

**MINUTES  
PLANNING COMMISSION  
116 WEST NEEDLES  
BIXBY, OKLAHOMA  
January 21, 2013                      6:00 PM**

***SPECIAL-CALLED MEETING***

**STAFF PRESENT:**

Erik Enyart, AICP, City Planner

**OTHERS ATTENDING:**

See attached Sign-In Sheet

**CALL TO ORDER:**

Chair Thomas Holland called the meeting to order at 6:04 PM.

**ROLL CALL:**

Members Present: Jeff Baldwin, Thomas Holland, Lance Whisman, and John Benjamin.

Members Absent: Larry Whiteley.

**CONSENT AGENDA:**

1. Approval of Minutes for the December 17, 2012 Regular Meeting
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Chair Thomas Holland introduced the item and asked to entertain a Motion. John Benjamin made a MOTION to APPROVE to the Minutes as presented by Staff. Chair Thomas Holland SECONDED the Motion. Roll was called:

**ROLL CALL:**

AYE: Benjamin, Holland, & Whisman

NAY: None.

ABSTAIN: Baldwin.

MOTION CARRIED: 3:0:1

During the Roll Call, Jeff Baldwin explained that he was voting “Abstain” as he was not present at that meeting.

**PUBLIC HEARINGS**

2. (Continued from December 17, 2012)  
**BCPA-7 – JR Donelson, Inc. for Clinton Miller and Roger Metcalf.** Public Hearing to receive Public review and comment, and Planning Commission recommendations regarding the adoption of a proposed amendment to the Comprehensive Plan of the City of Bixby,

Oklahoma, specifically to redesignate certain property on the Comprehensive Plan Land Use map from “Water” to “Medium Intensity” with no specific land use designation.

Property Located: North dead-end of Riverview Rd.; Northwest corner of the intersection of Riverview Rd. and E. Westminster Pl. N.

3. (Continued from December 17, 2012)

**PUD 74 – RiverLoft ADDITION – JR Donelson, Inc.** Public Hearing, discussion, and consideration of a rezoning request for approval of a Planned Unit Development (PUD) for part of Government Lot 7 lying West of the Centerline of Old U.S. Hwy 64 and lying North of Bentley Park in Section 13, T17N, R13E.

Property Located: North dead-end of Riverview Rd.; Northwest corner of the intersection of Riverview Rd. and E. Westminster Pl. N.

4. (Continued from December 17, 2012)

**BZ-362 – JR Donelson, Inc. for Clinton Miller and Roger Metcalf.** Public Hearing, Discussion, and consideration of a rezoning request from RS-2 Residential Single-Family District to RM-1 Residential Multi-Family Medium Density District for part of Government Lot 7 lying West of the Centerline of Old U.S. Hwy 64 and lying North of Bentley Park in Section 13, T17N, R13E.

Property located: North dead-end of Riverview Rd.; Northwest corner of the intersection of Riverview Rd. and E. Westminster Pl. N.

Chair Thomas Holland introduced Agenda Items Numbered 2 through 4, inclusive, and asked Erik Enyart for the Staff Report and recommendations. Mr. Enyart summarized the Staff Report as follows:

**To:** *Bixby Planning Commission*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Thursday, January 10, 2013*  
**RE:** *Report and Recommendations for:*  
*BCPA-7 – Comprehensive Plan Amendment – JR Donelson, Inc. for Clinton Miller and Roger Metcalf,*  
*PUD 74 – “RiverLoft ADDITION” – JR Donelson, Inc., and*  
*BZ-362 – JR Donelson, Inc. for Clinton Miller and Roger Metcalf*

**LOCATION:** – *North dead-end of Riverview Rd.*  
– *Northwest corner of the intersection of Riverview Rd. and E. Westminster Pl. N.*  
– *Part of Government Lot 7 lying West of the Centerline of Old U.S. Hwy 64 and lying North of Bentley Park in Section 13, T17N, R13E*  
**LOT SIZE:** – *8 acres, more or less (entire tract)*  
– *0.61 acres, more or less (area requested for approval)*  
**EXISTING ZONING:** *RS-2 Residential Single-Family District*  
**EXISTING USE:** *Part of the Riverwalk Trail (area requested for approval) and part of the bank and bed of the Arkansas River (balance of subject property)*  
**REQUESTED ZONING:** *RM-1 Residential Multi-Family District*  
**SUPPLEMENTAL ZONING:** *None*  
**SURROUNDING ZONING AND LAND USE:**  
*North: AG; Arkansas River.*

South: RS-2, RS-1, & RD; The Bentley Park Sports Complex, single-family residential and vacant lots zoned RS-1 in Riverview Terrace Addition, and duplexes zoned RD in Riverview Terrace Addition.

East: AG; The Arkansas River, a vacant 1.7-acre parcel belonging to the City of Bixby, and a house and agricultural land to the southeast on a 13-acre parcel.

West: AG, RS-2, RM-1/PUD 5, & RM-1/PUD 56; The Bentley Park Sports Complex, the Arkansas River, and vacant land zoned RM-1/PUD 56. The Riverwalk Trail continues to the northwest of the subject property.

COMPREHENSIVE PLAN: Water + Existing Regional Trail + Planned Regional Trail

PREVIOUS/RELATED CASES:

BZ-65 – Omaha Miller – Request for rezoning from AG to RM-0, RD, RS-3, & FD for approximately 95 acres mostly to the south/west of subject property (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – subject property included in that area zoned RS-2 – PC Recommended Approval of RD and RS-2 zoning on 04/24/1978 and the City Council Approved per PC recommendation in 08/1978 after a possible appeal per correspondence and notes in the case file (Ord. # 363).

BZ-357 – JR Donelson for Clinton Miller and Roger Metcalf – Request for rezoning from RS-2 to CS for subject property – Withdrawn by Applicant 11/09/2012 in favor of BCPA-7, PUD 74, and BZ-362.

RELEVANT AREA CASE HISTORY: (not necessarily a complete list)

Preliminary and Conditional Final Plat of Garden Spot Estates – Request for Preliminary and Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres to the south/west of subject property (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – PC Conditionally Approved the Preliminary Plat only 09/11/1978.

Conditional Final Plat of Garden Spot Estates – Request for Conditional Final Plat approval for Garden Spot Estates on part of the approximately 95 acres to the south/west of subject property (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – PC Conditionally Approved 07/11/1979 (recording information not available; plat evidently later vacated).

BZ-79 – Luther Metcalf – Request for rezoning from RS-1 to RD for Lots 6 and 12, Block 2, Riverview Terrace Addition, located across Riverview Rd. to the southeast of subject property at 406 & 410 E. Westminster Place – PC Recommended Approval 09/24/1979 and the City Council Approved 10/01/1979 (Ord. # 381).

BZ-100 – Hillis Inv. Corp. – Request for rezoning from [RD and] RS-2 to RM-1 for approximately 30 acres to the south/west of subject property (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – PC Recommended Approval 02/23/1981 and the City Council Approved 03/02/1981 (Ord. # 421).

BZ-105 – Philip & June Winsett – Request for rezoning from RS-1 to RD for Lots 3 and 4, Block 3, Riverview Terrace Addition, located to the southeast of subject property at 805 N. Terrace Dr. – PC Recommended Denial 05/26/1981 (evidently not appealed to City Council).

PUD 5 – Pecan Valley – WMD Development, LTD – Request for PUD zoning approval for a 160-unit townhouse development on approximately 31 acres to the south/west of subject property (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – PC Recommended Approval of 03/28/1983 and the City Council Approved 04/04/1983 (Ord. # 479).

Preliminary and Conditional Final Plat of Pecan Valley Addition – Request for Preliminary and Conditional Final Plat approval for Pecan Valley Addition on part of the approximately 95 acres across Riverview Rd. to the west (now the Pecan Valley Addition and part of 148<sup>th</sup> St. S. and Bentley Park) – PC Approved 03/28/1983 and City Council Approved 04/04/1983 (plat recorded 05/11/1983).

BZ-220 – Joe Donelson for Jerry & Sandra Green – Request for rezoning from AG to CG & RM-1 for approximately 25 acres to the west/northwest of subject property – PC Recommended Approval 03/18/1996 and City Council Approved 04/22/1996 (Ord. # 740).

PUD # 42 – RiverOaks – Request for PUD overlay zoning for a mixed use riverfront development on approximately 20 acres to the west/northwest of subject property – PC Recommended Approval 06/20/2005 but not placed on the City Council agenda thereafter – PUD application assumed withdrawn.

BL-337 – JR Donelson for Jerry Green – Request for Lot-Split approval to separate a southerly area of approximately 20 acres from an original tract of approximately 25 acres to the west/northwest of subject property – PC approved in 2006.

BL-338 – JR Donelson for Jerry Green – Request for Lot-Split approval to separate the southerly approximately 20 acres created pursuant to BL-337 into CG- and RM-1-zoned sections of approximately 8.0 acres and 12.165 acres, respectively – PC approved in 2006.

PUD # 56 – South Village – Request for PUD overlay zoning for a mixed use riverfront development on approximately 20 acres to the west/northwest of subject property – PC Recommended Approval 03/19/2007 and City Council Approved 04/09/2007 (Ord. # 965).

BZ-326 – Kevin Partin of Free Properties, LLC for Roger Green – Request for rezoning from RS-1 to RD for all of Block 1, Riverview Terrace Addition to the south of subject property – PC recommended Denial 03/19/2007 (evidently not appealed to City Council).

PUD # 56 – South Village – Minor Amendment # 1 – Request for PUD Minor Amendment for to amend height and other bulk and area Development Standards for a mixed use riverfront development on approximately 20 acres to the west/northwest of subject property – Approved by PC January 21, 2008.

BZ-350 – David Bergman for Free Properties, LLC – Request for rezoning from RS-1 to RS-3 for Lot 5, Block 1, Riverview Terrace Addition to the south of subject property – PC recommended Approval 07/19/2010 and City Council Approved 08/09/2010 (Ord. # 2043).

**BACKGROUND INFORMATION:**

History of the Applications. BZ-357 requested a rezoning from RS-2 to CS commercial for subject property entire tract of eight (8) acres, more or less.

The Comprehensive Plan designates the subject property as “Water.” The “Matrix to Determine Bixby Zoning Relationship to the Bixby Comprehensive Plan” (“Matrix”) on page 27 of the Comprehensive Plan does not indicate whether or not the requested zoning would be in accordance with the Comprehensive Plan.

Staff interprets the “Water” designation to mean it is recognized as being in the Arkansas River and not planned for development. Therefore, Staff did not believe that the proposed CS zoning is in accordance with the Comprehensive Plan. Based on the Comprehensive Plan, in addition to lack of support from surrounding Zoning and land use patterns and other reasons, Staff did not recommend approval of CS Zoning per BZ-357. The Applicant Withdrew BZ-357 on 11/09/2012 in favor of these new applications BCPA-7, PUD 74, and BZ-362. BZ-362 requests RM-1 zoning, and all applications concern the 0.61 acres of the subject property lying south of the Riverwalk Trail, located immediately behind/north of the multipurpose building in Bentley Park.

The Nature and Value of the Comprehensive Plan. Comprehensive Plans are the result of intensive study, broadly garnered and comprehensive information, professional analysis and coordination, public input, and general consensus of the City’s staff, Planning Commission, and City Council. They bring together all planning functions (e.g., housing, land use, transportation, physical environment, energy, infrastructure and community facilities, demographics, etc.), analyze and compare them all on the community-wide scale, relate them to specific geographical areas within the community (i.e. the Land Use Map), and consider all this with a long-range time perspective (e.g., 15-20 years into the future).

The Comprehensive Plan is a thorough, complete, and well researched policy document used to inform the Planning Commission, City Council, and the Public at large how land can best be developed and used (among other things), and so how rezoning applications should be accepted or rejected. Comprehensive Plans, when followed, prevent arbitrary, unreasonable, or capricious exercise of the legislative power resulting in haphazard or piecemeal rezonings (read: rezoning decisions legally indefensible in a court of law).

Comprehensive Plans can be highly prescriptive, prescribing specific land uses and land use intensities to specific parcels of land, or can be highly generalized, merely mapping out large swaths of land which may be suitable for certain intensities of development, and including a broad range of zoning districts which may be authorized therein. Bixby’s Comprehensive Plan falls somewhere in between, specifically designating certain areas with specific land uses, and others more generally (e.g. the “Corridor” designation).

Zoning Code Section 11-5-2 prohibits rezonings which would conflict with the Comprehensive Plan, and requires that such rezonings “must be processed along with a request to amend the land use map and a PUD in order to be accepted and considered.” The Applicant has requested PUD 74 in support of BCPA-7 and the rezoning application.

Procedure for Comprehensive Plan Amendments. Certain passages in the Comprehensive Plan text (page 30, 55, etc.) suggest the anticipation of amendments to the Plan. However, the Comprehensive Plan does

not provide, nor do State Statutes, a definite procedure or method for the City or property owners to request to amend the Comprehensive Plan. The City of Broken Arrow regularly (quarterly, etc.) considers applications to amend their Comprehensive Plan, for cases where a rezoning application would not be consistent with the Plan, but the plan amendment and rezoning application may be appropriate.

After receiving the first two (2) requests in mid-2008 (BCPA-1 and BCPA-2), Staff consulted the City of Broken Arrow to determine how that community goes about facilitating applications for Comprehensive Plan amendments, and followed the same method, which was supported by the Applicant's attorney in those cases, which was to advertise the public hearing in the same manner used for a rezoning application: By sign posting on the property, newspaper publication, and mailing a notice to all property owners within a 300' radius of the subject property. This method was used in the successful applications BCPA-3 and BCPA-4 in 2009, and BCPA-5 and BCPA-6 in 2011, and all of these have been done in this amendment case as well.

ANALYSIS:

Subject Property Conditions. The subject property contains a small amount of land at its southeast corner, which area contains part of the Riverwalk Trail, and the balance of the land contains part of the bank and bed of the Arkansas River. It is in the Floodway, with the exception of a small amount of land lying, more or less, south of the Trail, which is in the 100-year (1% Annual Chance) Regulatory Floodplain but outside the Floodway. The provided information does not indicate where the Floodway falls in relation to the 0.61-acre area requested for approval. The site plan does not overlay the FEMA Floodplain Maps or trace the elevation contour corresponding to the Base Flood Elevation (BFE) as modeled by FEMA. No BFE has been established for the 0.61-acre tract, such as by Elevation Certificate prepared by a Registered Professional Land Surveyor.

