

# TULSA METROPOLITAN AREA PLANNING COMMISSION

## Minutes of Meeting No. 2454

Wednesday, August 2, 2006, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

<b>Members Present</b>	<b>Members Absent</b>	<b>Staff Present</b>	<b>Others Present</b>
Ard	Bernard	Alberty	Boulden, Legal
Bayles	Carnes	Chronister	
Cantees	Harmon	Fernandez	
Collins	Jackson	Huntsinger	
Midget		Matthews	
Wofford			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Friday, July 28, 2006 at 1:54 p.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

Mr. Ard announced that the meeting will be delayed until there is a quorum present.

After declaring a quorum present, 1<sup>st</sup> Vice Chairman Ard called the meeting to order at 1:45 p.m.

Mr. Ard read the opening statement and rules of conduct for the TMAPC meeting.

Mr. Ard stated that there are several items that need to be continued:

### **PLAT WAIVERS:**

**Z-7013** – (8333)

(PD-26) (CD-8)

Northwest corner of East 118<sup>th</sup> Street South and Yale Avenue (**Continue to 8/16/06**)

### **TMAPC COMMENTS:**

Ms. Bayles stated that the Planning Commission's policy and procedures state that there should have a reason given before granting a continuance and there is none shown in our packet. Ms. Bayles requested an explanation.

Mr. Ard asked staff if they had an explanation of the continued item.

Mrs. Fernandez stated that on page 2.4 of the packet staff recommends that this item be continued to the August 16, 2006 meeting so that it can be considered with the lot-split requested (L-19971) as both items are integral to each other.

Ms. Bayles asked for the page number once again. In response, Mrs. Fernandez stated that it is page 2.4 of the agenda packet. Ms. Bayles thanked Mrs. Fernandez.

**Applicant was not present.**

Mr. Ard asked Ms. Bayles if she had any other consideration regarding this item. In response, Ms. Bayles answered negatively.

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** the plat waiver for Z-7013 to August 16, 2006.

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**PRELIMINARY PLAT:**

**Silver Ridge** – (8309)

(PD 18) (CD 8)

North of the northwest corner of East 75<sup>th</sup> Street South and Yale Avenue (continued from June 7, 2006) – (**Strike from Agenda due to new preliminary plat proposal.**)

**Stricken from agenda.**

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**PUD-514-A – R.L. Reynolds**

(PD-6) (CD-5)

3259 South Yale Avenue (Major Amendment) (**Continued to August 16, 2006 due to renoticing.**)

Mr. Ard asked staff if there was a reason to continue this application.

Ms. Matthews stated that a new notice is necessary due to an incorrect legal description being submitted by the applicant.

**Applicant was not present.**

**There were no interested parties wishing to speak.**

Mr. Ard asked if there is a date certain for the continuance. In response, Ms. Matthews stated that she believes the agenda states August 16, 2006.

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** the major amendment for PUD-514-A to August 16, 2006 due to renoticing requirement.

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**Z-7033/PUD-733 – Khoury Engineering**

**RS-3/AG to RS-3/CS**

Northeast corner of 177<sup>th</sup> East Avenue and East 41<sup>st</sup> Street South (**Applicant has requested a continuance to August 16, 2006.**)

(PD-17) (CD-6)

Mr. Ard asked staff if they had an explanation for this continuance. In response, Ms. Matthews stated that the applicant has requested this continuance and would like it to be continued to September 6, 2006 because he is not ready to present this case at this time.

**Applicant was not present.**

**INTERESTED PARTIES:**

**Larry Johnson**, 2535 East 21<sup>st</sup> Street, 74112, stated that if this is continued to the September date he wouldn't have a problem, but on August 16<sup>th</sup> he will be in trial and couldn't make that date.

**TMAPC COMMENTS:**

Ms. Bayles asked Mr. Johnson if this is the same case that he came to the Planning Commission to speak about several weeks ago. In response, Mr. Johnson answered negatively.

Ms. Bayles asked Mr. Johnson if he had an objection to the September 6, 2006 continuance. In response, Mr. Johnson stated that he did not have an objection to that date.

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** Z-7033/PUD-733 to September 6, 2006.

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**Z-7031 – Roy D. Johnsen**

**RS-3 to CS**

Northeast corner South 161<sup>st</sup> East Avenue & East 51<sup>st</sup> Street (PD-17) (CD-6) South (**Applicant has requested a continuance to August 16, 2006.**)

Mr. Ard asked staff if they have an explanation for this request. In response, Ms. Matthews stated that the applicant has requested this continuance and she believes that it is the Planning Commission's policy to grant one continuance for the applicant and one for any opposing or interested parties.

**Applicant's Comments:**

**Roy D. Johnsen**, 201 West 5<sup>th</sup>, Suite 501, Tulsa, Oklahoma 74103, stated that the principal reason for the request to continue this case is because there are some interested parties within the neighborhood and he believes it is appropriate that he has some dialogue with them. He filed the request for continuance last week and sent a letter to each name on the notice list and informed them that he would be requesting the continuance. To his knowledge no one has objected to the request.

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** the zoning case for Z-7031 to August 16, 2006.

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Mr. Ard stated that he would like to discuss Item 9, the continued Zoning Code public hearing.

**CONTINUED ZONING CODE PUBLIC HEARING**

**Consider proposed amendments to Title 42, Tulsa Revised Ordinances (Tulsa Zoning Code Text).**

**TMAPC COMMENTS:**

Mr. Ard stated that there were two items that the Planning Commission was going to discuss this week after discussions last week about some of the proposed Zoning Code amendments. The language from the Legal Department isn't prepared at this time. Mr. Ard asked staff to explain, more fully, the situation regarding Item 9.

Mr. Alberty stated that typically the staff prepares language that has gone through a number of agencies and a number of people. Legal Department has taken their first run at this and has basically approved it for advertising. There were questions raised on two issues regarding definitions (places of worship and massage therapists). Typically, Legal has the final word after the language has been presented and approved by City Council, then they go back and basically research it and make sure that if there are any legal issues that need to be clarified that it is done at that level. He believes what the Planning Commission is asking for now is for that step to be done before taking action and he is not clear on this. If this is the case, then it would be up to the Legal Department to respond, if not, then he would be comfortable with saying that we could go ahead and pass those items onto the City Council for their public hearing and then following that, the Legal Department would certainly take a look at any issues that have been raised. If there is any need for clarification, expansion or modification then it will certainly be done before an ordinance is published. The ordinance as prepared then comes back to the City Council for verification of the approval. Mr. Alberty reminded the Planning Commission that Legal has been in court and may not have had time to look at this issue.

