

**MINUTES
PLANNING COMMISSION
7:00 PM
116 WEST NEEDLES
BIXBY, OKLAHOMA
MONDAY
April 17th, 2006**

1. Call to Order

Chairman Sherrill called meeting to order at 7:02 pm. Members present: Sherrill, Trowbridge, Powell, Campbell, and Davis. *Chairman Sherrill introduced new member Neil Trowbridge to the commission and audience.*

2. Approval of Minutes for March 20th, 2006

Powell motioned for approval, Davis seconded.

VOTING FOR: Davis, Powell, Sherrill

VOTING AGAINST: none

ABSTAINING: Campbell, Trowbridge

MOTION PASSED: 3-0-2

PUBLIC HEARING

3. Discussion and possible action to approve BZ-315 North of 151st St. midway between Sheridan and Yale from AG (Agricultural) to CG (Commercial General), Jack Smith, applicant.

STAFF REPORT

This item was continued from last meeting because applicant was not present and to allow applicant to do a possible PUD as suggest in the Comprehensive Plan. No response has been received from the applicant. BZ 315 is along the commercial corridor and Commercial General is appropriate for this area. The Comprehensive plan suggests that zoning along the corridor be done in a PUD to allow more uniform development in the area. Commercial General would allow for mini storage, auto and allied activities, drive in restaurants, commercial recreation by right and warehousing, wholesaling and light manufacturing by special exception of the Board of Adjustment. Much of the property is within a 100 year flood plain and would be subject to the Flood Ordinance if developed. Staff has reviewed this application and feels that an open CG Commercial Zoning is not as appropriate as a PUD that indicated the use and development of the property. There is some control in that Architectural Review by the Committee when development occurs; however, we have required most recent development to present a PUD. Staff recommends the item be continued for a PUD or the zoning reduced on the approval of the applicant to CS Commercial Shopping.

PUBLIC HEARING

B. Jack Smith, 9945 S. 72nd East Ave Tulsa, applicant: Applicant stated that he would be more than willing to go with a CS zoning instead of CG. Approximately 2/3 of the property is in the floodplain, so they are only planning to develop the front part of the parcel with a possible detention pond/area in the back.

Powell: Changing the zoning to CS is not a problem?

Mr. Smith: No, it is not a problem at all. Mr. Coffey has been very helpful in explaining the different zones and what is/is not allowed in each. CS will suit us fine.

Powell motioned to approve **CS (Commercial Shopping)** zoning for BZ-315, Davis seconded.

VOTING FOR: Davis, Campbell Powell, Trowbridge, Sherrill

VOTING AGAINST: none

ABSTAINING: none

MOTION PASSED: 5-0

4. Discussion and possible action to approve PUD 50 a Supplemental Zoning located North of 151st Street and West of Sutherlands, Jeffery Levinson, applicant.

STAFF REPORT

Applicant is for Supplemental Zoning. The only two items amended have for the underlining zoning is the width of CS lots are reduced from 150 to 125, and IL widths are reduced from 200 to 100 feet. No other bulk area requirements are amended. The Fire Marshal would like to locate the fire hydrants at no more than 300 feet. The City Engineer will require drainage plans showing total retention and reserves the write to review and approve drainage, water, and sewer plans. Staff recommends approval

PUBLIC HEARING

Jeffrey Levinson, 9308 S. Toledo Tulsa, applicant: In accordance with staff recommendations. As Mr. Coffey stated, we are only asking for two small changes. We ask you to uphold the staff recommendation and approve PUD 50.

Powell made a motion to approve PUD 50, Davis seconded.

VOTING FOR: Trowbridge, Powell, Campbell, Davis, Sherrill

VOTING AGAINST: none

ABSTAINING: none

MOTION APPROVED: 5-0

5. Discussion and possible action to approve BZ 316 an application for CS (Commercial Shopping) Memorial Frontage (Lot 10 & Part of 9, Block 10 Southwood) and OL (Office Light) for adjoining property Part of Lots 9 & 8 Block 10) to the East, John Mumey, applicant.

