

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 2334

Wednesday, February 5, 2003, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

Members Present	Members Absent	Staff Present	Others Present
Bayles	Coutant	Dunlap	Romig, Legal
Carnes	Collins	Fernandez	
Harmon		Huntsinger	
Hill		Matthews	
Horner		Stump	
Jackson			
Ledford			
Midget			
Westervelt			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Monday, February 3, 2003 at 12:40 a.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

After declaring a quorum present, Chair Jackson called the meeting to order at 1:30 p.m.

Minutes:

Approval of the minutes of January 22, 2003, Meeting No. 2332

On **MOTION** of **HORNER** the TMAPC voted 6-0-1 (Carnes, Harmon, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; Hill "abstaining"; Bayles, Collins, Coutant, Midget "absent") to **APPROVE** the minutes of the meeting of January 22, 2003, Meeting No. 2332.

Minutes:

Approval of the minutes of January 29, 2003, Meeting No. 2333

On **MOTION** of **HORNER** the TMAPC voted 6-0-1 (Carnes, Harmon, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; Hill "abstaining"; Bayles, Collins, Coutant, Midget "absent") to **APPROVE** the minutes of the meeting of January 29, 2003, Meeting No. 2333.

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REPORTS:

Chairman’s Report:

Mr. Jackson reported that last week the Planning Commission reviewed a carport study at the last worksession. Mr. Jackson asked staff for a status on this project. In response, Mr. Stump stated that staff would be doing an additional study and submitting additional information at the February 26th worksession.

Mr. Jackson announced that PUD-617, detail site plan, has been stricken from the agenda.

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Ms. Bayles in at 1:34 p.m.

ITEMS TO BE CONTINUED:

Application No.: PUD-333-A

MAJOR AMENDMENT

Applicant: Darin Akerman

(PD-18) (CD-9)

Location: South of southeast corner of East 56th Street and South Lewis Avenue

TMAPC Comments:

Mr. Jackson stated that the applicant has requested a continuance.

Applicant’s Comments:

Darin Akerman, 6111 East 32nd Place, Tulsa, Oklahoma 74135, stated that two weeks ago this project was presented to the Planning Commission and there were some concerns with the site layout. The application was continued for two weeks in order to meet with the residents and work on a different layout. He indicated that there was a desire expressed to have two curb cuts onto Lewis Avenue to facilitate the reconfiguration of the bank to allow teller lanes and an ATM in front of the building and not have traffic routed to the rear of the property. He explained that he has discussed this option with the City of Tulsa Traffic Department and the City consented to two curb cuts.

He stated that the architect needs time to rework the layout and requests a two week continuance. He indicated that he would submit to the Planning Commission and residents a proposal prior to the February 19th TMAPC meeting.

Interested Parties opposing a continuance:

Brian & Diana Crotty, 2428 East 56th Place, Tulsa, Oklahoma 74105; **Susan Hammond**, 2420 East 56th Place, Tulsa, Oklahoma 74105; **Barbara Hewett**, 5607 South Lewis, Tulsa, Oklahoma 74105.

Comments of Interested Parties opposing a continuance:

A continuance is not a problem if they truly need it; experiencing problems getting information at meetings because the president of the bank is never present; had several meetings because there is no one from the bank present to make decisions; frustrated with the many meetings held and little change made; making the meetings during the day is difficult due to jobs and businesses.

TMAPC Comments:

Mr. Horner requested that the applicant have a representative from the bank (who can make decisions) present during these meetings.

Mr. Westervelt stated that he suggested that the applicant continue his application at the last meeting. He has heard from Councilor Neal today and understood that there was another meeting regarding this application prior to today's meeting. There is nothing strange about this process and it takes time to try to work these matters out satisfactorily and within the guidelines of the zoning laws. He indicated that he would be uncomfortable not allowing a continuance and giving the applicant adequate time to bring a site plan that deals with the issues. He encouraged the neighborhood to continue to meet and have someone from the bank present that can negotiate. Mr. Westervelt concluded that the Planning Commission couldn't make a decision today without new information if something is going to change.

TMAPC Action; 8 members present:

On **MOTION** of **WESTERVELT**, TMAPC voted 8-0-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant, Midget "absent") to **CONTINUE** PUD-333-A to February 19, 2003, at 1:30 p.m.

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TMAPC Comments:

Mr. Harmon reminded the Chair that there is a request to withdraw the plat waiver for CZ-312, CBOA-1750.

Staff Recommendation:

Mrs. Fernandez stated that the applicant has requested a plat waiver, but has chosen to withdraw their application and intend to plat the subject property.

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SUBDIVISIONS:

LOT-SPLITS FOR RATIFICATION OF PRIOR APPROVAL:

- L-19441 – Ron Detherow (814)** (PD-15) (County)
12705 East 106th Street North
- L-19455 – Sack & Associates, Inc. (684)** (PD-18) (CD-7)
6415 South Mingo Road
- L-19473 – Max Tankersley (893)** (PD-4) (CD-4)
1936 South Harvard
- L-19474 – John Woolman (1083)** (PD-18) (CD-8)
5217 East 78th Place
- L-19475 – Phil N. O’Bar (1292)** (PD-7) (CD-2)
1617 South Cheyenne
- L-19480 – Steve A. Powell (1283)** (PD-18) (CD-8)
8009 South Memorial Drive

Staff Recommendation:

Mrs. Fernandez stated that these lot-splits are all in order and staff recommends **APPROVAL**.

There were no interested parties wishing to speak.

TMAPC Action; 8 members present:

On **MOTION** of **HORNER**, the TMAPC voted **8-0-0** (Bayles, Carnes, Harmon, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant, Midget "absent") to **RATIFY** these lot-splits given prior approval, finding them in accordance with Subdivision Regulations as recommended by staff.

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PRELIMINARY PLAT:

- Woodward Addition – PUD-574 (1283)** (PD-18) (CD-8)
North of 81st Street and East of Memorial, one lot, one block, 1.05 acres

Staff Recommendation:

This plat consists of one lot, one block, on 1.055 acres.

The following issues were discussed January 16, 2003 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned under PUD-574 (RM-1). Mutual access easements must be identified. The PUD was approved such that a mutual access easement would be required for the property to the south, if the owner of that property would give an access easement to the subject site. A private mutual access easement was being developed between the sites, per the attorney for the proposed plat. The PUD standards must be shown in the covenants.
2. **Streets:** Mutual access easements must be shown. Show sidewalk along Memorial. Clarify location map and show existing subdivisions and existing easements and rights-of-way. Show 17.5-foot utility easement around site perimeter. Show location for sanitary sewer easements. Ditch and sidewalk locations need clarification.
3. **Sewer:** Sewer is available.
4. **Water:** Water is available.
5. **Storm Drainage:** Concept plan needs to be clarified. Water will be piped back to the inlet. Standard language needs to be put in the covenants.
6. **Utilities:** The utilities present (SBC, ONG, Cox) did not need a 17.5-foot perimeter easement because of extra right-of-way along Memorial and existing 11-foot easements on some abutting property. Valor was not represented and the consulting engineer for the plat would have to contact Valor to see if they needed a larger easement. The consulting engineer for the project did not wish to dedicate more easement. (A discussion about the need for the 17.5-foot easement was held.)
7. **Other:** N/A

Staff recommends **APPROVAL** of the preliminary plat subject to the special and standard conditions below.

