavy topography and to allow enough site distance for safety reasons.

Mr. Johnsen stated that his client proceeded with the single-family development and operated on the assumption that if the road is ever developed it would be on the section line. His client then was asked to dedicate 2.1 acres to the City of Tulsa for the realignment. He was informed that west of the realignment would be appropriate for commercial use and that the City of Tulsa would support him. The City of Tulsa indicated that they would build a sound wall along the east boundary of the realignment to protect the homes to the east. This discussion with the City of Tulsa is what prompted this application. Mr. Brown backed off of his subdivision and agreed with Public Works regarding dedication of 2.1 acres and filed this application for rezoning. Mr. Johnsen indicated that the realignment of the intersection would cost his client 28 lots.

Mr. Johnsen stated that he has been in communication with Michael Skates of Broken Arrow and he confirmed on more than two occasions that Broken Arrow intended that there would be commercial on the south side. Mr. Johnsen explained how the City of Broken Arrow amends their plan. The approved rezoning in Broken Arrow doesn't show on the map until the subject property is platted. Mr. Johnsen indicated where Reflection Ridge is located and where the intervening property owner is located outside of Reflection Ridge Subdivision. The homes in Reflection Ridge are located along the top because of the steep topography, which provides separation from that gated subdivision.

Mr. Johnsen concluded that there is reasonable separation and recognized nodes as being the appropriate place for commercial uses. He believes he meets the normal standard that is applied. The southwest and southeast corners in Broken Arrow are contemplated to be commercial. Mr. Brown has an interest

that his subdivision to the east not be impaired and he bargained with the City that they will install a sound wall along the east boundary of realigned 161st Street and there will be an existing street behind that, which will be a cul-de-sac. The houses will face west. Mr. Johnsen requested that the Planning Commission approve this application and he would like it to be for all of the 6.268 acres, but will accept the five acres if the Planning Commission is inclined.

TMAPC COMMENTS:

Mr. Ard asked Mr. Johnsen if the realignment of the street is finalized at this time. In response, Mr. Johnsen answered affirmatively.

Mr. Ard asked staff if there was an opportunity to review the change in street plan prior to the recommendation and if so why not allow all of the six plus acres for CS. In response, Ms. Matthews stated that staff did discuss this with staff in Broken Arrow regarding the plans for realignment. Staff has not seen the realignment on paper but staff assumes what Mr. Johnsen is stating is the truth and have every reason to believe that. Staff held to five acres because that is what the Development Guidelines call for. If the applicant comes in with a PUD, then staff would be favorable to looking into their plans.

Mr. Wofford asked Mr. Johnsen if his client has dedicated the 2.2 acres for the realignment. In response, Mr. Johnsen stated that his client has agreed to dedicate the 2.2 acres. Mr. Wofford asked if the City will vacate the old alignment. In response, Mr. Johnsen stated that section lines are established in the State of Oklahoma by treaty and they can't be vacated. The section line right-of-way (24.75 feet) will not go away, but it will not be opened and the additional dedication wouldn't be required. Now that this alignment has been changed it will not be required that his client dedicate the full 50 feet.

INTERESTED PARTIES:

David Cannon, 4200 North Battle Creek Drive, Broken Arrow, OK 74012, Reflection Ridge Subdivision, stated that he has a petition with 85 signatures and it represents about 50 homeowners in the subdivision (Exhibit A-1). He indicated that when he purchased his home it was indicated that the subject area would be residential. Broken Arrow never indicated that they had any interest in extending the street until the Bass Pro store was developed. There are homes along the ridge that will appraise for over one million dollars and will be looking down on the rooftops of the commercial development. The ridge looks over the east and into a valley where one can see all the way to the Arkansas River in most directions. The subdivision is bounded on the west by the Battle Creek golf course. There are over 100 homes in Reflection Ridge. He expected the expansion of 161st Street to be along the section line and he never expected the two cities to deviate because of the expense of the cut and fills.

Mr. Cannon recognizes that the developer of Trinity Creek didn't originally expect a commercial application on the subject property. He questioned that the

Comprehensive Plan called for commercial zoning in the subject area. Mr. Cannon agrees that the intersection should be realigned due to the topography and it would be dangerous to have an intersection at the bottom of the hill. There are three or four builders who have purchased lots on the east side of where the proposed commercial zoning is located. The lots will not be sellable with the sound wall in front of them and four of the five lots have already been developed. The staff's recommendation at the last scheduled meeting was for denial. He understands that commercial property is of greater value than residential. Mr. Cannon encouraged the Planning Commission to postpone their decision and to personally visit the site and recognize the impact it would make on the Battle Creek Golf Course additions and the Trinity Creek Addition. He recommended that Tulsa allow the City of Broken Arrow to realign the intersection wherever they choose and that the City of Tulsa abandon their plans to carry 161st between 41st and 51st Street. There are many areas in Tulsa where the section line is not improved as a street all the way through. He doesn't believe there is a real need for this street to exist.

Ned Gene Jones, 1300 West Omaha Place, Broken Arrow 74012, stated that he is one of the property owners at the top of Reflection Ridge and would look into the proposed commercial development. He indicated that he looked into the Comprehensive Plan prior to purchasing his property and there was no commercial designation at the subject corner. In 2003 the subject property was rezoned from AG to RS and if there was going to be a commercial node, it should have been addressed at that time. He purchased and developed his property based on the subject area being residential. This is a commercial opportunity for the developer, who will make a gain and the property owners along the ridge are going to be the ones to suffer some losses. It is shame that the trees in the subject area will be lost for a commercial development. The developer could still continue with the residential development and the reason he doesn't want to because it is not as profitable as commercial would be. The Long Range Plan seems to be a moving target and it is frustrating to collect information and study the plans. Mr. Jones requested that Planning Commission delay and review this proposal and see if should continue to be residential.

Applicant's Rebuttal:

Mr. Johnsen stated that the District 17 Plan has never been ambiguous because it has shown a commercial node since 1976.

Ms. Matthews confirmed that the District 17 Plan has shown the commercial node since 1976.

Mr. Johnsen stated that the tract to the west was at one time in the City of Tulsa, but when the Ford Plant came to Tulsa County they agreed to be annexed from Broken Arrow into the City of Tulsa. It was discussed at that time that there would be at some point an off-setting annexation in Broken Arrow, which is how

Battle Creek became part of that exchange of annexations. The initial planning indicated a node on the west side and the east side.

Mr. Johnsen stated that the alignment is final and they are creating the actual paving plans now and plan construction in 2007. He commented that Broken Arrow is planning commercial on the south side and west of 161st Street, which is closer to Reflection Ridge than the proposed commercial down the slope for today's proposal. Mr. Wooten, City Manager of Broken Arrow, told Mr. Johnsen that if Tulsa doesn't want the commercial zoning, then Broken Arrow would be glad to take it for the sales tax.

Mr. Bernard asked Mr. Johnsen if originally all of the land under application was to be residential, but now that the intersection is moved his client is requesting to cut this out as commercial. In response, Mr. Johnsen stated that initially it was zoned for residential because the plan at the time indicated medium intensity. His client didn't believe that the 161st Street would be extended because of the topography and he wanted to go forward and back up to it with residential. Now this has all changed since 161st Street is being extended and the right-of-way is needed. The best use for the subject property now is commercial because it is a small area and it would be cut off by itself.

Mr. Jackson asked Mr. Johnsen if the Planning Commission approves the zoning change on the five acres it would require a PUD in order to use the 6.83 acres. He asked Mr. Johnsen if he would build with pitched roofs. In response, Mr. Johnsen stated that the Planning Commission has a tight hand on that and the staff looks at it very closely. There is incentive to do a PUD if five acres is the only portion rezoned and there is a close scrutiny on how this will be developed.