STAFF REPORT

This item as been considered by the Planning Commission on two other occasions. Both request were for CS Zoning. The item is placed on the agenda in a new form of CS and OL on the request of the City Attorney. In the last application Mr. Mumey nor his representative were not present to respond and make their case for the zoning application. The staff recommendation has not changed. This area is designated on the Comprehensive Plan to remain Residential even though the property ins along a Commercial Corridor. Staff feels they must recommend to not violate the Comprehensive Plan and therefore recommends denial.

PUBLIC HEARING

Dale Warner, attorney for applicant: Filed once previously and backed off of that application since there has been a lot of resistance from both the public and Mr. Coffey's office. Dr. Mumey bought property 26 years ago when Memorial was just a two lane road and he was one of the few residence to live out here when it was basically an agricultural area. Things have changed a lot since that time. The busiest thoroughfare in Tulsa County is Memorial, which runs from Tulsa International Airport down to Arkansas River and is almost all commercial with very few exceptions. Dr. Mumey has the only house, that I could find, within any distance even remotely close that faces Memorial. I made a list of this ought to be rezoned; we are trying to sell this property and no one will touch it. They say it's commercial, it needs to be rezoned. It's the only piece of property on that block that faces Memorial that isn't zoned commercial. This is not spot zoning, this is really spot zoning in reverse because this is the only property in the block that is residential. Across the street (Memorial) is all commercial. Right next door to the South is a used car lot. I do not understand why the public resists the change. If I lived nearby, I would much rather has a nice, crisp, office building with landscaping and people paying taxes on the property. What's there right now is an eyesore. The City is not going to revisit this Comprehensive Plan until 2020, but Bixby is the fastest growing city in the state. They are not going to revisit a plan for the busiest thoroughfare in Tulsa County with about 43,000-46,000 cars a day because the plan says that little strip on the East side of the street should stay residential until something comes up. The plan was put into place in 2000 or 2001 and everybody's intentions were good. But even in the last five years things have changed. What is currently there is an eyesore that is not the highest and best use and that's what the citizens of Bixby are going to get to see, I guess until 2020, unless someone changes things. This is why we have boards and elected officials. I don't think you all should just rubber-stamp everything that comes in here, but if something comes before you repeatedly I don't think you should deny it just because someone down the street is against it. The properties to the North on the East side of the street do not face Memorial, their backyards do. The only reason to NOT rezone this property is that the Comprehensive Plan says no. This property will be commercial some day, it's just a question of how long the City of Bixby is willing to keep saying 'gosh no we're not going to do it until this plan is revised.' If someone has a better reason for not rezoning it, other than this plan, tell me what it is. This gentleman here (points to audience) doesn't want it rezoned. Why? Oh he probably lives near by has for years and doesn't want it there. He's certainly entitled to that view, but that's not a reason to not change the zoning. Highest and best use does not suggest that we go to every neighbor and say 'sir, we're thinking about putting this in on our property do you agree? No, if you don't we'll scrap the idea for the rest of our lives.' As far as a PUD, we cannot come in with that because we do not have a buyer yet. Stan Frisbie has it listed but his hands are tied; he cannot even put a price on it. Any development that comes in there, the City has the final call on.

Darrell Mullins, 8944 E. 113th St.: 37 year resident of Southwood Addition. Is opposed to the change in zoning because I want to preserve and protect the existing neighborhood. Once we start rezoning properties in our neighborhood, it will be hard to stop it in the future. These are all large lots, most are in the area of one acre. And most of the houses in there are pretty old. Most residents in this neighborhood are retired and the major investment we have is in our house. If we start changing the zoning and put commercial establishments in there, it will drive down the value of our homes.

Davis: Asked Mr. Mullins if there is any type of commercial zoning he could live with? Anything that would be acceptable?

Mr. Mullins: My fear is that once you change the zoning others will follow. So, to answer your question, no; my fear is commercial zoning.

Peggy Davenport, 8123 E. 117th St.: 40 year resident. From my property, the view is awful. Why can't someone live in the house? The owners before Mr. Mumey kept the property pristine. He needs to clean it up.

I do not think he should be allowed to put in a shopping center – he may decide he wants to build the shopping center.

