

DATE: March 30, 2012

TO: Josh Walker, Chairman, Tulsa Metropolitan Area Planning Commission

FROM: Dawn T. Warrick, AICP, Director

SUBJECT: Policy Analysis for the pending FBC Regulating Plan Decision

Mr. Walker,

Attached please find a Policy Analysis for the Pearl District Form-Based Code Regulating Plan prepared by this Department.

INCOG staff will provide the planner's recommendation for the application of Form-Based Codes to the Pearl District. This report is not, *nor is it intended to be*, a substitute for that review and recommendation. By standing agreement, the planner's recommendation will be presented by INCOG staff on the City's behalf. Rather, this report is a supplemental review of adopted plans of the City intended to provide the Planning Commission with a full understanding of the issues and policies created to address them.

You will also recall that one of my staff members, Theron Warlick, was asked by INCOG to assist with community outreach and feedback on this project. I am also retransmitting his February 1 memo to you that summarizes relevant planning issues from INCOG's three public meetings and offers possible solutions for your consideration. The Planning Commission may find these two reports useful as you consider the form-based codes proposal.

This is a very important case. If the TMAPC and/or INCOG staff requires additional assistance with analysis or problem-solving, please do not hesitate to ask and we will do our best to support the Commission's efforts to implement the City of Tulsa's Comprehensive Plan policies for the development of the built environment. Thank you.

Policy Analysis for the Pearl District Form-Based Code Regulating Plan

March 30, 2012

Prepared by: City of Tulsa Department of Planning and Economic Development

Purpose of This Report

INCOG staff will provide the planner's recommendation for the application of Form-Based Codes (FBC) to the Pearl District. *This report is not, nor is it intended to be, a substitute for that review and recommendation.* By standing agreement, the planner's recommendation will be presented by INCOG staff on the City's behalf. Rather, this report is a supplemental review of adopted plans of the City intended to provide the Planning Commission with a full understanding of planning and development issues and policies created to address them. The Planning Commission may find these relevant to the form-based code land use decision.

Together, these plans offer over a decade of integrated policies and strategies dedicated to the difficult task of restoring the Pearl District and places like it to positions of strength and vitality within our community. They inform the City on a wide array of capital and operational decisions ranging from streets and traffic, to flood control, to policing, to transit, to urban revitalization, parks, and economic development. To date, the City has invested millions of dollars in the Pearl District according to these plans and these plans will continue to guide future policy decisions, capital improvements, and city

Key Principles of the 6th Street Infill (Pearl District) Plan: Diversity and Urban Design.

The 6th Street Infill Plan, the Comprehensive Plan for Pearl District, promotes diversity in many forms, including diverse land use. Compatibility can be achieved through urban design.

14.2 Urban Design - *The foundation for the revitalization of 6th Street should be good urban design. New development should be carefully designed to fit and flow with the surrounding neighborhood. Design forms should respect existing setbacks, pedestrian and vehicular linkages, and materials. So long as the design mitigates undesirable environmental impacts (noise, dust, vibration, etc.), the use of the property is of minor importance"*

14.2.1. Pedestrian Orientation - *The pedestrian orientation of this neighborhood is one of its chief assets and has been identified as a key contributor to the long term success of this neighborhood. Pedestrian orientation should be protected and incorporated into new developments.*

14.2.2. Increased Density - *Flood control in the neighborhood will consume large amounts of land. To offset this, some of the remaining land should be redeveloped at higher densities. In certain areas, the density and scale of the neighborhood will increase dramatically. New development should remain connected to the rest of the neighborhood and transitional areas may be needed in order to create continuity.*

14.2.3. Mixed-use - *Good design practices will reduce or eliminate the need for strict separation of commercial, residential, and industrial land uses. A thorough integration of land uses establishes a new growth dynamic that will ultimately lead to a neighborhood that is able to evolve to suit the needs of those who live in it.*

14.2.4. Reducing Automobile Dependency - *The 6th Street Task Force is pragmatic in its approach to this principle. In the short run, the Task Force is recommending strategies which efficiently increase the amount of available parking in order to make existing properties commercially viable. But in the long run, the Task Force is recommending changes in density; preservation of pedestrian movement; and retention of a wide array of businesses and industries within the neighborhood. These measures will ensure that the neighborhood continues to offer residents plenty of opportunities to live, work, and play without having to use a car. Ultimately, the same variables that reduce dependence on automobiles will increase the demand for and the viability of mass transit in the neighborhood and throughout the City.*

operations. Land use and zoning is an integral part of these plans and this report will focus on this aspect.

Are you planning or zoning?

The Regulating Plan is a Comprehensive Plan amendment, however, the Planning Commission may wish to view this process more like a rezoning. Should the Planning Commission approve any portion of this plan, it will be carried forward to serve as the regulatory equivalent of a zoning map in just a few short months. This report therefore treats the proposed Regulating Plan before you as if it were a rezoning in the sense that a finding of consistency with the Comprehensive Plan is extremely important.

Many plans, One Comprehensive Vision

Many general and special purpose plans have been written for the Pearl District. Wherever possible, these plans have been updated and/or tailored for consistency with the 6th Street Infill plan, a part of the Comprehensive Plan for the City of Tulsa. Each of these plans has been publicly reviewed, adopted by the Planning Commission and approved by City Council.