Mr. Harmon stated that he wouldn't be opposed to the commercial use on the subject property due to the realignment of 161st Street. The 6.28 acres would not be unreasonable because of the unusual shape of the tract and the realignment of the street.

Mr. Ard stated that he is in agreement with Mr. Harmon. The Comprehensive Plan designates the subject corner for some type of medium intensity commercial use and the zoning map wouldn't show that at this time because it is still zoned AG or RS. If the corner is left residential, then it would be isolated and no one would ever develop it for residential purposes as a stand alone five-acre tract. Mr. Ard indicated that he would support staff's recommendation for the five-acre change with the hopes that a PUD would be used and provide some kinds of restrictions on the development.

Ms. Bayles stated that she would be willing to support staff's recommendation for the request for CS zoning on the five acres only. Specifically addressing the issue that Mr. Jackson brought forward, she believes that the Planning Commission should ensure that there is some transitional consideration and

spacing, buffering, etc. between the existing residential and the CS that will eventually be developed.

Ms. Bayles moved to recommend rezoning the five acres to CS per staff recommendation. Mr. Harmon seconded.

Mr. Wofford stated that often people come before the Planning Commission who are dealing with land that has not been platted, zoned, etc. and they are objecting to the fact that someone actually wants to do something with it. In this case, these homeowners looked at this plat and said they had every reasonable expectation that this will be single-family housing. Now that there is a new realignment of 161st East Avenue and perhaps there are new elements in this game, but he disagrees with the notion that six acres is not enough for a subdivision. There are several subdivisions in South Tulsa that are this small or smaller and are very attractive and well done. He would prefer to see more residential development on the subject site. If Broken Arrow wants to develop commercial, then that is their prerogative, but the Planning Commission is dealing with Tulsa and he feels that these homeowners acted on information that they thought was reliable. He will not be able to support the commercial zoning.

Mr. Jackson stated that Reflection Ridge was there first and Trinity Creek has just started coming on in the last couple of years. The nodes have always been there. He agrees with the motion and the second. He would like staff to inform the interested parties of how the PUD process works if the motion goes forward so that they can help participate and help Mr. Johnsen look at all the restraints that could be put in place.

Ms. Matthews cited the PUD process.

Ms. Cantees stated that she will be abstaining because she has worked for this particular developer and she has numerous properties for sale in the subject area.

Mr. Bernard stated that the City of Tulsa is running out of land within the City to develop. A PUD could help resolve most of the concerns and create an environment where the commercial does look somewhat residential.

TMAPC Action; 9 members present:

On **MOTION** of **BAYLES**, TMAPC voted **6-2-1** (Ard, Bayles, Bernard, Harmon, Jackson, Midget, "aye"; Cantrell, Wofford "nays"; Cantees "abstaining"; Carnes, Collins "absent") to recommend **APPROVAL** of the request for CS zoning on the five acres only for Z-7031 per staff recommendation.

Legal Description for Z-7031:

A tract of land in the Southwest Quarter (SW/4) of Section Twenty-Six (26), Township Nineteen (19) North, Range Fourteen (14) East of the Indian Base and Meridian, Tulsa County, State of Oklahoma, according to the United States Government Survey thereof, being more particularly described as follows:

Beginning at the Southwest Corner of said Southwest Quarter (SW/4); Thence N 88° 40' 17" E, along the South line of said Southwest Quarter (SW/4), a distance of 438.44 feet; Thence N 01° 19' 43" W a distance of 224.09 feet; Thence along a curve to the left having a radius of 470.00 feet, a central angle of 38° 51' 30", and an arc distance of 318.76 feet; Thence S 88°40' 38" W a distance of 334.38 feet, to a point on the West line of said Southwest Quarter (SW/4); Thence S 01° 19' 22" E, along the West line of said Southwest Quarter (SW/4), a distance of 519.00 feet, to the Southwest corner of said Southwest Quarter (SW/4) and the Point of Beginning; the City of Tulsa, Tulsa County, State of Oklahoma, Said Tract containing 217,806.38 square feet or 5.00 acres, **From RS-3 (Residential Single Family High Density District) To CS (Commercial Shopping Center District).**

COMPREHENSIVE PLAN PUBLIC HEARING

Consider Amending District 17 Plan Map

Consider proposed amendments of the District 17 Plan Map to adopt portions of the East Tulsa Neighborhood Detailed Implementation Plan – Phase I as a part of the District Plan and the Comprehensive Plan for the Tulsa Metropolitan Area.

Mr. Harmon out at 2:21 p.m.

TMAPC COMMENTS:

Mr. Bernard commended everyone who has worked on this project. The Planning Commission has seen this on several occasions and toured the subject area. This is one of the more extensive presentations that he has had while on the Planning Commission.

STAFF RECOMMENDATION:

**DRAFT
PROPOSED AMENDMENTS TO DISTRICT 17 PLAN RESULTING FROM THE
EAST TULSA NEIGHBORHOOD DETAILED IMPLEMENTATION PLAN –
PHASE I**

Plan map amendments:

- Adopt study Exhibit 5, Detailed Area Plan, page 30, as part of the District 17 Detail Plan.
- Amend existing District 17 Plan map to show East Tulsa Neighborhood Plan – Phase I boundaries as a (fifth) Special District, replacing the existing Eastland Mall Special District.
- Within that East Tulsa Neighborhood Plan boundary, show Select Area Plans (study pages 31-43) – East Land, International – as Consideration Areas.

Plan text amendments:

- Change 3. Specific Areas, paragraph 1, to read as follows (proposed changes crossed out or underlined):

“The District Plan Map indicates three Special District Industrial Areas, one Special District Low/Medium Intensity Mixed Use Area and one Special District ~~Eastland Mall~~ East Tulsa Neighborhood Detailed Implementation Plan – Phase One study area, containing two Select Areas, East Land and International.”

- Delete existing third paragraph under 3. Specific Areas and replace with the following:

“The fifth Special District is the East Tulsa Neighborhood Detailed Implementation Plan – Phase One study area, generally bounded by 11th Street on the north, 31st Street on the south, U.S. Highway 169 on the west, Interstate Highway 44 on the northwest and 145th East Avenue on the east. This area has been planned for redevelopment according to the East Tulsa Neighborhood Detailed Implementation Plan – Phase One, pages 14-49 of which are adopted as part of this plan. Two Select Areas, East Land and International, are included as Consideration Areas within this Special District.”

- Delete existing 3.8 Development Policies (3.8, 3.8.1- 3.8.7) within the Special District Eastland Mall and replace with the following:

“Development Policies within the Special District East Tulsa Neighborhood Implementation Plan – Phase I study area.

The East Tulsa Neighborhood Implementation Plan – Phase 1 was developed by a group of stakeholders in the area, including property owners, business and institutional representatives and others. This large

area is one of mixed land uses and several redevelopment opportunity sites.

The TMAPC cannot legally or legislatively be responsible for implementation of many of the provisions of the Implementation Plan. Some provisions must be implemented by other government entities, while others will require private and/or nonprofit groups' participation. By approving this Plan (pages 14 through and including 49) as part of the District 17 Detail Plan, the TMAPC is recognizing that the policies are in keeping with the overall goals of the Comprehensive Plan and are supporting efforts to implement the Implementation Plan.

3.8.1 The East Tulsa Neighborhood Implementation Plan – Phase I, together with the policies and goals of the District 17 Plan and subsequent amendments, should be the guideline for future development within the study area, indicated on the Plan Map as a Special District.