Mr. Ard stated that he thought the Planning Commission had asked for some language that would be legally acceptable. He believes that the Planning Commission should wait until the language is prepared, since that is what they had requested and that is what the public is expecting.

Mr. Boulden stated that he believes he could have something by the next TMAPC meeting.

Mr. Alberty stated that it will only be the two issues regarding language and it will be specified on the agenda that only those two items are being considered.

Mr. Ard explained how the Zoning Code amendments were split into different lists and dates to be discussed in the future, which will be on the TMAPC website soon.

**INTERESTED PARTIES:**

**AI Nichols**, no address given, was confused about what is being heard today.

Ms. Bayles stated that last week when the Planning Commission was discussing changing the terminology from "church" to "place of worship" as more inclusive and politically correct references Section 400 and 1800.

Mr. Nichols stated he thought dwelling units and accessory units were going to be discussed today.

Mr. Ard stated that accessory dwelling units will be heard later in the year.

Ms. Bayles stated that today the Planning Commission is specifically considering Section 400.A.3 and 1800.

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** the proposed amendments to Title 42, Tulsa Revised Ordinances, Sections 400 and 1800 specific to "church" to "places of worship" and Sections 1211 and Appendix B referencing the massage therapists to August 16, 2006.

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**REPORTS:**

**Chairman's Report:**

Mr. Ard reported that Mr. Alberty provided a 2007 Program Focus Report and has been supplied to everyone.

**Director's Report:**

Mr. Alberty reported on the Board of County Commission and City Council agendas.

Mr. Alberty reported that he will be visiting three cities in Texas during August 13<sup>th</sup> through August 20<sup>th</sup>. These cities have recently adopted New Urbanism Codes.

Ms. Bayles requested that Mr. Alberty bring back pictures.

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Mr. Ard stated that Item 23, discussion and possible action on District 1 Plan (Downtown Linkage Report) has requested a continuance.

Ms. Matthews stated that she believes Mr. Norton waited until 3:00 p.m. at the last meeting, but he had to leave for a 3:30 p.m. meeting. Ms. Matthews suggested that this should be continued to August 16, 2006.

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **ARD**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nay"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **CONTINUE** the District One Plan (Downtown Linkage Report) to August 16, 2006.

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**Worksession Report:**

Mr. Ard reported that the Planning Commission had a good worksession and discussed the possibilities relating to new zoning categories and hurdles to achieve this. The Planning Commission also discussed improving the communication linkages between the Planning Commission, staff and the community. Mr. Ard further reported that there was a presentation of the Phase I of the proposed East Tulsa Neighborhood plan. Mr. Ard indicated that Ms. Bayles agreed to be the Planning Commission's Education Chair. He thanked Ms. Bayles for sending out the flyer on how to be a better Planning Commissioner.

Ms. Bayles stated that the Planning Commission will be receiving information that has been garnered from Eugene, Oregon and their Planning Commission interaction with the Chamber's Area for Healthy Families. In particular it speaks to a report and the development of special districts and new categories of zoning with design guidelines. In particular the Planning Commission has an agenda item today that she believes is completely relevant to this, and that is promoting compatible development in mature neighborhoods. The Planning Commission has heard about this since the proposed zoning amendments went forward. She will have this information available in terms of links to all the Planning Commissioners, and she will pass it back to Barbara and Wayne for distribution.

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**SUBDIVISIONS:**

**LOT-SPLITS FOR RATIFICATION OF PRIOR APPROVAL:**

**L-19933 – Ronnie Ross** (6309) (County)

4424 East 193<sup>rd</sup> Street South

**L-19977 – Sisemore Weisz & Associates** (9319) (PD 6) (CD 9)

2226 East 35<sup>th</sup> Street South

**L-19979 – Paul Hudson** (7428) (County)

13300 East 161<sup>st</sup> Street South

**L-19981 – Jerry Wofford** (9024) (County)

3710 South 179<sup>th</sup> West Avenue

**STAFF RECOMMENDATION:**

All of these lot-splits are in order and staff recommends **APPROVAL**.

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET** the TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson "absent") to **RATIFY** these lot-splits given prior approval, finding them in accordance with Subdivision Regulations as recommended by staff.

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**PLAT WAIVERS:**

**PUD-684-A (Riverbend)** – (1883) (PD 18) (CD 2)

8110 South Yorktown (Southwest corner of East 81<sup>st</sup> Street South and Yorktown)

**STAFF RECOMMENDATION:**

The platting requirement is being triggered by a new building being constructed per PUD-684-A.

***Staff provides the following information from TAC at their July 20, 2006 meeting:***

**ZONING:**

TMAPC Staff: The plat waiver is for property zoned PUD 684-A.



**STREETS:**

A 30-foot intersection radius or waiver is required.

**SEWER:**

The property has access to the sanitary sewer.

**WATER:**

Water services can be obtained from an existing ten-inch water main line along Yorktown on the eastside of the road or from the existing 12-inch water main line along the south side of East 81<sup>st</sup> Street South.

**STORM DRAIN:**

No comments.

**FIRE:**

No comments.

**UTILITIES:**

No comment.

Staff can recommend **APPROVAL** of the plat waiver requested per the TAC comments because of the existing plat for the site.