1. **Central Park Tax Increment Financing Plan – 1997** – A tax increment district that includes portions of the Pearl District and has funded several key projects including Centennial Park pond and Community Center, and the acquisition of land for the development of the Village at Central Park. This plan provided funding to INCOG for the development of the Form-Based Code.
2. **Infill Development Task Force Report – 1999** – A citywide report that recommended three small area plans. The 6th Street Infill Plan was selected as one, Brookside and Brady the others. Recommended adoption of “*alternative zoning standards that encourage, traditional neighborhood planning principals; higher density; mixed commercial, civic, and residential uses in walkable environments.*”
3. **Downtown Neighborhood Urban Renewal Plan – 2004** – Expanded an existing urban renewal plan to be contiguous with the Pearl District. Positions the Pearl District for acquisition of property for urban renewal and redevelopment in accordance with the then draft of the 6th Street Infill Plan.
4. **The 6th Street (Pearl District) Infill Plan – 2006** – A comprehensive small area plan for the reinvention of the Pearl District offering recommendations for flood control; compact, walkable, mixed use

Report of the Infill Development Task Force - 1999

In areas in which higher intensity nonresidential uses are located near residential uses, residential and nonresidential property owners, with the assistance of the City, should consider jointly developing and adopting design guidelines for development and redevelopment of older areas of Tulsa. Special emphasis would be on transition of uses. Such guidelines should include, but not be limited to, standards for buffering, screening, landscaping and lighting. Development of detailed plans should be considered for existing pedestrian-oriented commercial areas, such as Cherry Street, to address the need for parking and potential for mixed-use redevelopment. Uses to be included should be primarily pedestrian-oriented and redevelopment should include good pedestrian access.

redevelopment and infill development; enhanced transit; reduced parking; reduced emphasis on land use; and a form-based approach to zoning.

5. **Elm Creek Master Drainage Plan – 2008** – A plan for the entire Elm Creek basin stretching from Kendall Whittier to the Arkansas River. Most of the proposed detention sites are located in the Pearl District. The plan was revised in 2008 to incorporate and further the flood control and redevelopment concepts from the 6th Street Infill Plan.
6. **Comprehensive Plan (PLANITULSA) – 2010** – A citywide plan for the future development of our city and principle guide for rezoning decisions. The 6th Street Infill Plan (Item #4) is adopted in whole, by title, as a part of the Comprehensive Plan.
7. **Fast Forward Regional Transit Plan – 2011** – An analysis and recommendation of key transit routes for the Tulsa Metropolitan Region. Two of the top five potential transit projects most likely to succeed run through the Pearl District. The Historic Streetcar Route, which transects the Pearl District on 11th Street, is a top-rated corridor. Also highly rated is the Broken Arrow corridor, which could eventually cross through the Pearl District diagonally, along existing rail lines. Either treatment requires compact, walkable urban development within walking distance of transit to succeed.
8. **Form Based Codes Regulating Plan – 2011** – An initial application of Form Based Codes in the Pearl District. Funding for Form Based Codes was provided through the Central Park TIF (Item #1). TIF funds must be expended within TIF boundaries; therefore this first application of Form Based Codes was limited to the TIF portions of the Pearl District. The code itself was developed with broader applicability, which is why the Regulating Plan for the balance of the Pearl appears before you today.

6th Street Infill Plan - 2006

Infill is happening in Tulsa today, but the process is often fraught with problems. Prohibitive building codes, inappropriate zoning codes, aging infrastructure, and disinterested financiers, often make infill development fiendishly difficult. In addition, many organized and well-established neighborhood associations have high expectations for the quality and compatibility of infill development; failure to respond to neighborhood considerations can result in opposition. Successful developers have found ways to address these unique code requirements and human factors.

From its inception with the Report of the Infill Development Task Force over 12 years ago, it seems clear that the Pearl District was *always* envisioned to have “alternative zoning standards” that would support the denser, walkable, urban environments. The 6th Street Infill Plan and other component plans all recommend a more compact urban form of development than is permitted by right by the conventional code that applies today.

Adopted Plan	Year	Walkable Urban Areas	Reduced Parking	Emphasis on Mixed Use	Form Based Code as a Means of Achieving These
<i>Infill Development Task Force Report</i>	1999	•	•	•	
<i>Downtn Nbrhd Urban Renewal Plan</i>	2004	•	•	•	
<i>6th Street (Pearl District) Infill Plan</i>	2006	•	•	•	•
<i>PLANiTULSA Comprehensive Plan</i>	2010	•	•	•	•
<i>Fast Forward Regional Transit Plan</i>	2011	•	•	•	•
<i>Form Based Code</i>	2012	•	•	•	•

Why does the Comprehensive Plan recommend Zoning Code Changes in the Pearl District?

Fundamentally, the Comprehensive Plan and the zoning code in place today have two different, and difficult to reconcile, forms of development in mind for a large portion of the Pearl District. Secondly, the zoning code itself does not appear to fit the lots platted almost a century ago, as evidenced by numerous requests for rezoning and/or relief from the code.

According the 6th Street Infill Plan, zoning is not the only barrier to the restoration of the Pearl District, but it is significant. Relative to other issues like flooding, aging infrastructure, and disinterested financiers, it is perhaps easy to address.