3.8.2 The two Select Areas within this Special District, as designated on the Plan Map, and their attendant development policies contained within the East Tulsa Neighborhood Implementation Plan – Phase I, together with the goals, objectives and policies of the District 17 Plan, should guide future development and redevelopment of this area.

Applicant's Comments:

Theresa Buchert, 542 South 127th East Avenue, 74128, thanked the Planning Commission for being actively involved in the process. Ms. Buchert recognized everyone in the room who had worked on the subject project.

Ms. Buchert requested that the Planning Commission adopt the East Tulsa Neighborhood Detailed Implementation Plan – Phase I and amend the District 17 Plan.

Steve Carr, Public Works Urban Development, 111 South Greenwood, 74112, stated that the detailed implementation plan that is before the Planning Commission today is Phase I and it is intended to be a fully component of District 17 Plan and Comprehensive Plan. This particular plan is not a land use plan, but a plan about implementing public and private projects. The main consideration that he was discussing with his group was that goals, objectives and policies (particularly towards land use) that apply in the District 17 area within this boundary continue to apply because they serve as a solid foundation for the recommendations of this document.

TMAPC COMMENTS:

Mr. Midget reminded Mr. Carr that the City is getting ready to do a Comprehensive Plan update and he would like to encourage both staff and residents in the area to stay on top of that so that as the changes are made to the Comprehensive Plan that it fully integrates and interjects the desires and priorities of the neighborhood area.

INTERESTED PARTIES:

Eric Paschal, 12420 East 14th Place, 74128, stated that he doesn't want anyone to forget the infrastructure and the support to make this plan viable. He requested the support of the Planning Commission for all kinds of infrastructure in this whole issue.

TMAPC COMMENTS:

Mr. Ard stated that he would like to commend everyone on this plan. It is very well presented and a detailed plan. This will go along way towards moving the East Tulsa Neighborhoods forward. Mr. Ard commented that this is the best detailed plan he has seen since being on the Planning Commission.

Mr. Wofford concurred with Mr. Ard. This plan is realistic and it is something that is doable. He believes that this plan could be implemented and the infrastructure components could be accomplished.

Ms. Bayles stated that there are three people in the audience whom she would like to recognize today. To Theresa Buchert who, wherever life takes her, will always be associated with the East Tulsa Plan. Her leadership is best exemplified by example. Ms. Bayles commented that Ms. Buchert has her personal appreciation and respect. She also recognized Nancy Creighton and her husband, Dennis, and Jim Mautino. This is not just about a plan in her opinion, but is about a process. What these people have done is to find a process by which others can learn by example as well. The plan is only as good as its implementation strategies and with that she agrees with Mr. Ard that the group has put together some specific, straightforward responses for this City, the Planning Commission and every representative in the City of Tulsa that it can follow.

TMAPC Action; 8 members present:

On **MOTION** of **MIDGET**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; no "nays"; none"abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the amendment to District 17 Plan to adopt portions of the East Tulsa Neighborhood Detailed Implementation Plan – Phase I as a part of the District Plan and the Comprehensive Plan for the Tulsa Metropolitan Area per staff recommendation.

CONTINUED PROPOSED ZONING CODE AMENDMENTS PUBLIC HEARING:

Proposed City of Tulsa Zoning Code Amendments from the “B” List: Sections 210.D, 212.C, 301, 401 & Table 1, 404.G, 601 & Table 1, 701 and Table 1.

Ms. Bayles stated that she went through all of her history that she has kept on these proposed Zoning Code amendments since May and she doesn't find any detail on Section 404.G has ever appeared before today's hearing.

Ms. Matthews stated that none of the proposals are new. This is an issue that came from the 15th and Lewis Study.

Ms. Bayles asked if the City Council has addressed the Lewis Study at this time. In response, Ms. Matthews stated that it was transmitted and it is on hold without a date certain assigned to it.

Ms. Bayles restated that she has gone through every piece of documentation that she has kept on the Zoning Code and this not something that she has seen before and since it certainly has not gone through any kind of distillation process and she would recommend to her fellow Planning Commissioners to remove this from consideration and place on the next hearing. [Ms. Matthews provided the original proposed Zoning Code amendment list to Ms. Bayles, which indicated that Section 404.G was included in the original proposal.]

Mr. Bernard asked staff and the Planning Commission if they could go through these one at a time and let everyone make their notes and public comments.

STAFF RECOMMENDATION:

“B” LIST (FOR FURTHER EXPLANATION AND DISCUSSION)

2. Section 210.D

Suggested changes: Limiting the height of a wall or a fence in a streetyard of office or commercial district, prohibiting use of certain materials, with provision for BOA modification of requirement.

Reason: Improvement of community appearance.

Suggested by: City Legal Department staff.

SECTION 210. YARDS

D. Fences and Walls in Street Yards

In an O or C district, a fence or wall erected in a street yard shall not exceed a height of three feet. The Board of Adjustment may modify this requirement by special exception. The use of barbed or razor wire on a fence or wall in a street yard is prohibited.

TMAPC COMMENTS:

Mr. Ard stated that it seems to him that the point of this is to not have fences that are too high. He questioned what the level of height that is defined as too high. In response, Ms. Matthews stated that staff is recommending three to four feet. She indicated that this would screen out the car lights from a parking lot, but it will not prevent someone from being seen and causing a safety and security issue. Mr. Ard asked where the verbiage relating to the specific height of the fence. In response, Ms. Matthews stated that staff would work on the verbiage with Legal.

Mr. Ard stated that there are a lot of cases where there would be a high fence or wall that provides a noise barrier. Ms. Matthews explained that the reason for putting the BOA requirement in this proposal is so that they can modify it if there is a noise issue. Ms. Matthews stated that the BOA could increase the height, decrease the height or waive the entire screening if needed.

Mr. Ard stated that this proposal only applies to walls that are adjacent to a street and not ones that border a residential district. In response, Ms. Matthews answered affirmatively.

Mr. Ard asked if there is a height requirement at this time. In response, Ms. Matthews stated that she believes it is six feet at this time. Six feet is typically what people believe will prevent someone from being seen and that is where the security issue comes in. If the only issue is car lights, then three to four feet will screen car lights and a person wouldn't crouch to hide behind a three to four-foot wall.

Ms. Cantrell stated that she thought the frontyard fences were already limited to four feet. In response, Ms. Matthews stated that they can be as high as six feet at this time. Ms. Cantrell stated that the current proposal states three feet and not three to four feet. In response, Ms. Matthews stated that at one time it was discussed to be at four feet and perhaps this is a modification that has happened along the way.

Ms. Matthews stated that three feet will still cover the car headlights.

Mr. Bernard asked if the Planning Commission is supposed to be voting on a recommendation of three feet from staff or four feet. In response, Ms. Matthews stated three feet is the recommendation.

INTERESTED PARTIES:

Chip Atkins, 1638 East 17th Place, 74120, stated that he is confused on this proposal regarding side yards and front yards for corner lots. He expressed concerns with people being able to see into windows. He gave an example of a parking lot being across the street from his frontyard and if the parking lot screening fence is lowered to three feet he wouldn't be able to sit on his front porch and have privacy anymore.

Ms. Matthews stated that the owner of the corner lot is the one who chooses the frontyard.

Mr. Atkins asked what street yard includes. In response, Mr. Boulden stated that street yard is a required yard in residential areas. Ms. Matthews stated that it is any yard abutting a street per Mr. Alberty.