**A YES answer to the following 3 questions would generally be FAVORABLE to a plat waiver:**

	Yes	NO
1. Has Property previously been platted?	X	
2. Are there restrictive covenants contained in a previously filed plat?	X	
3. Is property adequately described by surrounding platted properties or street right-of-way?	X	

**A YES answer to the remaining questions would generally NOT be favorable to a plat waiver:**

	YES	NO
4. Is right-of-way dedication required to comply with Major Street and Highway Plan?		X
5. Would restrictive covenants be required to be filed by separate instrument if the plat were waived?		X
6. Infrastructure requirements:		
a) Water		X
i. Is a main line water extension required?		X
ii. Is an internal system or fire line required?		X
iii. Are additional easements required?		X

- b) Sanitary Sewer
  - i. Is a main line extension required? X
  - ii. Is an internal system required? X
  - iii. Are additional easements required? X
- c) Storm Sewer
  - i. Is a P.F.P.I. required? X
  - ii. Is an Overland Drainage Easement required? X
  - iii. Is on site detention required? X
  - iv. Are additional easements required? X
- 7. Floodplain
  - a) Does the property contain a City of Tulsa (Regulatory) Floodplain? X
  - b) Does the property contain a F.E.M.A. (Federal) Floodplain? X
- 8. Change of Access
  - a) Are revisions to existing access locations necessary? X
- 9. Is the property in a P.U.D.? X
- a) If yes, was plat recorded for the original P.U.D.
- 10. Is this a Major Amendment to a P.U.D.? X
- a) If yes, does the amendment make changes to the proposed physical development of the P.U.D.?
- 11. Are mutual access easements needed to assure adequate access to the site? X
- 12. Are there existing or planned medians near the site which would necessitate additional right-of-way dedication or other special considerations? X

\* This may be dependent on lot-split approval.

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **APPROVE** the plat waiver for PUD-684-A (Riverbend) per staff recommendation.

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**FINAL PLAT:**

**Olympia Medical Park II-** (8202)

(PD 8) (CD 2)

Northeast corner of Highway 75 and West 71<sup>st</sup> Street  
South

**STAFF RECOMMENDATION:**

This plat consists of four lots in one block on 17.78 acres.

All release letters have been received and staff recommends **APPROVAL**.

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **APPROVE** the final plat for Olympia Medical Park II per staff recommendation.

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**PRELIMINARY PLAT:**

**Ridgecrest -** (8418)

(PD 18) (CD 7)

South of the southwest corner of East 81<sup>st</sup> Street South  
and Garnett Road

**STAFF RECOMMENDATION:**

This plat consists of 93 lots, three blocks, on 20 acres.

The following issues were discussed July 20, 2006 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned CO – Z-7024-SP-1. Access was determined at the site plan phase. A minimum of 18 feet will be used for street sections. Show each lot's square footages. Check on street frontages. Show planned gates. The plat must agree with approved site plan. Pipeline companies will need to provide plat approval.

2. **Streets:** Recommend a note on face of plat explaining sidewalk requirement. Curve data table needs correction: at least one error is present (C29 should allow a 30-foot radius). Section I.I.11 needs to include sidewalks on Garnett not just the private streets. Coordination with County will be required to insure sidewalk construction along Garnett. Include "width criteria" in the Construction Standards described in Section I.9.1 per the PUD. Delete the word "streets" in the last sentence in Section I.1 so that the covenant applies only to utility easements.
3. **Sewer:** Where the sanitary sewer lines are located within the reserve areas, easements will be required, unless the reserve area has also been designated as utility easement. Section 1.9, private streets, does not allow for utilities within reserve A. Section 1.10, Reserve E, does not allow for sanitary sewer lines within the reserve. Reserve C appears to have a structure on it and use should be defined in the covenants. A \$700/acre system development fee for the City of Broken Arrow will be assessed during the SSID process.
4. **Water:** Use standard language for the reserves that would allow water main lines to be installed and maintained inside the reserves.
5. **Storm Drainage:** Do not place utility easements within the limits of the stormwater detention facilities. Sections 1.1 and 2.1.2 must be specific about not allowing utilities into the stormwater detention easements in reserves B and E.
6. **Utilities: Telephone, PSO, ONG, Cable:** Additional easements will be needed. Show line crossings.
7. **Other: Fire:** The installation of security gates across a fire apparatus access road will require Fire Chief approval. Where security gates are installed, they shall have an approved means of emergency operation (Knox Box System). The security gates and the emergency operation shall be maintained operational at all times. Correct the description on face of plat. Fill in missing dimensions and correct dimensions as needed. Add to legal description using meets and bounds. Improvements need to be in accordance with County Engineer's projects along Garnett. Sidewalks will be required.

Staff recommends **APPROVAL** of the preliminary subdivision plat subject to the TAC comments and 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.
23. All PUD standards and conditions shall be included in the covenants of the plat and adequate mechanisms established to assure initial and continued compliance with the standards and conditions.

24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the preliminary plat for Ridgecrest, subject to special conditions and standard conditions per staff recommendation.

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**MINOR SUBDIVISION PLATS:**

**Church of the Holy Spirit Anglican –** (9420)

(PD 17) (CD 6)

12121 East 41<sup>st</sup> Street

**STAFF RECOMMENDATION:**

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

The following issues were discussed July 6, 2006 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned AG. The Board of Adjustment approved a Special Exception for the church at their July 25, 2006 meeting.
2. **Streets:** Document existing right-of-way. Sidewalk needs to be five feet wide. Include the south or S. suffix with East 41<sup>st</sup> Street name. Add suffixes to 31<sup>st</sup> and 41<sup>st</sup> labels on location map. Change "E. 129<sup>th</sup> Street" to "129<sup>th</sup> E. Avenue" on the location map.
3. **Sewer:** The existing barn to be used as church appears to encroach into the proposed 17.5-foot utility easement. This will not be allowed to occur. Modify the easement around the building so it will not encroach into the easement.
4. **Water:** No comment.

5. **Storm Drainage:** Change "D/E" to "ODE." Include standard language for Overland Drainage Easements. Roof drains should discharge stormwater runoff to "stormwater detention facility" in Subsection 1.5.1. Modify language in Subsection 1.9 to apply to parking lot stormwater detention facility (Subsection 1.9.D.1, 2 and E are not applicable). Detention is spelled incorrectly in Subsection 1.9.C.
6. **Utilities: PSO, ONG, Telephone, Cable:** Okay.
7. **Other: Fire:** When a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official. Exceptions: For buildings equipped throughout with an approved automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet. Fire Code official shall determine turning radius of a fire apparatus access road. Provide turning radius into the parking lot. Surveyor's information block needs to include C.A. expiration date. Include "OHD" in the legend (OHD MON at the POC).