Jason Clark, 8115 E. 117th St.: 1st house off Memorial directly behind site in question. Property is an eyesore, especially from our backyard. I know the applicant wants to sell the lots to make money. If he would clean it up, it would sell as residential property. We would be interested in trying to acquire some of it to make our yard bigger. The screening fence that the City requires between commercial property and residential property is a good idea. But when you have to walk out your back door and see the lights and the parking lots it will mostly affect us. When I bought my house, the value was already decreased compared to others in the subdivision because I am next to commercial property. I'm the one that would pay. It is a good looking piece of property, if it were just cleaned up. Plus, there is plenty of land left along Memorial for commercial development. If this was the only property available, they might have a stronger case.

Powell: This was an issue with the Boardwalk development. The lighting and screening was a major concern with surrounding homeowners. To this day there have not been any complaints. They worked real well with the developer to come to a solution. If they were to do something like that, would you feel better?

Mr. Clark: Even if the lighting issue worked out, I would ask them to buy me out. I would end up owing more than my house is worth because of the value lost by being near commercial.

Powell: Homes around Boardwalk just increased in value; if the homeowners sell to developers. Would that give you a "warm fuzzie"?

Mr. Clark: Not unless I had a guarantee that the value of my home would go up.

Trowbridge: What you have right now is not really a very good neighbor, right? Would commercial positively be a worse neighbor?

Mr. Clark: If they made a straight line on the west side of my fence where the commercial property is straight down right at his house and said we're going to give you this square of commercial property, that would be alright. But to come back into the neighborhood is not acceptable.

Jim Manley, 8322 E. 113th St.: Trying to take residential property and convert it to commercial; when you do that, you will open up a can of worms. The guy to the North already wants to make his commercial, and he is going to have a good argument when he applies for rezoning if we approve this one. Also, combine that with the lot split issue that is on the agenda tonight and we will have lots being split along Memorial with the new lots being rezoned as commercial.

Jim Winsworth, 8314 E. 116th St.: Traffic problem has not been mentioned. We have a tremendous traffic problem down 116th right now anyway. You put any kind of commercial on that corner, school buses and everyone else will have an even worse time trying to get out. 116th is the main drag through the neighborhood; I think this is a safety issue really.

Jim Davenport 8123 E. 117th St.: Want to tell Mr. Mumei what has NOT changed in the 26 years since he bought the property – that's the neighborhood surrounding it. I don't think we could argue with his logic of his house being the only one facing Memorial, but the rest of it is a neighborhood. It's all neighborhood to the North and to the East of his property and it's the "oh by the way" that he wants to do further East into the neighborhood where we would be looking at dumpsters. We don't want that.

Rick Horton, 8317 E. 117th St.: Moved to Bixby 10 years ago because of this neighborhood and the trees. They just completed a drainage project that runs right through the back of my house and through Mr. Mumey's property. It is not ready for a whole slab of 4 acres of concrete. My yard flooded for ten years until they put in this new drainage system. My main concern is that this new system they just completed will not be able to handle the runoff from a commercial property. We just fixed a drainage problem, we don't want to create a new one. Plus, I'm down hill from the property; a bunch of us are downhill from it; and we'll be affected by the runoff.

Campbell: Does the City Council have to change the Comprehensive Plan?

Coffey: Our Comprehensive Plan came about from 4 years (I was not here during the time) of public meetings. The process to change the Plan is much like the process to change zoning with public meetings and input into the process and then an agreement before the City Council. It would also go through this committee.

Sherrill: The Comprehensive Plan is a recommendation plan, but it's highly recommended.

Coffey: It is highly recommended. In the past, we have stayed with the Plan because compromising it would leave the Plan open to be compromised again and again.

Mr. Warner, attorney for applicant: Approval of this application would still have to go before City Council. People mentioned this would open the door for future commercial zoning in the area; the door's already open from the airport to the river. We're not changing the neighborhood and in my lifetime, I guarantee all the lots to the North of Mr. Mumey's property will be commercial. As for the traffic issue, it's already an issue. There are approximately 47,000 cars traveling Memorial every day. The drainage situation: this is why the City has engineers and any developer will be required to meet the City's drainage standards. These arguments are emotional ones. Zoning happens every day because change happens every day. If you believe this is not in the best interest of the City, than turn it down.

Sherrill: We are not in Tulsa, we are in Bixby. I agree a lot of things change, but we try to do it with an even hand here; we take into consideration the surrounding neighbors. If you want to make some change, maybe come in here with a PUD or something less intense like office; with a consensus from the neighbors.