Mr. Atkins stated that he disagrees with the proposal due to corner lots. He explained that people would be able to look into homes and it is a security risk to residents who are abutting these properties. He commented that this goes back to Section 212.C as well because a street doesn't form a barrier. The side yard should be six feet and the frontyard three feet.

Ms. Cantrell stated that she believes she understands that Mr. Atkins prefers that on a corner lot the side fence should be six feet minimum. Ms. Cantrell asked if the wording was amended to say three feet for frontyard would he be satisfied with that. In response, Mr. Atkins answered affirmatively.

Ms. Matthews stated that there is no requirement to put a screening fence in the frontyard. On a residential property the screening height can only be eight to ten feet in the back and align with the back of the house. In the frontyard the fence can only be four feet. The sideyard from the back of the house to the front can only be four feet.

Ms. Matthews stated that this would be screening from a parking lot or a commercial or industrial.

Mr. Midget stated that he grew up on a corner lot and he can see the need to have the side yard blocked off from a parking lot or an office building, particularly in urban areas where there are mixed uses within the neighborhood. Streets are not buffer enough for uses that might not be compatible or less appropriate in an infill urban area.

Mr. Alberty stated that he doesn't have quantitative studies to support this proposal, but this was produced by a number of recent BOA applications requesting a reduction of the screening fence for security purposes. There are a number of businesses in the Cherry Street area that have recently come in and neighbors adjacent to it have complained about the six-foot fences and because of the incidents of crime and the incidents of issues that take place inside of these boarded up areas. Staff looked at the purpose of the screening that was adjacent to residential and the purpose is primarily to screen the car lights and traffic.

Mr. Bernard asked if the requests of BOA have been for three to four feet in height in these types of situations. In response, Mr. Alberty stated that it is not necessarily been a request to the BOA, but a result of a number of recent applications to the BOA.

Mr. Bernard stated that the three- or four-foot fence would begin at the level of the tire and going up to three or four feet. In response, Ms. Matthews answered affirmatively. It would block lights from the cars parking in and leaving the parking lot.

Mr. Boulden asked if this proposal is requested mainly because the applicants are going to the BOA and having to justify a variance. In response, Mr. Alberty stated it is part of the reason, but when it is looked at from a standpoint of esthetics for the community, boarded up lots do not present themselves well. It looks like one is trying to exclude part of the community from the other part. The objective of the screening is not the uses, because a six-foot fence isn't going to screen out a 20-foot building. When one reduces it to what is really trying to be accomplished, staff has concluded that what is trying to be accomplished is the adverse effect and not to create an eyesore.

Mr. Boulden referred to a situation along Lewis where it looks like a combat zone because there is screening with barbed wire to protect it.

Mr. Alberty stated that the BOA has a routine requirement that automobile dealerships, when approved through Use Unit 17, do not erect a fence higher than three feet. This is done because it creates an area behind tall fences where security is at risk.

Mr. Boulden stated that in a commercial area, there are areas that welcome people to come in, but a large fence in a commercial area says "keep out", which is incompatible with commercial or office use.

Ms. Cantrell stated that as it is written now, it has to be three feet except by special exception, which means to her that if a neighborhood wants a taller fence, then the neighborhood would have to go to the BOA. That is quite an

imposition to put on a neighborhood. The burden should be on the person who is building the fence and not the neighborhood.

Mr. Alberty stated that the neighborhood doesn't have a right to file an application on land that they do not own and that wouldn't be an option.

Mr. Ard stated that he would move that the staff recommendation be approved on this proposal. He understands the blocking of the lighting and it serves the purpose of blocking the car lights. Mr. Ard referred to a lot at 17th and Utica and he knows within the PUD there were certain wall height restrictions, but a six-foot fence does isolate the property, and if the lighting can be blocked to create a better security for the property with three feet, then he is in agreement with that.

Mr. Jackson seconded.

Mr. Midget stated that he can understand trying to make an adjacent use blend better into a neighborhood for esthetic purposes. He believes that it would be an imposition on the neighborhood because they wouldn't have a chance to protest the proposal if allowed by right. Mr. Midget expressed his concern about what this proposal may cause in a residential area, particularly, in a more urban setting. He doesn't see anything wrong with a business coming to the BOA and requesting a reduction in height with a special exception. This would be imposing on residents comfort and quiet enjoyment of their residences. Mr. Midget concluded that he can't support this change.

Ms. Cantrell stated that currently it requires a variance to lower the height and she would be comfortable with this through a special exception. It would allow the neighborhood to have a chance to speak on this and the applicant wouldn't have to show a hardship.

Mr. Jackson asked staff what width provision for BOA modification of requirement means. In response, Mr. Alberty stated that the BOA could change it to a landscape screening fence (hedge) or do anything to modify what the strict interpretation of the ordinance requires. This issue is streetyard and not when there are abutting R properties. He explained that this is when an office district abuts a street and not adjoining property. Currently, to remove a screening fence requirement would require a variance. The BOA currently has the right to modify a screening fence requirement with an application for a special exception.

Mr. Midget stated that he lives across the street from an OL district, and asked if that would be considered abutting. In response, Mr. Alberty stated that currently that is considered to be abutting.

After a lengthy discussion Mr. Jackson withdrew his second and suggested that provision remain the same as it is today.

Mr. Ard withdrew his motion to approve.

Mr. Bernard clarified that the ordinance as it stands today will remain.

TMAPC Action; 8 members present:

On **MOTION** of **MIDGET**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; no "nays"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **DENIAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 210.D.

3. Section 212.C

Suggested changes: Allowing the BOA to remove a screening requirement when the abutting R district is separated by a street.

Reason: The purpose of requiring a screening fence or other means is to protect the adjacent R district from possible negative effects of the non-residential use. The presence of a street and ROW separating the R from the non-residential uses performs the same function.

Suggested by: INCOG staff.

Comments: Some opposition.

SECTION 212. SCREENING WALL OR FENCE

C. Modification of the Screening Wall or Fence Requirements

The Board of Adjustment, as a Special Exception, may:

5. Remove or modify the screening requirement when the abutting R district from which a use is required to be screened is separated by a street right-of-way.

TMAPC COMMENTS:

Mr. Midget asked what type of businesses or commercial are being referred to by allowing the BOA to remove the screening requirements. He expressed concerns about this issue, particularly, when separated by a street. There have been problems with this in the past because the businesses are so horrible.

Ms. Matthews stated that currently the applicant would have to go to the BOA if they do not want to screen or for some reason are unable to screen. The applicant would have to prove a hardship because this is not a special exception and this would allow them to not have to apply for a variance. She explained that

they would still have to go the BOA for approval of a special exception, which doesn't require a hardship.

INTERESTED PARTIES:

Chip Atkins, 1638 East 17th Place, 74120, stated that he has the same concerns with this proposal as he did with Section 210.D. Mr. Atkins questioned how a street forms a function of a wall.

Ms. Matthews stated that the street acts a separation function.

Mr. Atkins asked Ms. Matthews if she is indicating that distance performs privacy. There is more distance between a backyard and the back of a house than one would have from a frontyard to a parking lot. In response, Ms. Matthews stated that it still performs the same function. Mr. Atkins stated that he disagrees and requested the Planning Commission to deny this proposal.

Mr. Atkins asked Mr. Boulden if alleyways would perform the same function. In response, Mr. Boulden stated that alleyways are not defined in the Zoning Code, but it is defined in the Subdivision Regulations as service roadways providing secondary means of public access to abutting properties and are not intended for general traffic circulation. There is a different purpose between an alley and a public street, but the public has the same amount of access; it is not restricted. He commented that an alleyway is not defined as a street, but as an alleyway.