Staff recommends **APPROVAL** of the Minor Subdivision plat subject to the TAC comments and 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.
23. All PUD standards and conditions shall be included in the covenants of the plat and adequate mechanisms established to assure initial and continued compliance with the standards and conditions.
24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

**TMAPC COMMENTS:**

Ms. Bayles asked whether, when the Planning Commission receives letters like this, and this one was received the day before TAC met, these concerns are forwarded to them in any way. In response, Mrs. Fernandez stated that typically staff either talk with them directly, in Stormwater Management, or sends them emails. Mrs. Fernandez stated that one of the reasons the Planning Commission has a representative present from Public Works at the meetings is because of the typical concerns of stormwater.

**INTERESTED PARTIES:**

**Don Hughes**, 3914 South 122<sup>nd</sup> East Avenue, 74146, stated that he doesn't have a problem with the platting, but he does have problems with stormwater drainage. He has written a letter and has tried to bring this to everyone's attention. He expressed concerns with this problem becoming worse with new development. He commented that he has not received any communication from Stormwater Management regarding his letter and the Board of Adjustment didn't seem to be concerned.

**TMAPC COMMENTS:**

Mr. Ard explained to Mr. Hughes that stormwater management is outside of the Planning Commission's purview and he believes what staff can expand on is that with this platting and development, the intent will be that no more water would run onto his property than does currently. Mr. Ard further explained that the new development should not create any additional water shed.

Mr. Alberty stated that in all development there is a historical situation. As long as the development that is occurring does not make the condition worse, then they are allowed to develop. However, in the development process, if the computations show that the new development is going to increase the runoff, then they have to provide through means on the subject property to correct it. All of these requirements are reviewed during the platting process and it is certainly within the realm of restrictions by the City to cause certain things to occur on the subject property to remedy the increase situation.

Mr. Hughes stated that when a building is built, it will alter the water flow. Mr. Hughes further stated that he doesn't know who to go to or address this to. He indicated that he has sent letters and tried to make phone calls. He understands that the Planning Commission is not stormwater management.

Mr. Ard encouraged Mr. Hughes to call the Stormwater Management Department until he gets his concerns addressed.

Mr. Midget asked staff if the final plat would come back before the Planning Commission. In response, Mr. Alberty stated that it comes back for final approval. Mr. Midget stated that Mr. Hughes's concerns may be addressed by the time the final plat comes back and he encouraged Mr. Hughes to contact the Stormwater Management Department.

Mr. Alberty corrected his statement that this is a minor subdivision and it does not come back before the Planning Commission. This is final approval, but the conditions of this approval have to be met by the applicant.

Ms. Bayles pointed out the TAC comments to Mr. Hughes regarding stormwater runoff. She encouraged Mr. Hughes to speak with Mrs. Fernandez before leaving this afternoon.

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the minor subdivision plat for Church of the Holy Spirit Anglican, subject to special conditions and standard conditions per staff recommendation.

**PRELIMINARY PLAT:**

**Greenhill Distribution Center I – (0417)**

(PD 16) (CD 3)

4111 – 4243 North Garnett Road

**STAFF RECOMMENDATION:**

This plat consists of two lots, one block, on 14.90 acres.

The following issues were discussed July 20, 2006 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned IM. Properly define Reserve A.
2. **Streets:** Dedicate “public street right-of-way” in Section IA. Include standard language for “Limits of Access” in Section 1. ODOT right-of-way may be requested to accommodate ultimate secondary arterial design (five-lane) without encroachment on ODOT. Diagonal dashed line at lower left corner needs identification. Separate instrument number will need to be included on final plat. Fully dimension the utility easement as shown to be dedicated by separate instrument. Section I needs to include public streets.
3. **Sewer:** You will need to include construction of the main along the south property line of Lot 2 with this development. This pipe must be sized to carry the flow from the rest of the basin.
4. **Water:** No comment.
5. **Storm Drainage:** Overland drainage easements will be required to convey drainage from the proposed off-site separate instrument, 20-foot “drainage easement” which should be labeled “overnight drainage easement” and must be filed before platting to convey that overland drainage across the property to the Garnett Road drainage ditch. Add overland drainage easement to the legend. Add standard language for overland drainage easements. Contours are required for approval of this plat.
6. **Utilities: Telephone, PSO, ONG, Cable:** Additional easements will be needed.
7. **Other: Fire:** No comment.

Staff recommends **APPROVAL** of the preliminary subdivision plat (not the minor subdivision requested) subject to the TAC comments and 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.
23. All PUD standards and conditions shall be included in the covenants of the plat and adequate mechanisms established to assure initial and continued compliance with the standards and conditions.
24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

Mrs. Fernandez stated that as of this morning, through communication of all parties, per Mr. Hardt, staff can recommend to require 50 feet of right-of-way for this particular subdivision plat. There were many discussions on this item and there is not need for a five-lane frontage road at this time. Staff will continue to look at sizing for frontage roads in the future. Therefore, staff recommends **APPROVAL** of this preliminary plat with 50-foot or right-of-way being dedicated for the street.

**Mike Marrara**, Harden and Associates, 2001 South 114<sup>th</sup> East Avenue, 74128, stated that he is the surveyor on this plat and would like to clarify one issue. He indicated that he is in agreement with the staff recommendation, but he would like to clarify his understanding on these wastewater comments on sanitary. He understands that he needs to provide easements for the sewer line along the south line, but not the actual construction of that line.

Mrs. Fernandez stated that Mr. Marrara is looking at TAC comments from his own records going through the process.

Ms. Bayles requested that Mrs. Fernandez clarify that for Barbara Huntsinger and the record so that it can be made part of the record. In response, Mrs. Fernandez stated that she would do so.

Mrs. Fernandez clarified the conversation as follows: Mr. Mike Marrara of Harden and Associates addressed the commission to make sure that the sewer was not required to be extended at this time for this plat. Mrs. Fernandez told Mr. Marrara that the original TAC comments were in the agenda. There would be an easement required for the future sewer line extension at this time, and the sewer would need to be constructed during future phases of the development per Development Services.

**TMAPC Action; 6 members present:**

On **MOTION** of **WOFFORD**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the preliminary plat for Greenhill Distribution Center I, subject to special conditions and standard conditions per staff recommendation.