Campbell: 99% of the time if the developer and the community get together something can be worked out. Just discuss it with each other.

Mr. Warner: We would be open to that. As for a PUD, Mr. Mumey is not a developer so we would have to get a developer and talk to Stan Frisbie. Maybe Office Light Intensity (OL) zoning would be better.

Powell: It just goes way too far back into the neighborhood.

Discussion ensued between the attorney and the audience. It was decided to continue the issue to the next regularly scheduled meeting so the applicant may converse with neighbors for alternate solutions.

Powell made a motion to continue the issue to May 15th, 2006, Campbell seconded.

VOTING FOR: Davis, Campbell, Powell, Trowbridge, Sherrill

VOTING AGAINST: none

ABSTAINING: none

MOTION APPROVED: 5-0

6. Discussion and possible action to approve a Preliminary Plat for Bixby Crossing PUD 49.

STAFF REPORT

Previous comments of the staff have been addressed. The big item still remains that will part of the Process before earth is moved and that is the CLOMR-F and a letter from the Corp of Engineers on the 404 permit area. The staff recommends approval.

Davis made a motion to approve the preliminary plat, Trowbridge seconded.

VOTING FOR: Powell, Trowbridge, Campbell, Davis, Sherrill

VOTING AGAINST: none

ABSTAINING: none

MOTION APPROVED: 5-0

7. Discussion and possible action to reconsider BL 333 a Lot Split of Lot 19 Block 1 Southwood Addition.

STAFF REPORT

As the attached sheets will show there has been considerable discussion between the neighbor to this lot and the City Attorney over the legality of splitting this lot. Please review the attached letters and comment from the City Attorney. The City Attorney is of the opinion the Planning Commission did act correctly on the first decision, but he was troubled by the sanitary sewer system to the lot not being in place. It is also clear that when the lot is developed a building permit could not be obtained without the new development being connected to the sewer line.

The City Attorney also believes the language of the Code needs to be cleaned up to remove any ambiguity as to meaning and interpretation. Should the Planning Commission vote to reconsider, the item will be placed on the May agenda. If the Planning Commission votes not to reconsider the item will stand.

PUBLIC HEARING

Jim Manley, 8322 E. 113th St.: We moved to Southwood because we liked the neighborhood. Now we're getting folks coming in and trying to commercialize and split it up.

Trowbridge: There have been four previous lot splits in this neighborhood that have been approved. Are you aware of those?

Mr. Manley: Russ Fischer is the one who wrote the letters to the City Attorney about the previous lot splits. What most of us are trying to get at here is...what is the purpose here? To destroy our neighborhood with commercialization?

Trowbridge: I don't think anyone is out to destroy the neighborhood.

Mr. Manley: Well, that's what you're doing. We all moved here because we like the area, we raised our kids out here, and we don't want our neighborhood destroyed. This attorney and Mr. Mumey, they don't live there. There are folks that have lived there forty years. We don't want the neighborhood destroyed; that's what it's heading toward. We are no longer going to have those big trees along Memorial that everyone relates Southwood to. Everyone say's 'oh that's where the big trees are at; oh you live out there.' That is our neighborhood, we've spent a long time out there and we don't plan to let it get destroyed.