Comprehensive Plan. The Comprehensive Plan designates the subject property as "Water." The "Matrix to Determine Bixby Zoning Relationship to the Bixby Comprehensive Plan" ("Matrix") on page 27 of the Comprehensive Plan does not indicate whether or not the requested zoning would be in accordance with the Comprehensive Plan.

Staff interprets the "Water" designation to mean it is recognized as being in the Arkansas River and not planned for development. Therefore, by letter dated November 08, 2012, the Applicant has submitted BCPA-7, a request to change the "Water" designation to Medium Intensity with no specific land use designation, and has also submitted PUD 74 for the development on the subject property.

Page 7, item numbered 1 of the Comprehensive Plan states:

"The Bixby Comprehensive Plan map depicts desired land uses, intensities and use and development patterns to the year 2020. Intensities depicted for undeveloped lands are intended to develop as shown. Land uses depicted for undeveloped lands are recommendations which may vary in accordance with the Intensities depicted for those lands." (emphasis added)

This language is also found on page 30, item numbered 5.

This text introduces a test to the interpretation of the Comprehensive Plan Land Use Map, in addition to the Matrix: (1) If a parcel is within an area designated with a specific "Land Use" (other than "vacant, agricultural, rural residences, and open land," which cannot be interpreted as permanently-planned land uses), and (2) if said parcel is undeveloped, the "Land Use" designation on the Map should be interpreted to "recommend" how the parcel should be zoned and developed. Therefore, the "Land Use" designation of the Comprehensive Plan Land Use Map should also inform/provide direction on how rezoning applications should be considered by the Planning Commission and City Council.

There is presently no specific land use designation for the 0.61-acre area requested for approval, and BCPA-7 would not confer one.

If BCPA-7 is approved, the RM-1 zoning requested would be In Accordance with the Comprehensive Plan.

Per the Matrix, PUDs are In Accordance or May Be Found In Accordance with all designations of the Comprehensive Plan Land Use Map. The Matrix does not include the "Water" designation, however. If the property is redesignated per BCPA-7, the proposed PUD would be In Accordance with the Comprehensive Plan.

General. Because the review methodology is similar, and all three (3) applications are essentially rezoning-related and propose to prepare the subject property for the same single-building multifamily development, this review will, for the most part, include all three (3) applications simultaneously, and not attempt to differentiate between the analyses pertaining to each of the different applications.

*The submitted site plans for the development exhibit a suburban-style design, with the building to be set somewhat perpendicularly to Riverview Rd.*

*Although not clearly indicated, due to the project size and design, the proposed internal automobile traffic and pedestrian flow and circulation and parking can be inferred from the provided site plan drawings, notwithstanding the fact that it does not represent the existing Riverwalk Trail or a sidewalk that would be required along Riverview Rd.*

*Zoning Code Section 11-7I-8.C requires PUDs be found to comply with the following prerequisites:*

- 1. Whether the PUD is consistent with the comprehensive plan;*
- 2. Whether the PUD harmonizes with the existing and expected development of surrounding areas;*
- 3. Whether the PUD is a unified treatment of the development possibilities of the project site; and*
- 4. Whether the PUD is consistent with the stated purposes and standards of this article.*

*Regarding the fourth item, the “standards” refer to the requirements for PUDs generally and, per Section 11-7I-2, the “purposes” include:*

*A. Permit innovative land development while maintaining appropriate limitation on the character and intensity of use and assuring compatibility with adjoining and proximate properties;*

*B. Permit flexibility within the development to best utilize the unique physical features of the particular site;*

*C. Provide and preserve meaningful open space; and*

*D. Achieve a continuity of function and design within the development.*

*In its present form, Staff believes the PUD and proposed development are not substantially consistent with these prerequisites for the following reasons:*

- 1. Entire tract of approximately 8 acres is not included in the PUD. PUD does not show the relationship between the 0.61-acre area requested for approval and the balance of the approximately 8-acre subject property tract. Although adequate information is not provided, it appears, based on existing dimensions and configurations, that the balance of the approximately 8-acre subject property tract would not maintain the minimum 200' lot width (impossible without a front lot line, which is impossible without street frontage per definitions in Section 11-2-1). Subdivision Regulations Section 12-3-2.H requires access to public streets, and platting the 0.61-acre tract apart from the balance of the tract would cause the balance to be separated from the public street, or “landlocked.” Regardless of code prohibitions, landlocking tracts of land is not good land use or development policy.*
- 2. Item numbered 3 under Residential Area Policies on page 33 of the Comprehensive Plan provides, “Residential development within areas subject to periodic flooding will be strongly discouraged and regulated...” The subject property is entirely within the 100-year (1% Annual Chance) Regulatory Floodplain, and part of it may be in the Floodway. Placing residents on the bank of the Arkansas River, in an area that history has proven has flooded<sup>1</sup> [footnote: Water Management Analysis Report, Flood of September - October 1986, Appendix B, U.S. Army Corps of Engineers, Tulsa District, August 1987, Plate A-10.] and FEMA’s models show will likely flood during the next 1% Annual Chance event, is not good land use and development policy. Even if the land is elevated above the 100-year Floodplain, the subject property would become an “island” during such an event, unable to be exited or reached in emergency situations. Also, even if elevated above the 100-year Floodplain, it would still likely be in the 500-Year (0.2% Annual Chance) Floodplain, meaning it would flood during such events. The 1986 flood event was larger than a “100-year,” 1% Annual Chance event. The former residential subdivision*

Garden Spot Estates, abutting to the south, was abandoned when it flooded in 1986. Its successor use, Bentley Park, is a more appropriate land use for flood-prone areas.

3. Item numbered 1 under Residential Area Policies on page 33 of the Comprehensive Plan discourages residential development along major street frontage, stating, “Residential lot arterial street frontage will be avoided and residential lot collector street frontage will be discouraged in development design” (emphasis added). Although it is not a highly-trafficked street at its north dead-end, and houses had traditionally fronted upon it in Riverview Terrace Addition, Privett Addition, Midland Addition, and [the Original Town of] Bixby, Riverview Road is designated a Minor Collector street on the Bixby Comprehensive Plan Land Use Map.
4. Based on a site inspection November 27, 2012, Staff did not observe evidence of utility service to the subject property. Critical utilities include water, sewer, and electricity. Ancillary utilities include natural gas, telephone, and cabled communications. The City Engineer’s memo indicates water and sewer service will be extended [to the subject property]. PUD Section B.[6].c does not describe utilities other than water and sewer. Reference Bixby Comprehensive Plan Residential Area Goals item numbered 2 on page 32 and Residential Area Objectives item numbered 3 on page 33. Generally speaking, it is not good land use and development policy to grant development approval by means of rezoning lands which are not suited for development due to lack of utility infrastructure.

Regardless whether or not these three (3) applications are received favorably by the Planning Commission or City Council, certain PUD particulars require extensive corrections and site development considerations, such as providing plans and specifications for screening, buffering, and exterior materials.

The Fire Marshal’s, City Engineer’s, and City Attorney’s review correspondence are attached to this Staff Report (if received). Their comments are incorporated herein by reference and should be made conditions of approval where not satisfied at the time of approval.

The Technical Advisory Committee (TAC) discussed BCPA-7 and PUD 74 at its regular meeting held December 05, 2012. Minutes of that meeting are attached to this report.

Access. Plans for access and circulation are adequately discussed in PUD Text Section B.[7]. Access, Circulation and Parking.

On the PUD site plan, a sidewalk is not indicated as planned along Riverview Rd., as required by the Subdivision Regulations. PUD Text Section B.[7]. Access, Circulation and Parking provides that a sidewalk along this street is not planned. A Modification/Waiver of the Subdivision Regulations would be required in order to remove the sidewalk requirement along Riverview Rd. Sidewalks are part of complete streets, providing a safe and convenient passageway for pedestrians, separate from driving lanes for automobile traffic. Bixby Comprehensive Plan policy numbered 3 on page 52 encourages enhancing pedestrian transportation by connecting trails to sidewalks. Regardless whether or not these three (3) applications are received favorably by the Planning Commission or City Council, Staff does not recommend removing sidewalk requirements generally.

Surrounding Zoning and Land Use Compatibility. The surrounding zoning pattern includes AG, RS-1, RS-2, RD, RM-1/PUD 5, and RM-1/PUD 56.

North and east of the subject property is the Arkansas River zoned AG. Also to the east is a vacant 1.7-acre parcel belonging to the City of Bixby, and a house and agricultural land to the southeast on a 13-acre parcel, all zoned AG.

To the south is the Bentley Park Sports Complex zoned RS-2. To the south of Riverview Rd. is single-family residential and vacant lots zoned RS-1 in Riverview Terrace Addition, and duplexes zoned RD in Riverview Terrace Addition.

West of the subject property is a mix of AG, RS-2, RM-1/PUD 5, and RM-1/PUD 56 zoning, and land uses include the Bentley Park Sports Complex, the Arkansas River, and vacant land zoned RM-1/PUD 56. The Riverwalk Trail continues to the northwest of the subject property.

The surrounding zoning is primarily residential, and area land uses include residential, Bentley Park, and the Arkansas River.

The requested RM-1 zoning would be consistent with the RM-1 districts to the west and northwest. However, those areas are fairly removed from the 0.61-acre area requested for approval, and much of the district is occupied by Bentley Park, a large, public use which will not likely change or develop consistent with RM-1 zoning. The nearest multifamily use is in Marquis on Memorial, located over 2,700’ (over ½ a mile) to the west of the subject property’s southeast corner. The approximately-halfway-leased townhouse

*development, Pecan Valley Addition, is located over 2,300' to the west of the subject property's southeast corner.*

*The requested RM-1 zoning is not incompatible with RD zoning across Riverview Rd. to the southeast. The requested RM-1 zoning would not, however, be compatible with the surrounding RS-1, RS-2, and AG zoning.*

*The possible "fourplex" development anticipated for the subject property site would be somewhat compatible with the two (2) duplexes to across Riverview Rd. to the southeast, but is incompatible with the balance of the single-family residential use there in Riverview Terrace.*

*Residential use here may not be particularly compatible with the Bentley Park Sports Complex, which has elevated floodlights used, and amplified sounds produced at various times, consistent with a large sports park with local, regional, and interstate tournaments booked nearly year-round. The subject property's placement behind the multipurpose building, and next to its storage yard, may not make it a particularly attractive residential location. Further, the proposed building, as indicated on the site plan, would be quite close to the Riverwalk Trail, which can be seen as an amenity for the residents, but the trail itself may be so close that privacy is compromised at times. The site plan does not indicate a privacy fence would be employed.*

*The requested RM-1 zoning is not particularly compatible with existing and future surrounding land uses and zoning patterns.*

*Staff Recommendation. For all the reasons outlined above, Staff believes that the Comprehensive Plan, the surrounding zoning and land use patterns, and the physical facts of the area do not weigh in favor of the requested amendment and rezoning applications generally. Staff recommends Denial.*

Erik Enyart referred to the aerial map on page 64 of the agenda packet, and stated that it would give the Commissioners the best visual representation of the subject property and its context.

Chair Thomas Holland asked if the Applicant was present and wished to speak on the item. Applicant JR Donelson of 12820 S. Memorial Dr. # 100 was present and stated that his clients owned 7.66 acres [in this parcel], and that the 0.61-acre portion south of the "walk trail" was the area being requested for approval. Mr. Donelson stated that the property actually went to the center of the Arkansas River. Mr. Donelson questioned why the entire property was designated "Water," when the portion south of the walk "trail was" not in the river. Mr. Donelson stated that the Comprehensive Plan was a thorough, well-researched document, and asked that it be amended for this application. Mr. Donelson stated that the property was only 0.61 acres in size. Mr. Donelson stated that the [U.S. Highway 64 / Mingo Road to Riverview Road] bridge went out in [a flood in] 1957. Mr. Donelson stated that the remainder of the property was in the Arkansas River or was riverbank, and could not be developed, nor was there desire to do so. Mr. Donelson stated that the balance of the property was landlocked, but that it had frontage on the river. Mr. Donelson stated that the City of Bixby was presently preparing a [FEMA Conditional Letter Of Map Revision] CLOMR for Bentley Park, and that the 0.61 acres was to be included. Mr. Donelson stated that the finished floor of the fourplex would have nothing lower than the floor of the multipurpose building. Mr. Donelson stated that the Base Flood Elevation would be established by the CLOMR. Mr. Donelson stated that the owner would elevate the property out of the [100-year] Floodplain. Mr. Donelson stated that his client had owned this property prior to the construction of Bentley Park. Mr. Donelson indicated the amount of elevation required would be approximately one (1) foot.

Jeff Baldwin stated that he was on the Bixby Soccer Club board and stated that he had seen that the new concession building was elevated six (6) or seven (7) feet, and asked how the one (1) foot JR Donelson was talking about compared to this. Mr. Donelson stated that the soccer fields were lower in elevation.

Erik Enyart addressed Chair Thomas Holland and asked to interject statements for the purpose of clarification. Mr. Holland recognized Mr. Enyart. Mr. Enyart stated that the City of Bixby had received a request to include the subject property in the Bentley Park CLOMR application, and that the current application only included Bentley Park and no private properties at this time. Mr. Enyart stated that the City Council will be given the opportunity to consider this request to include this private property.

JR Donelson stated that, if approved, the property could be developed with a fourplex with about four (4) to eight (8) cars. Mr. Donelson stated that this would not be noticeable compared to the traffic in Bentley Park. Mr. Donelson stated that there was existing public water that would be extended into the property. Mr. Donelson stated that there was sanitary sewer to the south of the multipurpose building, and that the property would drain [stormwater runoff] directly into the Arkansas River with a flap gate. Mr. Donelson stated that the lights affect existing properties in the area. Mr. Donelson stated that the subject property had worth. Mr. Donelson stated that the owner owned the land since before Bentley Park. Mr. Donelson stated that the owner gave the City of Bixby the opportunity to put the “walk trail” through their property, and did not complain when the Bentley Park multipurpose building was built, and did not complain when the City of Bixby stored materials on the property. Mr. Donelson stated that the Little League [parents] drive their cars across and park on the property, and the kids practice on the property. Mr. Donelson stated that [he and the owners] believed [a fourplex] would be a good fit, overlooking the Arkansas River. Mr. Donelson stated that the owners were present as well.