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## **CONTINUED ZONING PUBLIC HEARING:**

**Application No.:** Z-7023

**RS-3 TO RM-2**

**Applicant:** Keli Hearon

(PD-6) (CD-4)

**Location:** 1617 South Lewis (Continued from 7/26/06 meeting.)

### **STAFF RECOMMENDATION:**

**Z-6985 May 2005:** All concurred in a recommendation for denial of a request to rezone property at 1601 South Lewis from RS-3 to OL. Upon appeal of the recommendation for denial, the City Council directed the TMAPC to conduct a special study of the area and to enact a moratorium on further rezoning pending outcome of the study and that of a university graduate school class.

**Z-6490 & Z-6490-A August 1995:** All concurred in an overlay Historic Preservation zoning on property located between East 15<sup>th</sup> Street and East 21<sup>st</sup> Street, South Utica Avenue and South Lewis Avenue.

**BOA-16019 April 28, 1992:** The Board of Adjustment approved a Special Exception to allow a school use in an RS-3 district for the existing Barnard Elementary School on property located at the northwest corner of East 17<sup>th</sup> Place South and South Lewis Avenue (2324 East 17<sup>th</sup> Place).

**BOA-12540 April 21, 1983:** The Board of Adjustment approved a Variance to allow two dwelling units on one lot of record in an RS-3 zoned district (garage apartment) and a Variance of the bulk and area requirements per conditions, on property located at 2207 East 18<sup>th</sup> Street and located southwest of subject property.

**Z-5509 May 1981:** All concurred in approval of a request to rezone a 140' x 212.2'± tract from RS-3 to RM-T on property located south of southeast corner of 16<sup>th</sup> Street and Lewis Avenue and abutting subject property to the south.

**BOA-696 September 10, 1929:** The Board of Adjustments granted a duplex on the subject property.

### **AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately 7250± square feet in size and is located south of the southeast corner East 16<sup>th</sup> Street and South Lewis Avenue. The property is being used as residential multifamily and is zoned RS-3.



**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Lewis Avenue	Urban Arterial	70'	4 lanes

**UTILITIES:** The subject tract has municipal water and sewer.

**SURROUNDING AREA:** The subject tract is abutted on the east by a single-family residence zoned RS-3; on the north by a single-family residence, zoned RS-3; on the south by townhomes, zoned RT; and on the west by single-family residences, zoned RS-3 with an overlay of HP.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 6 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this area low intensity. A recent zoning case (Z-6985) at approximately 16<sup>th</sup> and Lewis requested rezoning to OL from RS-3 and was unanimously recommended for denial to the City Council. Subsequently, the Council instructed the Planning Commission to enact a moratorium on further zoning cases until the recommendations of studies of the area by the TMAPC staff and an OU-Tulsa graduate school class could be reported (results of which are expected within two months). According to the Zoning Matrix, the requested RM-2 is not in accord with the Plan.

**STAFF RECOMMENDATION:**

Based on the Comprehensive Plan and the existing moratorium in the area, staff cannot support the requested rezoning. Therefore, staff recommends **DENIAL** of RM-2 zoning for Z-7023.

**TMAPC COMMENTS:**

Mr. Ard stated that he would like to Planning Commissioners to note the addendum provided today regarding this particular application.

**Applicant's Comments:**

**Keli Hearon**, 7622 South 5<sup>th</sup> Circle, Broken Arrow, Oklahoma 74011, stated that she would like to know the explanation for denial. She further stated that she purchased the home in November 2005 and the garage is dilapidated and falling down. In her opinion the zoning was incorrect because it is a multifamily dwelling that was built that way in 1930 and has been used that way ever since. She indicated that she doesn't want to use the subject property for anything other than what it has been used for since 1930. Her objective is to preserve the house and nothing else.

**TMAPC COMMENTS:**

Ms. Bayles announced that she has had ex parte communication on this application. Ms. Bayles asked Ms. Hearon if the garage apartment was occupied as a rental property at the time of purchase. In response, Ms. Hearon stated that

the renters moved out several months before she purchased it. All three dwellings had been occupied at one time. When she plans to rebuild the garage she has no plans to make it a residence, but a garage with a large attic for storage. Ms. Bayles asked Ms. Hearon if this is her intent today. In response, Ms. Hearon answered affirmatively.

Ms. Bayles asked staff if there is a requirement for the applicant to change the zoning given the fact that there is still a 1929 BOA case in effect so that she can operate and use the home as a duplex. In response, Mr. Alberty stated that this is correct.

Mr. Alberty stated that he might offer an explanation about this because the applicant has been confused and perhaps not a proper explanation has been given. This property falls within the nonconforming section of the Zoning Code, which allows one to continue with a nonconforming use to update and maintain it. The question, he believes, was presented to a staff person when the application was filed was how to get three dwelling units on the subject lot (he understands that the intent has changed now). This is the reason for the RM-2 zoning request because it would take an RM-2 zoning in order to get three dwelling units on the subject property. If the applicant is now stating that she is not going to rebuild the garage apartment then he doesn't see any problem with getting a permit to rebuild the garage since it is not a safe structure. The only issue was with the reestablishment of nonconforming use. If the dwelling was completely demolished then she could not restore it without a variance through the BOA. The duplex is still nonconforming and the applicant can maintain it, but if it were torn down the only thing that could be rebuilt is a single-family dwelling under the current zoning.

Ms. Bayles asked Ms. Hearon if she is satisfied with the response from Mr. Alberty. Ms. Bayles clarified that the applicant can operate and rent the facility as a duplex and rebuild the garage with the exception that it not be an accessory dwelling unit (ADU) or a tenant-occupied facility. In response, Ms. Hearon agreed with Ms. Bayles.

Ms. Hearon stated that she feels that she was misled when she originally applied for the rezoning; however, she doesn't believe it was intentional. She commented that she has spent a lot of money on having this rezoned because she understood that in order to rebuild that garage she would have to rezone it. This is one thing she has regret about and feels that she went to the City and do the right thing, and in the process she was misled. Now she is out \$1200.00. She commented that she regrets it and resents that she spent this money because she feels that she was taken advantage of in that way.

Ms. Bayles asked staff if Ms. Hearon is entitled to make a request for a refund. In response, Mr. Alberty stated that Ms. Hearon is entitled to make a request for a refund. Mr. Alberty further stated that staff will take full responsibility if they had

a part in misleading her and not understanding clearly what she was trying to accomplish. The staff person who took this application obviously thought she was trying to restore and rebuild it. Any out-of-pocket expenses would have to be kept because there was advertising and expenses that were charged. There is an application fee of \$700.00 and if the Planning Commission would like to refund any part of her \$1,135.00 application fee, then the \$700.00 would be something that could be considered.

