

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 1779
Wednesday, **February 14, 1990**, 1:30 p.m.
City Commission Room, Plaza Level, Tulsa Civic Center

Members Present	Members Absent	Staff Present	Others Present
Carnes, 2nd Vice Chairman	Doherty Kempe	Gardner Lasker	Linker, Legal Counsel
Coutant	Randle	Setters	
Draughon, Secretary	Rice	Wilmoth	
Paddock			
Parmele			
Wilson, 1st Vice Chairman			
Woodard			

The notice and agenda of said meeting were posted in the Office of the City Auditor on Tuesday, February 13, 1990 at 10:55 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, First Vice Chairman Wilson called the meeting to order at 1:34 p.m.

MINUTES: Not applicable; no meeting January 31st, 1990.

REPORTS:

Report of Receipts & Deposits for the Month Ended January 31, 1990:

On **MOTION** of **PARMELE**, the TMAPC voted **7-0-0** (Carnes, Coutant, Draughon, Paddock, Parmele, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Doherty, Kempe, Randle, Rice "absent") to **APPROVE** the Report of Receipts and Deposits for the month ended January 31, 1990.

Chairman's Report:

First Vice Chairman Wilson reminded fellow Commissioners of the workshop scheduled for Saturday, February 17th with Council candidates, INCOG Staff and District Planning Team officers.

Committee Reports:

Mr. Paddock advised the Rules & Regulations Committee had met this date to review input received at the public hearing on amendments to sign regulations. He stated a follow up meeting will be held next Wednesday to continue discussions.

Director's Report:

Mr. Lasker echoed Ms. Wilson's encouragement to the TMAPC members regarding attendance at Saturday's workshop. He updated the TMAPC on the status of the proposed PUD legislation, the Cultural Facilities Plan and the Creek Turnpike.

Mr. Gardner briefed the Commission members on recent City Commission actions relating to zoning.

CONTINUANCE(S):

Application No.: **Z-6275** Present Zoning: RT
Applicant: **Norman (Brumble)** Proposed Zoning: OL
Location: NE/c of East 91st Street & South College Avenue
Date of Hearing: February 14, 1990
Continuance Requested to: March 28, 1990 (Timely request by applicant)

TMAPC ACTION: 7 members present

On **MOTION** of **PARMELE**, the TMAPC voted **7-0-0** (Carnes, Coutant, Draughon, Paddock, Parmele, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Doherty, Kempe, Randle, Rice "absent") to **CONTINUE Consideration of Z-6275 Norman (Brumble)** until Wednesday, **March 28, 1990** at 1:30 p.m. in the City Commission Room, City Hall, Tulsa Civic Center.

SUBDIVISIONS:

FINAL PLAT APPROVAL & RELEASE:

Autumn Village (PUD 405-4)(2383) S/side of East 91st @ So. 72nd E. Ave. (AG)

On **MOTION** of **CARNES**, the TMAPC voted **7-0-0** (Carnes, Coutant, Draughon, Paddock, Parmele, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Doherty, Kempe, Randle, Rice "absent") to **APPROVE** the Final Plat of **Autumn Village** and release same as having met all conditions of approval.

LOT SPLITS FOR DISCUSSION:

L-17269 Oklahoma Baptist Foundation (1192) 738 & 740 West 13th Street (RM-2)

In Staff's opinion, this lot split meets the subdivision and zoning regulations, but all residential lot split applications which contain a lot having more than three side lot lines cannot be processed as a Prior Approval lot split. Such lot splits require a five day written notice to the abutting property owners. Per TMAPC General Policies, deeds for such lot splits shall not be stamped or released until the TMAPC has approved said lot split in a public hearing.

It is proposed to split these lots to provide for separate ownership of the two structures currently built on Lot 18 of Norvell Park Addition. This review is required due to the irregular shape of the lots; a configuration which is necessary to accommodate existing sanitary sewer connections. Staff recommends APPROVAL.