Chair Thomas Holland recognized Clinton Miller of 4420 N. Walnut, Broken Arrow, OK from the Sign-In Sheet. Mr. Miller stated that he had no comment at this time.

Chair Thomas Holland recognized Roger Metcalf of 15329 S. Sheridan Rd. from the Sign-In Sheet. Mr. Metcalf stated that there were “duplexes right across the street from us,” and that he “can’t see why this [would be] a problem.” Mr. Metcalf stated that he was “not trying to cause any bad deals.”

Chair Thomas Holland recognized D. R. Piercy of 806 N. Riverview Rd. from the Sign-In Sheet. Mr. Piercy stated that he lived across the street from the multipurpose building, and that he had separate issues with that as it is. Mr. Piercy asked if water and sanitary sewer had been taken into consideration. Mr. Piercy stated that there would be [concern for] a little extra traffic at the end of the street, but that he was “not necessarily against the project.” Mr. Piercy urged the Commissioners to look at the project carefully. Mr. Piercy described the area as a “tight spot” with “a lot going on.”

Jeff Baldwin stated that he had no empirical data but, two (2) years ago, a little kid was hit crossing the street [in this area]. Mr. Baldwin expressed concern for traffic and speeds, mostly because of Bentley Park. Mr. Baldwin stated that the soccer complex had been broken in to four (4) times last fall, and that it was difficult to get police to the area [fast enough]. Mr. Baldwin stated that there were also issues of vandalism.

JR Donelson stated that there has been an increase in traffic and activity going on, and that the speed limit was 25 [miles per hour]. Mr. Donelson stated that any speed limit reduction would have to go through [Police] Chief [Ike] Shirley. Mr. Donelson asked D. R. Piercy if he had observed any

concerns over security, and Mr. Piercy responded that he had, recently. Mr. Donelson asked Mr. Piercy if he had made any contact with Chief Shirley, and Mr. Piercy responded that he had, and was told the police would get out as fast as they could, but that the bank of the river was County jurisdiction.

JR Donelson stated that he recalled when this property was first developed in 1976, before FEMA [mapped the floodplain].

Jeff Baldwin asked if the owner had a projected rent structure. Roger Metcalf stated that it would “depend on the cost of the project.” Mr. Metcalf stated that he would require an 18 month lease and would do background checks. Mr. Metcalf stated that he owned other properties and that [these units] would be fairly priced.

JR Donelson asked the Commissioners to put themselves in [the owners’] situation. Mr. Donelson stated that “the City of Bixby said they don’t recommend anything there.” Mr. Donelson stated that the owner “asked the City if they want[ed the property],” and that “there’s been some negotiation, but the City has not come back favorably yet. The City wanted it at one time for the park.” Mr. Donelson asked that the Comprehensive Plan be changed “because it’s not water.”

Jeff Baldwin thanked Clinton Miller and Roger Metcalf for granting the City of Bixby easement for the trail and the other accommodations they had made for the City.

Erik Enyart addressed Chair Thomas Holland and asked to interject statements for the purpose of clarification. Mr. Holland recognized Mr. Enyart. Mr. Enyart addressed Clinton Miller and Roger Metcalf and thanked them on behalf of the City and the citizens who use the trail, for giving easement to allow the trail. Mr. Enyart addressed the Commission and stated that JR Donelson had insinuated that the City of Bixby said there could be no development. Mr. Enyart stated that this was not correct. Mr. Enyart stated that the property was zoned RS-2, which would allow the construction of one (1) single-family house, provided that the property was elevated out of the floodplain and platted. Mr. Enyart stated, as it concerns the “Water” designation of the Comprehensive Plan, JR Donelson’s argument made sense: the subject property was south of the bank of the Arkansas River, and so should not have been designated “Water.” Mr. Enyart stated that he would amend the Staff recommendation to support redesignating the 0.61-acre subject property area from “Water” to Low Intensity. Mr. Enyart stated that there are or had been negotiations between the City and landowner on the acquisition of the property, but that he had not been involved in them and was in no position to comment on that. Mr. Enyart stated that the owners were present and could comment on the negotiations, if they desired to.

Chair Thomas Holland stated that his concern was over the Floodplain. Mr. Holland stated that the houses that were currently there were in jeopardy, but that, if the owner could bring the land up and out of the [100-year] Floodplain they have the right to build. Mr. Holland expressed concern for the Floodway.

JR Donelson stated that the Floodway was on the north side of the “walk trail” and clarified this point with Chair Thomas Holland.

JR Donelson stated that he had met with the Mayor and City Engineer, and the City Engineer indicated the property could be elevated as a part of the City's project.

Chair Thomas Holland stated, "I've seen it flood, and it will again."

Jeff Baldwin asked if the Floodplain elevation changes from time to time. Mr. Baldwin asked about the floodplain and certain elevations as related to the soccer club facility. JR Donelson responded that there had been several new maps in the past few years.

Roger Metcalf stated that he grew up in a house where Bentley Park is, and the area used to be a slough.

Erik Enyart addressed Jeff Baldwin and stated that JR Donelson was correct, and that there had been two (2) new Floodplain maps published by FEMA in the past few years. Mr. Enyart stated that he could not speak specifically to the facility Mr. Baldwin was referring to, but that the maps can change per new FEMA modeling of the floodplain, and also due to new, better elevation data. Mr. Enyart stated, as a point of clarification, that it appeared people discussing this matter may be referring to two (2) different things, the 1986 flood, which was greater than a 100-year flood event, and the 100-year Floodplain.

JR Donelson stated that the 1986 flood was [approximately] a 350-year flood event.

Lance Whisman stated that he was not against any development, but stated that all should be careful with the floodplain.

Clinton Miller, referring to the City's previous storage of materials on the subject property, stated "They didn't know any better" than to store the "containers and backhoes."

John Benjamin stated that he respected that the property owner wanted to develop the land. Mr. Benjamin stated that he used the trails and knew exactly where the properties were located. Mr. Benjamin referenced Staff's presentation and stated that the application was viewed more negatively than positively. Mr. Benjamin stated that, if the [Planning Commission and/or City Council] declined the requested change, then he would urge the City to work with the landowner to purchase the property. Mr. Benjamin stated that it would be perfect to combine with Bentley Park.

John Benjamin made a MOTION to Recommend DENIAL of BCPA-7, PUD 74, and BZ-362.

JR Donelson stated that, if the Commission declined the applications, [he and his clients] wanted [John Benjamin's] recommendation to be read to the City Council.

Roger Metcalf noted that [he and Clinton Miller] offered the land to the City. Mr. Miller noted the size of the whole parcel of land was 1240' in length [by some certain measurement].

Erik Enyart stated that Staff had revised the recommendation on BCPA-7 to approve the Comprehensive Plan map designation from "Water" to "Low Intensity," recognizing the 0.61-acre area was south of the bank of the Arkansas River. Chair Thomas Holland and Lance Whisman

clarified with Erik Enyart that they would prefer the amendment only be approved if the subject property was out of the Floodway, in addition to being south of the bank of the Arkansas River. Mr. Enyart stated that the Comprehensive Plan map was not particularly precise when it came to small areas, and that he would use GIS to determine if the shapefiles showed the 0.61-acre area out of the “Water” designation, and to confirm that all of the 0.61-acre area was south of both the Floodway line and the south bank of the river, before presenting the recommendation to the City Council.<sup>1</sup>

The Commissioners discussed separating the items into different Motions.

Lance Whisman made a MOTION to Recommend APPROVAL of BCPA-7 for redesignating the subject property of 0.61-acres from “Water” to “Low Intensity,” subject to Staff determining that it was out of the Floodway and south of the bank of the Arkansas River. John Benjamin SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Benjamin, Holland, Baldwin, & Whisman  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

John Benjamin made a MOTION to Recommend DENIAL of PUD 74 and BZ-362. Lance Whisman SECONDED the Motion.

Lance Whisman asked if the Motion should include a recommendation on the purchase of the land to the City Council. After some discussion, Chair Thomas Holland stated that it should be a separate Motion and could be taken up as a matter of New Business.

Roll was called:

ROLL CALL:

AYE: Benjamin, Holland, & Whisman  
NAY: Baldwin.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

5. (Continued from December 17, 2012)

**BCPA-8 – JR Donelson for Roger & LeAnn Metcalf.** Public Hearing to receive Public review and comment, and Planning Commission recommendations regarding the adoption of a proposed amendment to the Comprehensive Plan of the City of Bixby, Oklahoma, specifically to redesignate certain property on the Comprehensive Plan Land Use map from “Low Intensity” and/or “Special District # 4” to “Medium Intensity” and to remove the “Special District #4” designation.

Property Located: 15329 S. Sheridan Rd.

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<sup>1</sup> After the meeting, Staff reviewed GIS and found that the 0.61-acre area was located fully outside the “Water” designation and was already designated “Low Intensity.”

6. (Continued from December 17, 2012)  
**PUD 75 – LeAnn Acres – JR Donelson, Inc.** Public Hearing, discussion, and consideration of a rezoning request for approval of a Planned Unit Development (PUD) for part of the W/2 of the NW/4 of Section 23, T17N, R13E.  
Property located: 15329 S. Sheridan Rd.
  
7. (Continued from October 15, November 19, and December 17, 2012)  
**BZ-359 – Roger & LeAnn Metcalf.** Public Hearing, Discussion, and consideration of a rezoning request from AG Agricultural District to RM-2 Residential Multi-Family District for part of the W/2 of the NW/4 of Section 23, T17N, R13E.  
Property located: 15329 S. Sheridan Rd.

Chair Thomas Holland introduced Agenda Items Numbered 2 through 4, inclusive, and asked Erik Enyart for the Staff Report and recommendations. Mr. Enyart summarized the Staff Report as follows:

**To:** Bixby Planning Commission  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Thursday, January 10, 2013  
**RE:** Report and Recommendations for:  
BCPA-8 – Comprehensive Plan Amendment – JR Donelson, Inc. for Roger & LeAnn Metcalf,  
PUD 75 – “LeAnn Acres” – JR Donelson, Inc., and  
BZ-359 – Roger & LeAnn Metcalf

**LOCATION:** – 15329 S. Sheridan Rd.  
– Part of the W/2 of the NW/4 of Section 23, T17N, R13E

**LOT SIZE:** 25 acres composed of a 15- and a 10-acre tract, more or less

**EXISTING ZONING:** AG Agricultural District

**EXISTING USE:** Agricultural with a single-family dwelling

**REQUESTED ZONING:** RM-2 Residential Multi-Family District & PUD 75

**SUPPLEMENTAL ZONING:** None

**SURROUNDING ZONING AND LAND USE:**

**North:** AG & CS; A 20-acre agricultural tract zoned AG and the Leonard & Marker Funeral Home zoned CS north of 151<sup>st</sup> St. S.

**South:** AG; Agricultural, rural residential, and vacant/wooded land along S. Sheridan Rd.

**East:** RMH & AG; The Shadow Valley Mobile Home Park zoned RMH and the Conrad Farms’ farmland further to the east and southeast.

**West:** (Across Sheridan Rd.) AG; The Bixby Cemetery and rural residential land.

**COMPREHENSIVE PLAN:**

**Northerly 15 Acre Parcel:** Corridor + Vacant, Agricultural, Rural Residences, and Open Land.

**Southerly 10 Acre Parcel:** Low Intensity/Development Sensitive + Vacant, Agricultural, Rural Residences, and Open Land + Special District # 4.

**PREVIOUS/RELATED CASES:** None found.

**RELEVANT AREA CASE HISTORY:** (not necessarily a complete list)

**BZ-120 – Calvin Tinney – Request for rezoning from AG to RS-3 for approximately 80 acres (E/2 SW/4 Section 22, T17N, R13E) to the southwest of subject property – PC Recommended Approval 08/30/1982 and City Council Approved 09/07/1982 (Ord. # 460).**

**BZ-126 – Georgina Landman and/or W.S. Atherton – Request for rezoning from RS-3 to RS-1 for approximately 80 acres (E/2 SW/4 Section 22, T17N, R13E) to the southwest of subject property – Applicant did not own the property requested for downzoning – PC Recommended Approval**

12/27/1982 and City Council Denied 01/03/1983 upon recommendation of City Planner and City Attorney.

BBOA-137 – Lee Fox – Request for Special Exception to allow a mobile home on a previously 10.3-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – BOA Denied 12/10/1984.

BZ-181 – W.S. Atherton – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres to the southwest of subject property for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – Approved by City Council 06/23/1987 (Ord. # 562).

BBOA-190 – W.S. Atherton – Request for “Use Variance” to allow the keeping of horses on individual lots as an accessory use for approximately 240 acres to the southwest of subject property for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – Approved by BOA 07/13/1987.

BBOA-137 – Twilah A. Fox, M.D. – Request for Special Exception per Zoning Code Section 310 to allow a Use Unit 5 church (now the Church on the Hill) on the Southwest approximately 1.16 acres of a previously 10.3-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – BOA Approved 09/04/1990.

BZ-199 – Dan Stilwell – Request for rezoning from RMH to CG for approximately 3 ¾ acres located to the northeast of subject property – now includes the commercial properties containing the Bixby Chiropractic and (existing or former) Living Water Family Church establishment buildings at 7100, 7102, and 7106 E. 151<sup>st</sup> St. S. – PC recommended Approval 05/18/1992 and City Council Approved 05/25/1992 (Ord. # 667). However, the legal description used does not close and the ordinance did not contain the approved Zoning District. The official Zoning Map reflects CS instead of CG. Needs to be corrected upon initiative effort of one or more of the affected property owners.

BBOA-293 – Lee & Twila[h] Fox – Request for Variance from the minimum size and width bulk and areas standards of the AG district, to allow a Lot-Split (BL-184) on a previously 10.3-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – BOA Approved 04/17/1995.

BL-184 – Joe Donelson for Lee & Twilah A. Fox – Request for Lot-Split approval to separate a 1-acre tract at 6668 E. 148<sup>th</sup> St. S. from an original tract of 10.3 acres located to the north of subject property at 15015 S. Sheridan Rd. – PC Approved 04/17/1995.