Mr. Bernard stated that the intent of the proposal is not to affect the alleyways, but to public streets only. In response, Mr. Boulden answered affirmatively.

Chip Atkins, 1638 East 17th Place, 74120, referred to the Redux Study as a model for the future when referring to something as an example.

Susan McKee 1616 South Victor, 74104, stated that she is also against this proposal. She commented that parking lots are not required to set back to where the houses used to be. This changes the entire look and feel of the neighborhood. If the screening is taken away then one would be left with only the parking lot to view. Three-foot walls do not screen the parking lot and the only part that is screened is the headlights.

TMAPC COMMENTS:

Mr. Midget stated that he is opposed to this proposal for the same reasons he was opposed to Section 210.D.

TMAPC Action; 8 members present:

On **MOTION** of **MIDGET**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; no "nays"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **DENIAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 212.C.

Mr. Bernard stated that the language for the Sections 210.D. and 212.C. will not be amended.

4. Section 301

Suggested changes: Allowing limited Use Unit 13 (Retail Sales) in AG districts.

Reason: To allow the retail sale of agricultural and related products, grown or produced on the property or directly related to the products as accessory items.

Suggested by: INCOG staff.

**CHAPTER 3
AGRICULTURE DISTRICT PROVISIONS**

SECTION 301. PRINCIPAL USES PERMITTED IN THE AGRICULTURE DISTRICT

The principal uses permitted in the Agriculture District are designated by use units. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading, screening requirements and other use conditions in Chapter 12. The use units permitted in the Agriculture District are set forth in Table 1.

Table 1

Use Units Permitted in the Agriculture District*

Use Units		District
No.	Name	AG
13.	Convenience Goods and Services	X*****

*****= Limited to retail sales of agricultural products (grown and/or produced) on or contiguous to the lot and including the sale of related accessory items, which are customarily, incidental and subordinate to the products that are grown on the property.

TMAPC COMMENTS:

Mr. Ard asked how related products to agricultural sales are defined. In response, Ms. Matthews stated that it would up to the building inspector. She explained that there are working farms and wineries in the City limits. Ms. Matthews gave an example of a winery selling grapes or wine.

Mr. Ard asked if gasoline that comes out of the ground after it is refined from oil would be included. In response, Ms. Matthews stated that she wouldn't think that would be the case. Mr. Ard asked how it would that be extrapolated. In response, Ms. Matthews stated that it would be up to the building inspector and she doubts the gasoline would be found as a use in this case.

Mr. Ard expressed concerns that the Planning Commission would be opening this up to commercial sales activity on agricultural locations to get around commercial zoning. In response, Ms. Matthews stated that she doesn't know the magnitude of this, but if anyone has ever been to Bixby, this type of activity is already going on. Mr. Ard stated that this doesn't make him feel any better.

Mr. Bernard questioned the criteria that would be used by the building inspector in determining this issue. In response, Ms. Matthews stated that she would ask Legal if there is some sort of category or criteria that could be devised. Mr. Bernard stated that attorneys are fairly sharp individuals and when they see a loop hole they will jump in it as quick as possible.

Mr. Alberty stated that this has already had close scrutiny. The purpose of this proposal is to allow agricultural products that are produced in an agricultural district to be sold on a retail basis. Right now most agricultural products are allowed to be sold on a wholesale basis, but not an onsite retail basis. The wording states that the products have to be produced on the property and they wouldn't be allowed to import. Related accessory uses have to be related to the product being sold and produced on the property. If there is something that the Planning Commission would like to suggest, at this point, to clarify this, then the staff would invite it. Mr. Alberty concluded that one doesn't want to make the definition so difficult and onerous that it becomes complicated by trying to define it. Staff and Legal is trying to keep it brief, simple and clear.

Mr. Bernard stated that the words "or produced" is what concerned him.

Mr. Boulden stated that he could expand on this some and insert "in sales of related items, which are customarily incidental and subordinate to products grown or produced on the property or on the contiguous lot".

Mr. Ard asked if it would kill the language if the word "produced on" was removed.

Ms. Cantrell stated that the winery wouldn't be able to sell the wine if they worded it in that fashion.

Mr. Ard asked if there have been a lot of instances where this type of allowance was requested and it couldn't be permitted because it was not defined in the Zoning Code. In response, Mr. Alberty stated that at this point it has been the County that has had the most of this action due to the recent popularity of

wineries and growing of grapes. Mr. Alberty explained that in the County, a use variance can be permitted, but in the City a use variance is not allowed. The only way to allow a winery that is AG in the City limits, it would have to apply for commercial zoning. This would side-step the commercial zoning and restricts it to an agriculturally-produced product.

In response to Mr. Bernard, Mr. Boulden stated that a chain of examples could be listed with this provision.

Mr. Midget stated that once a list is started, then something may be excluded from that list unintentionally.

Ms. Bayles stated that staff has identified that this was scrutinized and she requested the numbers and examples that are occurring in Tulsa County that the Planning Commission may be unfamiliar with. The staff has given produce and wine, but are there others. Ms. Bayles asked staff if they had the numbers of these types of sales that support this type of amendment.

Mr. Alberty stated that Ms. Bayles is suggesting research projects, but this would be an exhaustive research project. If the funding could be found for staff to provide the exhaustive research for these, then staff would be happy to do so. What staff has to do is give the Planning Commission anecdotal information. Staff does not have a quantification of how many of these types of sales are requested.

Ms. Bayles stated that she is just commenting on a comment of Mr. Alberty's that this had been scrutinized by staff and if so she would think there would be some sort of quantitative support for it.

Ms. Cantees asked if the product has to be taken somewhere else to be completed or processed. In response, Ms. Matthews stated that she doesn't know if this is important from a land use aspect, whether it goes out of state to be processed. Ms. Cantees stated that this would open up to things being sent to be processed and then brought back for sale and we would have Mom and Pop shops, which is her concern. Ms. Matthews stated that it wouldn't impact land use. Ms. Cantees stated that it is too broad.

INTERESTED PARTIES:

Chip Atkins, 1638 East 17th Place, 74120, stated that he believes this should go forward and include wineries. This type of activity is done all over the United States and he believes Tulsa should have it as well.

TMAPC COMMENTS:

Mr. Bernard stated that he has some concerns about this being a subjective opinion of a building inspector. He expressed concerns with the language

“produced” and “accessory”. Is this specific enough to keep Legal out of issues of how broad this is?

Mr. Boulden stated that he doesn't believe it would cause Legal any problems. He believes that instead of focusing on the word “related” and focus on the word “accessory”: items that are accessory to what is grown and produced on the property, customarily, incidental and subordinate to the products that are grown on the property.

Ms. Cantrell asked if the language “customarily, incidental and subordinate” should be included within the motion. In response, Mr. Boulden answered affirmatively.

TMAPC Action; 8 members present:

On **MOTION** of **CANTRELL**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; no "nays"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 301, per staff recommendation and as modified by the Planning Commission. (Language with a strike-through has been deleted and language with an underline has been added.)

MIXED USE DEVELOPMENT PROPOSALS

5. Section 401, Table 1

Suggested changes: Remove reference to office use permitted by exception only in RM-1, RM-2 and RM-3 districts.

Reason: To clarify if office use is permitted in other R districts by Special Exception (see other related MXD proposed amendments).

Suggested by: INCOG staff.