The conventional, Euclidian, zoning code that exists in the Pearl District is perhaps not a perfect fit. In many instances, the existing zoning code supports a development standard that is not easily achieved using the existing building blocks (streets, blocks, lots, and form) of the neighborhood; the high parking requirements, setbacks, and other rules designed to limit density and use are perhaps better suited for suburban environs where land is plentiful. While these standards have a place in our community, the TMAPC may conclude that the place for conventional zoning is perhaps not the Pearl District or in the very least perhaps *not all of it*.

Along arterial corridors where the plan seeks “Main Street” environments with walkable shopping districts and live-over housing, and also near transit, where higher density is essential for success, the existing code can stand in the way of desired outcomes. From a plan perspective, recent “bridge” amendments to the zoning code allow housing to coexist with commercial in certain districts, but these amendments *still* may not adequately address the urban form as recommended. In particular, high parking requirements and street setbacks can still make it difficult to design infill development that can reuse existing lots and seamlessly blend into the traditional urban vernacular.

From a developer’s or property owner’s point of view, it can be difficult to adapt the established neighborhood to the land-hungry standards of the existing zoning code. Existing lots, especially along arterial corridors, are often too small and too shallow to handle many suburban development types fostered by the current zoning code. The zoning code, as applied in the Pearl District, significantly restricts the size of a building that can be built on a single lot with setbacks, parking requirements, height restrictions, and open space and landscape requirements. The practical solution for delivering what the zoning code prescribes is to assemble multiple lots, rezone, and replat to produce a much larger site. But, this can be a complicated, expensive, time-consuming, controversial, and ultimately unpredictable process. These zoning tools are fundamentally important for development and will not simply go away with new zoning, but the use of these tools can be reduced. And the result, according to the Comprehensive Plan, should be less bureaucratic, faster, more predictable approach to land development.

The conventional, suburban zoning code that exists in the Pearl District today is a mismatch. It does not appear to prescribe by right the desired outcomes of the Comprehensive Plan. Even when viewed apart from the plan, it still requires significant alterations to the fabric of the neighborhood just to work as prescribed. The degree to which the zoning code has been a contributor to the disinvestment in the Pearl District over the last several decades is a matter of debate. Nevertheless, the Pearl District is on the mend and *most* new development within its boundaries requires some form of relief from the zoning code in place today. This means costly, time-consuming, unpredictable processes in order to position a property for development.

PLANiTULSA - 2010

Tulsa’s current zoning code prohibits mixed-use developments by right, except downtown, along corridors, and in special discretionary planned development zones. These special zones require approval, and provide no certainty for developers or neighbors. In short, the current system has it backward. To accurately reflect what Tulsans requested through the PLANiTULSA process, the zoning code should explicitly define and allow these kinds of places, particularly along corridors and in new neighborhoods and centers. Expanding the range of possible building types will be crucial to meeting the city’s economic development and housing goals as defined in the vision.

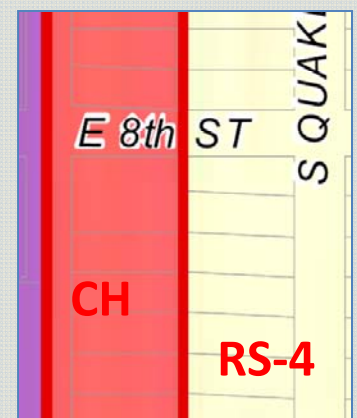


Figure 1 Existing lots are small and shallow, perhaps too small for the existing zoning code to work properly.

Are We SURE We Need Zoning Modifications?

This question may have already been answered by the people that choose to develop in the Pearl District. Since most new projects require relief from the code, the Planning Commission, City Council, and Board of Adjustment are already making modifications to the zoning code. In one sense, you are not being asked **if** you want to modify the existing code, but **how** you would like to make those modifications: on a case-by-case basis, or at least in part through a fundamentally new approach tailored for a specific neighborhood.

The guidance from Comprehensive Plan seems clear. A case-by-case, convoluted rezoning process itself does not appear consistent with the Comprehensive Plan.

Is it possible that the zoning on the ground today in the Pearl can be adapted to facilitate the recommended growth? Yes, it is possible. Through combinations of Planned Unit Developments, variances, and Special Exceptions, almost any form of development is *possible*. On a case-by-case basis, the Planning Commission and City Council have the ability to place conditions on PUDs that deliver the recommended outcomes of the Comprehensive Plan. Likewise, the Board of Adjustment can place conditions on Special Exceptions and variances, one request at a time.

While these techniques are widely used, as noted previously, they are vexing and unpredictable for the developer and the surrounding property owners as well. Instead, the Comprehensive Plan recommends a zoning code that ensures “The need to seek variances, planned unit developments, and other exceptions should be minimized, and the zoning approvals process should be short and easy to navigate.”¹

The City is already acting on this recommendation and has hired Duncan Associates of Austin, Texas to update the zoning code and that process is now under way. The FBC project in the Pearl District was initiated in 2008. Though it predates the drafting of PLANiTULSA, the proposed FBC rezoning appears consistent with the recommendations of PLANiTULSA.