PUD 20 – Atherton Farms Equestrian Estates – Phillip Faubert – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres located to the southwest of subject property for an “Atherton Farms Equestrian Estates” residential subdivision (never built) – Recommended for Approval by PC 01/20/1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. Further, PUD 20 does not exist on the official Zoning Map. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no records or notes were found to determine the eventual disposition of this request, if any.

BZ-238 – W.S. Atherton – Request for rezoning from AG to RE for approximately 10 acres located to the southwest of subject property for part of an “Atherton Farms Equestrian Estates” residential subdivision (never built) – Approved by City Council 02/23/1998 (Ord. # 768).

BL-228 – Phillip Faubert – Request for Lot-Split to separate a 2.7-acre tract from balance of 240 acres located to the southwest of subject property – Approved by PC 03/16/1998 and by City Council 03/23/1998.

BBOA-345 – Twilah Fox – Request for “Special Exception” from Zoning Code Section 310 to allow a Use Unit 9 mobile home to be temporarily placed in the AG district for a 9-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – BOA Conditionally Approved 07/06/1999.

BZ-283 – Mike Marker – Request for rezoning from AG to CS for a 1.3-acre tract to the north of subject property and containing the Leonard & Marker Funeral Home main building at 6521 E. 151<sup>st</sup> St. S. – PC Recommended Approval 02/19/2002 and City Council Approved 03/11/2002 (Ord. # 848).

BBOA-381 – Mike Marker – Request for Variance from the parking standards of Zoning Code Chapter 10 Section 1011.4 for a 1.3-acre tract to the north of subject property and containing the Leonard & Marker Funeral Home main building at 6521 E. 151<sup>st</sup> St. S. – BOA Approved Variance, to include requiring 62 parking spaces, 05/06/2002.

BZ-287 – Randy King – Request for rezoning from AG to CG for a 4-acre tract to the north of subject property at 6825 E. 151<sup>st</sup> St. S. – PC (09/16/2002) Recommended Denial and suggested that the item be brought back as a PUD; denial recommendation evidently not appealed to City Council.

BZ-291 – Cleatus & Deloris Tate – Request for rezoning to CG for approximately 16 acres located to the northwest of subject property for the Allison Tractor Co. Inc. tractor sales business – PC (06/20/2003) recommended Approval for 4.6 acres as per the amended reduced acreage request and City Council (07/14/2003) approved as recommended/amended (Ord. # 870). Zoning acreage reduction amendment letter dated 06/18/2003 additionally requested a “plat waiver,” but Staff found no record of such being approved at that time. See Plat Waiver granted 04/14/2008.

BL-384 – K.S. Collins for Lee & Twilah A. Fox – Request for Lot-Split approval to separate a 0.81-acre tract from a 9-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – PC Conditionally Approved 05/21/2012.

BZ-356 – K.S. Collins for Lee & Twilah A. Fox – Request for rezoning from AG to RS-1 for the proposed 0.81-acre tract section of a 9-acre tract located to the north of subject property at 15015 S. Sheridan Rd. – PC Recommended Approval 05/21/2012 and City Council Approved 06/11/2012.

**BACKGROUND INFORMATION:**

History of the Applications. As requested by the Applicant, BZ-359 was Continued from the October 15, 2012 regular meeting to the November 19, 2012 regular meeting agenda. The Applicant then requested that it be Continued to the December 17, 2012 regular meeting, so that it could be reviewed along with PUD 75 “LeAnn Acres” and the related request for Comprehensive Plan Amendment BCPA-8. The Planning Commission Continued the application to the December 17, 2012 meeting agenda as requested.

For any rezoning application that requests to approve multifamily uses, State Statutes now require the Public Notices be mailed to property owners within a ¼ mile radius of the property, rather than the 300’ that is required for all other cases: Title 11 O.S. Section 43-106 amended by HB 1424, c. 226, § 2, eff. November 1, 2009.

BCPA-7, PUD 74 “RiverLoft ADDITION,” BZ-362, BCPA-8, PUD 75 “LeAnn Acres,” and BZ-359 all request zoning approval for multifamily developments. All were all advertised for the December 17, 2012 meeting using the customary 300’ radius mailing, and thus, adequate Public Notice was not been achieved. Staff discovered this problem in the first part of December. As recommended by Staff, all applications were Continued to the January 21, 2013 Planning Commission meeting, to allow for revised, corrected Public Notice to be issued. Since then, adequate Public Notice has been achieved.

The Nature and Value of the Comprehensive Plan. Comprehensive Plans are the result of intensive study, broadly garnered and comprehensive information, professional analysis and coordination, public input, and general consensus of the City’s staff, Planning Commission, and City Council. They bring together all planning functions (e.g., housing, land use, transportation, physical environment, energy, infrastructure and community facilities, demographics, etc.), analyze and compare them all on the community-wide scale, relate them to specific geographical areas within the community (i.e. the Land Use Map), and consider all this with a long-range time perspective (e.g., 15-20 years into the future).

The Comprehensive Plan is a thorough, complete, and well researched policy document used to inform the Planning Commission, City Council, and the Public at large how land can best be developed and used (among other things), and so how rezoning applications should be accepted or rejected. Comprehensive Plans, when followed, prevent arbitrary, unreasonable, or capricious exercise of the legislative power resulting in haphazard or piecemeal rezonings (read: rezoning decisions legally indefensible in a court of law).

Comprehensive Plans can be highly prescriptive, prescribing specific land uses and land use intensities to specific parcels of land, or can be highly generalized, merely mapping out large swaths of land which may be suitable for certain intensities of development, and including a broad range of zoning districts which may be authorized therein. Bixby’s Comprehensive Plan falls somewhere in between, specifically designating certain areas with specific land uses, and others more generally (e.g. the “Corridor” designation).

Zoning Code Section 11-5-2 prohibits rezonings which would conflict with the Comprehensive Plan, and requires that such rezonings “must be processed along with a request to amend the land use map and a PUD in order to be accepted and considered.” The Applicant has requested PUD 74 in support of BCPA-7 and the rezoning application.

Procedure for Comprehensive Plan Amendments. Certain passages in the Comprehensive Plan text (page 30, 55, etc.) suggest the anticipation of amendments to the Plan. However, the Comprehensive Plan does

not provide, nor do State Statutes, a definite procedure or method for the City or property owners to request to amend the Comprehensive Plan. The City of Broken Arrow regularly (quarterly, etc.) considers applications to amend their Comprehensive Plan, for cases where a rezoning application would not be consistent with the Plan, but the plan amendment and rezoning application may be appropriate.

After receiving the first two (2) requests in mid-2008 (BCPA-1 and BCPA-2), Staff consulted the City of Broken Arrow to determine how that community goes about facilitating applications for Comprehensive Plan amendments, and followed the same method, which was supported by the Applicant's attorney in those cases, which was to advertise the public hearing in the same manner used for a rezoning application: By sign posting on the property, newspaper publication, and mailing a notice to all property owners within a 300' radius of the subject property. This method was used in the successful applications BCPA-3 and BCPA-4 in 2009, and BCPA-5 and BCPA-6 in 2011, and all of these have been done in this amendment case as well.

ANALYSIS:

Subject Property Conditions. The subject property consists of a 15-acre tract on the north and a 10-acre tract on the south, and has over 800' of frontage on Sheridan Rd. It contains the top of a small hill and contains significant slope. It contains the northern tip of a pond located on another tract abutting to the south, which is part of a natural drainageway that skirts along the southerly line of the southern parcel.

The subject property appears to drain to the east and south, ultimately to Bixby Creek. It is zoned AG and appears to be agriculturally-used, with the exception of (1) a small grove of trees at the northeast corner of the 15-acre tract, and (2) the Applicant's residence toward the west end of the 10-acre tract.

Comprehensive Plan. The Comprehensive Plan designates the two (2) parcels of the subject property differently. The northerly 15-acre parcel is designated (1) Corridor and (2) Vacant, Agricultural, Rural Residences, and Open Land. The southerly 10-acre parcel is designated (1) Low Intensity/Development Sensitive, (2) Vacant, Agricultural, Rural Residences, and Open Land, and (3) Special District # 4.

The Development Sensitive designation is along the eastern lines of both tracts of land, and appears to correspond (more or less) to those parts of each located within the 500-year (0.2% Annual Chance) Floodplain. Floodplain areas may sometimes have soils which are not naturally conducive to construction, and may require remedial soil chemical work and/or special construction methods.

The "Matrix to Determine Bixby Zoning Relationship to the Bixby Comprehensive Plan" ("Matrix") on page 27 of the Comprehensive Plan provides that RM-2 zoning Is In Accordance with the Corridor, Is Not In Accordance with the Low Intensity, and May Be Found In Accordance with the Development Sensitive designations of the Comprehensive Plan Land Use Map.

The Matrix does not indicate whether or not the requested RM-2 zoning would be in accordance with the Vacant, Agricultural, Rural Residences, and Open Land Land Use designation of the Plan Map. However, this Vacant, Agricultural, Rural Residences, and Open Land designation cannot be interpreted as permanently-planned land uses, and so the specific land use designation test as indicated on Page 7, item numbered 1 and page 30, item numbered 5 of the Comprehensive Plan, would not apply here.

A southerly strip of the southerly 10-acre tract is designated within Special District # 4, for which the Bixby Comprehensive Plan provides on Pages 20 and 21:

- "d. Special District 4 is that area previously designated In the 1991 Bixby Comprehensive Plan in which a majority of the land is located within the 100 year flood plain. This development sensitive area is located approximately from one-quarter mile south of S. H. 67, west of S. Memorial Drive, north of 171" Street South, and east of the upland area along S. Sheridan Road. The majority of this land is used for agricultural purposes. This [is] prime farm land and contributes strongly to the "green theme" characteristic of Bixby. Preservation of those Special District areas should continue with AG zoning the primary designation. Certain select areas adjacent to major roadway intersections may be appropriate for different zoning designations in accordance with the other Urban Design Development Guidelines. Any change in use in this area should be designed to integrate continuing agribusiness uses, provide onsite drainage control solutions, it should provide appropriate buffers between adjoining land uses on the upland area along S. Sheridan Road, south of 171<sup>st</sup> Street South, and along S. Memorial Drive." (emphasis added)

*Special District # 4 calls for areas within to “continue with AG zoning the primary designation,” but that “[c]ertain select areas adjacent to major roadway intersections may be appropriate for different zoning designations...” It would appear that the part of the subject property located within Special District # 4 “should continue with AG zoning,” as it is not within a reasonable distance of a major street intersection.*

*Page 7, item numbered 1 of the Comprehensive Plan states:*

*“The Bixby Comprehensive Plan map depicts desired land uses, intensities and use and development patterns to the year 2020. Intensities depicted for undeveloped lands are intended to develop as shown. Land uses depicted for undeveloped lands are recommendations which may vary in accordance with the Intensities depicted for those lands.” (emphasis added)*

*This language is also found on page 30, item numbered 5.*

*This text introduces a test to the interpretation of the Comprehensive Plan Land Use Map, in addition to the Matrix: (1) If a parcel is within an area designated with a specific “Land Use” (other than “vacant, agricultural, rural residences, and open land,” which cannot be interpreted as permanently-planned land uses), and (2) if said parcel is undeveloped, the “Land Use” designation on the Map should be interpreted to “recommend” how the parcel should be zoned and developed. Therefore, the “Land Use” designation of the Comprehensive Plan Land Use Map should also inform/provide direction on how rezoning applications should be considered by the Planning Commission and City Council.*

*There is presently no specific land use designation for the subject property, and BCPA-8 would not confer one.*

*Due to all of the factors listed and described above, Staff believes that the proposed RM-2 zoning should be found In Accordance with the Comprehensive Plan, but only partially. If approved for RM-2 zoning strictly in accordance with the differing designations of the Comprehensive Plan, a Low Intensity-designated strip of land in the center of the acreage would have to be disapproved. This pattern would likely confound any reasonable development pattern for the property. Within the context of a PUD, underlying Zoning districts may vary and remain In Accordance with the Comprehensive Plan, such as if an area of the subject property equal to the Low Intensity strip could be calculated and relocated outside the future development areas, to be reserved for the preservation of natural site features as an amenity to the development.*

*For the balance of the areas to be fully recognized as In Accordance, Staff recommends the RM-2 zoning only be approved with appropriate detailed planning and safeguards as per an appropriate PUD. The PUD may deal with the outlying conditions suggested in those designations within which RM-2 zoning is not fully in accordance, such as by reserving natural pond and drainageway areas, incorporating the appropriate parts of the small tree grove if not incompatible with development plans, and the properly-planned use and incorporation into site plans of areas of significant slope change. The PUD should also address buffering the subject property from the residential uses to the east (Shadow Valley Mobile Home Park), the agricultural uses to the south, and the more intensive development that may be expected on the 20-acre property at the 151<sup>st</sup> St. S. (State Hwy 67) and Sheridan Rd. intersection. Finally, the PUD should address what would be done with the existing improvements on the subject property (house and agricultural buildings).*

*BCPA-8 proposes to (1) redesignate those parts of the subject property presently designated “Low Intensity” and/or “Special District # 4” to “Medium Intensity” and (2) to remove the “Special District #4” designation. If BCPA-8 is approved, the RM-2 zoning requested would be fully In Accordance with the Comprehensive Plan.*

*Per the Matrix, PUDs are In Accordance or May Be Found In Accordance with all designations of the Comprehensive Plan Land Use Map, and thus PUD 75 would be In Accordance with the Comprehensive Plan.*

*General. Because the review methodology is similar, and all three (3) applications are essentially rezoning-related and propose to prepare the subject property for the same multifamily development, this review will, for the most part, include all three (3) applications simultaneously, and not attempt to differentiate between the analyses pertaining to each of the different applications.*

*The submitted site plans for the development exhibit a suburban-style design. The plan indicates 15 apartment buildings, a leasing office, a pool within a common central area, a stormwater detention pond at the east end of the property, and parking lots, unidentified structures presumed to be carports or small garage buildings, and sidewalks located throughout the developed site.*

*In the interest of efficiency and avoiding redundancy, regarding PUD particulars for needed corrections and site development considerations, such as screening, buffering, and exterior materials, please review the recommended Conditions of Approval as listed at the end of this report.*