TMAPC ACTION: 7 members present

On MOTION of PARMELE, the TMAPC voted 6-0-1 (Carnes, Coutant, Paddock, Parmele, Wilson, Woodard, "aye"; no "nays"; Draughon, "abstaining"; Doherty, Kempe, Randle, Rice "absent") to APPROVE L-17269 Oklahoma Baptist Foundation, as recommended by Staff.

**PUD 190-E: Amendments to Declaration of Covenants, Conditions and Restrictions for Charter Oak
East 76th Street & South Joplin Avenue**

Staff Recommendation:

Staff has reviewed the proposed amendments to the covenants for Charter Oak subdivision as it relates to allocation of annual assessments. The proposed amendments provide for two different assessment rates for developed lots. The 14 lots not included in the amended plat will pay 14/98's of the homeowners association's annual budget, and the new lots in Charter Oak Amended will pay the remainder, once all lots are developed. This is the same portion of the cost the original lots would have had to pay if the 98 original lots in Charter Oak had been developed.

While Charter Oak Amended is being developed, an undeveloped lot's annual assessment will be 83% of the assessment paid by a developed lot in the original Charter Oak Addition. This is a higher assessment than the undeveloped lots would have paid if the total number of lots had not been reduced from the original 98 lots.

PUD 190-E Charter Oak - Cont

Staff finds the new method of assessment to be in conformance with the conditions placed on PUD 190-E by the TMAPC. Therefore, Staff recommends APPROVAL of the Third Amendment of the Declaration of Covenants, Conditions and Restrictions for Charter Oak Addition.

Comments & Discussion:

In-depth discussion centered on the percentages to be paid by the developed lot owners versus the undeveloped lot owners, and the TMAPC's intent at the previous hearing regarding the 1/98 assessment for the original owners before, during and/or after total development. Staff clarified the second amendment was not presented to the TMAPC as it did not contain items needing their review/approval. Therefore, today's application involves the third amendment; discussion followed.

Applicant's Comments:

Mr. Roy Johnsen, attorney for the applicant, explained that vacant lots were only required to pay 40% of a full share at the time the TMAPC previously expressed their intent that the lots originally developed only pay 1/98 of the homeowners association annual budget. Mr. Johnsen distributed and reviewed copies outlining the calculations for assessment for developed and undeveloped lots.

Mr. Johnsen also discussed the status of street conditions, the condition of the retaining walls and perimeter wall. He commented a key element to keep in mind was that the current residents active in the homeowners association were satisfied with the efforts being made to complete development of the lots in Charter Oak, and supported the current proposals for drainage, streets, landscaping, pool, etc.

In summary, Mr. Johnsen remarked that the PUD has been approved and the reason for today's hearing was to address the platting aspects and the required covenants for the subdivision plat. Mr. Johnsen acknowledged the TMAPC's authority to review the documents and provisions establishing and assuring the continuity of the homeowners association. In this regard, he pointed out the following: on the plat as originally filed and per the proposed amendment, common area has been established as Lots A, B and C and limited to these areas; and a homeowner's association has been incorporated. Mr. Johnsen stated this addressed the key issue of whether there were covenants to reasonably ensure continuity and conversation.

Mr. Paddock initiated discussions on funding of capital improvements, maintenance, etc. and assessments for these items. In regard to questions raised regarding past and present litigations pertaining to this subdivision, it was stressed that these particular matters were beyond the purview of the TMAPC.

Interested Parties:

Mr. Bob Nichols advised he had previously represented protestants at past hearings, and he provided a brief update on the status of litigation. Mr. Nichols commented the covenants for the "40% rule" for vacant lots were never approved by this body or the City Commission. He reviewed the history of this development from 1983 to the present.