Russ Fischer, 8734 E. 113th St.: I believe that the Planning Commission should vote to reconsider this. I feel the action previously taken had unintended consequences that you may not have been aware of. Three main points as to why this should be reconsidered. 1) The character of Southwood. I think you have heard from the others here tonight quite a bit about the character of our neighborhood, so I won't go into that. 2) Our restrictive covenants do not allow lot splits. Mr. Frazier and I, when you read his letter, kind of agree to disagree. The covenants say 'there shall be one residence per lot as now platted.' I work for a civil engineering company and work with this stuff. The founder of my company has been on the Tulsa Planning Commission, so I went over some of this with him; the language and what it really says. When he read this phrase, he said it meant 'no lot splits.' This was penned in, I think 1968 when the subdivision was platted and yes things are done differently now. They may be clearer on this issue now than they were then, but it clearly says 'as now platted.' A lot split does not create new lots; lot 19 will always be lot 19, you just create a parcel where one person will own maybe the west half of lot 19 and another person will own the east half. Mr. Trowbridge brought up a point about the previous lot splits that have occurred in Southwood. Mr. Coffey was good enough to give me copies of those. Three of the lot splits actually did occur in Southwood, but they did not create new lots they were for various odds and ends. One, at 112th & Memorial, cleaned up some ODOT taking of property during the widening of Memorial. Another is at 114th & 83rd East Avenue. Again, it did not split a lot that created two residences. It sliced off the back of one of the properties to accommodate a pool. The third occurs in block 2 of Southwood which is the commercial corner with Witte Automotive and the other businesses and I don't feel this is relevant. These lot splits, though they happened in Southwood, did not create a separate lot that one would intend to build a residence on. So, I am saying that there really has been no compromise to the restriction that Southwood does not allow lot splits. This case would change that. I do not think it was the intention of the Planning Commission to set up that change. The minutes from the original meeting: Mr. Sherrill you are asking a question about whether the subdivision covenants state that such a lot split is allowed. I am not sure you got sure you got the answer specifically as to what our covenants say with the twist "as now platted". You also talk about if there had been lot splits had occurred here before and the answer you received was just that yes there were. 3) The action goes against City Subdivision Regulations. Looking at the minutes it was stated right off the bat that a sewer line needed to be extended. In the letters between Mr. Coffey, Mr. Frazier, and me it kind of gets stated that this was a conditional approval. My point is that the Planning Commission does not really have authority to do conditional approvals. Section 8 of the Subdivision Regulations has a list of when you can just do a straight up approval, a full staff review, a waiver, it gives you guidance to go by. Part of what needs to be looked at is if sewer is available to the new lot. It does not say that you can do a conditional approval, the lot is either to have sewer or there must be a waiver granted by the City. Again, Mr. Frazier and I have kind of agreed to disagree on what it means when it says 'City'. I contend that this section refers to 'City' to mean City Council. Mr. Frazier acknowledges that one can argue that 'City' includes the Planning Commission as you guys are an action of it. There is a section in the Subdivision Regulations there is a section on exceptions. Section 3.5 which states exceptions can only be granted by City Council. There is a procedure listed and the Planning Commission is part of that, but a person has to come in and show undue hardship. As I said, I work at a civil engineering company and several times I have worked on sanitary sewer extensions where someone wants to do a lot split. I've not done one in Bixby, but I have done them in Tulsa and Broken Arrow. It's a similar deal: they want to do a lot split, they didn't have sewer and before it could be approved they had to put in sewer, they had to have the easement dedication and you have to

have it built per City requirements. Mr. Coffey did say that Mr. Frazier has stated that he feels the Planning Commission acted appropriately. But yet, Mr. Frazier decided this needs to be looked at again tonight. I think he recognizes some things were done that are not in the Subdivision Regulations. My letters to him were pointing out to him that I felt the City had violated City Ordinance (Ord. 854). In essence, a waiver was granted that was not requested, procedure was not followed, TAC was not done. The lot also does not have access to electric, gas, or phone. It does have access to the street and it does have water. With all that in mind, I hope that you all will decide to reconsider this issue at the next meeting.

John Gillenwater, 8724 E. 113th, original applicant: First of all I've got a lot of good neighbors here and I certainly understand how they feel about protecting the ambience of the neighborhood. I am wondering, based on what I heard earlier if having my lot split could potentially cause a lot of problems for the whole neighborhood. I understand where everyone is coming from and they are great neighbors, but I respectfully disagree. It's a huge lot. Whatever they build in there, if I were to sell it; which I have no intention of doing any time soon & I have no plans to move; but if I were ever to sell it, whatever they would build in there would fit in the neighborhood since the lot is so large. I also own the lot that has the easement and I would obviously agree to stretch or build or whatever you have to do to get the easement to the new lot. If I need to build a sewer now, I would be willing to pay to have the sewer extended even though I am not planning to sell right now. With respect to value I just cannot argue that splitting this lot would do anything but enhance the value of the neighborhood since it is such a large lot. As far as the sewer goes, I just want to make sure that everybody understands that I tried to get the engineering firm to put a sewer line in there when they first were platting it out. I agreed to the easement that went across my driveway. Once again, I apologize for any grief I've caused any of my neighbors; they are all good neighbors. I just disagree. I think anything on there would look very good and would enhance the neighborhood.