*The Fire Marshal's, City Engineer's, and City Attorney's review correspondence are attached to this Staff Report (if received). Their comments are incorporated herein by reference and should be made conditions of approval where not satisfied at the time of approval.*

*The Technical Advisory Committee (TAC) discussed BCPA-8 and PUD 75 at its regular meeting held December 05, 2012. Minutes of that meeting are attached to this report.*

*Access. Plans for access and circulation are adequately discussed in PUD Text Section B.7. Access, Circulation and Parking. The proposed internal automobile traffic and pedestrian flow and circulation and parking can also be inferred from the provided site plan.*

*On the PUD site plan, a sidewalk is not indicated as planned along Sheridan Rd., as required by the Subdivision Regulations. PUD Text Section B.7.b. Access, Circulation and Parking provides that a sidewalk along this street is not planned. A Modification/Waiver of the Subdivision Regulations would be required in order to remove the sidewalk requirement along Sheridan Rd. Sidewalks are part of complete streets, providing a safe and convenient passageway for pedestrians, separate from driving lanes for automobile traffic. Staff recommends that the Applicant revise this section to remove the statement that sidewalks will not be constructed, and reword the same such as "A sidewalk shall be constructed by the developer along the entire frontage of Sheridan Road, as required by Subdivision Regulations Section 12-3-2.N. The sidewalk shall be a minimum of five (5) feet in width or otherwise four (4) feet in width with five (5) foot by five (5) foot minimum turnaround areas spaced no less than 200 feet apart, shall be ADA compliant, and shall be approved by the City Engineer."*

*Surrounding Zoning and Land Use Compatibility. Surrounding zoning patterns are primarily AG, RMH, and CS.*

*To the north is a 20-acre agricultural tract zoned AG and the Leonard & Marker Funeral Home zoned CS north of 151<sup>st</sup> St. S.*

*South of the subject property, agricultural, rural residential, and vacant/wooded lands zoned AG lie along Sheridan Rd.*

*East of the subject property is the Shadow Valley Mobile Home Park zoned RMH and the Conrad Farms' farmland further to the east and southeast zoned AG.*

*Finally, to the west is the Bixby Cemetery and rural residential land zoned AG.*

*The requested RM-2 zoning would be fairly consistent with the established RMH district to the east, containing the Shadow Valley Mobile Home Park, as the densities allowed by each district and the overall land use category are similar. However, due to the significant slope change, the proximal relationship is more tenuous and areas "up on the hill" will be more directly impacted by the establishment of a new RM-2 district on the subject property. There should be no conflict with the Bixby Cemetery to the west, but care should be given when allowing the development and use of an apartment complex in respect to the agricultural land to the south, the rural residential land to the south and southwest, and the intensive use (commercial or greater) that may be anticipated on the 20-acre tract abutting to the north, which is located in a Corridor designation of the Comprehensive Plan, has ¼ mile of street frontage along 151<sup>st</sup> St. S. (State Hwy 67), and is located at the highway's intersection with Sheridan Rd.*

*Not including assisted living facilities, Bixby has four (4) apartment complexes. Parkwood Apartments was constructed in or around 1973. The Links at Bixby was developed in or around 1996, and was done with PUD 16. Marquis on Memorial was developed in 2008/2009, and was done with PUD 61. Encore on Memorial was developed in 2011 and was done with PUD 70. Since 1973, no apartment development has been developed in Bixby absent a PUD, and the PUDs arguably contribute to the improvement of the value and quality of such projects. If a "straight rezoning" was approved absent a PUD, it is unlikely that a PUD would later be requested. To ensure the highest value and quality for any multifamily development that may occur on the subject property, a PUD should be applied, and as recommended, the Applicant has submitted PUD 75. However, the provided PUD does not appear to address development value or quality. If approved, Staff recommends, at a minimum, the PUD specify the following, which should help ensure the development product is adequately invested to help ensure quality for the long term:*

- 1. Consistent with the most recent and relevant two (2) apartment developments in Bixby, the adequacy of construction quality shall be determined by means of a PUD Detailed Site Plan, to*

be reviewed and recommended upon by the Planning Commission and approved by the City Council.

2. Consistent with the *Encore on Memorial* project, the PUD should propose specific masonry requirement for each building type (*Encore on Memorial* included a 25% masonry requirement for the standard 3-story apartment buildings (“Type I”), a 35% masonry requirement for the modified-type 2/3-story apartment buildings (“Type III”), and a 40% masonry requirement for the leasing office. The garages and carport buildings had no masonry requirement).
3. Describe in the PUD text and amend the site plan as necessary to address what will be done with the existing natural site features: the pond and natural drainageway areas along the south property line, the small tree grove at the northeast corner of the acreage, and the hilltop and areas of significant slope change; i.e. will any of them be preserved within the development, or will they be removed and graded.
4. Describe specific plans and add measurable minimum standards for land use buffering and compatibility needs. Perimeter treatments normally include screening fences or walls and vegetative screening, and setbacks and massing adjustments are normally provided to buffer less-intensive land uses (e.g. single-family housing or rural residential properties) in proportion to their relative elevations and proximities.

Zoning Code Section 11-7I-8.C requires PUDs be found to comply with the following prerequisites:

1. Whether the PUD is consistent with the comprehensive plan;
2. Whether the PUD harmonizes with the existing and expected development of surrounding areas;
3. Whether the PUD is a unified treatment of the development possibilities of the project site; and
4. Whether the PUD is consistent with the stated purposes and standards of this article.

Regarding the fourth item, the “standards” refer to the requirements for PUDs generally and, per Section 11-7I-2, the “purposes” include:

- A. Permit innovative land development while maintaining appropriate limitation on the character and intensity of use and assuring compatibility with adjoining and proximate properties;
- B. Permit flexibility within the development to best utilize the unique physical features of the particular site;
- C. Provide and preserve meaningful open space; and
- D. Achieve a continuity of function and design within the development.

For the sake of development and land use compatibility, as described more fully above, Staff would be supportive of the three requests supporting the development proposal if it (1) ensures full consistency with the purposes and intent of the Comprehensive Plan, (2) appropriately incorporates safeguards to sensitive geographical features, (3) provides for land use buffering and compatibility needs, and (4) helps ensure the highest value and quality for any multifamily development that may occur on the subject property. If these were satisfactorily provided for, Staff believes that the prerequisites for PUD approval per Zoning Code Section 11-7I-8.C will have been met.

Staff Recommendation. For all the reasons outlined above, Staff believes that the surrounding zoning and land uses and the physical facts of the area weigh in favor of the requested amendment and rezoning applications generally. Therefore, Staff recommends Approval of all three (3) requests, subject to the following corrections, modifications, and Conditions of Approval:

1. Subject to the satisfaction of all outstanding Fire Marshal, City Engineer, and City Attorney recommendations.
2. Incorporate within the text and exhibits the four (4) numbered recommendations listed above.

3. Title Page: “LeAnn Addition” is inconsistent with the name “LeAnn Acres” as used elsewhere throughout the PUD.
4. Page 1, Introduction: The provided site plan indicates a multifamily apartment development, but the specific development type is not included in the introduction, as it should be recognizing the intent is known. Please specify along the lines of, “LeAnn Acres is ~~not~~ planned for a multifamily development.”
5. Page 1, Zoning: Zoning district requested by BZ-359 is “RM-2,” not “RM.”
6. Page 1, The Comprehensive land-use Plan: Final sentence uses word “amended” instead of “amend.”
7. Page 1, The Comprehensive land-use Plan: Comprehensive Plan Map designations are incorrect. See correct designations cited in this report.
8. Page 1, Features of the Site and surrounding area; viability and compatibility: Please remove incorrect code citation as follows: “A Detailed Site Plan, adequate to demonstrate compliance with applicable standards and including details on proposed parking and landscape plans, shall be submitted for Bixby Planning Commission approval as required by the Zoning Code Sections ~~11-7G~~ and 11-7I-8.B.5 and this PUD.”
9. Page 1, Features of the Site and surrounding area; viability and compatibility: Comprehensive Plan Map designations are incorrect. See correct designations cited in this report. Language should be added acknowledging that the designations are proposed to change per BCPA-8, and to describe the final result of the change if approved.
10. Page 2, Permitted Uses: Zoning district requested by BZ-359 is “RM-2,” not “RM.”
11. Page 2, Minimum Frontage: Please specify a minimum frontage standard. The provided site plan indicates a singular lot with 824.94’ of frontage on Sheridan Rd.
12. Page 2, Maximum Building Floor Area: Use of FAR is not appropriate here for a multifamily residential development; proper density/intensity measure uses units per land area. Please specify maximum proposed units for the development in accordance with the formula provided in the PUD chapter and the Bulk and Area provisions for the RM-2 district of the Zoning Code.
13. Page 2, Minimum Building Setbacks: Zoning Code citation is incorrect.
14. Page 2, Minimum Building Setbacks: Please specify proposed setbacks standards. Consider adjoining land uses, existing and expected, when sizing setbacks. Development Standards Section B.1.b provides 20’ setbacks from the north and south PUD boundaries.
15. Page 2, Development Standards: Acreages and percentages provided do not appear formatted or qualified to be operational in this context. Percentages and acreages should be qualified as “maximum” or “minimum” if intended as standards. Flexibility should be written into the standards, such as by using ranges. The Comprehensive Plan designations cited should be qualified as “existing” and the text should acknowledge that the designations are subject to change per BCPA-8, and what they would be if changed. Calculations provided should be adjusted if appropriate.
16. Page 3, Development Standards Section B.1: Please specify what screening will be proposed for which property lines (type and height).
17. Page 3, Development Standards Section B.1.a: Refers to Exhibit B as a “Preliminary Landscape and Screening Plan,” when Exhibit B is named a “Conceptual Site Plan.” Reconciliation could be achieved by modifying the text such as, “Preliminary plans for landscaping and screening are represented on Exhibit B.”
18. Page 3, Development Standards Section B.1.a: Please correct: “... on Exhibit B ~~to the PUD Text~~.”
19. Page 3, Development Standards Section B.1.b: The street yard landscape percentage requirement is proposed to be removed. Staff recommends this be retained. Even if that standard was removed, the language does not also remove the 10’ minimum landscaped strip widths or minimum number landscaping tree requirements of the Zoning Code.
20. Page 3, Development Standards Section B.1.b: (If retained; see item above) Please clarify “The 15% street yard landscape percentage requirement along South Sheridan Road does not apply to this site” or as otherwise intended.
21. Page 4, Development Standards Section B.6.a: Refers to Exhibit D instead of Exhibit F.
22. Development Standards Section B.7.b: Please revise this section to state something along the lines of, “Sidewalks will be constructed within the development site to provide internal

- pedestrian access between apartment buildings, the management office, the pool, and other common site features.”*
23. Development Standards Section B.7.b: *Please revise this section to remove the statement that sidewalks will not be constructed along Sheridan Rd., and reword the same such as “A sidewalk shall be constructed by the developer along the entire frontage of Sheridan Road, as required by Subdivision Regulations Section 12-3-2.N. The sidewalk shall be a minimum of five (5) feet in width or otherwise four (4) feet in width with five (5) foot by five (5) foot minimum turnaround areas spaced no less than 200 feet apart, shall be ADA compliant, and shall be approved by the City Engineer.”*
  24. Page 4, Development Standards Section B.9: *Schedule does not include Earth Change Permit, Preliminary Plat, Final Plat, or PUD Detailed Site Plan.*
  25. Page 5, Exhibits List: *Exhibit B is inconsistent with the exhibit name actually used.*
  26. Exhibit B: *Please include, represent, identify/label, and/or dimension, or otherwise correct as follows:*
    - a. *North arrow*
    - b. *Scale*
    - c. *Date of preparation*
    - d. *Name and contact information of the site plan preparer*
    - e. *Unique identifier so that the plan may be related to the subject property if ever separated from the file, such as property owner’s name, property or building address, and/or legal description, or PUD #*
    - f. *50’ dimension for Sheridan Rd. right-of-way: Please label as “to be dedicated by plat”*
    - g. *17.5’ Perimeter Utility Easement: required around entire perimeter (including Reserve Area for stormwater detention facility)*
    - h. *Proposed building dimensions (“typical” qualifier may be used)*
    - i. *Proposed building setbacks (nearest buildings to each: west to Sheridan Rd. right-of-way, north/side, and south/side at a minimum)*
    - j. *Driveway widths (“typical” qualifier may be used)*
    - k. *Consistent with the recommendation for Development Standards Section B.1, please identify what screening will be proposed for which property lines*
  27. Exhibits B, C, D, and E: *Please add a North Arrow.*
  28. Exhibit B: *Please label Development Area A.*
  29. Exhibit C: *Please identify the subject property.*
  30. Exhibit C, D, E, and F: *Missing exhibit names as per Exhibits list on page 5.*
  31. *For the recommended Conditions of Approval necessarily requiring changes to the text or exhibits, recognizing the difficulty of attaching Conditions of Approval to PUD ordinances due to the legal requirements for posting, reading, and administering ordinance adoption, please incorporate the changes into appropriate sections of the PUD, or with reasonable amendments as needed. Please incorporate also the other conditions listed here which cannot be fully completed by the time of City Council ordinance approval, due to being requirements for ongoing or future actions, etc. Per the City Attorney, if conditions are not incorporated into the PUD text and exhibits prior to City Council consideration of an approval ordinance, the ordinance adoption item will be Continued to the next City Council meeting agenda.*
  32. *A corrected PUD text and exhibits package shall be submitted incorporating all of the corrections, modifications, and conditions of approval of this PUD: Two (2) hard copies and one (1) electronic copy (PDF preferred).*

Erik Enyart stated that, just prior to the meeting, the Applicant had submitted a revised PUD Text and Exhibits package, which may have addressed some or all of the recommended corrections, modifications, and Conditions of Approval. Mr. Enyart stated that he had not had opportunity to see what changes had been made. Mr. Enyart recommended approval with the corrections, modifications, and Conditions of Approval, to the extent they remained after the changes made to the submittal.

Applicant JR Donelson stated that he had addressed all of the items except # 23, pertaining to building a sidewalk along Sheridan Rd. Mr. Donelson stated that a sidewalk would not be advantageous to the population of Bixby because “everything out there is [borrow] ditch.” Mr. Donelson stated that, in the area, another developer had put money in escrow for sidewalks, rather than construct their own.