Mr. Boulden stated that the refund could be acted upon today.

Mr. Midget asked the applicant if she would like to request a refund. In response, Ms. Hearon stated that she would appreciate it.

Mr. Ard asked Ms. Hearon if she is satisfied with where she has to go from here to achieve her goals. In response, Ms. Hearon answered negatively.

Mr. Midget stated that he understands that she will have to get a building permit. In response, Ms. Hearon asked if her property would still be zoned a single-family dwelling.

Mr. Ard explained that the zoning wouldn't change, but she would still be allowed to use it in the manner of which it has been used since 1930 as a duplex. Ms. Hearon stated that she is satisfied with that.

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to recommend **DENIAL** of the RM-2 zoning for Z-7023 per staff recommendation and strike from staff recommendation "the existing moratorium in the area" and to **APPROVE** the refund of \$700.00 for Z-7023.

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**ZONING PUBLIC HEARING**

**Ms. Bayles requested that the chairman restate the opening statement regarding time limitations for the following agenda items.**

Mr. Ard reread the time limits.

Ms. Bayles asked how many interested parties are signed up for Z-7030. In response, Mr. Ard stated that there are 17 interested parties signed up to speak.

**Application No.: Z-7030**

**OL/RS-3 TO CS**

**Applicant:** Peaceful Terwilleger/Barbara VanHanken (PD-6) (CD-9)

**Location:** 2212 East 38<sup>th</sup> Street

**Ms. Bayles announced that she has had ex parte communication on this particular agenda item.**

Mr. Alberty stated that before staff presents the case he would like to make a brief comment with regard to the application filing. The Zoning Code is very specific on who has a right to file an application and one must have an equitable interest or a legal interest in the property. When the application was brought forward, the applicants were allowed to file it on the entire block with the knowledge that if there were property owners within this application who disagreed with the rezoning of their property that the Planning Commission would probably strike those from the application. There are two lots to his knowledge that are not in agreement with this application. He instructed the Planning Commission that those two lots should probably be excluded from any discussion. The lots are Lot 4, Block 8 and Lot 11, Block 7, the east half. The Planning Commission can on its own initiative initiate rezoning, the City Council can request it or a citizen may request the Planning Commission on their application to consider it. The owner of the two properties mentioned has submitted two letters, one is for a continuance of this application; however, if these properties are excluded from discussion and consideration, then the request for a continuance would be withdrawn.

Ms. Bayles asked if the two letters are in the packet that was received today. In response, Ms. Matthews stated that it was something that was submitted by the applicant.

Mr. Ard stated that Lots 4, Block 8 and the east half of Lot 11, Block 7 can't be included in the application unless the property owner asks for them to be or unless the Planning Commission decides to make a zoning change on those lots. Unless there is a Planning Commissioner who would like to propose a zoning change on those two lots, then they should be excluded from consideration of Z-7030. In response, Ms. Matthews agreed with Mr. Ard's understanding of the process.

Mr. Ard asked if there should be a motion as to that particular issue since the application came in as a whole. In response, Ms. Matthews stated that it would probably clarify things and probably Legal would request that this be done.

Ms. Matthews reminded the Planning Commission that the staff recommendation was written with all properties being included. If the two lots are windowed out there would be less than ten acres.

**STAFF RECOMMENDATION:**

**PUD-637 October 2000:** All concurred in approval of a proposed Planned Unit Development on a 10.75± acre tract, for private gated streets, per staff recommendation and modified by the TMAPC regarding a sign and landscaping for property abutting South Atlanta Avenue, located on the northwest corner of East 45<sup>th</sup> Street and South Atlanta.

**Z-6777 September 2000:** All concurred in approval of a request to rezone a 45± acre tract from RS-1/RS-2 to RE for single-family residential development located south of East 32<sup>nd</sup> Street to East 36<sup>th</sup> Street and East of Lewis.

**PUD-615 September 1999:** A request for a PUD to allow for the redevelopment of a lot located on the northeast corner of East 34<sup>th</sup> Street South and South Lewis Avenue and included within the subject tract, for a three-lot single-family development with a private street was denied.

**PUD-589 June 1998:** All concurred in approval of a request for the development of a 2.9-acre tract located on the north side of East 41<sup>st</sup> Street, approximately 1,500 feet west of South Lewis Avenue. The property was zoned RS-1 and the requested PUD was approved to develop the tract into a six lot, single-family, gated community.

**PUD-416 June 1986:** All concurred in approval of a request to rezone a 3.6-acre tract located west of the northwest corner of East 41<sup>st</sup> Street and South Lewis Avenue from RS-1 to PUD for a seven lot, single-family, private street development.

**PUD-546 June 1996:** A request for a Planned Unit Development for a five-lot single-family development with a private street on a 2.3 acre tract located north of the northeast corner of East 37<sup>th</sup> Street South and South Lewis was approved per conditions by staff and TMAPC.

**PUD-517 September 1994:** All concurred in approval of a request to rezone a 2.5 acre tract located on the northeast corner of East 38<sup>th</sup> Street and South Atlanta Place from RS-2 to PUD to allow for a five-lot single-family development.

**Z-6449 October 1994:** All concurred in approval of a request to rezone a 56-acre area bounded on the north by the lots fronting East 37<sup>th</sup> Street South and south to the lots fronting East 38<sup>th</sup> Street South and between South Atlanta Place east to South Delaware Avenue from RS-1 and RS-2 to RE.

**PUD-493 October 1992:** All concurred in approval of a request for a Planned Unit Development to allow the development of eight single-family homes with private streets on a seven-acre tract located west of the northwest corner of East 41<sup>st</sup> Street and South Lewis Avenue.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately ten and one-half acres in size and is located north and south of East 38<sup>th</sup> Street South, west of Lewis Avenue. The property is largely single-family residential in use and is zoned RS-2.