Mr. Nichols stated he considered all of the lots to be developed since streets, utilities, etc. were in place, even though there may be no structures on the lots. Therefore, he did not see the need for reduced assessments for undeveloped lots. He felt the original declaration of covenants was the item before the Commission and this was a proposal to amend that original declaration along with the original plat. Mr. Nichols pointed out the original concept was that every lot pay the same amount, and he suggested that, regardless of the amount of the budget, the two original homeowners should not be assessed more than 1/98 of the total annual budget since there originally were 98 lots.

Mr. Paddock stated the Commission's concern has been and remains to be fair and equitable treatment. He inquired if Mr. Nichols was suggesting that 1/98 pertained to the original 13 or 14 lot owners. Mr. Nichols clarified there were only two owners purchasing under the original plan (the Phillips and Sadlers). Discussion followed on original assessments ratios and current assessment ratios for the homeowners association's operating budget.

Mr. Peter Mann (7539 South Hudson), president of the Charter Oak Homeowners Associations, stated he wanted to make it clear that he was speaking only for the people currently living in Charter Oak. Mr. Mann commented that he felt the replat was a necessary process to get the development moving. He pointed out that one of the protestants did not live in Charter Oak, even though she gave that impression from her correspondence. Mr. Mann stated that those who do live day-to-day in Charter Oak had a much greater interest in the project succeeding than those just leasing their property. Further, the majority of the homeowners were greatly interested in trying something new to get the lots totally developed. He stated the homeowners wanted to give this revision a chance to work, and he urged the TMAPC to support the proposal.

In reply to Mr. Carnes, Mr. Mann stated he did not have a problem with the "40% rule" or the assessment formula presented. He agreed with the premise of the formula which was that it costs less to maintain an undeveloped lot than a developed one.

Ms. Diane McCaulley, whose husband is president of the Minshall Park Homeowners Association, read a written statement requesting that "it be provided in the deed of dedication and covenants of Charter Oak that all residents should be members or associate member of the Minshall Park Homeowners Association." Ms. McCaulley advised the request was made because the residents of Charter Oak overlook the pond areas in Minshall

Park and will benefit from the maintenance and improvement of these common areas. She also requested a postponement of today's review of Charter Oak "until the Commissioners have had time to consider new information presented today." Further, she felt it would be wise to wait until the legal matters surrounding this case were resolved before taking any action.

Ms. Wilson stated to Ms. McCaulley that, although she might feel that Minshall Park is under PUD 190 and Charter Oak, a different, separate, distinct subdivision, was also under PUD 190, it would be highly irregular, and probably illegal, for this Commission to mandate in the covenants membership in another homeowners association. Mr. Carnes and Mr. Paddock agreed that it would be beyond the scope of the TMAPC's powers and authority to require membership in another homeowners association. Mr. Linker, as the TMAPC's Legal Counsel, confirmed this to be correct.

Mr. John Griffin (7540 South Atlanta Court) concurred with the comments made by Mr. Mann as to getting on with development which would benefit the current residents and property owners in Charter Oak.

Ms. Monica Sadler (7543 South Hudson) confirmed she does not reside at this address but owns the property and leases it. Ms. Sadler reiterated comments made at the previous hearings on this case in protest. She questioned how, if the City of Tulsa did not have the right to add restrictions to a deed, could they release restrictions from the original documents. Ms. Sadler spoke on the litigation involving this development. She stated she felt the undeveloped lots should pay the same as the developed lots; therefore, the assessments would be the same. Ms. Sadler commented that, as an original purchaser in this subdivision, she would like assurances that her assessment would not ever be more than 1/98 of the total annual budget, regardless of the stage of development in the subdivision. In reply to Ms. Wilson, she advised she was not in agreement with today's proposal at all.

In response to Mr. Draughon, Staff verified the "40% rule" issue was approved by 90% of the lot owners through an amendment to the private agreement between the lot owners, which was outside the jurisdiction of the TMAPC.

Acknowledging the litigation did not involve the TMAPC, Mr. Draughon requested an update on the outcome of previous lawsuits regarding Charter Oak, the Sadlers and Phillips (protestants) and Superior Financial. Copies of rulings and a review was provided by Ms. Rene DeMoss (2000 Fourth National Bank).