Roger Metcalf stated that he had lived in this house since 1984. Mr. Metcalf stated that he [would eventually] have commercial [developed on the acreage next to] his property along 151<sup>st</sup> St. S. Mr. Metcalf stated that he had a mobile home park below him [to the east], and a cemetery with tombstones across the street to the west.

Chair Thomas Holland asked Roger Metcalf what was to the south of his property. Mr. Metcalf responded that there was “one place there—he’s got 40 acres—one resident, and [the] Atherton [acreage].” Mr. Metcalf stated that [the] McCutchin [family] owned 160 acres that “just sits there.”

Chair Thomas Holland recognized Phil Faubert of 15802 S. Sheridan Rd. from the Sign-In Sheet. Mr. Faubert stated that he had the Atherton Farms property. Mr. Faubert stated that he did not think this was a good place for apartments, but indicated he would not necessarily object if they were of “high quality.” Mr. Faubert expressed concern over traffic, and traffic safety at the intersection of Sheridan Rd. with 151<sup>st</sup> St. S. / State Highway 67, especially for westbound turns. Mr. Faubert stated that he had a ranch south of the subject property. Mr. Faubert stated that there seemed to be “apartments everywhere in Bixby,” and that, for this, he was “a little concerned.”

Certain Commissioners expressed concern over traffic and Sheridan Rd. itself, questioned if the road was capable of handling the traffic and the added stress that this development would bring, and questioned whether or not it was a County road or a City street, and if the acreage to the north of the subject property would be required to access 151<sup>st</sup> St. S. exclusively or would be permitted access to Sheridan Rd.

Erik Enyart stated that Sheridan Rd. was a County-maintained road to his knowledge, and that he agreed it needed improvement. Mr. Enyart stated that it was a “chicken-or-the-egg” situation, the question being whether to allow development to occur prior to adequate infrastructure being put in place, or to insist that the infrastructure be adequate before allowing development to occur. Mr. Enyart stated that, in this part of the country, it seemed to be the norm that development is allowed first, and the infrastructure improvements follow when public revenues allow. Mr. Enyart stated that approximately 400 residential lots had been platted in this area along 141<sup>st</sup> St. S. and Sheridan Rd. in the past few years, and all of them funnel down [Sheridan Rd. and other north-south arterial streets] to 151<sup>st</sup> St. S., in order to gain access east and west. Mr. Enyart stated that it was yet to be determined whether the 20-acre commercial development tract abutting to the north would have curb cuts allowed on 151<sup>st</sup> St. S. or Sheridan Rd. Mr. Enyart stated that, like the acreage to the north, the north 15 acres of the subject property was currently designated “Corridor” on the Comprehensive Plan, and that it was planned for something intensive to develop. Mr. Enyart stated that the sidewalk matter JR Donelson had mentioned stemmed from a conversation he had with Mr. Donelson prior to the meeting, wherein he pointed out that the developer of the *Southridge at Lantern Hill* housing addition to the north on Sheridan Rd. had objected to building a sidewalk due to the borrow ditches, and instead, agreed to put an amount of money equal to the cost of

constructing the sidewalk into an escrow account owned by the City of Bixby, that the City could then use to build sidewalks elsewhere when it had new street improvement projects. Mr. Enyart stated that this would probably be a rare event, as most developers want their money invested next to their property, where it would benefit their property values, and not be spent somewhere else in the City.

Chair Thomas Holland asked how many apartment units there would be. JR Donelson responded that the PUD would allow up to 454 units. Mr. Holland indicated this was a large number, and Mr. Donelson stated that this was just what the PUD would allow, and would not necessarily mean all of them would be constructed.

Chair Thomas Holland asked about the cost of constructing a sidewalk. JR Donelson responded that a 4'- to 5'-wide sidewalk would cost approximately \$1.50 per [square] foot, and so approximately \$6.00 per [linear] foot. Mr. Holland expressed concern that a developer would not want their money to go into escrow in lieu of building the sidewalk, and would rather see their money go into their own project.

Lance Whisman asked how a sidewalk would work with a borrow ditch, and JR Donelson answered that one would have to “engineer around it,” and discussed the likely location of a sidewalk in relation to the borrow ditch.

JR Donelson expressed objection to the Comprehensive Plan’s designation of the subject property, including narrow strips of one designation or another. Upon request for comment from a Commissioner, Erik Enyart responded that he believed the intent was to draw the map based on property lines, and that the narrow strips of different designations may have been a mapping oversight, or otherwise it should be permitted to amend it to correspond with the existing acreage property lines.

JR Donelson stated that he and Erik Enyart had discussed the need to use care when amending the Comprehensive Plan. Mr. Donelson expressed objection to there being five (5) different designations on one piece of land, and stated that he had talked to Mr. Enyart about various ways that property owners be notified when the Comprehensive Plan is being updated, since [consistency with the Plan was mandatory], and not eight (8) or nine (9) years after the fact.

Erik Enyart stated that, when the City Council decides to have the Comprehensive Plan updated, he will recommend to them that they broadcast the notice of the process as widely as possible, to secure the highest public participation rates, because only when there is significant participation in the planning process, when the public provides input and takes ownership of the Plan, will it have broad political support and stand the test of time and be useful down the road.

Chair Thomas Holland referred to the Staff Report and asked Erik Enyart about the narrow strip of “Special District # 4” designation, and if that would be problematic for the development. Mr. Enyart stated that the narrow strip would be removed by the Comprehensive Plan amendment, and so then would be moot.

Chair Thomas Holland referred to the Staff Report and asked Erik Enyart if there would be an issue with the fact that the proposed amendment would not confer a specific land use designation. Mr. Enyart stated that the Comprehensive Plan text provided that, when the Plan Map had a specific land use designation, such as residential, commercial, or industrial, that is what type of land use should be developed there, but when it was designated “Vacant, Agricultural, Rural Residen[ces], and Open Land,” that was not interpreted as a permanent land use, and so such areas “could be anything.”

Erik Enyart stated that it was important to point out one recommended Condition of Approval was a departure from custom. Mr. Enyart stated that recommended Condition of Approval # 31 was based on conversations with the City Attorney, which pertained to PUDs that were not in their final form before being presented to the City Council for approval by ordinance. Mr. Enyart stated that the recommendation called for the receipt of “fixed copies” before the PUD was presented to the City Council for approval by ordinance. JR Donelson was asked, and stated that he agreed with the statement Erik just made, and that he had presented the revised PUD according to the recommendations.

Chair Thomas Holland asked to entertain a Motion. John Benjamin made a MOTION to Recommend APPROVAL of BCPA-8, PUD 75, and BZ-359 subject to the corrections, modifications, and Conditions of Approval as recommended by Staff.

Jeff Baldwin asked Erik Enyart for clarification of the sidewalk matter, and expressed concern that the sidewalk would not connect to anything in the area, and expressed concern over the escrow matter. Mr. Enyart stated that, broadly speaking, the requirement could result in a patchwork of sidewalks, but, if the requirement was consistently enforced, through time as each property develops, there will ultimately be continuous sidewalks. Mr. Enyart stated that, in the area of 151<sup>st</sup> St. S. and Sheridan Rd. in particular, a continuous sidewalk would be likely because all the properties were primarily undeveloped at this time. Mr. Baldwin stated that he was still struggling with the recommendation # 23 [pertaining to sidewalks], and would Abstain from the vote because of that issue.

(The original Motion did not receive a Second).

Lance Whisman made a MOTION to Recommend APPROVAL of BCPA-8, PUD 75, and BZ-359 subject to the corrections, modifications, and Conditions of Approval as recommended by Staff. John Benjamin SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Benjamin, Holland, & Whisman
NAY:	None.
ABSTAIN:	Baldwin.
MOTION CARRIED:	3:0:1

8. **PUD 63 – 101 South Memorial Plaza – Major Amendment # 1.** Discussion and possible action to approve Major Amendment # 1 to PUD 63 for all of *101 South Memorial Plaza*,

which amendment proposes the modification of the maximum parking space standard and sign height restriction, among other things.

Property located: Along 102<sup>nd</sup> St. S. between Memorial Dr. and 85<sup>th</sup> E. Ave.

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Chair Thomas Holland introduced the item and asked Erik Enyart for the Staff Report and recommendations. Mr. Enyart summarized the Staff Report as follows:

**To:** Bixby Planning Commission  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Wednesday, January 16, 2013  
**RE:** Report and Recommendations for:  
PUD 63 – 101 South Memorial Plaza – Major Amendment # 1

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**LOCATION:** – Along 102<sup>nd</sup> St. S. between Memorial Dr. and 85<sup>th</sup> E. Ave.  
– All of 101 South Memorial Plaza  
**LOT SIZE:** 7.5 acres more or less, in four (4) platted lots  
**EXISTING ZONING:** CS Commercial Shopping Center District and CG General Commercial District  
**SUPPLEMENTAL ZONING:** PUD 63 & Corridor Appearance District (partial inclusion)  
**EXISTING USE:** Vacant commercial lots in 101 South Memorial Plaza, and a Holiday Inn Express & Suites Tulsa South/Bixby hotel on Lot 1, Block 3 thereof  
**REQUEST:** Major Amendment # 1 to PUD 63 for all of 101 South Memorial Plaza, which amendment proposes the modification of the maximum parking space standard and sign height restriction, among other things

**SURROUNDING ZONING AND LAND USE:**

**North:** CS; Vacant unplatted tracts and the vacant balance of Tract C in 101 South Memorial Center.  
**South:** CS; Aldi grocery store, BancFirst, and The Palazzo shopping center, all in 101 South Memorial Center.  
**East:** CS; Dickinson Starworld 20 movie theater and the vacant Tract D in 101 South Memorial Center and the Warren Clinic doctor's office in Landmark Center.  
**West:** CG/CS/PUD 65, CG, & AG; CVS/Pharmacy, Whataburger, Sprouts Farmers Market (under construction), and vacant Lot 5, Block 1, all in 101 Memorial Square zoned CG/CS/PUD 65, the Schlotzsky's Deli restaurant zoned CG, and vacant land zoned AG across Memorial Dr. in the City of Tulsa.

**COMPREHENSIVE PLAN:** Corridor + Medium Intensity + Commercial Area.

**PREVIOUS/RELATED CASES:** (Not necessarily a complete list)

**BZ-89 – Ron Koeppe** – Request for rezoning from AG to CG for 3.6 acres (included part of subject property) – Recommended for Approval by PC 04/28/1980 and Approved by City Council 05/19/1980 (Ord. # 401).

**BZ-231 – American Southwest Properties, Inc. & Memorial Drive, LLC** – Request for rezoning from RM-2 to CS for approximately 6 acres, which included part of subject property – PC Recommended Approval 05/17/1997 and City Council Approved 12/08/1997 (Ord. # 761).

**BL-352 – American Southwest Properties, Inc.** – Request for Lot-Split to separate northern part of Tract C of 101 South Memorial Center from balance of property, which was later included in PUD 63 and the plat of 101 South Memorial Plaza – Conditionally approved by PC 04/21/2008.

**PUD 63 – 101 South Memorial Plaza – American Southwest Properties, Inc.** – Request for PUD approval for subject property – Conditionally approved by PC and City Council in April/May of 2008 (Ord. # 1004).

**Preliminary Plat of 101 South Memorial Plaza** – Request for Preliminary Plat approval for subject property – Conditionally approved by PC and City Council in April of 2008. The City Council also approved a Modification/Waiver from the street right-of-way widths to allow the 30' to 40' right-of-way widths as proposed.

Final Plat of 101 South Memorial Plaza – Request for Final Plat approval for subject property – PC recommended Conditional Approval on 10/20/2008 and City Council Conditionally Approved 10/27/2008. City Staff received and approved a request for extension on the plat approval for one (1) year from 10/27/2009.

AC-09-12-05 – Holiday Inn Express – ArcTech Incorporated, PC – Request for Detailed Site Plan approval for a hotel on Lot 1, Block 3, 101 South Memorial Plaza – Planning Commission Conditionally Approved 12/21/2009.

Plat Waiver for Holiday Inn Express – Request for temporary Waiver of the platting requirement per Zoning Code Section 11-8-13 for Lot 1, Block 3, 101 South Memorial Plaza – Approved by City Council 03/22/2010 subject to the approval and recording of the plat of 101 South Memorial Plaza before the end of calendar year 2010.

Revised Final Plat of 101 South Memorial Plaza – Request for revised Final Plat approval for subject property – PC recommended Conditional Approval on 04/19/2010 and City Council Conditionally Approved 04/26/2010 (plat recorded 07/30/2010).

BSP 2012-02 – Andy’s Frozen Custard – Lewis Engineering, P.L.L.C. – Request for Detailed Site Plan approval for a frozen custard restaurant on Lot 2, Block 3, 101 South Memorial Plaza – Planning Commission Conditionally Approved 12/17/2012.

RELEVANT AREA CASE HISTORY: (not a complete list)

BZ-89 – Ron Koepp – Request for rezoning from AG to CG for 3.6 acres including the southerly 0.96 acres (more or less) of the land later platted as 101 Memorial Square abutting subject property to the north/west – Recommended for Approval by PC 04/28/1980 and Approved by City Council 05/19/1980 (Ord. 401).

BZ-148 – John Moody for William E. Manley, et al. – Request for rezoning from AG to CG (amended to CS) for land later platted as 101 Memorial Square, less the southerly 0.96 acres (more or less) thereof (abutting subject property to the north/west) – Recommended for Approval by PC 10/31/1983 and Approved by City Council 11/07/1983 (Ord. 496).

BBOA-341 – Roy D. Johnsen for William E. Manley – Request for Special Exception to allow used car sales on the northwest 0.7 acres of land later platted as 101 Memorial Square abutting subject property to the north/west – Denied by BOA 11/02/1998 – Notice of Appeal in District Court found in case file but with no followup information as to its ultimate disposition.

BBOA-409 – Eric Sack for William & Betty Manley – Request for Variance to Chapter 11, Section 1140(d) “Unenclosed off-street parking areas shall be surfaced with an all-weather material,” and a Special Exception per Chapter 10 Section 1002.3(a) “Temporary open air activities, may continue for a period not to exceed thirty days per each application.... for the sale of Christmas Trees, wreaths, bows and other seasonal goods from November 25, 2003 through December 24, 2003 for land later platted as 101 Memorial Square abutting subject property to the north/west – Withdrawn by Applicant in September 2003.