**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Lewis Avenue	Urban arterial	70'	4
East 38 <sup>th</sup> Street South	N/A	N/A	2

**UTILITIES:** The subject tract has municipal water and sewer available.

**SURROUNDING AREA:** The subject tract is abutted on the east by single family residential development, zoned RS-1; on the north by single family residential development, zoned RS-2; on the south by single family residential development, zoned RS-2 and on the west by single family residential development, zoned RS-2.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 6 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this area as Low Intensity – Residential land use. The requested rezoning is in accord with the District Plan map.

**STAFF RECOMMENDATION:**

Based on the Zoning Matrix, District Plan map and surrounding development, staff supports the requested rezoning and recommends **APPROVAL** of RS-1 zoning for Z-7030.

**TMAPC COMMENTS:**

Mr. Ard asked staff if they are recommending approval of RS-1 zoning excluding Lot 4, Block 8 and the east half of Lot 11, Block 7. In response, Ms. Matthews answered affirmatively.

Ms. Matthews pointed out to the Planning Commission that there are some lots that do not conform to frontage requirements for RS-1. Apparently, these property owners are supportive of the down-zoning and do not mind that they would be a nonconforming use, which is what has been conveyed to staff.

Mr. Ard asked Ms. Matthews to explain what nonconforming would mean in the future to those lots. In response, Ms. Matthews stated that if the property owners wanted to rebuild for any reason (example: the house catches on fire or a tornado hits and the house is demolished substantially), then they would have to rebuild to the RS-1 standards, which would be difficult in some of these cases. They may have to go to the BOA to obtain a variance or buy an adjacent lot and combine them.

Mr. Boulden volunteered to keep time for the speakers.

**Applicant's Comments:**

**Steve Novick**, 1717 South Cheyenne Avenue, Tulsa, OK 74119, stated that he is the legal representative for the applicant. He wanted to convey to the Planning Commission his request that any consideration of a motion as to whether or not the Planning Commission would join in this application so that these properties could be included wait until the end of the presentation so that all evidence has been heard.

Mr. Novick presented his applicant's position regarding the down-zoning. He indicated that the neighborhood is unanimously seeking the down-zoning. The primary purpose for this request is to preserve the character, style and scale of the subject neighborhood, specifically to prevent nonconforming lot-splits that would destroy the estate character of the neighborhood. Mr. Novick cited the history of the zoning and the houses in the subject neighborhood. He cited the few exceptions where there have been lots divided within the neighborhood and a couple of the existing lots were not large to begin with.

**Ms. Bayles out at 2:42 p.m.**

Mr. Boulden interrupted Mr. Novick due to lack of quorum. He explained that if the Planning Commissioners are within hearing distance the meeting shall continue.

**Ms. Bayles in at 2:43 p.m.**

Mr. Novick stated that in his view that the RS-2 zoning that was originally assigned to the subject properties was somewhat arbitrary and should be changed to RS-1 to reflect the long-term development and maintenance of these properties. He commented that the Planning Commission can anticipate that there will be additional applications from the residents on 37<sup>th</sup> Street, 39<sup>th</sup> Street and possibly in the Highland Park Estate addition requesting the same remedy.

Mr. Novick pointed out that staff has informed the Planning Commission that there is an owner who owns two properties and he is a non-resident land speculator. The owner has purchased two properties within the subject area and scraped the homes off of the lots. Now he would like to build new homes, which

the residents fully endorse. Mr. Novick stated that the two lots in question were purchased after the rezoning case had been filed. He explained that the owner of the two properties has a lot-split pending on Lot 4, Block 8. The applicant for the rezoning case didn't know who the purchaser of the two properties was at the time of the filing of this application or that a lot-split was intended. The whole point behind today's application is to stop the very action that this land speculator now wants to undertake.

Mr. Novick stated that he wanted to make two points about the inclusion of the two properties that are against the rezoning. First he would ask that the Planning Commission join with him in rezoning the contiguous tract of land from RS-2 to RS-1, notwithstanding the objection of the nonresident prospective builder. His client claims that they do own an equitable interest in the property to the extent that there are restrictive covenants that limit these lots to one single-family dwelling. He indicated that a copy of the covenants was placed into the file when this application was filed. Mr. Novick commented that his clients do have an equitable interest in the two properties, although it is not a legal interest. He believes that the people who were the signatories to those restrictive covenants have an equitable interest in ensuring that there not being more than one single-family dwelling on Lot 4, Block 8. Mr. Novick stated that it is appropriate to review some similar zoning cases that involved this very issue. Mr. Novick cited the previous zoning cases (Exhibit A-3) that requested down-zoning with some property owners opposing the rezoning. He believes that the previous zoning cases shows a precedent being set for approving a zoning change over the objection of resident homeowners. The standing of a resident homeowner is going to be superior to that of a builder who has purchased the property and speculating that they can redevelop it and make money on the deal.

Mr. Ard asked Mr. Novick to cite the first case again. In response, Mr. Novick stated that the first case was Z-6499, Philbrook and Rockbridge Park neighborhoods.

Mr. Midget asked Mr. Novick if he is not concerned about the one lot in Block 7. Mr. Novick stated that he doesn't want to place any barriers on the builder to build a home on the east half of Lot 11, Block 7 by changing it to RS-1. He does object to the exclusion of Lot 4, Block 8 because it could be split. Mr. Novick further stated that he understands that the Planning Commission prefers contiguous areas for rezoning, but he doesn't want to place any barriers on the building for Lot 11, Block 7. He hopes that he is able to build a nice home, which was once a full lot and is now a half lot. Mr. Midget asked Mr. Novick if the restrictive covenants cover Block 7 and if so, wouldn't that have already violated the restrictive covenants regarding lot-splits. Mr. Novick stated that the signatories to those covenants were not everybody on this street and that particular lot was not a signature. The signature on Lot 4, Block 8 was a signatory to those covenants. Mr. Novick reiterated that he does not object to the exclusion of the property on Block 7 as RS-1, but he does for the exclusion of



property on Block 8. He believes that the property in Block 7 was split in the 1950's.