Waivers of Subdivision Regulations:

1. None requested.

Special Conditions:

1. The concerns of the Public Works Department staff must be taken care of to their satisfaction.

Standard Conditions:

1. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements shall be tied to or related to property line and/or lot lines.
2. Water and sanitary sewer plans shall be approved by the Public Works Department prior to release of final plat. (Include language for W/S facilities in covenants.)
3. Pavement or landscape repair within restricted water line, sewer line, or utility easements as a result of water or sewer line or other utility repairs due to breaks and failures shall be borne by the owner(s) of the lot(s).
4. Any request for creation of a Sewer Improvement District shall be submitted to the Public Works Department Engineer prior to release of final plat.
5. Paving and/or drainage plans (as required) shall be approved by the Public Works Department.
6. Any request for a Privately Financed Public Improvement (PFPI) shall be submitted to the Public Works Department.
7. A topography map shall be submitted for review by TAC (Subdivision Regulations). (Submit with drainage plans as directed.)
8. Street names shall be approved by the Public Works Department and shown on plat.
9. All curve data, including corner radii, shall be shown on final plat as applicable.
10. Bearings, or true N/S, etc., shall be shown on perimeter of land being platted or other bearings as directed by the County Engineer.
11. All adjacent streets, intersections and/or widths thereof shall be shown on plat.
12. It is recommended that the developer coordinate with the Public Works Department during the early stages of street construction concerning the ordering, purchase and installation of street marker signs. (Advisory, not a condition for plat release.)

13. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City/County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
14. The method of sewage disposal and plans therefor shall be approved by the City/County Health Department. [Percolation tests (if applicable) are required prior to preliminary approval of plat.]
15. The owner(s) shall provide the following information on sewage disposal system if it is to be privately operated on each lot: type, size and general location. (This information to be included in restrictive covenants on plat.)
16. The method of water supply and plans therefor shall be approved by the City/County Health Department.
17. All lots, streets, building lines, easements, etc., shall be completely dimensioned.
18. The key or location map shall be complete.
19. A Corporation Commission letter, Certificate of Non-Development, or other records as may be on file, shall be provided concerning any oil and/or gas wells before plat is released. (A building line shall be shown on plat on any wells not officially plugged. If plugged, provide plugging records.)
20. A "Letter of Assurance" regarding installation of improvements shall be provided prior to release of final plat. (Including documents required under 3.6.5 Subdivision Regulations.)
21. Applicant is advised of his responsibility to contact the U.S. Army Corps of Engineers regarding Section 404 of the Clean Waters Act.
22. All other Subdivision Regulations shall be met prior to release of final plat.

The applicant indicated his agreement with staff's recommendation.

There were no interested parties wishing to speak.

TMAPC Action; 8 members present:

On **MOTION** of **HORNER**, the TMAPC voted **8-0-0** (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Coutant, Collins, Midget "absent") to recommend **APPROVAL** of the preliminary plat for Woodward Addition subject to special conditions and standard conditions, per staff recommendation.

CHANGE OF ACCESS ON RECORDED PLAT:

5300 Commerce Park – (3693)

55th Street South, west of South Mingo Road

Staff Recommendation:

This application is made to allow a change of access for existing conditions in the 5300 Commerce Park Addition. The property is zoned IL (industrial light).

Staff recommends approval of the change of access. The Traffic Engineer has reviewed and approved the request. Staff recommends **APPROVAL** of the change of access as submitted.

The applicant indicated his agreement with staff’s recommendation.

There were no interested parties wishing to speak.

TMAPC Action; 8 members present:

On **MOTION** of **HORNER**, TMAPC voted 8-0-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant, Midget "absent") to **APPROVE** the change of access on recorded plat for 5300 Commerce Park, per staff recommendation.

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CONTINUED ZONING PUBLIC HEARING:

Application No.: Z-6880

RS-3 to CS/RM-2

Applicant: Wayne Alberty

(PD-5) (CD-5)

Location: North of northwest corner of East 21st Street and South Memorial Drive

Staff Recommendation:

RELEVANT ZONING HISTORY:

BOA-16470 October 1993: The Board of Adjustment approved a special exception to allow a private school and daycare on the south lot of the subject property. The approval was granted per conditions, which denied access from South 79th East Avenue, per plan, and subject to hours of operations.

No zoning applications in this area.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property consists of three large residential lots that are flat, partially wooded and have a single-family dwelling on the two lots fronting Memorial and vacant land on the lot fronting South 79th East Avenue. The property is zoned RS-3.

STREETS:

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
South Memorial Drive	Primary Arterial	120'	4 lanes
South 79 th East Avenue	Residential Collector	60'	2 lanes

UTILITIES: The subject tract has municipal water and sewer.

SURROUNDING AREA: The property is abutted on the northeast by a church and accessory parking, zoned RS-3; to the northwest by single-family dwellings, zoned RD and RM-2; to the west is a mobile home park and single-family dwellings, zoned RS-3; to the south is a funeral home, zoned OM; and to the south and southwest are single-family dwellings, zoned RS-3. To the southeast is a strip commercial development and a carwash, zoned CS.

RELATIONSHIP TO THE COMPREHENSIVE PLAN:

The District 5 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the east 300' of the subject property as Medium Intensity – Residential and the west 300' as Low Intensity – Residential.

According to the Zoning Matrix the requested CS **is not** in accord with either the Medium Intensity – Residential portion or the Low Intensity – Residential portion, and the requested RM-2 **is** in accord with the Medium Intensity – Residential portion but **is not** in accord with the Low Intensity – Residential portion.

STAFF RECOMMENDATION:

Although portions of the request are not in accord with the District Plan, it is unrealistic to expect low intensity residential development in this area, due to existing development patterns. However, staff recommends development under a PUD, with the multifamily residential development located on the western portion of the site and the commercial development on the eastern portion. Therefore, staff recommends **DENIAL** of the requested CS and RM-2 zoning unless accompanied by a PUD.

Applicant's Comments:

Wayne Alberty, 201 West 5th, Suite 570, Tulsa, Oklahoma 74103, submitted photographs (Exhibit A-1) and stated that he is representing two owners. He

cited the various uses in the subject area and recommended that the Comprehensive Plan be updated because it no longer reflects the uses in the subject area.

Mr. Alberty stated that his clients have tried to sell their properties for a number of years and are unable to sell them due to the zoning. He indicated that the predominant and prevailing uses from 11th to 21st Street are automotive-type uses. The subject area has been characterized as a used car area. He requested the 330' of frontage be zoned CS and the back balance be zoned RM-2. He stated that to require a PUD is unreasonable because none of the other properties in the subject area have been developed under a PUD. It would be difficult to plan a PUD without knowing the zoning and would present a hardship. He explained that he is requesting RM-2 on the back property because of the presence of RM-2 immediately to the north, but if the Planning Commission feels it is appropriate to downzone it to RM-1, then his clients would accept that.

TMAPC Comments:

Mr. Harmon stated that the area shows that it is definitely in transition and a PUD would be ideal for the subject property. In response, Mr. Alberty stated that in the past the surrounding properties were not developed under the constraints of a PUD and it would be unjust to require his clients to do so. Mr. Harmon asked Mr. Alberty why he felt it would be unjust to require a PUD. In response, Mr. Alberty stated that he can only repeat his reasoning that past surrounding properties have not developed under a PUD. Mr. Alberty commented that this would place a burden on the applicant. Mr. Alberty explained that there are several purchasers involved and a few plan to file a PUD. Mr. Alberty stated that he is simply asking that at today's meeting, the appropriate zoning be applied to the subject properties.

Mr. Carnes stated that he believes that the subject property would be more valuable under a PUD. In response, Mr. Alberty stated that there is no plan in place at this time for the subject property and the imminent need is to sell the subject property. To require his clients to wait until they have someone who is willing to present a plan is unfair and unreasonable. He commented that a recent contract was turned down because zoning was not acquired on the subject property.

Mr. Midget in at 2:05 p.m.