BBOA-410 – Eric Sack for William & Betty Manley – Request for Variance to Chapter 11, Section 1140(d) “Unenclosed off-street parking areas shall be surfaced with an all-weather material,” and a Special Exception per Chapter 10 Section 1002.3(a) “Temporary open air activities, may continue for a period not to exceed thirty days per each application.... for the sale of Halloween related items such as pumpkins, gourds, hay and other seasonal goods and related activities such as pony rides and miniature train rides, from September 26, 2003 through October 31, 2003 for land later platted as 101 Memorial Square abutting subject property to the north/west – Withdrawn by Applicant in September 2003.

PUD 65 – 101 Memorial Square – Manley 101<sup>st</sup> & Memorial, LLC – Request for PUD approval for 101 Memorial Square abutting subject property to the north/west – Recommended for Conditional Approval by PC 11/17/2008 and Conditionally Approved by City Council 01/05/2009.

Preliminary Plat of 101 Memorial Square – Manley 101<sup>st</sup> & Memorial, LLC – Request for Preliminary Plat approval for 101 Memorial Square abutting subject property to the north/west – Recommended for Conditional Approval by PC 11/17/2008 and Conditionally Approved by City Council 11/24/2008.

Final Plat of 101 Memorial Square – Request for Final Plat approval for 101 Memorial Square abutting subject property to the north/west – Recommended for Conditional Approval by PC 02/17/2009 and Conditionally Approved by City Council 03/02/2009.

AC-09-02-02 – CVS/Pharmacy – Jacobs Carter Burgess – Request for Detailed Site Plan approval for Lot 1, Block 1, 101 Memorial Square (northwest of subject property) – Architectural Committee Conditionally Approved 02/17/2009. Developer Appealed the Approval in order to do away with the landscaped berm and Council took no action on 03/09/2009 based on the City Attorney’s opinion that the Council had removed the berm requirement for this Detailed Site Plan upon the approval of the Final Plat of 101 Memorial Square.

BSP 2009-01 – CVS/Pharmacy – Jacobs Carter Burgess – Request for Detailed Site Plan approval for Lot 1, Block 1, 101 Memorial Square as required by PUD 65 (northwest of subject property) – PC Conditionally Approved 02/17/2009. Developer Appealed the Approval in order to do away with the landscaped berm and Council took no action on 03/09/2009 based on the City Attorney’s opinion that the Council had removed the berm requirement for this Detailed Site Plan upon the approval of the Final Plat of 101 Memorial Square.

BBOA-547 – Kimley-Horn & Associates, Inc. – Request for Special Exception per Zoning Code Section 11-10-2.H to allow a total of 40 parking spaces, in excess of the 24 space maximum standard for a proposed restaurant in the CG General Commercial District and CS Commercial Shopping Center District with PUD 65 for the S. 189.99’ of Lot 3, Block 1, 101 Memorial Square abutting subject property to the west – BOA Approved 11/07/2011.

BL-382 – Sisemore, Weisz & Associates, Inc. – Request for Lot-Split approval for Lot 3, Block 1, 101 Memorial Square abutting subject property to the west – PC Approved 11/21/2011 subject to the attachment of the north 54.56’ to Lot 2, Block 1, 101 Memorial Square.

AC-11-01-02 – Whataburger – Kimley-Horn & Associates, Inc. – Request for Detailed Site Plan approval for a Use Unit 12 fast-food restaurant for the S. 189.99’ of Lot 3, Block 1, 101 Memorial Square abutting subject property to the west – PC Conditionally Approved 11/21/2011.

BSP 2012-01 / AC-12-04-05 – “Sprouts Farmers Market” – Sisemore, Weisz & Associates, Inc. – Request for Detailed Site Plan approval for a “Sprouts Farmers Market,” a Use Unit 13 specialty grocery store development for Lots 2, 4, and the N. 54.56’ of Lot 3, Block 1, 101 Memorial Square abutting subject property to the north/west – PC Conditionally Approved 04/16/2012.

PUD 65 – 101 Memorial Square – Major Amendment # 1 – Request for approval of a Major Amendment to PUD 65, abutting subject property to the north/west, which amendment proposed changes to parking and signage requirements – PC recommended Approval 04/16/2012 and City Council Approved 04/23/2012 (Ord. # 2082).

**BACKGROUND INFORMATION:**

**ANALYSIS:**

**Property Conditions.** The subject property consists of all of 101 South Memorial Plaza, containing vacant commercial lots, with the exception of a Holiday Inn Express & Suites Tulsa South/Bixby hotel on Lot 1, Block 3.

101 South Memorial Plaza is moderately sloped and drains through an underground stormsewer system in a southeasterly direction to an upstream tributary of Fry Creek # 1, which tributary flows to the southeast through 101 South Memorial Center, Regal Plaza, South Country Estates, and the Legacy additions before its confluence with Fry Creek No. 1 near 107<sup>th</sup> St. S. and 91<sup>st</sup> E. Ave.

Tract F in 101 South Memorial Center, located immediately south of the Dickinson Starworld 20 movie theater, contains a stormwater detention facility. This facility has been enlarged, and the stormsewer pipe systems have been extended and enlarged, to accommodate the additional stormwater detention and drainage capacity necessary to serve the new commercial developments in 101 South Memorial Plaza and 101 Memorial Square.

**General.** On Lot 2, Block 3, 101 South Memorial Plaza, the Planning Commission Conditionally Approved an Andy’s Frozen Custard restaurant for a PUD Detailed Site Plan in December of 2012. Certain parking and signage aspects of that proposed development would not comply with PUD 63, and thus this Major Amendment # 1 has been requested.

The Andy’s Frozen Custard restaurant is proposed to have 2,150 square feet of building floor area. Although this particular development precipitated the need for this PUD Major Amendment, the amendment proposes changes to certain parking and signage requirements for all of PUD 63 / 101 South Memorial Plaza. The changes would affect Section E of the PUD, which are “Development Standards for All Development Area Lots.” Because the changes only pertain to parking and signage and all changes were explicitly represented on the Detailed Site Plan reviewed by the Technical Advisory Committee on

December 05, 2012, and no objections were raised to any proposed consequence, this PUD Major Amendment # 1 was not placed on a TAC agenda for review or additional comment.

Comprehensive Plan. The Comprehensive Plan designates the subject property as (1) Corridor, (2) Medium Intensity, and (3) Commercial Area.

Due to the relatively limited scope of proposed changes, the proposed PUD 63 Major Amendment # 1 should be recognized as being not inconsistent with the Comprehensive Plan.

Surrounding Zoning and Land Use Compatibility. Surrounding zoning is primarily CS and CG. Surrounding zoning and land use patterns would support the commercial development existing in 101 South Memorial Plaza and contemplated by this Major Amendment to PUD 63 and the existing underlying CS and CG zoning.

The Major Amendment proposed to PUD 63 would not appear to be inconsistent with surrounding Zoning or land use patterns.

Parking Requirements. Per BSP 2012-02, the provided site plan drawings for the Andy's Frozen Custard development in Development Area B indicate parking lots on the east and west sides of the building with a total of 30 parking spaces. Zoning Code Section 11-9-12.D requires a minimum of 14 parking spaces for a 2,150 square foot building. Zoning Code Section 11-10-2.H provides a "minimum plus 15%" maximum parking number cap, to prevent excessive parking that results in pressure to reduce greenspaces on the development site. The maximum number of parking spaces allowed for this property, for 2,150 square feet, is 16 parking spaces (reference Zoning Code Section 11-9-12.D). In other words, the site is proposed to have a total of 87.5% more parking spaces than the minimum number required. Therefore, by this proposed Major Amendment # 1, the Applicant has proposed that parking "may exceed the minimum [sic] requirement of the Bixby Zoning Code." The text will need to be amended to state that parking may exceed the "maximum" allowed. If approved, this would allow the proposed 30 parking spaces for the Development Area B (Andy's) lot and all of 101 South Memorial Plaza.

In the immediate vicinity, there is precedent for allowing the maximum parking number standard to be exceeded, and precedent for parking space number exceedances that occurred prior to advent of the maximum standard in 2009/2010.

Per PUD 65 Major Amendment # 1 in 2012, the Planning Commission recommended, and the City Council approved certain amendments to the PUD, which included a 10% increase in the number of parking spaces allowed for the Sprouts Farmers Market specialty foods grocery store development. PUD 65 (which consists of all of 101 Memorial Square) abuts the subject property to the west.

Per BBOA-547 in 2011, the Board of Adjustment approved a Special Exception allowing the Whataburger restaurant development on the lot abutting to the west to exceed the maximum parking space allowance. That development was approved for 40 parking spaces when 24 was the maximum, resulting in a total of 92.5% more parking spaces than the minimum required.

Per Aerial data and GIS, the Schlotzsky's Deli restaurant on another lot abutting to the west has approximately 3,440 square feet and 43 parking spaces. At 3,440 square feet, 23 parking spaces would be required, so the 43 parking spaces are 87% higher than the minimum number required.

Per Aerial data and GIS, further to the south, the Carl's Jr. restaurant has approximately 4,125 square feet and the Taco Bueno about 3,000 square feet, and they share approximately 96 parking spaces (48 required, or 102% higher than the minimum number required).

Compared to an un-weighted average of 94% more parking spaces than the minimum number required in the three (3) other restaurant developments, this restaurant development proposes only 87.5% more parking spaces than the minimum number required.

Zoning Code Section 11-7I-5.F provides a lot percentage landscaping standard for PUDs, which would be 10% of a commercial lot in this case. Per the "Site Plan" drawing A101 received for the Andy's Frozen Custard development in Development Area B on 01/10/2013, 4,600 square feet would be landscaped area, which would be approximately 14% of the lot area of approximately 0.73 acres. Per the "Site Plan" drawing for the same development prepared by Lewis Engineering, P.L.L.C. and received 01/08/2013, 5,846 square feet would be landscaped area, which would be approximately 18% of the lot. Regardless of which estimate is correct, the 10% minimum standard is exceeded. Further, as detailed in the Staff Report for BSP 2012-02, the development proposes certain landscaped strips which are wider than the minimum required by the Zoning Code and PUD 63. Most developments provide only the bare minimum required landscaped strip widths. Presuming approval of this amendment, all lots will still be subject to the minimum landscaping requirements of the Zoning Code.

Lot 1, Block 3, 101 South Memorial Plaza is developed with a Holiday Inn Express & Suites Tulsa South/Bixby hotel, and it was constructed with precisely the minimum number of parking spaces required (92), and thus does not require an additional parking allowance at this time. The Andy's Frozen Custard development in Development Area B will require the additional parking allowance, per the conditionally approved Detailed Site Plan BSP 2012-02. Based on its size, configuration, and the character of the surrounding commercial area, it is fairly likely that Lot 1, Block 1 will be developed with a Use Unit 12 restaurant, which land use type regularly exceeds the new maximum parking number standard. The future use of the large Lot 1, Block 2 is not as easily predicted, but it is an interior lot with no frontage on Memorial Dr. or 101<sup>st</sup> St. S., and abuts a large parking lot serving ALDI to the south and a very large parking lot serving the Dickinson Starworld 20 movie theater to the south/east.

For all the reasons set forth above, Staff has no objections to removing the maximum parking number requirement for PUD 63 as proposed by this amendment.

Signage – General. The “detail sign plan” element of BSP 2012-02 was recognized as consisting of certain sign plan drawings by Pinnacle Sign Group and representation of signage information on other plan sheets. During the review process and after the Planning Commission's Conditional Approval of BSP 2012-02, certain plans replaced the original plan sets as they concern signs. This report will describe the latest plans and information as received on January 10, 2013.

The “Site Plan” drawing A101 indicates the location of certain ground signs, and certain Pinnacle Sign Group sign plan drawings represent the signage details. There is a proposed pylon ground sign at the southwest corner of the lot at 35' in height and a proposed “monument-style” ground sign at the southeast corner of the lot at approximately 10' to 12' in height.

The subject property will also have “incidental signage” for traffic control and general identification information. The Pinnacle Sign Group sign plan represents them on drawing # “Directional” and drawing # “Road Signs,” page numbers 12 and 17 of the Hufft Projects site plan package, respectively. The “Enter” and “Exit” signs would exceed the maximum of 3 square feet in display surface area permitted by Zoning Code Section 11-9-21.C.3.k; the others would comply. On the “Road Signs” drawing, it appears some of the incidental signs would not be directional in nature. Non-directional signs and directional signs exceeding the 3 square feet maximum would be recognized as ground signs, subject to the regulations for ground signs.

Signage – Maximum Sign Height. For the Andy's Frozen Custard development in Development Area B, the Pinnacle Sign Group sign plan drawing # 0107-13-PYLO-1 (page 10 of the Hufft Projects site plan drawings received 01/10/2013) represents the proposed pylon ground sign at a 35' height. Zoning Code Section 11-7I-4.B.2.d restricts ground signs to 25' in height in PUDs. Language in the PUD Major Amendment would increase the height restriction for ground signs to 40'.

The underlying CG district, in which all four (4) ground signs along 102<sup>nd</sup> St. S. would be located, has no maximum height restrictions. There are no height restrictions either in the CH, IL, IM, or IH districts. The CS district is the only commercial district with a maximum sign height restriction, and it allows up to 30', absent a PUD.

Zoning Code Section 11-9-21.C.3.d provides a categorical exemption from signage regulations for:

“d. Signs which are not visible from a public street.”

This suggests the primary intent of the signage regulations is to place restrictions on signage only when visible from public streets.

Within PUDs, Zoning Code Section 11-7I-4.B.2.d provides the following for ground signs in PUDs:

“d. Ground signs shall not exceed twenty five feet (25') in height, measured from the mean curb level of the lot upon which it is erected; except, a sign when located behind the building setback line may exceed twenty five feet (25'), but shall not exceed forty feet (40') in height.” (emphasis added)

The proposed pylon ground sign exceeding the height restriction would exceed the 25' building setback from the south property line per PUD 63, but would be about 10' short of the building setback line imposed by the plat of 101 South Memorial Plaza, which appears to be 25' from the existing northerly street curbline.

