

**MINUTES
PLANNING COMMISSION
116 WEST NEEDLES
BIXBY, OKLAHOMA
February 22, 2011 6:00 PM**

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 6:11 PM.

ROLL CALL:

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

CONSENT AGENDA:

1. Approval of Minutes for the July 19, 2010 Regular Meeting
 2. Approval of Minutes for the December 20, 2010 Regular Meeting
 3. Approval of Minutes for the January 25, 2011 Special-Called Meeting
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Chair Thomas Holland introduced Consent Agenda Items numbered 1 through 3, inclusive.

Larry Whiteley asked if any of the Minutes could be approved [recognizing to John Benjamin was not present and Michael Wisner resigned the Planning Commission].

Erik Enyart stated that, at the last meeting, one of the Minutes was approved with the caveat that only two (2) of the members voting on the Minutes were present at that meeting, the third having resigned the Commission. Mr. Enyart stated that the Commissioners had a choice: They could Continue them once again or approve them with a caveat that only two (2) of the members present were in attendance at the meeting[s]. Mr. Enyart and the Commissioners discussed the matter for a time. Larry Whiteley indicated favor for taking care of these items now, especially the Minutes from the previous July.

After further discussion and certain clarifications made during the Roll Call, Thomas Holland made a MOTION to APPROVE the Minutes of the July 19, 2010 meeting with the caveat that only two (2) of the members voting on the Minutes were present at that meeting. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Erik Enyart stated that approving the Minutes in this manner would involve a certain measure of trust that their colleagues were accurately representing that the meeting happened in accordance with the Minutes.

After further discussion and certain clarifications made during the Roll Call, Thomas Holland made a MOTION to APPROVE the Minutes of the December 20, 2010 meeting with the caveat that only two (2) of the members voting on the Minutes were present at that meeting. Larry Whiteley SECONDED the Motion. Roll was called:

ROLL CALL:

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

Larry Whiteley made a MOTION to APPROVE the Minutes of the January 25, 2011 meeting. Lance Whisman SECONDED the Motion. Roll was called:

ROLL CALL:

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

PUBLIC HEARINGS:

None.

PLATS

None.

OTHER BUSINESS

5. **AC-11-02-01 – Firestone Complete Auto Care – Khoury Engineering, Inc.** Discussion and possible action to approve a Detailed Site Plan and building plans for “Firestone Complete Auto Care,” a Use Unit 17 automotive sales and services business for the S. 165.5’ of Lot 6, Block 1, *Bixby Centennial Plaza*.
Property located: 11894 S. Memorial Dr.
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Chair Thomas Holland took the agenda items out of order and introduced Agenda Item # 5 at this time. Mr. Holland asked Erik Enyart if this application was not Withdrawn by the Applicant. Mr. Enyart confirmed this was the case and noted that he had provided copies of a printout of an email from the project engineer stating that his client was Withdrawing the application from consideration. Mr. Enyart stated that there was “no action to be taken on this item.”

No action was taken.

4. **BL-377 – JR Donelson, Inc. for Remy Enterprises.** Discussion and possible action to approve a Lot-Split for Lot 5, Block 1, *Crosscreek*.

Property located: 12810 & 12812 S. Memorial Dr.; Northeast of the north dead-end of 73rd E. Ave. north of 129th St. S.

Chair Thomas Holland introduced the item and asked Erik Enyart for the Staff Report and recommendation. Mr. Enyart summarized the following Staff Report:

To: *Bixby Planning Commission*
From: *Erik Enyart, AICP, City Planner*
Date: *Thursday, February 10, 2011*
RE: *Report and Recommendations for:
BL-377 – JR Donelson, Inc. for Remy Enterprises*

LOCATION: – 12810 & 12812 S. Memorial Dr.
– Northeast of the north dead-end of 73rd E. Ave. north of 129th St. S.
– Lot 5, Block 1, *Crosscreek*

LOT SIZE: 4.46 or 4.95 acres, more or less

ZONING: CS Commercial Shopping Center District + PUD 37

EXISTING USE: Vacant

REQUEST: Lot-Split approval

COMPREHENSIVE PLAN: Corridor

PREVIOUS/RELATED CASES:

PUD 37 – Crosscreek – Randall Pickard for Remy Co., Inc. – Request for rezoning from AG to CS and PUD 37 for Crosscreek – Recommended for Approval by PC 03/21/2005 and Approved by City Council April 11, 2005 (Ord. # 980 – number assigned to the approved blank ordinance in the year 2007 after discovery of the discrepancy).