In response to Mr. Westervelt, Mr. Stump stated that the request for RM-2 is a medium intensity category and that is not in conformance with the west half of the properties plan. RM-1 is the highest multifamily that is considered possibly appropriate and low-intensity areas other than the RM-0 includes townhouse-type of densities and then RD, which is duplexes and single-family. Mr. Stump explained that one of staff's concerns and reasons for asking for a PUD is the access to the western half. If it were sold off and developed separately, access

is going to have to be from 79th East Avenue. He commented that 79th East Avenue does have a mix of uses and staff is always looking for a rational way to draw a line as to how far back multifamily would go. It would be easier to draw the line at 79th Street if the development on the west half of the subject property were assured access to Memorial through the eastern property. This could be assured with a PUD, but not with straight zoning. If all of the traffic from the west half has access from 79th East Avenue, then staff would want to be conservative and keep the zoning to RD or at the most RM-0 types of density in order to prevent generating trips on 79th East Avenue.

Interested Parties Opposing Z-6880:

Linda Moore, 1748 South 79th East Avenue, Tulsa, Oklahoma 74112, **Frances Cervontes**, 1736 South 79th East Avenue, Tulsa, Oklahoma 74112, **Arnold Brown**, 1704 South 79th East Avenue, Tulsa, Oklahoma 74112; **Michael Brown**, 7816 East 15th Street, 74112.

Comments from Interested Parties Opposing Z-6880:

The neighborhood does not want more neighbors and traffic; the apartments have changed the existing neighborhood drastically; do not want more apartments; the existing apartments are not taken care of properly; drainage problems and more development would increase the problem; too many car lots in the subject area and do not want additional car lots; 79th East Avenue is too narrow for more traffic; the subject area is an average middle-class area and prefer to keep it that way; the trailer park in the subject area is actually an R.V. park and is not a permanent residence for people and it is not a problem; there is residential on three sides of the proposal and it should remain residential.

TMAPC Comments:

Mr. Jackson asked Ms. Moore if she would be opposed to townhouses. In response, Ms. Moore answered affirmatively. Mr. Jackson asked if she would be opposed to duplexes. In response, Ms. Moore stated duplexes wouldn't be a problem.

Mr. Jackson asked Mr. Brown if he would be opposed to townhouses. In response, Mr. Brown answered affirmatively.

Applicant's Rebuttal:

Mr. Alberty stated that he shares the neighbors' concerns regarding additional traffic on 79th East Avenue, but all of the existing multifamily projects on 79th East Avenue, from 15th to 21st Street, directly have access to 79th East Avenue. He would offer a way to accomplish what the staff is requesting. He proposed to keep the RS-3 zoning for 25 to 35 feet on the east of the subject property and then whatever staff feels is appropriate for the RM and the balance (frontage) be zoned CS. He commented that if a developer decided to develop apartments, then he would have to file a PUD to get access to 79th East Avenue or funnel access to the east (Memorial).

Mr. Alberty stated that the amendment to the proposal would be to retain the western portion in an RS-3 district and the balance of the west 330 feet would be RM and CS on the east 330 feet.

TMAPC Comments:

Mr. Westervelt asked Mr. Alberty if he would agree to the 330 feet on the frontage being zoned commercial and leaving the balance RS-3 until such time that there is a transaction, and file a PUD to deal with the access issues. He explained that this would take care of the screening from the CS and keep the applicant from having to file a PUD at this time. It would give him more flexibility. In response, Mr. Alberty stated that Mr. Westervelt's suggestion would be preferable to having the project turned down.

Mr. Stump asked if the intent is to line up the zoning with the OM and CS zoning abutting the subject property. In response, Mr. Westervelt answered affirmatively.

TMAPC Action; 9 members present:

On **MOTION** of **WESTERVELT**, the TMAPC voted **9-0-0** (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant "absent") to recommend **APPROVAL** of CS zoning on approximately the eastern half, with the western boundary of the CS aligning with the OM district to the south and the CS district to the north and retain the RS-3 zoning on the balance of the subject property for Z-6880.

Legal Description for Z-6880:

The east 295 feet of the S/2, N/2 of the NE/4, SE/4, SE/4, less east 35 feet of Section 11, T-19-N, R-13-E and the east 280 feet of the N/2, S/2, of the NE/4, SE/4, SE/4, less east 50 feet of Section 11, T-19-N, R-13-E, in the City of Tulsa, Tulsa County, State of Oklahoma **(RS-3 to CS)**.

Mr. Romig stated that he would have to declare a conflict of interest with PUD-360-B due to his home being in the neighborhood directly behind the subject property.

Application No.: PUD-360-B

MAJOR AMENDMENT

Applicant: Stephen Schuller

(PD-18) (CD-8)

Location: 7715 East 91st Street

Staff Recommendation:

The applicant is requesting a major amendment to allow a children's nursery as included within Use Unit 5 as a permitted use within 70 feet of the west boundary of Tract A of Development Area 2-A-2 of PUD-360-A. The subject tract has a total land area of 3.170 acres and is located west of the northwest of East 91st Street and South Memorial Drive. The subject tract is abutted on the west by a single-family subdivision zoned RS-3/PUD-215.

The existing permitted uses for Tracts A and B of Development Area 2-A-2 are as follows:

As permitted in the CS district except within the west 200 feet of Tracts A and B which shall be restricted to Use Units 11 (Offices, Studios & Support Services) & 14 (Shopping Goods and Services) and an allowance for a Use Unit 12 use (Eating Establishments, other than Drive-Ins) within 70 feet of the west property line subject to the following restrictions: Such Use Unit 12 use shall not face the neighborhood to the west, shall not have any public entrance within 100 feet of the west boundary of the PUD, shall not have a drive-in window, shall have hours of operation limited to the hours of 6:30 a.m. to 11:00 p.m., shall not have a bulk trash container located within 120 feet of the west boundary of the PUD, and that the enclosure for the bulk trash container shall be of a masonry type (except for gates) similar to the front of the building.

The applicant is proposing that a children's nursery be permitted within 70 feet of the west boundary of the subject tract. It is proposed that the use would be conducted entirely indoors, and there would be no outside playground or play area. The maximum building floor area for the proposed nursery would be 3000 square feet.

Staff finds the uses and intensities of development proposed and as modified by staff to be in harmony with the spirit and intent of the Code. Based on the following conditions, staff finds PUD-360-B as modified by staff, to be: (1) consistent with the Comprehensive Plan; (2) in harmony with the existing and expected development of surrounding areas; (3) a unified treatment of the development possibilities of the site; and (4) consistent with the stated purposes and standards of the PUD Chapter of the Zoning Code.

Therefore, staff recommends **APPROVAL** of PUD-360-B subject to the following conditions:

1. The applicant's Outline Development Plan and Text be made a condition of approval, unless modified herein.
2. Development Standards:

TRACT A DEVELOPMENT AREA 2-A-2

Additional Permitted Principal Use:

Children's nursery as included within Use Unit 5.

Maximum Building Floor Area for Use Unit 5 Uses: 3000 SF

Maximum Building Height for Use Unit 5 Uses:

One story – not to exceed 24 FT

**Minimum Building Setback From West Boundary of
Development Area for Use Unit 5 Uses:** 70 FT

Hours of Operation for Use Unit 5 Uses:

6:30 a.m. to ~~11:00~~ 12:00 a.m.

Building Limitations for Use Unit 5 Uses:

The building shall not face to the west.

There shall be no public entrance within 100 feet of the west boundary of the development area.

The use shall be conducted entirely indoors, and there shall be no outside playground or play area.

All other standards for PUD-360, as amended, shall apply unless modified above.