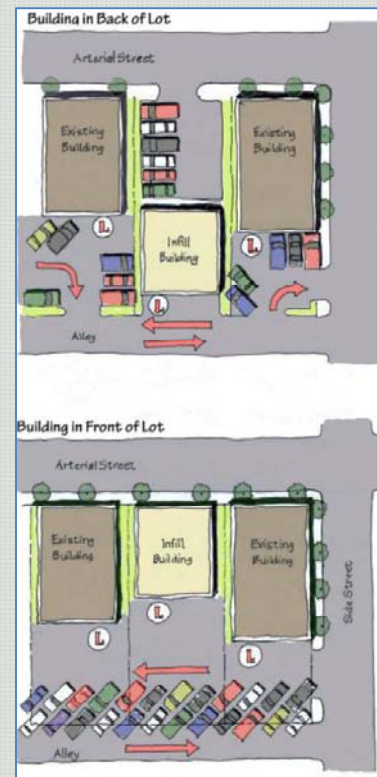


Figure 2 Graphic from the 6th Street Infill Plan - 2006. (Illustrates the ongoing conflict between a zoning code that produces one set of outcomes [top] and a Comprehensive Plan that recommends a different set of outcomes [bottom]).

¹ PLANiTULSA Vision, Page 40

Does the Comprehensive Plan Insist upon Form Based Codes?

No. The 6th Street Infill Plan recommends outcomes that are achievable through a “form-based approach”².

The rest of the Comprehensive Plan, PLANiTULSA, makes no specific recommendation about the type of zoning an updated code should use. Rather, it describes the kinds of outcomes an updated code should have: 1) it should be easier to use, 2) It should explicitly allow for a diverse range of mixed use development types, 3) It should allow innovative parking strategies, and 4) It should align with development incentives and overarching planning goals.

It is very possible that these objectives could be met by a number of code types: a modified conventional Euclidian code, performance zoning, or form-based codes. In fact, it is quite likely that our updated zoning code will include a hybrid of all of these styles. While the style of the code can be important in terms of administration and usability, there are several techniques in which the planned outcomes can be achieved.

While PLANiTULSA does not recommend one style of code over another, it does state that Form-Based Codes are a viable method of achieving predictability and even adding value to property and neighborhoods (see sidebar).

Tulsa’s FBC History

In 2009, INCOG hired Ferrell Madden Lewis (FML) of Washington D.C. to produce a Form-Based Code for the Pearl District. The \$34,000 spent to produce this code was provided by the Central Park Tax Increment District and funding restrictions required splitting this project into phases. The code text and first phase Regulating Plan (for the area inside the TIF District) was completed by FML in a collaborative effort that included INCOG planners, City planners, City Legal, and Pearl District property owners including the Pearl District Design group. FML’s contract with INCOG was completed in 2011.

The second phase, the Regulating Plan for the balance of the Pearl District, was initiated in 2011 with an instruction from the TMAPC Chairman to INCOG staff to prepare a Regulating Plan Map for the balance of the Pearl. A planning team comprised of INCOG staff, City planning staff, and the Pearl District Design group collaborated to draft the Regulating Plan before you

6th Street Infill Plan - 2006

Using the existing neighborhood as a starting point, a “form-based” approach to development that is principled on good urban design will allow for increased development density, walkable neighborhoods, and successful mass transit systems.

PLANiTULSA - 2010

Planning and zoning, while not typically thought of as economic catalysts, can play a major role in Tulsa’s economic development. Advanced planning and carefully designed form-based zoning codes add value by removing uncertainty from the development process — both for neighborhoods and developers. Cities that have successfully spurred reinvestment in their cores and corridors have done just this. Development is a risky business, but that risk can be mitigated when a community’s goals and objectives are expressed by a plan and allowed by right.

² 6th Street Infill Plan, Page 12

today. To date, three public meetings have been held since November 2011 to discuss this proposal and feedback from these meetings is provided and discussed under separate cover.

Differences between the Comprehensive Plan and Regulating Plan

There appear to be two significant differences between the proposed Regulating Plan and the Comprehensive Plan. Should the Planning Commission agree that these discrepancies exist, it is possible to reconcile them through the adoption of the regulating plan. As noted previously, the Planning Commission may wish to treat this more like a rezoning than a plan amendment, keeping in mind that the Regulating Plan will ultimately evolve into the regulatory equivalent of a zoning map in a matter of months. Therefore, differences from the Regulating Plan and Comprehensive Plan may be important.

The first apparent difference is perhaps the most significant. The Comprehensive Plan (6th Street Infill Plan Map) calls for Auto-Oriented Commercial in the eastern portions of 3rd St. and 1st St. corridors, and the northern portion of the Utica Corridor. There are no specific design standards recommended for the Auto-Oriented areas of the Comprehensive Plan. While *every* frontage in the proposed Regulating Plan does *consider and accommodate* automobile traffic, the

Apparent Difference #1

Regulating Plan



Comprehensive Plan

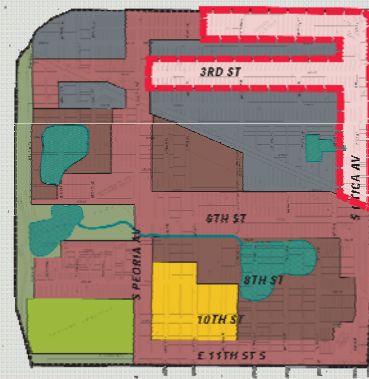


Figure 3 The Urban General frontage of the proposed Regulating Plan may be inconsistent with the Auto-Oriented Commercial areas of the Comprehensive Plan.