Preliminary Plat of Crosscreek – Request for Preliminary Plat approval for Crosscreek – Recommended for Approval by PC 06/20/2005 and Approved by City Council 06/25/2005.

Final Plat of Crosscreek – Request for Final Plat approval for Crosscreek – Recommended for Approval by PC 11/21/2005 and Approved by City Council 11/28/2005.

AC-06-04-01 – Request for Architectural Committee [Site Plan and building plans] approval for Phase 1, consisting of buildings 1 through 5, inclusive, of Crosscreek – Believed to have been approved by AC April 17, 2006 (Minutes not found in case file).

BBOA-453 – Dennis Larson – Request for Special Exception to allow a Use Unit 17 indoors sales of used automobiles in the CS district with PUD 37 for the land platted as Crosscreek, and specifically, 12804 S. Memorial Dr. Unit # 109 – Approved by BOA 05/07/2007 on the condition that sales be indoors with no storage of automobiles outside of the building.

BBOA-487 – Keith Whitehouse for Cross Creek Office Warehouses, LLC – Request for Special Exception to allow a Use Unit 17 internet-based/indoor used automobile sales in the CS district with PUD 37 for Lot 2, Block 1, Crosscreek, and specifically, 12818 S. Memorial Dr. Unit # 111 – Approved by BOA 08/04/2008.

BBOA-494 – David Owens for Cross Creek Office Warehouses, LLC – Request for Special Exception to allow a Use Unit 17 indoor lawnmower and small engine repair business in the CS district with

PUD 37 for Lot 3, Block 1, Crosscreek, and specifically, 12806 S. Memorial Dr. Unit # 115 – Withdrawn by Applicant in October/November 2008.

BBOA-498 – Cross Creek Office Warehouses, LLC and/or Remy Enterprises – Request for Special Exception to allow a Use Unit 19 indoor gymnasium, health club, baseball and basketball practice and training, enclosed commercial recreation establishments not elsewhere classified, and other such related uses within Use Unit 19, in the CS Commercial Shopping Center District with PUD 37 – Approved by BOA 03/02/2009.

PUD 37 – Crosscreek – Minor Amendment # 1 – Request for Minor Amendments to PUD 37 for Crosscreek – PC recommended Denial 05/18/2009 and City Council Approved on appeal 05/26/2009.

BACKGROUND INFORMATION:

The Applicant is proposing to divide the subject property into four (4) lots for commercial development. Conceptual plot plans submitted with the application indicate that each lot would contain its own metal warehouse building, similar to the other buildings in the developed part of Crosscreek (Lots 1 through 4, inclusive).

The Crosscreek development essentially consists of a series of metal warehouse buildings extending approximately ½ mile along the south side of the Fry Ditch No. 1 channel, oriented lengthwise along the channel (east-west). The exception is the front building (“Building 1”), which is oriented lengthwise along Memorial Dr., and has had appearance upgrades. The metal warehouse buildings are consistent with those typical of warehousing and trades and services general business offices (Use Unit 15, etc.).

ANALYSIS:

Subject Property Conditions. The subject property consists of vacant Lot 5, Block 1 in Crosscreek, zoned CS + PUD 37. It contains either 4.46 acres (per the Tulsa County Assessor) or 4.95 acres (per the Applicant). The discrepancy appears to be based on different legal descriptions used in two (2) deeds: The 1995 deed from the Charles Roger Knopp Revocable Trust (“Knopp”) to the City of Bixby for the Fry Creek # 1 and the 2005 deed from Knopp to Remy Enterprises, Inc. The latter deed included a “sliver” of land that follows the angle of the Fry Creek channel as built, which “sliver” would be excluded per the former deed, which used a due west call. The plat of Crosscreek followed the legal description in the 2005 deed. The Tulsa County Assessor’s office does not appear to recognize the “sliver” area in the 2005 deed or the plat of Crosscreek, and still represents the City of Bixby owning the land based on the due west call. The difference is approximately 0.49 acres as it concerns the Lot 5 subject property. Staff is asking INCOG to assist in analyzing the possible discrepancy and asking the City Attorney to review for possible remedy.

General. The proposed lots would comply with the bulk and area requirements of PUD 37 and appear to be reasonably sized for their intended use.

The Technical Advisory Committee (TAC) was scheduled to review this Detailed Site Plan on February 02, 2011. However, due to the blizzard, the meeting was cancelled and comments were requested to be submitted via email. As of the date of this report, no comments have been received. The Applicant should coordinate with the TAC utility providers to ensure their utility service provision concerns are satisfied.