Applicant's Comments:

Stephen Schuller, 100 West Fifth, Suite 500, Tulsa, Oklahoma 74103; stated that he agrees with the staff recommendation, except he would like to request that the facility be permitted to be opened until midnight.

Mr. Dunlap stated that staff would not have a problem with the extension of hours.

TMAPC Action; 9 members present:

On **MOTION** of **CARNES**, the TMAPC voted **9-0-0** (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant "absent") to recommend **APPROVAL** of the major amendment for PUD-360-B, subject to the conditions as recommended by staff and amended by TMAPC. (**Words deleted are shown as strikeout; words added or substituted are underlined.**)

Legal Description for PUD-360-B:

A tract of land that is part of Lot 2, Block 1, Homeland No. 0102, a Subdivision in the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded Plat thereof, said tract of land being described as follows: Beginning at the Northwest corner of Lot 2, thence due East and along the North line of Lot 2 for a distance of 263.24' to a point; thence due South a distance of 532.90' to a point; thence due West a distance of 263.88' to a point on the West line of Lot 2; thence N 00°04'10" E and along the West line of Lot 2 a distance of 523.90' to the Point of Beginning of said tract of land, and located north and west of the northwest corner of East 91st Street South and South Yale Avenue, Tulsa, Oklahoma, **From RM-0/PUD-360-A (Residential Multifamily Lowest Density District/Planned Unit Development) To RM-0/PUD-360-B (Residential Multifamily Lowest Density District/Planned Unit Development).**

ZONING PUBLIC HEARING

Application No.: CZ-318

AG TO CS

Applicant: Pastor Bobby Hocking

(PD-21) (County)

Location: Northeast corner of East 151st Street South and South Lewis Avenue

Staff Recommendation:

RELEVANT ZONING HISTORY:

CBOA-October 2002: A request for a use variance to allow a warehouse facility on the subject property was denied.

No rezoning cases in this area.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property is within the Bixby fence line. The property is gently sloping, non-wooded, vacant and zoned AG in the County.

STREETS:

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
East 151 st Street South	Primary arterial	120'	4 lanes
South Lewis Avenue	Secondary arterial	100'	2 lanes

UTILITIES: The subject property would be served by the Creek County Water District 2 and sewer would require lagoons or septic systems.

SURROUNDING AREA: The subject tract is abutted on the north and south by single-family dwellings, zoned AG; to the southwest by a vacant CS tract; and to the east and west by vacant land, zoned AG.

RELATIONSHIP TO THE COMPREHENSIVE PLAN: The District 21 Plan, a part of the Comprehensive Plan for the City of Bixby, designates the subject tract as Corridor. According to the Development Guidelines, an adopted part of the Comprehensive Plan for the Tulsa Metropolitan Area, the intersection meets the definition of a Type Two (ten acres of medium intensity uses at each corner) Node.

According to the Zoning Matrix the requested CS zoning is in accord with the Zoning Matrix.

STAFF RECOMMENDATION:

The Comprehensive Plan technically could support medium intensity (CS) zoning on this property. However, given the low density of development surrounding the property, the undeveloped infrastructure (the fact that one of the arterials servicing it only has two lanes presently and would require lagoons or other septic systems) and the tendency of many churches now to offer far more services than worship, staff cannot support CS zoning for CZ-318, absent an approved PUD. Therefore, staff recommends **DENIAL** of CS zoning for CZ-318.

TMAPC Comments:

Mr. Ledford asked if the church could be located in any type of zoning. In response, Ms. Matthews stated that it is a Use Unit 5 and could be located on the subject property as it is presently zoned.

Applicant's Comments:

Pastor Bobby Hocking, 2 West Dawes, Bixby, Oklahoma 74008, stated his church has entered a contract with the property owner in order to purchase the northern one-acre section of the subject property. He commented that it is in his best interest to zone the subject property as CS and Mr. Sitton believes that it is in his best interest and that of the bank. If this was done by special exception, which he believes could be done, if something should happen to him, it would be difficult for Mr. Sitton and the bank to inherit a church on the subject property by special exception.

Pastor Hocking stated that there is nothing being done except to build a church for his congregation. He explained that he is under contract with Mr. Sitton to build a building that would have 7,200 square feet. He requested the Planning Commission to allow the rezoning to CS.

TMAPC Comments:

Mr. Stump asked Pastor Hocking if he planned to buy the entire 4.5 acres. In response, Pastor Hocking stated that his church is currently under contract for one acre and in negotiations for an additional half-acre. He explained that he does have the option to purchase the entire tract.

Mr. Stump stated that if the church were not able to exercise the option to purchase the entire tract, then there would be commercially-zoned property that could be developed commercially. In response, Pastor Hocking stated that he would agree with that possibility.

Interested Parties:

Jim Coffey, Planner for the City of Bixby, stated that the Bixby Planning Commission voted unanimously to approve the proposal. He explained that Bixby has a Comprehensive Plan that suggests commercial development on both sides of 151st in the city limits and to the fence line, which includes the subject property. There is industrial zoning in the subject area and a number of residential tracts are starting to develop as well. He commented that he believes the subject area would develop in the same way that Memorial Drive has developed between Tulsa and Bixby, with the residential areas behind commercial establishments. He indicated that there are several subdivisions under consideration at this time. He stated that he would prefer to see the subject area develop as commercial rather than industrial.

TMAPC Comments:

Mr. Harmon asked Mr. Coffey if he thought 151st Street would develop as commercial from Highway 75 to Bixby. In response, Mr. Coffey stated that he doesn't believe that would be the case, but Bixby has designated it for that particular frontage. Mr. Coffey explained that Bixby has zoned this corridor in order to have some control over the esthetics and what kind of development would be built.

Mr. Harmon stated that if the subject property were zoned CS there would be many things that could be developed on the subject property besides a church. In response, Mr. Coffey stated that he is well aware of that. Mr. Coffey explained that Bixby patterned their ordinances and use units after the City of Tulsa.

Mr. Midget asked if the Bixby Planning Commission considered this being developed under a PUD. In response, Mr. Coffey answered negatively.

Interested Parties:

Doug Pittman, 14736 South Lewis, Bixby, Oklahoma 74008, stated that he is not in opposition to a church being located on the subject property, but he does oppose the CS zoning. If there were to be blanket zoning of CS and the church didn't work out, then many other commercial uses could be located on the subject property.

Mr. Pittman informed the Planning Commission that the CS zoning indicated on the subject case map is no longer located there due to the widening of 151st Street.

Gladys Parker, 2750 East 151st Street, Bixby, Oklahoma 74008, stated that she is opposed to the CS zoning, but she is not against the church use.

TMAPC Comments:

Mr. Westervelt asked staff to explain how the church could be constructed on the subject property under the current zoning. In response, Mr. Stump stated that the applicant could request, for the one acre they are purchasing or the entire tract, a special exception for church use in an AG district at the County Board of Adjustment. If the Board finds it compatible with the surrounding area, they could approve the use or approve it per plan. The church would be allowed under the AG, but uses other than agricultural uses would not be allowed.

Applicant's Rebuttal:

Pastor Hocking stated that he appreciates the input from the two interested parties who have spoken. He indicated that he provided Mr. Pittman a picture of the church and discussed this proposal with both interested parties and many of the other neighbors. He commented that he is asking to build a church for his congregation and nothing else.

TMAPC Comments:

Mr. Westervelt stated that after learning that the small piece of land that was zoned CS across the street is no longer in place, he is concerned that the Planning Commission would be making a bad land use decision in order to facilitate the security of a lender and land owner to stage sale, which is not what the Planning Commission was intended for. The applicant can go before the County Board of Adjustment and request a special exception in order to locate on

the subject property. He explained that the CBOA could place some controls with the special exception until such time the patterns are evident in development along 151st Street. Staff did an accurate job of their recommendation and the church has a means of locating on the subject property without interrupting the lifestyle of those people in the subject area.