SECTION 401. PRINCIPAL USES PERMITTED IN RESIDENTIAL DISTRICTS

The principal uses permitted in the Residential Districts are designated by use unit. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading and screening requirements and other use conditions in Chapter 12. The use of an RE, RS, RD or RT District for access to any RM, O, C, or I District, or the use of an RM District for access to any O, C, or I District is prohibited unless permitted through an approved Planned Unit Development. The use units permitted in Residential Districts are set forth below in Table 1.

**Table 1
Use Units Permitted in Residential Districts***

Use Units		Districts					
No.	Name	RE	RS	RD	RT	RM	RMH
11.	Offices, Studios & Support Services		<u>E</u>	<u>E</u>	<u>E</u>	E****	<u>E</u>
*X	= Use by Right						
E	= Special Exception						
**	= Duplexes permitted only in RS-3 and RS-4 Districts.						
***	= In RM-2 and RM-3 Districts only.						
****	= In RM 1, RM 2, and RM 3 Districts only.						
****	= Assisted living facility, community group home, convent, life/care retirement center, monastery, and novitiate are the only uses within Use Unit 8 permitted by special exception in the RE, RS and RD Districts						
*****	= Mini-storage is permitted only in the RM-1, RM-2, and RM-3 Districts						
#	= Detention/Correctional Facilities, Emergency and Protective Shelters, Homeless Centers, Transitional Living and Residential Treatment Centers are not allowed in RE and RS Districts.						

TMAPC COMMENTS:

No comments.

INTERESTED PARTIES:

Herb Beattie, 3474 South Zunis Avenue, 74105, representing the Brookside Neighborhood Association, stated that he studied the Zoning Code and this item and the next item (Section 404.G) seem to be oriented to make it easier to put office uses into residential districts. He believes that the Zoning Code today provides all the necessary provisions, which would permit appropriate office uses in residential and he is opposed to Section 401, Table 1 and Section 404.G.

Carol Lambert, 2508 East 17th Street, 74114, representing Lewiston Gardens Neighborhood Association, stated that she agrees with Mr. Beattie and she cannot support the amendment for Section 401, Table 1. She expressed concerns that the BOA is the only recourse for either neighborhood associations or for small offices and businesses. The neighborhoods do not have the money to go directly to district court if there is a disagreement with the outcome.

TMAPC COMMENTS:

Mr. Ard stated that the notes in the Planning Commission handouts are that the 15th and Lewis neighborhood association suggested these changes. In response, Ms. Lambert stated that she is only speaking to Section 401 and not Section 404.G. She further stated that Mr. Midget has been discussing all along today about what is important from the standpoint of what we as neighborhoods are dealing with, and she believes that this is something that really goes beyond what we are capable of addressing.

Mr. Midget asked staff for clarification.

Mr. Alberty stated that this is the table that would need to be modified if the Planning Commission agrees to amend Section 404.G. Right now the table restricts it to RM-1 and what staff is stating is that now it would be allowed in RS or RD by special exception.

Mr. Midget suggested that Section 404.G. be discussed before acting on Section 401, Table 1.

Ms. Lambert stated that she is suggesting that it be left as RM and not include the RS, RD and RT districts on Table 1.

Ms. Cantrell asked for some clarification regarding Sections 404 and 401, which are basically the same thing. She asked Ms. Lambert if the 15th and Lewis Neighborhoods didn't suggest this change. In response, Ms. Lambert stated that she has been present from the beginning and she doesn't know where this is coming from. She is requesting a look at the rezoning issues and requesting a look at the special district zoning, but never has recommended spot zoning, which is what this amounts to.

Mr. Alberty stated that this is certainly a change in the presentation that staff had, not only in private meetings with representatives from Lewiston Garden. The representatives stated that they wouldn't oppose office use on the frontage properties providing the Planning Commission didn't change the zoning. This is simply a reflection of that conversation. Apparently, Ms. Lambert is now representing herself and stating that she doesn't agree and that is fine. This proposal had a basis and a reason why it was presented. When staff performed the study on Lewis, it was recommended to change some of those properties to OL zoning with a PUD filed. Representatives from those neighborhoods stated

that they didn't object to the office use as long as the zoning isn't changed. That is why this proposal is before the Planning Commission today.

Mr. Bernard asked staff to clarify Table 1 based on the decision regarding Section 404.G.

Mr. Alberty stated that there was an asterisk in Table 1, which states that it only referred to RM-1, RM-2 and RM-3. This asterisk will be removed from Table 1 and assuming that this is approved by the City Council this could now be done for RS and RD and there is no reason for the asterisk.

Mr. Bernard recognized Mr. Atkins.

INTERESTED PARTIES:

Chip Atkins, 1638 East 17th Place, 74120, referred to Section 404.G and stated that the action of the Planning Commission will affect the houses along 21st Street. This action is basically destroying HP neighborhoods. He agrees with the change on Table 1.

TMAPC COMMENTS:

Mr. Midget stated that Section 404.G would require a special exception through the BOA. That is different from being permitted by right.

Mr. Atkins stated that they still would have the ability to put businesses and offices along arterial streets all over Tulsa. There are homes along 21st Street between Utica and Peoria that are being remodeled for residential living and it is a misconception that people do not want to live along an arterial street.

Mr. Bernard stated that obviously there are sections of town that this isn't germane to, but there are other sections of town where the areas are deteriorating and the Planning Commission and the City of Tulsa have to find a way to allow the property owners to reinvest in their properties.

Mr. Atkins stated that he agrees with that, but why they are deteriorating is the question. What causes deterioration? He questioned if past ordinances have caused the deterioration. Mr. Atkins concluded that there is no way of knowing why the properties along major arterials deteriorate and possible another study should be done.

Mr. Alberty asked for a point of order because Mr. Atkins's questions and comments have absolutely nothing to with Section 401, Table 1.

Mr. Bernard thanked Mr. Atkins and asked the Planning Commission for any other questions or comments.

Mr. Atkins asked how Mr. Alberty can ask for a point of order since he is not a Board member.

Mr. Bernard stated that he is recognizing Mr. Alberty now. Mr. Bernard further stated that Legal is not a Board member either, but his role is help keep the Planning Commission on tract.

Mr. Atkins stated that he just wanted to make sure who was on the Board and who is not.

Mr. Bernard stated that everyone knows Mr. Alberty's position and the Planning Commission appreciates what he does.

Mr. Bernard clarified that since Section 404.G has been approved, Section 401, Table 1 is to correct a clerical error.

Mr. Boulden stated that since the Planning Commission approved the change in Section 404.G it requires the change in Section 401, Table 1.

TMAPC Action; 8 members present:

On **MOTION** of **JACKSON**, TMAPC voted **7-1-0** (Ard, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; Bayles "nay"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 401, Table1 per staff recommendation. (Language with a strike-through has been deleted and language with an underline has been added.)

6. Section 404.G

Suggested changes: Allowing office use in RS and RD districts by BOA Special Exception with specified requirements.

Reason: To permit office use in some residentially-zoned areas where the office use may be appropriate, as determined by the BOA, but the change in zoning may set a negative precedent.

Suggested by: 15th/Lewis neighborhood associations.

Comments: Both support and opposition.

SECTION 404. SPECIAL EXCEPTION USES IN RESIDENTIAL DISTRICTS, REQUIREMENTS

- G. Office use in the RM-1 district shall comply with the bulk and area requirements of the OL district. Office use in the RM-2 district shall comply with the bulk and area requirements of the OM district, except no structure shall exceed two stories in height. Office use in the RM-3 district shall comply with the bulk and area requirements of the OMH district.