The Lot 5 subject property currently has no frontage on a public street. Access is afforded via a private roadway within a 30’-wide Mutual Access Easement, which runs on an east-west axis and connects the east line of the subject property to the west line of Lot 1. The driveway connection to Memorial Dr. is located at the southeast corner of Lot 1. Lot 5 also accesses S. 73rd E. Ave. via an unnamed, curved roadway constructed by the Crosscreek developer on land owned by the City of Bixby (part of the Fry Creek channel right-of-way). After some effort searching, Staff has not located any easement which would support this roadway. Perhaps it was understood that, if constructed on City property, it would be a de facto public street. It was not included in or dedicated by the plat of Crosscreek.

The roadway to the west connects to the rest of the Crosscreek development via a roadway that passes north-south through the northwest corner of the Lot 5 subject property, and east-west along the north side of Lot 5 (inside the property or just outside, depending on the ownership of the “sliver” land as described above).

The proposed lots PUD 37 Development Standards for Development Area “Lot 5” provide that there is no minimum frontage requirement. However, Subdivision Regulations Section 12-8-1.C.3.b requires that all proposed lots have legal access to a public way. The plat of Crosscreek does not appear to provide any specifically-defined easements through the Lot 5 subject property.

Crosscreek Deed of Dedication Section 2.6.a provides what may amount to a blanket easement over all the lots in Crosscreek, "...The Owner/Developer hereby grants and establishes a perpetual, non-exclusive mutual access easement for purposes of permitting vehicular and pedestrian passage to and from all lots in the planned unit development across all drives and parking lots as shall exist on the lots." The section continues with "A mutual access easement shall be recorded in the office of the Tulsa County Clerk by the Owner/Developer." The former easement establishment language, located in the PUD Restrictions section of the DoD/RCs, appears to have been added after the PUD was approved, as it was not found in the PUD language itself. It may have been added in satisfaction of the latter statement, along with the specifically-defined MAEs as represented on the face of the plat.

The Applicant has submitted a "Plat of Survey Exhibit for Mutual Access Easement," including a legal description of a 30'-wide Mutual Access Easement to be established through the east-west center of the subject property and connecting the existing 30' MAE on Lot 4 to the west roadway ingress/egress. Staff Recommendation. Staff recommends Approval, subject to the exclusion from conveyance any land determined by the proper authorities to belong to the City of Bixby by prior deed, and subject to the dedication of any utility easements as may be required by the TAC utility service providers.

Erik Enyart stated that JR Donelson had told him owner Tim Remy would be in attendance, but it was evident he had not arrived.

Erik Enyart stated that the Deed of Dedication and Restrictive Covenants for *Crosscreek* provided that, essentially, anywhere there were drives or parking spaces, those areas were designated Mutual Access Easement, and so the proposed lots would have access to Memorial Dr. from the front entrance drive. Mr. Enyart stated that, for this reason, he did not include a recommendation for the dedication of any additional access easements. Mr. Enyart stated that the Applicant had provided a blank copy of a proposed Mutual Access Easement that would connect the existing Mutual Access Easement at the east end of the [subject property] lot to the existing roadway to the west. Mr. Enyart indicated that this would be a positive outcome if they go ahead and dedicate it anyway.

Erik Enyart stated that, in his report, he had identified a possible legal description overlap issue. Mr. Enyart stated that he had referred the matter to the legal description experts at INCOG and received an email that day describing how the legal descriptions should be interpreted. Mr. Enyart stated that he had provided copies of a printout of that email prior to the meeting. Mr. Enyart stated that it appeared there was no conflict after all. Mr. Enyart recommended Approval subject to the dedication of any utility easements as may be required by the TAC utility service providers.

Chair Thomas Holland stated that he had two (2) principal concerns, the first of which was the continuation of the fencing.

Erik Enyart stated that he was not sure if the PUD prescribed anything special as far as the required screening fence was concerned, but that the Zoning Code required a 6' screening fence whenever commercial uses were established next to a Residential zoning district.

Chair Thomas Holland stated that the Zoning Code's [minimum] requirement was not the same as what was in place currently [for the existing part of the development]. Mr. Holland stated that the fence was built on a concrete footing.

Erik Enyart stated that, before any commercial building could be built on the subject property, the PUD required a Detailed Site Plan be approved by the Planning Commission. Mr. Enyart stated that the Detailed Site Plan would be the appropriate time to consider requirements for the fence, and

that it would be unusual to attach such a condition to a Lot-Split. Chair Thomas Holland indicated agreement.