TMAPC Action; 9 members present:

On **MOTION** of **WESTERVELT**, the TMAPC voted **8-1-0** (Bayles, Carnes, Harmon, Hill, Jackson, Ledford, Midget, Westervelt "aye"; Horner "nays"; none "abstaining"; Collins, Coutant "absent") to recommend **DENIAL** of CS zoning for CZ-318 as recommended by staff.

* * * * *

Application No.: PUD-573-A

MINOR AMENDMENT

Applicant: Kevin Coutant

(PD-18) (CD-8)

Location: North of northwest corner of East 81st Street and South Yale Avenue

Staff Recommendation:

The applicant is requesting a major amendment to allow the construction of an equipment building and a 70-foot monopole cellular transmission tower within PUD-573.

PUD-573 was approved by the City Council in 1997. The PUD consists of 1.98 gross acres located at 7712 South Yale Avenue and was approved for those uses included within Use Unit 11 (Offices, Studios, and Support Services). The underlying zoning is OL. An office building has been constructed on the site.

The applicant is proposing to construct a 70-foot monopole cellular transmission tower and an equipment building in the northwest portion of the PUD. The subject tract is abutted on the north and west by single-family homes.

The applicant has chosen to locate the tower on the portion of the tract which would have the most adverse effect on abutting residential property. The proposed amendment does not harmonize with the existing development of the surrounding area. Therefore, staff recommends **DENIAL** of PUD-573-A.

Applicant's Comments:

John Brightmire, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103, representing U.S. Cellular, submitted a booklet of materials (Exhibit B-4) and stated that U.S. Cellular needs coverage in the 81st Street and Yale area. He indicated that there are no other towers in the subject area that would

accommodate the coverage necessary due to elevations, nor any property available to lease. The proposed site would allow a 70-foot tower and would be able to reach the 150 feet necessary because the subject is at a higher elevation.

Mr. Brightmire proposed a wood monopole and indicated that the trees in the subject area would hide the tower from view. He stated that the proposal meets and exceeds the guidelines. He commented that the subject property is zoned OL and the tower is not allowed by right. He indicated that there would be not be any negative market value impact to the surrounding properties based upon Mr. John Story, Appraiser. Mr. Brightmire displayed photographs of similar monopoles in the City of Tulsa.

TMAPC Comments:

Mr. Westervelt stated that he is not accustomed to seeing affidavits in packages from the telecom provider. He asked Mr. Brightmire if he was building a case to use the Federal Ordinance to help locate the proposed tower. In response, Mr. Brightmire stated he collected the affidavits in order to help the Planning Commission make their decision today. Mr. Westervelt asked Mr. Brightmire if there was some reason why he submitted affidavits. In response, Mr. Brightmire stated that the affidavits support his presentation and it is sworn testimony as to supporting what he has presented today.

Mr. Stump asked Mr. Brightmire if the proposed site is within the circle of area where it should be ideally located. In response, Mr. Brightmire answered affirmatively. He explained that he had checked with every landowner in the circled area and was unable to reach an agreement with them.

Mr. Stump asked Mr. Brightmire if the subject property owner is willing to lease U.S. Cellular any site that doesn't cover the parking or building. In response, Mr. Brightmire stated that part of the problem is that when Yale is widened, the driveway would be moved to the south. Mr. Brightmire explained that there is some uncertainty of what would happen in front of the subject building. Mr. Brightmire stated that he doesn't know if the subject property owner would be willing to lease a different site within the subject property.

Doyle Groat, Project Manager for U.S. Cellular, 1210 South Detroit, Tulsa, Oklahoma 74120, stated that with the widening of Yale and the steepness of the subject property, there weren't too many practical places to place the tower without redoing the whole hill. He commented that he considered every inch of the subject property before choosing the subject site. He admitted that the tower would be located outside of the circle, but the testing proved that it would work. He explained that the reason for the affidavits was to show that everyone is legitimate and experts of their fields.

TMAPC Comments:

Mr. Stump asked if the subject property owner imposed any conditions on where the tower could be located.

Troy Grudgel, owner of the subject property, stated that he would agree to whatever would work for U.S. Cellular. If it would be more acceptable to the residents to move it closer to Yale (northeast corner) that would be possible. He explained that he was under the impression from U.S. Cellular that the proposed site would be the best.

Mr. Stump stated that he understands that this is not the only location and it is not one of the more desirable locations for the tower. According to the applicant's information, this site is not within the circle drawn for the most desirable location. Therefore, there are several other sites that would be preferable to the proposed site on a technical basis. In response, Mr. Brightmire stated that on a technical basis, perhaps yes, but in reality, on an available basis, no. Mr. Brightmire explained that there are no other sites available. Mr. Stump asked if "available" means the amount U.S. Cellular is willing to pay for the site. In response, Mr. Brightmire stated that he asked Mr. Groat about this and was told that they searched for a site in this location for over one year, and U.S. Cellular was offering above-market rates and still didn't find another site within the circle of desirability. Mr. Brightmire commented that the reason U.S. Cellular feels this is the best location on the subject property is because the setbacks are met at this location.

Interested Parties:

Councilor Christensen, District 8, submitted a petition in opposition (Exhibit B-2) signed by 61 people in the immediate area. He indicated that he viewed the location and if the tower is placed where it is proposed it would depreciate the value of the homes in the subject area. If the tower is moved to the north or east side it would still depreciate the value of homes. Mr. Christensen stated that he does not believe the tree Mr. Brightmire indicated would hide the tower is not 70 feet tall and the tower will be viewable.

TMAPC Comments:

Mr. Harmon asked Councilor Christensen what his primary concern is, other than property value. In response, Councilor Christensen stated that the tower would be too close to the homes and esthetics.

Interested Parties:

Ed Cadenhead, Attorney representing Silver Oaks and Southern Heights Homeowners Associations, 2001 East Strothers, Seminole, Oklahoma 74868, stated that the residents are opposed to the cellular tower and the equipment shelter that is built with the tower. There are three reasons for opposition, which are esthetics, safety and a matter of principle. The tower is in the worst possible

position on the proposed site because it would too close to residential neighborhoods instead of being as far away as possible.

Mr. Cadenhead stated that he hates to tell the Planning Commission that the landowners consider this board partly responsible for the esthetic problems. He explained that reason the residents consider the Planning Commission partly responsible is because there are zoning requirements and this PUD came in with a design requirement that there be a screening wall separating the subject property from the residential property (west and north boundary). There was to be a six-foot wall that would screen the subject property from the residences.

Mr. Cadenhead stated that the residents came to a Planning Commission meeting because they were concerned about the subject PUD being developed. The residents wanted to make sure that the screening wall would be present in order to separate the commercial development from their homes. The residents were assured by the architect, developer, engineer and the Planning Commission that the screening wall would be in place. He explained that the residents left the meeting with the assurance that the wall would be in place.

Mr. Cadenhead indicated that residents found out that the property owner, in a minor amendment (almost like a secret meeting), had the screening wall requirement amended and waived.

Mr. Westervelt called for a point of order.

Mr. Westervelt stated that he would like to address the comment that there had been some sort of secret meeting. That is absolutely in the record and he suggested the record reflect the same.

Mr. Cadenhead apologized and stated that he didn't mean to suggest that anything illegal had been done. In response, Mr. Westervelt stated that in his opinion, Mr. Cadenhead did indeed suggest something illegal had been done. Mr. Westervelt further stated that he didn't like the tone of Mr. Cadenhead's comment and he would like the record to be clear.