Apparent Difference #2

Regulating Plan



Comprehensive Plan

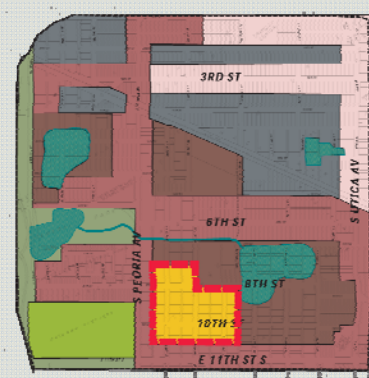


Figure 4 The recommended Townhouse/Small Apartment frontages may be inconsistent with the Restoration Area.

proposed Urban General frontage (Figure 3, yellow blocks) of FBC may be difficult to define as auto-oriented.

The second apparent difference is in the Restoration Area of the Comprehensive Plan. Portions of this area are designated Townhouse/Small Apartment frontage in the proposed Regulating Plan (Fig 4, blue blocks). While the Restoration Area does encourage apartments, the Comprehensive Plan recommends preserving the continuity and character of this area, which is comprised mainly of bungalows and detached, four-unit walkups. The Townhouse/Small Apartment frontage requires *attached* buildings that would presumably span many lots. The Planning Commission may find the Detached Frontage Designation of the proposed Regulating Plan more consistent with the Comprehensive Plan for this area.

One more notable difference, pointed out by INCOG staff, is how to treat the flood control portions of the Comprehensive Plan. On a very practical level, flood control planning in this area is an ongoing process. Though the general locations and sizes of these sites are well understood and reflected in the plan, the boundaries of detention sites have not been finalized. On another more important level, the construction of detention sites prescribed in the Elm Creek master drainage plan will be an expensive activity and private property will be acquired in many phases over several years. The City, through a rezoning action, cannot (and does not want to) deprive property owners of all productive economic value of their property in the intervening months and years.

There are perhaps other differences between the Comprehensive Plan and the proposed Regulating

PLANiTULSA – 2010

The following are principles that should serve as the basis for more detailed design guidelines in small area plans or zoning districts.

Walkable districts

Communities must be pleasant places to walk, if we want people to reduce their use of cars. Walkable districts represent the basic building block for a city that is more sustainable — socially, environmentally, and economically. Walkable districts mix complementary uses, maintain reasonable walking distances, and bring building entrances and facades to the street. Conveniences and recreation can be walked to easily, along safe and attractive routes. This traditional pattern presents a sensible alternative to auto-reliant development that separates housing and jobs from conveniences and transit, exacerbates traffic congestion, creates social enclaves, and consumes more land.

Residential streets

Streets set the stage for many dimensions of community life. Streets that are lined with street trees, sidewalks, building entries and windows make walking more attractive — whether for errands or recreation. Well-designed streets also make it easier to meet neighbors and partake in community life. Their character can also have a profound effect on the image and identity of a city or neighborhood. Specific policies on streetscape design are found in the Transportation Chapter.

Street-Facing architecture

Streets are more attractive and safe when they are lined with building entrances and windows, rather than parking lots or blank garage doors. By minimizing front setbacks, buildings contribute activity and informal surveillance to the street, which encourages walking. Porches provide families with a protected place where they can engage in neighborhood life. By reducing setbacks, buildings also establish a more intimate and village-like scale. Established areas that lack pedestrian-supportive architecture can transform over time through infill, intensification, and redevelopment.

Plan, but generally the desired forms appear more similar to the frontages proposed.

Your Decision

Continuity and consistency of plans over time is a cornerstone of a predictable and successful land use development program and has been a key objective of the public planning process in the Pearl District over the last decade. Nevertheless, planning is a dynamic process and plans do change and evolve. The Planning Commission will hear from INCOG staff and others who collaborated in the development of the Regulating Plan. You will also hear from citizens and property owners who are potentially affected by it. You may discover opportunities to improve upon the Regulating Plan, or even the Form Based Code itself. Whether you choose to adopt the Regulating Plan, in whole or part, your actions will be sent to City Council for approval.

The Future

It should be noted that this action is a TMAPC-initiated rezoning procedure involving multiple properties within an adopted small area plan. The process of creating and adopting small area plans, and following them with appropriate zoning is a key implementation activity of the Comprehensive Plan. This may be the first time that the TMAPC will need to consider area-wide rezoning driven by a small area plan, but this process is likely to be repeated after future small area plans. The Comprehensive Plan for other parts of the City appears to recommend similar outcomes to the Pearl District.

PLANiTULSA – 2010

Zoning District Principles (cont'd)

Downtown Revitalization

Tulsa's downtown represents, not only the heart of the region, but a location where an intense sense of community can be generated by strengthening its array of cultural and retail destinations, and by encouraging urban housing options. The downtown contains many assets including historic buildings and uses with higher intensities. Replacing some of downtown's many surface parking lots with urban uses would contribute to the area's vitality. The Downtown Area Master Plan proposes urban design guidelines for new development.

Corridors-Boulevards

Aging or vacant strip commercial properties represent opportunities for future infill and redevelopment. Change and intensification of these areas can be shaped to create multi-use corridors, which can offer a range of shops and services and encourage walking for many trips. Street trees and other enhancements can help beautify these frequently traveled routes.