Office use in the RS and RD districts shall comply with the bulk and area requirements of the respective district and in addition shall comply with the following:

1. Office uses shall be completely contained within and not extend beyond, one-story of the principal use building;
2. Office uses are not subject to livability space requirements but shall not exceed a floor area ratio of .3;
3. No ground signage is permitted.
4. Any sign associated with a permitted office use shall be attached to the building and shall be no larger than 3 square feet of display surface area;
5. Parking accessory to office use shall not be located in a required frontyard except for an existing driveway;
6. Office uses shall be allowed on a major arterial street only.

For the purpose of determining whether a proposed office use in an RS or RD district is injurious to the neighborhood, the Board of Adjustment, may shall consider the architectural appearance and scale of a proposed office structure under consideration for a special exception.

TMAPC COMMENTS:

No comments.

INTERESTED PARTIES:

Chip Atkins, 1638 East 17th Place, 74120, stated that there are many questions that need to be answered before this can be considered. He suggested that this proposal be denied due to the lack of information.

Mr. Midget stated that certain uses could be restricted, such as restricting certain uses by right.

Mr. Atkins asked how deep this would go into a neighborhood or is this for arterial streets only. Every neighborhood in Tulsa could have a business in the middle of the neighborhood by right if this approved.

Mr. Alberty stated that this would be by exception and not by right. There are no uses by right and they would have to go to the BOA for a special exception. There are five conditions that have been proposed (Mr. Alberty read the five conditions) and stated that there would also have to be a presentation to the BOA. The intent is not to allow office use within the center of a residential district; however, that right is there as one now has the right to request a home occupation.

Mr. Midget stated that after hearing those five conditions he recalls the Planning Commission discussing this during the 15th and Lewis study. Mr. Bernard concurred.

Mr. Alberty stated that it is not limited to these five conditions; there could be ten conditions that the BOA might impose to make it compatible with the area.

Ms. Cantrell stated that she believes it is important to add: "for the purpose of determining whether the proposed office use is injurious to the neighborhood, the BOA may consider the architectural appearance and scale of a proposed office structure". For additional protection it could be limited to arterial streets and then people wouldn't have to worry about it being in the middle of their block.

Mr. Atkins requested a time limit be put on these applications, too, for review.

Mr. Boulden stated that the BOA can put a time limit on any special exception. Mr. Atkins asked if a law could be passed with a time limit. In response, Mr. Boulden stated that it could be done for five years.

Mr. Midget stated that the time limit may not be a bad idea because they would have to come back for review and prevent eyesores from happening.

Carol Lambert, 2508 East 17th Street, 74104, stated that she understands that the Lewis study hasn't been acted on by the City Council. Since the Lewis study is pending, she believes that any decision made on this should be put off until the Lewis study issues are resolved.

Susan McKee, 1616 South Victor, 74104, stated that she agrees with Carol Lambert and this should be tabled until the Lewis study has gone through the City Council.

TMAPC COMMENTS:

Mr. Jackson asked staff if the Lewis study at City Council has any bearing today on these two items. The Lewis study is what precipitated this action, but in his opinion, it doesn't have any bearing on today's decision.

Mr. Midget stated that this change would have to be applied generally and not to just the 15th and Lewis area. He wouldn't disagree with waiting on this until the

Lewis study is before the City Council. Mr. Midget commented that he suspects that Councilor Barnes would be moving to get this before the Council for consideration.

Mr. Bernard disagrees with Mr. Midget's comments. This has been discussed on numerous occasions. Mr. Ard has asked, on several occasions due to applications before the Planning Commission, for alternatives to some of the proposed changes that the Planning Commission has been trying to make and is not being comfortable with it. He is opposed to holding this up because the Lewis study could be held up at City Council as long as it had been with the Planning Commission, which was more than one year. This is a good proposal and this would apply to many areas in town that need this help and not just the 15th and Lewis area. Citizens do not want to live on a main arterial street and the best use of the property (rather than allowing it to continue to deteriorate) would be to allow office use with conditions that have been proposed and maintaining the look of a residential home. This wouldn't be an eyesore to the people living behind these properties and the property owners would no longer see their property values deteriorate.

Mr. Midget stated that if the Planning Commission decides to move this forward, he would ask that the Planning Commission make a specific appeal to the City Council to address this particular issue along with the 15th and Lewis study so that it is not so disjointed.

Mr. Bernard reminded the Planning Commission that there are a few property owners who have been waiting several months for a decision on this.

Ms. Matthews stated that there are two property owners who have cases pending. However, on property owner was granted a partial refund. There is one case still waiting for a decision, which has been waiting prior to the 15th and Lewis study.

Ms. Bayles stated that she agrees with Ms. Cantrell about the paragraph referring to the BOA, but she doesn't know of any time that this Board or the BOA has had any education on architectural appearance and design. To her this is a piecemeal reaction to what one of the recommendations in the Lewis study addressed, which was a zoning ordinance with design guidelines. If the Planning Commission is dealing with a zoning ordinance that is going to be universally applied to all 27 Comprehensive Plan districts, then it should be addressed as such. The Planning Commission has no standard for architectural appearance and there is no person on this board, with the exception of Mr. Ard and Ms. Cantrell, who sat through an HP meeting and hearing to go over the finite definitions and terms relating to architectural appearance and scale. It can become overly cumbersome. If this is being addressed she would prefer to defer this until after City Council consideration and hear their decision on it. There may be considerable time and expenses associated with this in addition to the

Comprehensive Plan and whatever zoning ordinance comes from it. She doesn't see a piecemeal solution being an adequate solution for this issue.

Mr. Boulden stated that staff was trying to produce a package to send to the City Council and what he is hearing is that the Planning Commission wants this one to lag behind and not be considered at the same time as other changes. He asked the Planning Commission to clarify if they want the package to wait until the Lewis study is addressed or send everything else forward and this one stay back. Mr. Boulden asked the Planning Commission to provide some clarity.

Mr. Midget stated that he doesn't want it to lag behind, but he does believe that the City Council should address this issue along with the Lewis study. Mr. Midget clarified that he is speaking to this specific issue and the balance can be sent on.

Mr. Boulden asked if the Lewis study is an amendment to the Comprehensive Plan. In response, Ms. Matthews stated that it is not an amendment to the Comprehensive Plan. It was presented for information. Ms. Huntsinger informed the Planning Commission that the Lewis study was transmitted to the City Council on August 25, 2006.

Mr. Midget asked if there was anything specific that the City Council was asked to do with the study. In response, Ms. Matthews stated that the Planning Commission wasn't asking the City Council to do anything except to accept the study. This wasn't presented as an amendment to the Comprehensive Plan. The Lewis study was a study conducted at the City Council's request.

Mr. Boulden stated that the Lewis study was simply information provided to the City Council.

Mr. Ard stated that he understands where Ms. Bayles is coming from. This will amend the entire Zoning Code. Although, certainly it may have its roots in the 15th and Lewis study or area, it will affect the entirety of the City of Tulsa. The Planning Commission tends to focus in on it being a 15th and Lewis issue, but it is not because it will change the entire Code and will have an impact over all areas. He would support it with Ms. Cantrell's proposed language that specifies arterial streets only.

Mr. Albery agreed with Ms. Cantrell's proposed language regarding arterial streets. Mr. Bernard and Ms. Cantees concurred.

Mr. Midget stated that nothing that is done today will preclude the Planning Commission from making any other adjustments that may be needed in reference to the 15th and Lewis area. The Lewis study is simply a plan and the Planning Commission is not asking the City Council to do anything.