Mr. Cadenhead stated that what appears to the public to be a secret meeting is probably not anything like a secret meeting and is all in compliance with the law, but the parties who had notice of the public hearing didn't know anything about the meeting for the minor amendment when the screening wall was waived. The minutes of that meeting indicated that the waiver was conditioned upon certain trees and vegetation being planted in place of the screening wall. The trees and vegetation were never planted and there is no screening to protect the neighborhood.

Mr. Cadenhead commented that U.S. Cellular would like to install a tower and a concrete equipment shelter and there will be trees removed in order to do this.

The residents feel that they were let down by the Planning Commission and now they are afraid it is going to happen again. Esthetics is only one concern of the neighborhood. When this property was originally developed, the subject property was considered highly unstable and it was not too long before in the development a house had slid down the hill into a swimming pool. The residents are concerned for their safety and the property owner has shown that he does not follow the conditions imposed to protect the neighbors. He reminded the Planning Commission that the concerns about safety were raised during the original PUD meeting and the developer indicated that the engineer had designed strategically-placed retaining walls to stabilize the ground. There would be landscaping and terracing and there was to be sod to make sure the ground would be stabilized and secured. None of these things has taken place. The office building is not secure at all and now there is an applicant wanting to install a cellular tower and equipment building on the subject property.

Mr. Cadenhead stated that perhaps the applicant has had engineering studies and soil samples done, but they haven't stated whether they have.

Mr. Midget stated that the applicant indicated that had been done in their submittal.

Mr. Carnes informed Mr. Cadenhead that the Planning Commission has not made up their mind at this point and are collecting the facts before making their decision.

Mr. Jackson called for order.

Mr. Cadenhead apologized and stated that he is not trying to suggest that the Planning Commission has already made their decision. He explained that it troubles him that the applicant is applying for permission to place a tower on property that is deficient. He requested the Planning Commission to deny this application as staff has recommended. He commented that he couldn't read the Planning Commission's minds, but if they have already made their decision he would stop his presentation.

Mr. Jackson informed Mr. Cadenhead that the Planning Commission listens to all of the facts from the applicant and interested parties before making a decision. The Planning Commission is not biased. In response, Mr. Cadenhead apologized if he angered the Planning Commission with his comments.

Mr. Harmon asked Mr. Cadenhead if he is concerned that the tower would collapse because the ground is unstable. In response, Mr. Cadenhead answered affirmatively.

Mr. Cadenhead concluded by stating that he does not believe that an amendment to a PUD should be allowed when the requirements of the initial

PUD have not been satisfied. He indicated that the subject property owner has not been issued an occupancy permit and the City Inspections Department shows that there has been no occupancy permit on file for the subject office building. An engineer designed the PUD proposal and found it important enough to have a separate sheet in designs for the retaining walls, which were not for esthetic reasons. Mr. Cadenhead cited all of the deficiencies on the subject property. It would be a mistake to add a tower to an already deficient property that could make the situation worse.

TMAPC Comments:

Mr. Harmon asked staff if there is any evidence that the requirements of the original PUD have not been met. In response, Mr. Stump stated that complaints would be directed to Neighborhood Inspections. Mr. Stump indicated that Candy Parnell is investigating some recent complaints. Mr. Stump stated that staff has not received any complaints and it wouldn't be the appropriate place to make those complaints. Mr. Stump informed the Planning Commission that during staff's site visits, it was noticeable that the bulk trash container was not properly screened.

Mr. Dunlap informed the Planning Commission that the requirements for the subject PUD have been faxed to Neighborhood Inspections.

Interested Parties Opposing PUD-573-A:

Gary Reall, 7644 South Winston, Tulsa, Oklahoma 74136; **Stephen Parks**, (Submitted photographs Exhibit B-1) 4625 East 78th Street, Tulsa, Oklahoma 74136; **Ray McCollum**, 7724 South Canton, Tulsa, Oklahoma 74136; **Max Vile**, 7701 South Sandusky, Tulsa, Oklahoma 74136.

Comments of Opposing Interested Parties:

Existing trees are not tall enough to hide the tower; screening wall and landscaping was never installed; the tower would be too close to the homes; the architect for the subject property promised landscaping, but it was never installed; neighbors received notification each time there was a meeting, except for one meeting when the screening fence was waived; retaining walls were never installed; dumpster was never enclosed and it is emptied at 3:00 a.m. once a week, which wakes up the neighbors; cannot trust the subject property owner; the tower would be above the roof of the homes nearby; the reason the subject property owner wants the revenue from U.S. Cellular is because he is having financial difficulty due to the office building not leasing well; the subject property owner is willing to ruin the neighbors' view in order to make \$1500.00 a month for leasing space to the cell tower company; complaints have been filed with the Neighborhood Inspections in the past; the subject property has been out of compliance for over 700 days and the City of Tulsa could be collecting \$500.00 in fines per day; expressed concerns that minor amendments do not have to be advertised and requirements are waived without the neighbors knowing; tower may be a health hazard; the existing trees would die from the installation of the

tower and equipment building; concerned about more erosion with new development being done for the equipment building.

TMAPC Comments:

Mr. Jackson asked Mr. Reall if he would be against the cell tower if it were positioned on the subject property in another area. In response, Mr. Reall stated that he is opposed to a tower being anywhere on the subject property. Mr. Reall stated that the property owner doesn't want the tower fronting Yale because it would hurt the value of his building. Mr. Reall indicated that he did talk with a realtor and was told that a cell tower would depreciate the value of his home.

Mr. Westervelt stated that he is disappointed that the requirements have not been met. The Planning Commission is not responsible for what is not right. The Planning Commission made a responsible land use decision and if the requirements that have been approved have not been adequately carried out, that is something that Neighborhood Inspections investigates. Staff has notified Neighborhood Inspections regarding this property.

Mr. Romig stated that he contacted Neighborhood Inspections and they are currently working two complaints on the subject property. One complaint is for mowing and vegetation (overgrown nature) and the second complaint is for failure to meet the PUD requirements (particularly landscaping, retaining walls and the trash container requirements).

Mr. Westervelt polled the audience and determined that none of the interested parties was in favor of the cell tower.

Applicant's Rebuttal:

Mr. Brightmire stated that the interested parties discussed esthetics, safety and principle. He indicated that his client would move the tower closer to Yale Avenue if that is the desire. Staff stated that they believe the subject property is a bad alternative and he doesn't know if they would change their recommendation based on moving the tower closer to Yale Avenue. He suggested that he may need a continuance to change the placement and discuss the staff recommendation with staff.

Mr. Brightmire commented that he believes the principle that the interested parties were speaking of were the alleged violations of the subject property owner. He explained that he can't address those issues, and if there are some problems with that it is not U.S. Cellular's problem. He stated that everything U.S. Cellular commits to do, with respect to the tower and building, would be done.

Mr. Brightmire indicated that the tower would be on a 6' x 6' foundation and it is not a mammoth foundation that would affect the existing trees. Coring has been done on the subject property and the tower would be erected to engineering

specifications and specifications required under the Tulsa City/County Code. All of these specifications would be submitted at the building permit process. There has been an environmental study conducted and it could be submitted to the Planning Commission.

Mr. Brightmire explained that the esthetics were mentioned and his client has studied the subject property. He indicated that the whole neighborhood would not see the 70-foot tower, but a few residents would. He believes that the best spot has been chosen to shield the tower by the existing trees. His client would be willing to move the placement of the tower if the Planning Commission chooses. This application should be based upon what the Code provides as far as towers are concerned. This proposal meets the setbacks and every standard under the Code for a special exception. He reiterated that the tower would be a 70-foot laminated tower, which isn't much taller than the utility poles along Yale Avenue. The tower would not be required to be lighted by the FAA and will not have lighting. He stated that the equipment building could be built however the neighbors or the Planning Commission would like. It can be designed to look like a shed, brick exterior or with the proposed rock exterior. He commented that the equipment building is not a 35-ton building and it would be eight feet tall. With the slopes and ridges, he doesn't believe anyone would see the equipment building unless they are on the subject property itself.