For the CS district absent a PUD, Zoning Code Section 11-9-21.D.1 provides the following:

*“A ground sign shall not exceed thirty feet (30') in height, measured from the mean curb level of the lot upon which it is erected, unless in addition to the minimum setback prescribed in subsection C5 of this section, the sign is set back one foot (1') for each foot of height exceeding thirty feet (30'); provided the sign shall not exceed fifty feet (50') regardless of setback.”*

*The latter part of the above suggests the intent was to restrict, within CS districts, sign heights to an absolute maximum of 50', and that signs were encouraged to be located further from the street by allowing additional height. It appears to recognize an inverse relationship between the sign height and proximity to the street. This concept is echoed in the language found in Section 11-7I-4.B.2.d quoted above and in certain other sections of the Zoning Code.*

*Lot 2, Block 3, 101 South Memorial Plaza (Andy's lot) has no public street frontage. Lot 1, Block 2, and Lot 1, Block 3 have public street frontage only on 85<sup>th</sup> E. Ave. All three (3) named lots are interior to the shopping center, and are thus not as visible from Memorial Dr. and 101<sup>st</sup> St. S. as Lot 1, Block 1 and other commercial lots with frontage on these commercial streets. Recognizing the intent of the Zoning Code, which permits additional sign height for lots when set back from public streets, and which does not restrict signs when not visible from public streets, by logical extension, it would encourage additional sign height for commercial lots less visible from public streets. Thus, it seems reasonable to allow additional sign height for these three (3) interior commercial lots. Staff recommends the pertinent section of the PUD Major Amendment be qualified to exclude Development Area A (Lot 1, Block 1, 101 South Memorial Plaza) from the additional height allowance. Other commercial businesses with Memorial Dr. frontage typically have approximately 25'-high signs (CVS/Pharmacy, Sprouts Farmers Market, Whataburger, Schlotzky's, etc.).*

*Signage – Maximum Number of Ground Signs. Zoning Code Section 11-9-21.C.8.b provides for the number of signs permitted: “b. CG and CH districts: One per one hundred feet (100') of arterial street frontage or a fraction thereof.”*

*As the Development Area B (Andy's) lot is a lot interior to the shopping center development, the subject property does not have any arterial street frontage. Development Areas C and D have the same condition. The PUD Major Amendment would remove the “arterial” qualifier on the street frontage requirement, and would allow up to 10 ground signs per street frontage. Ten (10) ground signs is unlikely to be achieved in any instance, however, as the number is still restricted by available street frontage.*

*On the Development Area B (Andy's) lot, if the two (2) directional signs are added to the two (2) ground signs on the 102<sup>nd</sup> St. S. frontage due to the former exceeding the 3 square feet display surface area allowance, that would be a total of four (4) ground signs along 102<sup>nd</sup> St. S. Using the 1 to 100' frontage ratio, the 192' of street frontage would allow for a maximum of two (2). The text needs to be amended to specifically allow all four (4) as actually proposed on the Development Area B (Andy's) lot. Staff recommends this be done by (1) adding a “Signage” subsection to PUD 63 Section B (the development standards for Development Area B) stating that the maximum number of ground signs permitted shall be 1 for 50' of street frontage or fraction thereof, and (2) by changing the proposed amendment language in PUD 63 Section E.2.a as follows: “...fraction thereof, not to exceed ten (10), or as otherwise provided within the development standards of the specific Development Area.”*

*Staff has no objections to this change as recommended herein, as the aggregate display surface area would not be increased by this amendment, and so additional signs merely cause the allowable copy areas of each to be reduced in size.*

*Signage – Maximum Display Surface Area and Sign Rotation. Zoning Code Section 11-9-21.E.1 restricts ground signage display surface area to “... two (2) square feet per each linear foot of street frontage if more than one such sign is erected.”*

*For the Development Area B (Andy's) lot, 384 square feet of display surface area is allowable on 192' of street frontage on 102<sup>nd</sup> St. S. now that there are four (4) ground signs.*

*The Pinnacle Sign Group sign plan drawing # 0107-13-PYLO-1 (page 10 of the Hufft Projects site plan drawings received 01/10/2013) provides calculations for the pylon sign, which are interpreted as follows:*

- The sign would have a main identification sign element measuring approximately 10' horizontally by 10' horizontally by approximately 5' vertically. Thus, it forms a cube-like design, with opposing sides having the same copy, alternating between “Andy's” and “Frozen Custard.” This sign element will rotate per a note on that plan and previous statements by the Applicant.*

The pertinent part of the original PUD 63 text would be amended to allow for the sign rotation. Due to its cube-like design and rotating function, by interpretation, the double-faced sign exclusion per Zoning Code Section 11-7I-4.B.2.e should not apply. Thus, all four (4) of the sign faces of should be added to the aggregate total display surface area.  $5' \times 10' = 50 \text{ sq. ft.} \times 4 = 200 \text{ square feet}$ .

- The pylon will also support, underneath the main identification sign, a non-rotating changeable-letter message board sign element measuring  $8' \times 4' = 32 \text{ square feet}$ .
- Finally, at the top, the pylon would support a large,  $13' 2'' \times 6' 5''$ , 3-dimensional frozen custard cone. Staff believes it reasonable to measure this 3-dimensional sign element by assuming each facet from every possible horizontal direction will contain an equal visible display surface area, but counting it only once because it is only humanly possible to see one facet at a time. However, this sign element will also rotate per a note on that plan and previous statements by the Applicant (the pertinent part of the original PUD 63 text would be amended to allow for the sign rotation). As recommended by Staff, the Applicant has added language to the PUD Major Amendment formally recognizing this interpretation and applying it to the subject property. The language used will need to be clarified as described in the recommendations section of this report. The recommended language calculates display surface area calculated by counting one (1) facet at a perpendicular angle to the street for each street abutting the Development Area in which the sign is located. Using this interpretation for the 102<sup>nd</sup> St. S. frontage and the mensuration method of the “smallest rectangle” containing the cone element,  $13' 2'' \times 6' 5'' = 84.5 \text{ square feet}$ .

The Pinnacle Sign Group sign plan drawing # Monument (page 11 of the Hufft Projects site plan drawings received 01/10/2013) provides information for the monument ground sign, which is interpreted as follows:

- The sign would have a main identification sign element measuring approximately  $6' \times 3' 2\frac{1}{2}'' = 19.25 \text{ square feet}$ .
- Under the identification sign element, a changeable-letter message board sign element is proposed measuring approximately  $6' \times 3.5' = 21 \text{ square feet}$ .
- Finally, to the side of the other two (2) sign elements, the sign would support a (presumably) 3-dimensional frozen custard cone. If 3-dimensional, counting its 102<sup>nd</sup> St. S. frontage facet only once as per the other cone sign element described above, and using the mensuration method of the “smallest rectangle” containing the cone element,  $10' \times 5' 10'' = 58.3 \text{ square feet}$ .

The Pinnacle Sign Group sign plan drawing # Directional (page 12 of the Hufft Projects site plan drawings received 01/10/2013) provides information for the directional ground signs (“Enter” and “Exit”), which are counted as ground signs because they exceed the 3 square foot exemption allowance. Although the “Site Plan” drawing A101 does not differentiate between types of ground signs, presumably the 102<sup>nd</sup> St. S. frontage will contain an “Exit” sign at the exit-only western driveway connection and an “Enter” sign at the eastern one. The two ground signs are interpreted as follows:

- The “Enter” sign would measure approximately  $20'' \times 36'' = 5 \text{ square feet}$ .
- The “Exit” sign would measure approximately  $20'' \times 36'' = 5 \text{ square feet}$ .

The aggregate display surface area for all four (4) ground signs on 102<sup>nd</sup> St. S. would be **316.5 square feet**, which is within the 384 square feet permitted by Zoning Code Section 11-9-21.E.1.

The “incidental sign” at the driveway connection to 83<sup>rd</sup> E. Ave. will have no conformity issues due to being the only the second potential ground sign on that street frontage and the known dimensions of the monument sign and incidental signs.

Staff has no objections to adding to the PUD Staff’s display surface area interpretation for 3-dimensional signs and allowing the sign rotation as proposed.

Signage – Minimum Spacing Between Ground Signs. Zoning Code Section 11-7I-4.B.c provides: “Any ground sign shall maintain a minimum separation of one hundred feet (100') from any other ground sign.” As described elsewhere in this report, there are four (4) ground signs recognized along the 102<sup>nd</sup> St. S. frontage. Per the “Site Plan” drawing A101, this minimum spacing standard would not be met. Two (2) signs at the southwest lot corner will be spaced approximately 25' apart, and two (2) at the southeast lot corner will be spaced approximately 10' apart. The PUD Major Amendment currently does not have any language exempting the Development Area B (Andy’s) lot from this restriction, and it will need to be added either to PUD 63 Section E or the previously-recommended “Signage” subsection of PUD 63

*Section B (Development Standards for Development Area B). As a matter of site development flexibility, Staff has no objections in either case.*

Staff Recommendation. *Staff believes that the proposed PUD Major Amendment # 1 is consistent with the purposes and intent of the Zoning Code and the original PUD 63, and is appropriate and in order for approval, as a tool to allow for the efficient and flexible development of the commercial property. Staff recommends Approval subject to the following corrections, modifications, and Conditions of Approval:*

- 1. The text will need to be amended to state that parking may exceed the “maximum” allowed.*
- 2. Staff recommends the amendment language for PUD 63 Section E.2.a be qualified to exclude Development Area A (Lot 1, Block 1, 101 South Memorial Plaza) from the additional height allowance.*
- 3. Staff recommends this be done by (1) adding a “Signage” subsection PUD 63 Section B (the development standards for Development Area B) stating that the maximum number of ground signs permitted shall be 1 for 50’ of street frontage or fraction thereof, and (2) by changing the proposed amendment language in PUD 63 Section E.2.a as follows: “...fraction thereof, not to exceed ten (10), or as otherwise provided within the development standards of the specific Development Area.”*
- 4. Staff recommends the amendment language for PUD 63 Section E.2.a be clarified by changing the following text: “Signs with multiple facets or surfaces will use only the sign surface facing the street frontage when calculating the surface area of the sign.”*

*to read: “Signs with three (3) or more copy areas shall not enjoy the two-sided sign exclusion of Zoning Code Section 11-7I-4.B.2.e, and shall have their display surface area calculated by counting each copy area one time, regardless of rotation or non-rotation. Three-dimensional signs without flat-surfaced copy areas shall have their display surface area calculated by counting one (1) facet at a perpendicular angle to the street for each street abutting the Development Area in which the sign is located.”*

- 5. The PUD Major Amendment currently does not have any language exempting the Development Area B (Andy’s) lot from the ground sign separation restriction of Section 11-7I-4.B.c, and it will need to be added either to PUD 63 Section E or the previously-recommended “Signage” subsection of PUD 63 Section B (Development Standards for Development Area B).*

Chair Thomas Holland asked JR Donelson why there was a difference between the 35’ sign height proposed for the *Andy’s* project and the 40’ height listed in the PUD Major Amendment. Mr. Donelson stated that he could not answer the question as to why there was a difference, but was instructed to list the height at 40’. Mr. Donelson stated that the architect had measured the height of two (2) other [*Andy’s*] sites, including the new one in Joplin, and that they came close to 40’.

Chair Thomas Holland asked Erik Enyart what the Commission could do about the sign height. Mr. Enyart stated that it was the Commission’s prerogative to recommend anything specifically in this regard.

Lance Whisman consulted the Minutes of the previous meeting in the agenda packet and noted that the approved height was 35’.

Lance Whisman asked Erik Enyart if the *Andy’s* project had additional landscaping. Mr. Enyart responded that, as noted in the Staff Report, there was more landscaping proposed than would otherwise be required, and that was an argument in favor of allowing the additional parking proposed.

After further discussion of the sign height matter, Erik Enyart stated that the Commission could achieve the 35’ sign height change by including in its Motion that recommended Condition of

Approval # 2 specify the maximum height would be 35'. Mr. Enyart stated that he would work out the particulars after the Motion.

Lance Whisman made a MOTION to Recommend APPROVAL of the proposed PUD 63 Major Amendment # 1 with all of the corrections, modifications, and Conditions of Approval as recommended by Staff, with the second recommendation to specify the maximum sign height would be 35'. Jeff Baldwin SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Benjamin, Holland, Baldwin, & Whisman
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

PLATS

Chair Thomas Holland asked if there were any plats to consider. Erik Enyart stated that there were none. No action taken.

OTHER BUSINESS

Chair Thomas Holland asked if there was any other business to consider. Erik Enyart stated that there was none. No action taken.

OLD BUSINESS:

Chair Thomas Holland asked if there was any Old Business to consider. Erik Enyart stated that he had none. No action taken.

NEW BUSINESS:

Chair Thomas Holland stated that the Commissioners had discussed taking up a matter of new business related to an item on the agenda.

John Benjamin read a statement (clarified later) recommending the City of Bixby purchase the Roger Metcalf and Clinton Miller property as an addition to Bentley Park.

JR Donelson stated that [he and his clients were going to] request an appeal [of the recommended Denial of PUD 74 and BZ-362] to the City Council, so that John Benjamin's statement could be read into the record.

John Benjamin stated that his statement was his Motion.

Jeff Baldwin recommended that the Motion be amended to qualify the purchase recommendation by adding the words, "make a good faith effort to."

JR Donelson asked that the Motion be amended to replace the word “purchase” with “purchase or acquire,” and noted that the City of Bixby sometimes trades for properties, rather than buying them outright.

John Benjamin accepted the recommended amendments to his Motion and made that his MOTION as follows:

“In reference to the property listed, item 3 of today’s [Planning Commission] agenda, PUD 74 – Riverloft Addition, the Planning Commission recommends that the City of Bixby make a good faith effort to purchase or acquire said property as an addition to the Bentley Park acreage.”

Jeff Baldwin SECONDED the Motion. Roll was called:

ROLL CALL:

AYE:	Benjamin, Holland, Baldwin, & Whisman
NAY:	None.
ABSTAIN:	None.
MOTION CARRIED:	4:0:0

ADJOURNMENT:

There being no further business, Chair Thomas Holland declared the meeting Adjourned at 8:00 PM.

APPROVED BY:

\_\_\_\_\_

Chair

\_\_\_\_\_

Date

\_\_\_\_\_

City Planner/Recording Secretary