Sherrill: It said somewhere that these lots were platted back in the mid 1960's and they were large lots because they needed to have both a septic system and a well on them. Both of those things have since changed; the neighborhood now has city water and sanitary sewer.

Mr. Gillenwater: The sanitary sewer is fairly new but the water has been there for quite a while. Just so you all know, I've lived there almost 13 years, I'm not a new neighbor who came in to try to develop it. We've raised our kids here from the time they were 4 and now they're in high school.

Sherrill: The size of the lots and the trees are some of the nice features of the neighborhood. I know that down in the Utica Square area in Tulsa there were a lot of large open lots that have subsequently been re-subdivided into smaller lots. In my own opinion, I don't think it has hurt the neighborhood. Probably, if anything, it's improved the neighborhood because they've built a lot of nice new houses in that area. Most of the people that live in your subdivision have lived there a long time. Probably a few of them do not want to mow that large of a lot forever and there's a possibility that some of them may want to subdivide their lots if possible. I drove through there, quite extensively today, to look at this particular lot and others. It's even possible, I'm pretty confident that at some point; maybe not now; but at some point in the future there will be probably twice as many lots as there are today. Some of that will occur because people will join lots together because they put their existing houses in the middle of the lot and there isn't enough room to split it so those people will join with the neighbor in order to create a lot in between to sell off. The lot itself will be worth several times more than they originally paid for the lot and house. That's what I see happening in the future. I think this is a very different item than we talked about while ago with commercial zoning. I think this is residential – residential here and not residential – commercial.

To Mr. Coffey: It's my understanding, we've already voted on this; we've passed it. So now what we are doing is to reconsider. Will you explain to us what we are doing?

Coffey: The deeds have been stamped and have been filed in Tulsa County Courthouse. So this reconsideration, we are looking at the next meeting, because the filing will have to be reversed as well. The reason for setting it off for a month is because this will probably entail some legal action; we have to give the action time so that we can see what needs to be done legally both within the City or by Mr. Gillenwater or Mr. Fischer; whomever chooses. Lots splits and platting are not the same item; neither are lot splits and zoning. Zoning is not a conditional matter. We cannot conditionally zone; which is the reason for Planned Unit Developments (PUD) so conditions may be put on zoning. Lot splits can have conditions placed on them by state law. The condition that we placed on this lot split was that there be sewer extended to the new lot. So I don't think that's an issue really to sway one way or the other. So, the issue is: do we want to reconsider this and give all parties the opportunity to look at it thoroughly until next month and then act on it? Or, is the Planning Commission satisfied with the action they have taken and would like to simply deny the reconsideration; with which the previous action will stand?

Sherrill: I am still not 100% sure whether a lot has to have sewer to it before or after it is split in order to make it valid. Common sense would tell you that if you are going to split it at a later point, sewer would be brought to it. Because who is going to go out and put sewer in with the hope that they get the lot split. I think that is some language that maybe the City Council needs to get cleared up and help us define what the word 'City' means.

Coffey: This is one of the few instances where the Planning Commission is not a recommending body. The way our ordinance is written we in fact make the decision on lot splits.

Sherrill: Usually they don't come to us unless there are questions because you have the right to stamp them, correct?

Coffey: I do have the authority to stamp lot splits according to the ordinance and have chosen not to do that, unless it is a case where there has been a court order or scribner areas and lot line adjustments. In areas where there is a true lot split I have brought those to you. I do have the authority if it fits within the ordinance.

Sherrill: Personally I think we did the right thing the first time around, but I am willing to listen to what the rest of you guys (commissioners) have to say.

Davis: I am too.

Trowbridge: I'm going to abstain. *Mr. Trowbridge was not appointed to the Planning Commission until this meeting, therefore was not a part of the original decision.*

Davis made a motion NOT to reconsider BL 333, Campbell seconded.

VOTING FOR: Davis, Campbell, Sherrill

VOTING AGAINST: none

ABSTAINING: Trowbridge, Powell

MOTION APPROVED: 3-0-2

Powell abstained because he was absent from the meeting at which the original decision was made.

8. Old Business: None

9. New Business: Planning Workshop in Oklahoma City May 12th, 2006. Coffey passed out entry forms and asked the commissioners to RSVP within the next few days.

10. Adjournment

Approved

Date