TMAPC Comments:

Mr. Harmon stated that the applicant is requesting a major amendment to the PUD and he doesn't feel the deficiencies of the required standards for the original PUD are not his client's problem, but are in fact his problem. Mr. Harmon further asked why the Planning Commission should lenient this time when the owner has not been in compliance originally. In response, Mr. Brightmire stated that his client is U.S. Cellular and not the owner of the property. In response, Mr. Harmon stated that it would still be the applicant's problem since the subject property is not in compliance. In response, Mr. Brightmire stated that if the Planning Commission were to approve this tower and the associated building, it would be built as promised.

Mr. Midget asked Mr. Brightmire if he was asking for a continuance. Mr. Midget stated that he is not suggesting that if the applicant requested a continuance, that when it is brought back it would be approved, but the continuance request was mentioned. In response, Mr. Brightmire stated that if the Planning Commission and staff would prefer to see the tower somewhere else on the subject property, then he would be willing to work with that. Mr. Midget explained that he was trying to be fair to the applicant because he had mentioned a continuance, and once the Planning Commission goes into discussion the opportunity is gone. Mr. Brightmire stated that his client is not wedded to this site, and if the tower needs to be placed somewhere else on the subject property, then his client may need time to look at the other site to make sure it would work.

Mr. Stump asked Mr. Brightmire if he stated that the building would be 6' x 6'. In response, Mr. Brightmire stated that the tower would be an on 6' x 6' foundation.

Mr. Stump stated that the applicant stated in his submittal that the building would be 10' x 20', and in another paragraph it states it would be 10' x 12'. Mr. Stump asked Mr. Brightmire which measurement is correct. In response, Mr. Brightmire stated that the building would be 10' x 20'.

Mr. Westervelt stated that the application is not good because it would have an adverse effect on the abutting residential property, and the proposed amendment does not harmonize with the existing development of the surrounding area. He recommended a denial solely on these grounds. The other information gathered today is quite disturbing and the Planning Commission is interested in good growth and development. Economic downturns produce some unfortunate circumstances sometimes. He commented that he is not angry about anything other than the fact that this application was not executed properly.

TMAPC Action; 9 members present:

On **MOTION** of **WESTERVELT**, the TMAPC voted **9-0-0** (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Collins, Coutant "absent") to recommend **DENIAL** of the major amendment for PUD-573-A.

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Application No.: PUD-566-1

MINOR AMENDMENT

Applicant: Sean J. Johnson

(PD-9) (County)

Location: Northwest corner of West 41st Street and South 57th West Avenue

Staff Recommendation:

The applicant is requesting a minor amendment to the development standards which require a sanitary sewer system be provided prior to issuance of a building permit. The applicant was sold a one-acre tract at the southeast corner of the PUD in violation of the subdivision regulations. No plat of this tract has been submitted nor any lot-split approved.

PUD-566 was approved by the County in 1997. The PUD consists of approximately ten acres located at the northwest corner of West 41st Street and South 57th West Avenue. The approved use included offices, retail, single-family or church.

When PUD-566 was before the Planning Commission, there was considerable discussion regarding the method of sewage disposal from the public, the applicant, TMAPC members and elected officials. The following comment was made at the August 27, 1997 TMAPC meeting:

“Mr. Levy stated an extensive study has been done to review the hydrology, water and sewer service to the subject property. He stated sewer service will be provided from the west.”

Staff feels that the request to eliminate the requirement that no building permit shall be issued until an approved sanitary sewer system has been provided would be a substantial deviation from the original approval. The subject tract is at the most remote point in the PUD from surrounding residential uses and abuts the planned Gilcrease Expressway right-of-way on the east. The applicant proposes to use an onsite sewage system to dispose of the small amount of wastewater his doughnut shop would produce. Because this is a sewage disposal method question, not a land use issue, staff has no recommendation.

Mr. Dunlap indicated that County Commissioner Miller was present earlier, but had to leave. County Commissioner Miller stated that she does support this request and asked Mr. Dunlap to convey her support.

Mr. Stump stated that to his knowledge this is the first time the Planning Commission put a condition on the sewer service prior to development in a PUD, but it is there and a building permit can't be properly issued without sewer service being present.

Applicant's Comments:

Sean Johnson, 6129 South 155th West Avenue, Tulsa, Oklahoma, stated that when he purchased the property in November, he didn't know about the property being in a PUD. He indicated that a title search and the lawyers who reviewed the abstract didn't mention a PUD. On January 7, 2003, he was instructed to stop construction because the knowledge of the PUD came about regarding the sanitary sewer system.

Mr. Johnson stated that he is proposing an aerobic sewer system and has been approved in areas where perc test are not suitable for septic systems. He indicated that the water usage for the doughnut shop would be minimal (25 to 75 gallons a day).

TMAPC Comments:

Mr. Harmon asked Mr. Johnson if he had his building permit. In response, Mr. Johnson answered affirmatively. Mr. Harmon asked if construction has been delayed until the Planning Commission approves this application. In response, Mr. Johnson answered affirmatively.

Mr. Stump stated that the other problems are that the subject property is subject to plat and it has not been platted. In order to sell off the subject property, a lot-split is needed, which has not been done nor requested. There was no vehicle to let the applicant know that there was a PUD in place that had special conditions. Mr. Stump commented that he is not sure why the applicant was not advised that he needed a lot-split before closing on the property. Mr. Stump stated that if this is approved, the applicant would more than likely return with a plat waiver, because none of the work, subsequent to the adoption of the PUD, has been completed.

Mr. Harmon explained to Mr. Johnson that the only issue the Planning Commission can address today is the minor amendment regarding the sanitary sewer system.

Interested Parties:

Manuella Glore, 3730 South 60th West Avenue, Tulsa, Oklahoma 74107, stated that she is in favor of this application.

TMAPC Action; 9 members present:

On **MOTION** of **HARMON**, TMAPC voted 8-1-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget "aye"; Westervelt "nay"; none "abstaining"; Coutant, Collins "absent") to **APPROVE** of the minor amendment for PUD-566-1.

* * * * *

Application No.: PUD-513-A-1

MINOR AMENDMENT

Applicant: Kevin Coutant

(PD-18) (CD-9)

Location: East of southeast corner of East 51st Street and South Delaware

Staff Recommendation:

The applicant is requesting a minor amendment to delete the requirement that building walls on the exterior of the development shall consist of masonry construction using brick, stone, stucco or concrete tilt-up panels. Metal or standard (smooth) concrete block exterior walls are not permitted on such exterior.

PUD-513-A was approved by the City Council in 1999. The PUD consists of approximately 4.5 acres located on the south side of 51st Street just west of Harvard. The approved uses are those included within Use Unit 11, Offices, Studios, and Support Services; and those included within Use Unit 16, Mini-Storage.

Condition four of the approved standards states the following:

4. The mini-storage shall be designed so that all openings to storage buildings are screened from view by persons standing at ground level at the boundaries of the PUD. This screening shall be accomplished by the use of the exterior building walls of storage units. Building walls on the exterior of the development shall consist of masonry construction using brick, stone, stucco or concrete tilt-up panels. Metal or standard (smooth) concrete block exterior walls are not permitted on such exterior. Access gates shall be opaque if needed to screen interior door openings.