Mr. Alberty stated that the City Council requested that the Planning Commission study that particular segment (Lewis from 15th to 21st Street). It has had many interpretations and several Planning Commissioners may have different ideas of what that study did. Staff completed the study and presented it to the Planning Commission. The Planning Commission has now approved it and it has been forwarded on to the City Council. The reason why there was a delay, to further complicate the situation, it was not received in the City Council office electronically (due to technical difficulty), which was discovered last week. It has now been manually delivered for their consideration. The study is before the City Council to do with whatever they please to do. This requested ordinance change should have no bearing on what the Council does with the study.

Mr. Wofford moved to approve the proposal with the additional language Ms. Cantrell suggested limiting to arterial streets.

Ms. Cantrell asked if Mr. Wofford would amend his motion to include the language that the BOA shall consider the architectural appearance and scale of a proposed office structure under consideration for a special exception, and subject to this being allowed on a major arterial street only.

Mr. Wofford accepted the amendments as part of his motion.

Mr. Midget concurred with the amendments and seconded the motion.

Ms. Bayles stated that she would like to give the public additional time to review this. The public was given more time to review the language change on church and massage therapists. There is nothing to be lost by putting this out in the public realm for another review based on the changes that are proposed today.

Mr. Bernard stated that he understands Ms. Bayles's comments, but the Planning Commission has been working on this a long time and actually this gives the public more teeth by tying this down to major arterial streets.

Mr. Wofford stated that he feels the same as Mr. Bernard. There has been public input today and that is what these changes are based upon. This has been out there long enough and comments have been made. Mr. Atkins and others have made very useful comments. He believes this is an appropriate time to bring this to a vote.

TMAPC Action; 8 members present:

On **MOTION** of **WOFFORD**, TMAPC voted **7-1-0** (Ard, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; Bayles "nay"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 404.G per staff recommendation, subject to modifying the language "for the purpose of determining whether a proposed office use in an RS or RD district is injurious to the neighborhood, the Board of Adjustment, ~~may~~ shall consider the architectural appearance and scale of a proposed office structure under consideration for a special exception, and subject to this being allowed on a major arterial street only. (Language with a strike-through has been deleted and language with an underline has been added.)

7. Section 601, Table 1

Suggested changes: Allowing residential uses in office districts as uses by right with specified densities for multifamily uses.

Reason: To permit "New Urbanism" mixed uses, as proposed by several neighborhood association representatives, Crutchfield neighborhood, 6th Street (Pearl District) Corridor neighborhood.

Suggested by: Neighborhood association representatives of "New Urbanism".

Comments: Both support and opposition.

**CHAPTER 6
OFFICE DISTRICT PROVISIONS**

SECTION 601. PRINCIPAL USES PERMITTED IN OFFICE DISTRICTS

The principal uses permitted in the Office Districts are designated by use units. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading, and screening requirements and other use conditions in Chapter 12. The use units permitted in Office Districts are set forth below in Table 1.

Table 1

Use Units Permitted in Office Districts*

Use Unit		Districts			
No.	Name	OL	OM	OMH	OH
6.	Single-Family Dwelling	E X	E X	E X	E X
7.	Duplex Dwelling	E X	E X	E X	E X
7a.	Townhouse Dwelling	E X	E X	E X	X
8.	Multifamily Dwelling and Similar Uses	E	E X	E X	X

*X = Use by Right

E = Special Exception

** = Drive-in bank facilities whether a principal or accessory use, require Board of Adjustment approval of special exception in OL Districts.

*** = Limited to hotel and motel.

**** = Limited to barber and beauty shops.

= Residential treatment and transitional living centers are allowed by right in OM, OMH, and OH Districts.

Equivalency: OL is to be allowed by Special Exception in RM-0 and RM-1; OM is to be allowed by right in RM-2 and OMH and OH by right in RM-3.

TMAPC COMMENTS:

Mr. Ard asked staff why wasn't the same thing that was done in Section 404.G, which is by special exception, done in this item. In response, Ms. Matthews stated that staff considered that but thought it would be easier if the philosophy of the Planning Commission is going to be to go for New Urbanism in the mixed used developments then to make it allowed. Mr. Ard stated that he thought if this went before the BOA it would give some controls. In response, Ms. Matthews stated that this is already allowed in CBD district, which only covers downtown.

Mr. Jackson stated that these are real life situations. He believes this is a good step in a positive direction.

INTERESTED PARTIES:

Susan McKee, 1616 South Victor Avenue, 74104, stated that she has some really basic objections to this proposal. The first objection is uses by right and the reason being that the person who is adjacent to any of these offices has no recourse or public forum to express their comments, their questions or even know about what is going to go on behind their homes. The second objection is the specified densities for multifamily dwellings. She indicated that she doesn't

object to allowing this, but she doesn't believe it should be by right. It should be addressed in a public way and letting the public have an opportunity to come forward to express their concerns. She expressed the same issues and concerns with Section 701, Table 1.

TMAPC Action; 8 members present:

On **MOTION** of **JACKSON**, TMAPC voted **7-1-0** (Ard, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; Bayles "nay"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 601, Table 1 per staff recommendation. (Language with a strike-through has been deleted and language with an underline has been added.)

8. Section 701, Table1

Suggested changes: Allowing residential uses in commercial districts as uses by right with specified densities for multifamily uses.

Reason: See item #7 above.

Suggested by: See item #7 above.

**CHAPTER 7
COMMERCIAL DISTRICT PROVISIONS**

SECTION 701. PRINCIPAL USES PERMITTED IN COMMERCIAL DISTRICTS

The principal uses permitted in the Commercial Districts are designated by use units. The use units are groupings of individual uses and are fully described, including their respective off-street parking, loading and screening requirements and other use conditions in Chapter 12. The use units permitted in Commercial Districts are set forth below in Table 1.

**Table 1
Use Units Permitted in Commercial Districts***

Use Units		Districts			
No.	Name	CS	CG	CH	CBD
6.	Single-Family Dwelling	E X	E X	E X	E X
7.	Duplex Dwelling	E X	E X	E X	E X
7a.	Townhouse Dwelling	E X	E X	X	X
8.	Multifamily Dwelling and Similar Uses	E X	E X	X	X
17.	Automobile and Allied Activities	E	X**	X**	X**

*X = Use by Right

**X= Use Unit 12a. and auto body painting within Use Unit 17 uses require Board of Adjustment approval of a special exception if the lot containing either of these uses is within 150 feet of R zoned land, other than streets or freeways which are in R Districts.

E =Special Exception

TMAPC COMMENTS:

No comments.

INTERESTED PARTIES:

Susan McKee, 1616 South Victor Avenue, 74104, stated that she has some really basic objections to this proposal. The first objection is uses by right and the reason being that the person who is adjacent to any of these uses has no recourse or public forum to express their comments, their questions or even know about what is going to go on behind their homes. The second objection is the specified densities for multifamily dwellings. She indicated that she doesn't object to allowing this, but she doesn't believe it should be by right. It should be addressed in a public way and letting the public have an opportunity to come forward to express their concerns.

TMAPC Action; 8 members present:

On **MOTION** of **MIDGET**, TMAPC voted **7-1-0** (Ard, Bernard, Cantees, Cantrell, Jackson, Midget, Wofford "aye"; Bayles "nay"; none "abstaining"; Carnes, Collins, Harmon "absent") to recommend **APPROVAL** of the proposed amendment to the City of Tulsa Zoning Code for Section 701, Table 1 per staff recommendation. (Language with a strike-through has been deleted and language with an underline has been added.)

There being no further business, the Chair declared the meeting adjourned at 4:21 p.m.

Date Approved:

11/15/06


Chairman

ATTEST:



Secretary