Chair Thomas Holland stated that he was concerned for a roadway connecting the development to 73rd E. Ave., as it would be detrimental to the residences to allow commercial and industrial traffic through this street. Mr. Holland and the Commissioners discussed with Erik Enyart the possibility of erecting a gate at the west end of the development to prevent commercial traffic from 73rd E. Ave., the status of the dedication of the roadway connecting *Crosscreek* to 73rd E. Ave., and related matters.

Erik Enyart stated that he had had some experience with this matter previously. Mr. Enyart stated that, a few years ago, a resident along 73rd E. Ave. submitted a complaint about commercial traffic on the residential street, and he had presented that complaint to the City Council. Mr. Enyart stated that the end result was an agreement by the Police Chief to step up speed limit enforcement and the former gate was not required to be put back up. Mr. Enyart stated that he believed that the gate may have been erected during the period of construction of the development. Mr. Enyart stated that, per his experience in a related matter elsewhere in the City, he knew that the City Attorney had opined that it was the City Council's prerogative to put up gates on public streets or require that they remain down, and that the current environment would likely not favor the erection of a gate on a public street.

Larry Whiteley stated, "The Lot-Split is not the way to [deal with the access issue]. The street is already there and they're using it."

Chair Thomas Holland clarified with Erik Enyart that the roadway connection was already in place and open and being used. Mr. Enyart stated that the concrete roadway goes along the north side of [the subject property] Lot 5 and along its west end, and connected to the roadway connection to 73rd E. Ave.

After further discussion on this matter, Erik Enyart recommended the Planning Commission keep the issues separated. Mr. Enyart stated that the Lot-Split met the requirements of the Code and ought to be approved. Mr. Enyart stated that, statutorily, the Planning Commission did have the authority to make recommendations to the City Council on all new public streets, and so it was their prerogative to make a recommendation on this matter. Mr. Enyart stated that, if it was the Commission's desire to do so, it should take up the matter at the end of the meeting in the form of a Motion under New Business.

Chair Thomas Holland and Lance Whisman asked if the second roadway was a requirement of the PUD. Erik Enyart stated that he did not have the PUD in front of him and could not answer at this time. Mr. Enyart stated that he was not in this position when the property was approved and developed around 2005 or 2006, but that he expected the development was required to have a second means of ingress and egress for emergency purposes. Mr. Enyart stated that it was probably decided at the time that any roadway built on City-owned property would be a de facto city street. Mr. Whisman and Mr. Holland asked Mr. Enyart if there was no formal dedication of the roadway connection and Mr. Enyart stated that this appeared to be the case as he had not found any documentation to suggest otherwise.

Erik Enyart stated that he considered it likely the Fire Marshal reviewed the building permit or the plat and stated that the Fire Code required a second entrance, and this was likely the result. Chair Thomas Holland stated, "We've approved numerous developments with only one entrance." Mr. Holland noted that several developments are approved with a single, double-wide street entrance.

Erik Enyart recommended the Commission keep the issues separate and make any recommendations they chose to as a new Motion under New Business.

Chair Thomas Holland asked if the roadway was represented on the PUD site plans. Mr. Enyart stated that he did not know. Mr. Holland asked if the roadway was built to minimum standards. Mr. Enyart stated that it was a good, concrete roadway with curbs and gutters. Mr. Holland asked if it was wide enough and had sidewalks, and Mr. Enyart stated that he did not think it met the [commercial street] standards and had no sidewalks, but that it was not [on platted land] either.

Erik Enyart stated that, before anything could be built on the subject property, the Planning Commission will see the Detailed Site Plan. Chair Thomas Holland asked if the access concern would be better dealt with at that time. Mr. Enyart stated that the Commission could make a recommendation now, as authorized by State Statutes, but that it should be done as a separate matter of New Business. Mr. Holland or Lance Whisman asked if the access concern would be better dealt with at the time of the Detailed Site Plan and Mr. Enyart responded, "It wouldn't be any more or less appropriate to bring it up at that time."

After further discussion, Larry Whiteley made a MOTION to APPROVE BL-377 subject to the dedication of any utility easements as may be required by the TAC utility service providers. Lance Whisman SECONDED the Motion. Roll was called:

ROLL CALL:

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

During the Roll Call, Chair Thomas Holland confirmed with Erik Enyart that he did not believe that the Planning Commission had [given] away any of its rights to bring this access matter up again at a later time.

OLD BUSINESS:

None.

NEW BUSINESS:

None.

ADJOURNMENT:

There being no further business, Chair Thomas Holland declared the meeting Adjourned at 6:41 PM.

APPROVED BY:

Chair

Date

City Planner/Recording Secretary