The applicant is proposing to delete the following portion of this requirement:

“Building walls on the exterior of the development shall consist of masonry construction using brick, stone, stucco or concrete tilt-up panels. Metal or standard (smooth) concrete block exterior walls are not permitted on such exterior.”

There has not been a significant change in the surrounding area and the requested modification to the approved screening would be a substantial deviation from the original approval. Therefore, staff recommends **DENIAL** of the request.

Applicant’s Comments:

Kevin Coutant, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103, cited the history of the PUD. He described the surrounding properties and their zonings. He commented that there was resistance from the neighbors when the PUD was originally approved for mini-storage. In the give-and-take of the PUD process, the requirements being discussed today were made part of the development standards. There is a full array of esthetic-related requirements for this project.

Mr. Coutant submitted a proposal package (Exhibit C-1) and stated that there is not a substantial difference between the esthetic impact of a tilt-up concrete and the steel building. There has been a material change of circumstance. The mystery has gone out of this project and this project has been well received by the neighbors. The original interested party expressing esthetic concerns is now encouraging the approval of this minor amendment as indicated in Exhibit C-1. The Brittany Square Apartments also indicated their approval; however, they indicated that their attorney would have to review the letter before signing, and to this date nothing has been received.

Mr. Coutant stated that there is a privacy fence in place that belongs to the apartments along the westerly and southerly boundaries. Therefore, there is an existing privacy fence. Development standards limit the height of the walls on the buildings to eight feet and the buildings have to be ten feet spaced back from the fence.

TMAPC Comments:

Mr. Jackson asked Mr. Coutant if he was proposing to use the existing wood fence as screening. In response, Mr. Coutant stated that the wood fence belongs to the apartments and would probably remain. Mr. Coutant explained that with the deletion of that requirement, the buildings would appear to be inside the fence line. Mr. Coutant stated that steel construction is fairly typical in the industry.

Mr. Stump asked Mr. Coutant if he was offering a particular style of metal building wall with the textured paint on it and to delete all requirements for any particular style or material so that he can put up any type of metal or other wall. In response, Mr. Coutant stated that it is not his desire to obtain a wide-open mandate to allow him to do whatever he would like.

Mr. Stump asked Mr. Coutant if he could describe this differently. In response, Mr. Coutant answered negatively.

Mr. Jackson asked if the Planning Commission could approve the proposal if a model number from the manufacturer were supplied. In response, Mr. Stump stated that staff would prefer that the standard be retained and add this particular model of metal wall as the final option or additional option.

Mr. Harmon stated that he has a problem with this being a minor amendment. This is a significant change and should be a major amendment. At some point in time the Planning Commission has to keep faith in what is initially approved. If there was a reason for it initially, then he is not sure that suddenly waiving it because it is a cost-saving measure for someone is appropriate.

Mr. Westervelt stated that he concurs with Mr. Harmon. He further stated that the Planning Commission has not had a lot of credibility today.

Mr. Carnes agreed that this is a major amendment when changing this much exterior facing into a neighborhood. In response, Mr. Coutant stated that his opinion of a major amendment versus a minor amendment is nothing different from the past. Mr. Coutant commented that notices were mailed out and he thought he had done a reasonable job of assuring the Planning Commission of the attitudes of the surrounding property owners.

Mr. Jackson asked staff, if the steel had a Polymer finish would it be considered masonry. In response, Mr. Stump stated that he remembers only one instance of this and on the back portion there was some sort of paint with texture on the metal panel and the Planning Commission approved the finish. In response, Mr. Westervelt stated that there was a bonded material that was sandwiched onto the metal, not just textured paint.

Mr. Midget stated that he would be more concerned if there were single-family homes next to this project, but it is multifamily dwellings. He commented that he feels it is unfair to the applicant, at this point, to state it should be a major amendment when he came here thinking it is a minor amendment. He stated that the applicant has submitted a reasonable alternative and he would hate to see a denied application based upon that.

Mr. Westervelt stated that his motion is simply to deny the application whether it is a minor or major. He indicated that he is not in support of changing, again, what the Planning Commission has described in the PUD and this nothing but a reduction in cost.

Mr. Harmon concurred with Mr. Westervelt.

TMAPC Action; 9 members present:

On **MOTION** of **WESTERVELT**, TMAPC voted 8-1-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Westervelt "aye"; Midget "nays"; none "abstaining"; Coutant, Collins "absent") for **DENIAL** of the minor amendment for PUD-513-A-1 as recommended by staff.

* * * * *

OTHER BUSINESS:

Application No.: PUD-668

DETAIL SITE PLAN

Applicant: Eric Sack/Sack & Associates (PD-17) (CD-6)

Location: East 11th Street and 137th East Avenue

Staff Recommendation:

The applicant is requesting approval of a detail site plan for a new truck wash/reclaimer facility. The proposed use is in conformance with PUD-668 development standards for Development Area "C".

Phase I of the APAC site includes the truck wash/reclaimer facility only. Phase II of the APAC site, including screening walls, existing buildings and removal of the pond as per PUD requirements, will be submitted for review by TMAPC at a later date. Notice to surrounding property owners will be provided.

The reclaimer as permitted in Development Area "C" is subject to operational limitations as specified in item #4 of PUD-668, which states that "the Truck Wash-out and Truck Rinse-off shall be limited to a self-contained total retention system incorporating a reclaimer process and shall have a DEQ-regulated industrial wastewater discharge".

Staff recommends **APPROVAL** of PUD-668 detail site plan for Phase I, Truck Wash-out and Truck Rinse-off/Reclaimer facility, per specified operational limitations.

(Note: Detail site plan approval does not constitute sign or landscape plan approval.)

The applicant indicated his agreement with staff's recommendation.

TMAPC Action; 9 members present:

On **MOTION** of **HARMON**, TMAPC voted 9-0-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Coutant, Collins "absent") to **APPROVE** the detail site plan for PUD-668, Phase I, Truck Wash-out and Truck Rinse-off/Reclaimer facility, per specified operational limitations as recommended by staff.

Mr. Stump clarified that the subject area is allowed without a landscape plan, because there is no landscaping proposed around the reclaimer.

* * * * *

L-19479 - Lawrence Morrison - (RS-3) (PD-11) (CD-1)

Location: 1425 North Xenophon

Staff Recommendation:

The applicant applied to split a 75' x 140' tract off a 300' x 300' tract. However, the TMAPC approved a lot-split (L-19380) on the subject property on September 4, 2002, with the condition that any additional dividing of the property be accomplished by the subdivision platting process.

The current application was taken in error, and staff is recommending **APPROVAL** of a full refund of the \$50 lot-split application cost.

TMAPC Action; 9 members present:

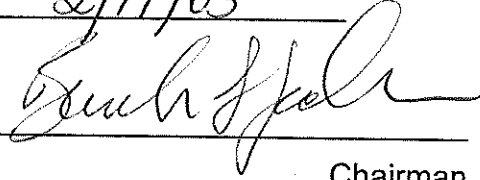
On **MOTION** of **HARMON**, TMAPC voted 9-0-0 (Bayles, Carnes, Harmon, Hill, Horner, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Coutant, Collins "absent") to **APPROVE** the refund of \$50.00 for L-19479 as recommended by staff.

* * * * *

There being no further business, the Chair declared the meeting adjourned at 4:40 p.m.

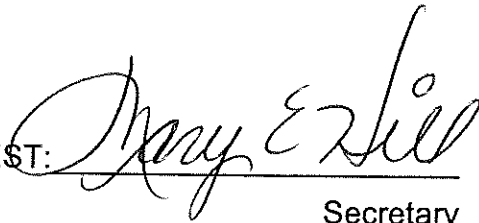
Date Approved:

2/19/03



Chairman

ATTEST:



Secretary