Applicant's Rebuttal:

Mr. Johnsen clarified the documents addressing assessments were never before the TMAPC and was, therefore, not approved by them. In reply to Mr. Paddock regarding the percentage to be paid by the original owners, Mr. Johnsen stated that, during development the portion will vary,

eventually reducing down to 1/98 when completed. Mr. Coutant asked if Staff, in the past, routinely reviewed the declaration of covenants and conditions of restrictions for Charter Oak. Mr. Gardner replied Staff did not, as the only item that would have been part of a plat would be a reference to a homeowners association. He added that, typically, one of the PUD requirements was to establish a homeowners association for maintenance of common areas. Therefore, when the subdivisions plat was presented for review a reference would be made to this requirement. Mr. Johnsen answered questions from the Commission to clarify the "40% rule" for vacant lots, the assessment formulas, etc.

TMAPC Review Session:

In response to Mr. Draughon, Mr. Gardner commented this appeared to be a "classic case of beating a dead horse". The development was there and partially developed and would not go any further unless some changes were made. The protestants were originally saying they bought in a development where they would pay 1/98 share of the assessment, regardless of the stage of completion. Mr. Gardner commented that, during the development phase and as part of amended covenants, the courts had upheld the concept of applying a ratio for assessing more for developed versus undeveloped lots, and that this was done through a private agreement not involving the TMAPC. Discussion ensued as to the correct interpretation of the TMAPC's previous action that, regardless of the status of the PUD's development, the 1/98 ration for assessments would be applied to the original 13 or 14 lots of Charter Oak.

Mr. Carnes moved for approval of Staff recommendation as presented. Mr. Paddock commented he had to take issue with the Staff's findings as he did not feel this met the intentions of the TMAPC at the previous hearing. He stated he felt the TMAPC definitely intended the assessment should be 1/98, regardless of how many developed/undeveloped lots there might be. Mr. Carnes withdrew his motion. Mr. Paddock moved for approval with the stipulation that each of the original 14 lot owners in Charter Oak be assessed at a rate of 1/98 of the total annual assessment budget. Discussion followed on the motion, and whether or how to include the "one unbuildable lot" in the original 14 lots; i.e. should it only be 13 lots. Mr. Paddock stood by his original motion as it supported to TMAPC's intent from the previous hearing.

Mr. Paddock inquired as to monetary difference between the 1/98 proposal versus the formula proposed while lots remained undeveloped. Mr. Johnsen advised there was approximately \$600/month difference that would be paid by the owners of the vacant lots.

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **6-0-0** (Carnes, Coutant, Draughon, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Doherty, Kempe, Parmele, Randle, Rice "absent") to **APPROVE** the **Amendments to Declaration of Covenants, Conditions and Restrictions for PUD 190-E Charter Oak**, as recommended by Staff and with the stipulation that each of the original 14 lot owners in Charter Oak be assessed at a ratio of 1/98 of the total annual assessment budget.

On **MOTION** of **COUTANT**, the TMAPC unanimously voted to **APPROVE** the applicant's request to expedite the execution of the documents pertaining to Charter Oak Amended.

In regard to the above, Mr. Wilmoth presented the recommendation for Final Plat Approval and Release for Charter Oak Amended (PUD 190)(1083).

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **6-0-0** (Carnes, Coutant, Draughon, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Doherty, Kempe, Parmele, Randle, Rice "absent") to **APPROVE** the Final Plat of **Charter Oak Amended** and release same as having met all conditions of approval.

Mr. Coutant commented for the parties in attendance that the TMAPC's action of today should not be viewed as endorsing, supporting or refuting any legal positions which any of the parties may have with regard to their private contract rights, eluded claims or pending litigation.

There being no further business, the Chairman declared the meeting adjourned at 4:22 p.m.

Date Approved 2/28/90

James R. Cook
Chairman

ATTEST:

Art Draughon
Secretary