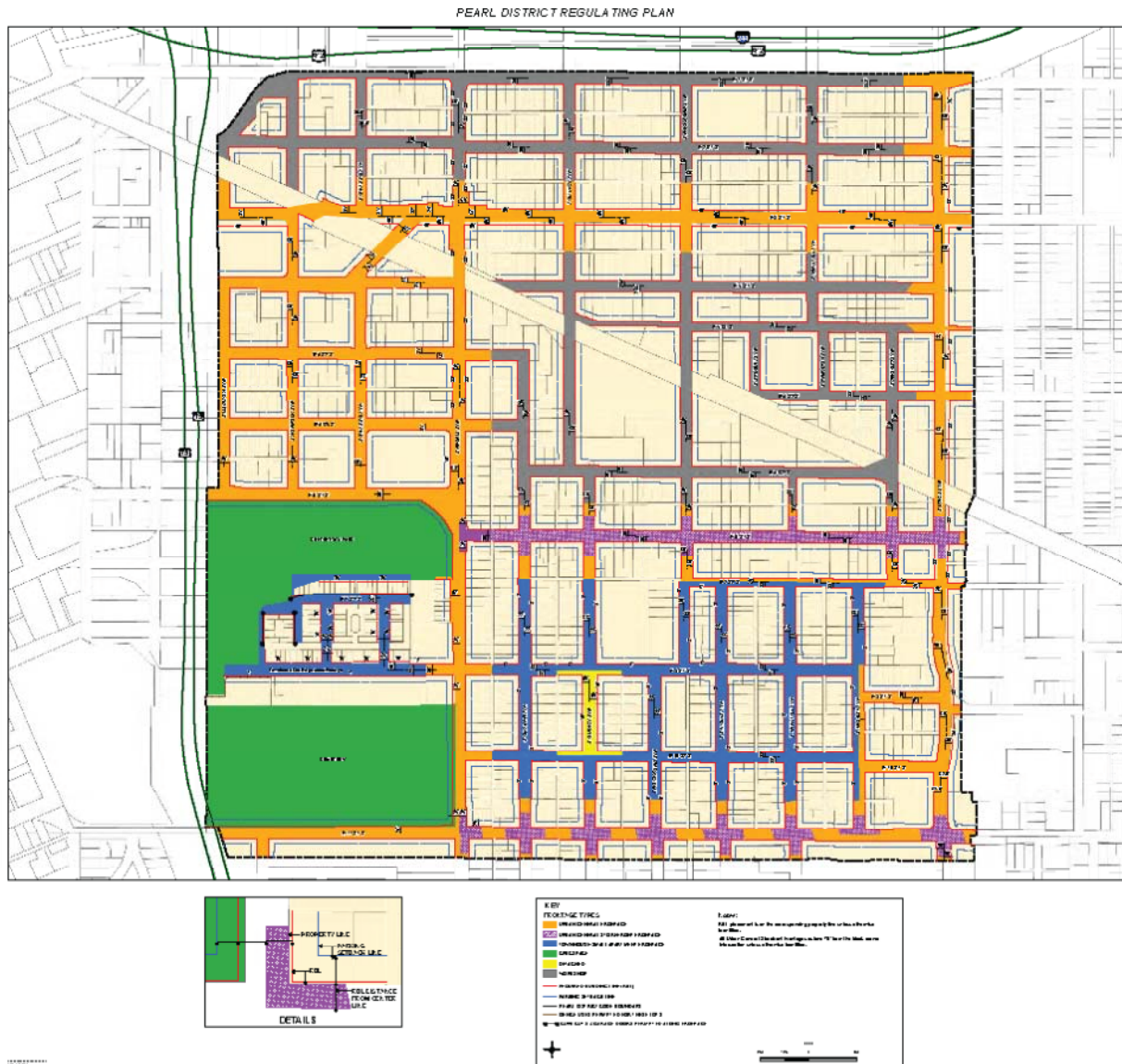
A Sense of Place

Tulsa has a unique heritage that is rooted in its climate, topography, history and cultural traditions. Private development and city actions can reinforce and enhance this unique character. Another dimension of place-making is the ways that buildings and public space relate: buildings should create coherent and well-shape public spaces while shielding them from parking lots and other features that dilute activity and urban form along streets, parks, and plazas.

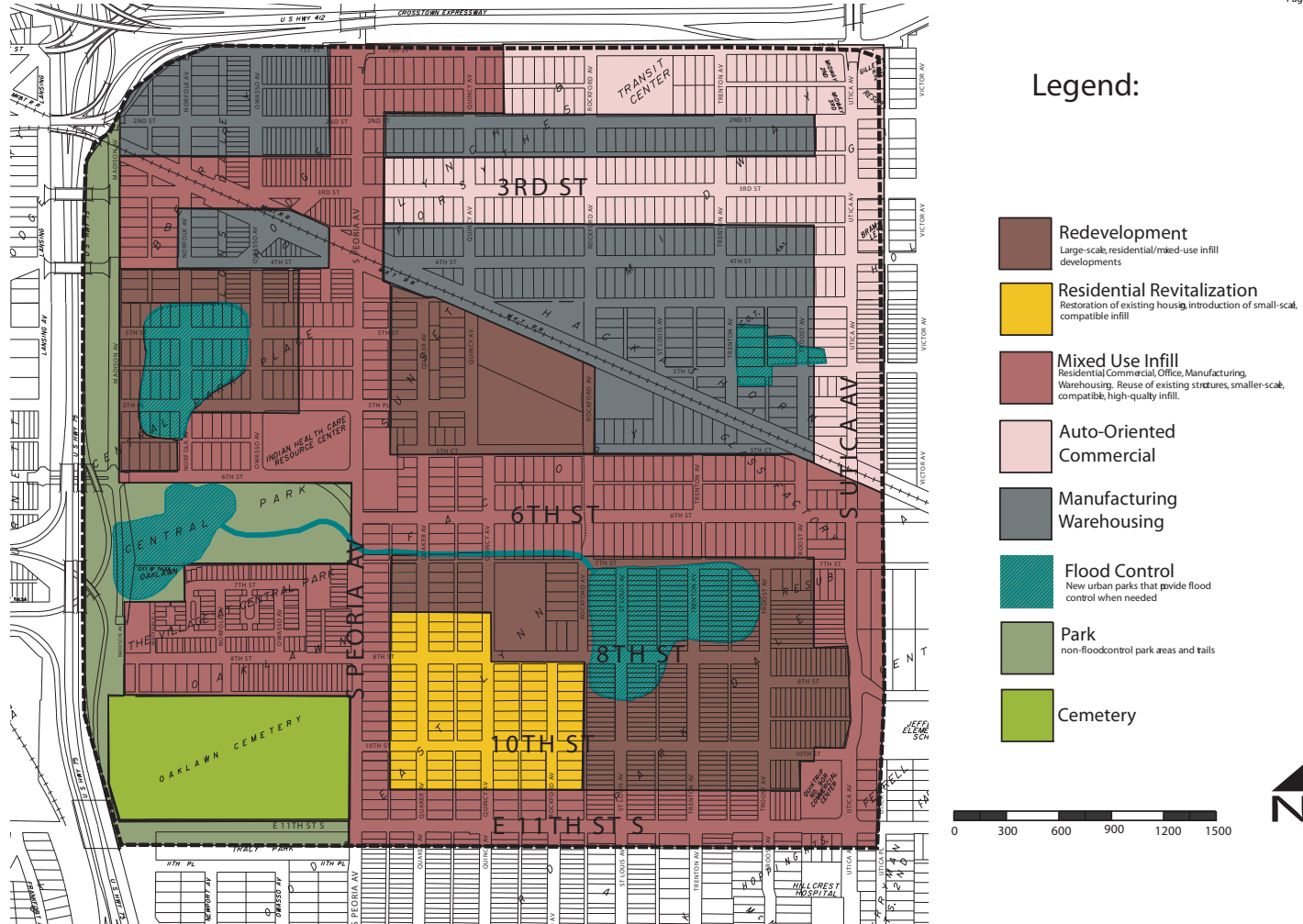
Public Art

Public art, including statues, fountains, interpretive spaces and other elements enliven and celebrate Tulsa's history and culture. The arts also add to the city's economic prosperity by attracting visitors, providing venues for new artists and making the city a more diverse and interesting place. The City should continue to support this asset through the Tulsa Arts Commission, the "1% for Public Art" ordinance, and collaboration with foundations and local arts institutions.

Proposed Regulating Plan



Comprehensive Plan



DATE: February 1, 2012

TO: Josh Walker, Chairman, Tulsa Metropolitan Area Planning Commission

FROM: Theron Warlick

SUBJECT: Pear District Regulation Plan

Mr. Walker,

Staff from INCOG and City Planning jointly conducted three informational meetings at the Central Park Community Center:

- November 28, 2010 from 4 to 5:30 PM
- December 5, 2010 from 4 to 5:30 PM
- December 19 from 6 to 7:30 PM

A key objective of these meetings was to attempt to help property owners understand how the development and redevelopment of their property would be affected by the Form Based Code. Wayne Alberty offered a thorough presentation followed by questions and answers. We acknowledged that we would not be able to cover every potential development scenario at these meetings, therefore, we also offered upon request to follow up with any property owner who was interested and take a closer look at their property, their development needs, and the code.

Two follow-up meetings have been held so far. INCOG and City Planning Staff met with the owners of Southwest United Industries on December 14 and with representatives from Sonic Corp and others on December 19. City staff is preparing a comparative analysis of the existing code and FBC for the owner of the property where Loomis Armored resides but no meeting has been scheduled yet.

There were many questions about the new code, many of which involved code details that were answered by staff at the meetings. Much of the feedback we received was of a general nature, but there were some specific questions that prompted further study:

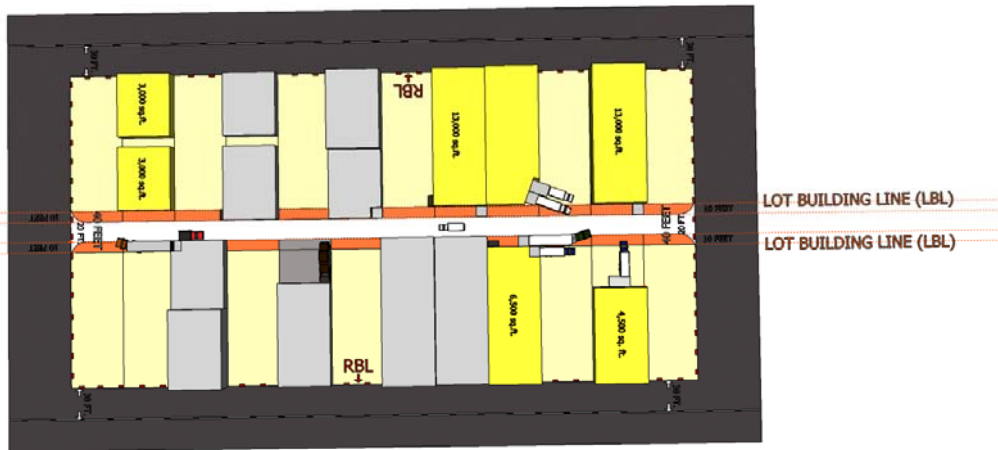
1. **FHA will not insure the mortgage of a structure if it does not conform to the zoning code.** On December 20, I contacted the FHA Resource Center in Denver and received the following reply:

Theron, based on our conversation the re-zoning change would not affect any current FHA loans. You stated “the zoning would be would be legal-non-conforming” which would be acceptable to HUD/FHA. However, future FHA loans may be affected should the property be damaged beyond repair. FHA would require the owner have the ability to construct the property back to its original state.

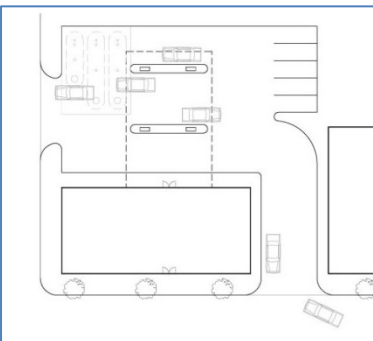
Sincerely,
Terry Caine
Appraiser
Denver Homeownership Center

While HUD/FHA does require that damaged property be allowed to be restored, (brought to our attention in the review process and addressed elsewhere) it does appear that legal non-conforming structures are acceptable. Further investigation indicates that HUD/FHA’s objective is to ensure that non-conforming properties can be rebuilt sufficiently to collateralize a loan. A structure’s status as legal/non-conforming is a necessary disclosure, but not an issue so long as the structure can be rebuilt. Some cities, offer to provide lenders (FHA and conventional, it appears) with a letter from the Code Administrator (or equivalent) stating that a non-conforming structure can be rebuilt. BOA resolution would make sending such a letter impossible, and should be considered by the Planning Commission, not just for Form Based Code Areas, but for legal, non-conforming structures throughout the City.

2. **Workshop interior height requirement is too low.** Modern standards require at least 32’ (FBC says 25’) to accommodate overhead storage and cranes. According to Ferrell Madden Lewis, Increasing the height to better suit anticipated needs of users is not a problem. No need to introduce fenestration higher up on the façade to look like a second story. It’s not a stylistic code. The ground floor fenestration requirements (15%) should adequately break up the façade...the building proportions are going to be what they are going to be and it’s not a good idea for it to try to mimic something that it’s not. This has been discussed with the Pearl District Design Committee and they have no concerns about changing this.
3. **Alleyways, by themselves, are too narrow to handle heavy truck turning, traffic, and loading.** Discussed with Ferrell Madden Lewis and they recommend using the Lot Building Limit that is already in the code. This is a mapping exercise on the Regulating Plan, draw a Lot Building Limit boundary line 10’ off of the alley on either side. For property owners who would want to build right up to that line, sawtooth loading docks would allow adequate room for truck loading, maneuvering, and passing. For those who want direct backing, they can set their building back further. Street loading through parallel loading zones is acceptable, too, though the lack of curb cuts and the potential to block the street would make loading docks infeasible. All of this can be accomplished through map modifications and map notations. Also reviewed by Pearl District Design Committee. On blocks that also contain Townhouse or detached frontages, they would prefer that the setbacks not be used but otherwise, this can solve a problem.



4. **The setback, two-story height, and minimum frontage requirements do not match up with archetypal convenience store and fast food facilities.**



Discussed with Ferrell Madden Lewis and they do acknowledge that these standards could require an owner to build more space than they might need for their core operation. There are some rather complicated ways to address some of this, replatting for instance. Rather than that, and acknowledging that this is not ideal, they suggested that if the property owners would simply adhere to the “build to” line, parking setback, and ground floor façade requirements, you could get a “3/4 solution” that would offer some compatibility without requiring a full build out of the site. They suggested that we could consider making a map notation, “Urban General A” for instance, that waived the two story construction and the minimum 80% frontage. If the property owner would simply place the building of the desired size and height at the “build-to” line and comply with the façade and parking setback requirements, you’d still have a solution that would contribute to the desired result. Discussed with the Pearl District Design Committee. They recognize this as a C+ solution at best, but understand that it could of value to the Planning Commission in limited cases, particularly along the Utica Corridor. They are

not recommending it, but could stand aside in very limited situations. The Utica Corridor near I-244 (McDonald's, Sonic) was area that was studied.

The initial meetings have served their purpose. We have managed to get many sets of eyes on the code and helped many property owners study the benefits and issues. A few key concerns prompted further study and it appears that there are options available to the Planning Commission using tools already available in the Code, or through map changes and/or amendments to the Form Based Code.

The Department of Planning and Economic Development recommends we move forward with the Pearl Regulating Plan, advertise a public hearing and continue to listen, assist, and respond to property owners and other stakeholders in a manner consistent with the pre-meetings. This will allow us to continue a so far very constructive dialog with neighborhood property owners as we seek a way to implement the Pearl District, 6th Street Infill Plan adopted by the TMAPC in 2005. If the last two months are an indication of the future, there may be recommendations from INCOG, City Staff, and the Pearl District Design Committee to modify the Code and/or the Regulating Plan, but we have every indication so far that Form Based Code is a workable solution for the Pearl District.