Mr. Ard asked Mr. Novick if he or any of his applicants were concerned about creating nonconforming uses on the lots that would be changed to RS-1 and potentially setting up some roadblocks for themselves in the future should they decide to make changes in their property. In response, Mr. Novick stated that this issue has been fully discussed with those homeowners and they have elected to proceed. Mr. Novick further stated that it would be a very unusual set of circumstances that would place a roadblock in their way to doing anything with those properties zoned RS-1. In response to Mr. Novick's statements, Mr. Ard stated that the neighbors may find themselves in front of the Board of Adjustment for a special exception, on occasion, whereas if they had retained their RS-2 zoning they wouldn't have a need for that. Mr. Novick assured the Planning Commission that these issues were discussed and the residents agreed to move forward.

Mr. Cantees asked Mr. Novick what the dates of the covenants were that he had referred to. In response, Mr. Novick stated that the covenants were dated 1959.

**INTERESTED PARTIES:**

**Jeffrey Levinson**, 9308 South Toledo Avenue, Tulsa, Oklahoma 74136, representing Rockford Road, L.L.C., stated that there are two representatives present today. Mr. Levinson explained that he was the attorney for Oakview Estates when it was applied for as a PUD with five homes. The neighborhood then filed for a rezoning application, but there are million-dollar houses sitting on the PUD property.

Mr. Levinson stated that Heath Hardcastle has requested a continuance, but he would drop the request if the two properties owned by Rockford Road are removed from the rezoning application. He explained that Rockford Road does not consent to the rezoning and there is a continuance still on the agenda that has not been addressed. Lot 4, Block 8 does have a lot-split pending and will be approved with RS-2 zoning, but can't with the RS-1 zoning. It is his opinion that procedurally the continuance should be addressed. Mr. Levinson explained that it is very clear that this application is done without the authority of the owners of the two parcels in question. He requested that the Planning Commission vote on removing the two lots from the application and then the continuance goes away if they are removed. Rockford Road, LLC owns the two lots in question and no one else has legal title to them. He commented that if someone tries to enforce the covenants that were mentioned it will be difficult and that is not within the Planning Commission's purview.

Mr. Boulden stated that Mr. Levinson's point is well taken. The Planning Commission is in the posture of having to have the hearing first then deciding if they would like to be an applicant for rezoning. This is not the proper way to

handle it. Procedurally, Mr. Levinson's point is well taken that the Planning Commission should determine if the two lots are in our out from the Planning Commission's perspective.

Mr. Ard stated that Mr. Novick cited several cases, and they are listed in the relevant zoning history, where large areas were down-zoned despite the objection of particular lot owners in those areas. In this case, since there is a lot owner who does not want to be included in this application, it falls under different guidelines.

Mr. Boulden stated that the Planning Commission, and more appropriately, the City Council, will be acting in the public's interest in rezoning these properties. Certainly, when properties are annexed into the City of Tulsa they are automatically given a certain designation and large areas may be rezoned by the Council, particularly after review by the Planning Commission, without the owner's applying for that. The property can be rezoned without the owner's consent if the Planning Commission and the City Council want to do that as a matter of public policy. Owners of other property in the subject area do not have any interest in these lots and cannot control another property owner's fate.

Ms. Bayles stated that as usual Mr. Boulden sometimes she is unable to follow his logic. Ms. Bayles addressed staff by stating that she doesn't see the application for the Swan Lake down-zoning in the relevant history. There was a similar issue with a down-zoning request based on what was perceived to be an imposition at the time the zoning had occurred and there was one property owner who was developing a piece of property and objected to the down-zoning. At that point the Planning Commission did exactly what the developer of the property asked and excluded those properties from the beginning and moved forward on the remainder properties. Ms. Matthews stated that she recalls the same situation as Ms. Bayles just described. Ms. Matthews further stated that when Riverview rezoned, some of the applicants wanted to be included who didn't meet the requirements and others who met the requirements didn't want to be included. The Planning Commission chose some of each where it made the most sense to do the down-zoning and not leave what they called "Swiss cheese". The Planning Commission tried to stay with contiguous pieces of property. The same thing happened in Bolewood Acres. Ms. Matthews stated that there have been about five or six neighborhoods where the Planning Commission has been the applicant to down-zone. This case is a little different because this is the neighborhood coming in to be rezoned.

Mr. Ard stated that the Planning Commission should consider whether or not the two lots should be included in the application before moving forward.

Mr. Midget stated that he understands the desire to have those two lots included in this application, but at this point he would be somewhat reluctant to include

them. He would exclude the two lots from the application and then move forward.

Mr. Wofford concurred with Mr. Midget. He stated that one of the things the Planning Commission hears repeatedly from the neighborhood groups and developers is a stable, predictable, certain planning environment. In this case he has no reason to believe that the individuals who purchased Lot 4 and half of Lot 11 acted in bad faith. He understands the neighborhood's position, but this unfortunately didn't happen before the other property owner purchased the two lots. He would feel uncomfortable with Lot 4 and half of Lot 11 being rezoned at this point.

Mr. Ard agreed with Mr. Wofford. He understands the neighborhood wanting to take care of its characteristics and the Planning Commission may very well see an application for all of the property around it wishing to down-zon, but at this point most are already zoned RS-2. He is concerned about an inverse condemnation situation, which effectively reduces a property owner's rights by down-zoning his property when he doesn't want to be involved with that process.

Ms. Bayles asked if the lady wishing to be recognized is signed up to speak. In response, she indicated that she was. Ms. Bayles thanked her and stated that the Planning Commission would hear her when she is called up to speak.

Ms. Bayles concurred with Mr. Wofford and in particular with the report that she brought in today speaking to compatibility in mature neighborhoods. One of the things in the recommendation that came out of the Lewis study is that we look at new zoning categories with design guidelines. What the Planning Commission is hearing is that we are dealing with issues of setbacks, building heights, and homes that are out of scale to their surrounding properties. What the Planning Commission will have to do within this environment is weigh the desire for density against these compatibility standards and she believes that the Planning Commission is moving in that direction. Ms. Bayles requested that Mr. Alberty bring back lots of pictures from his Texas trip. Ms. Bayles stated that she would go for her advocacy for density and compatibility standards and agree with Mr. Midget, Mr. Wofford and Mr. Ard that these two properties be removed from the application and move forward today.

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **REMOVING** Lot 4, Block 8 and the east half of Lot 11, Block 7 from zoning application Z-7030.

Mr. Ard stated that the Planning Commission will now move forward with interested parties regarding the zoning application for Z-7030.

Mr. Ard recognized Mr. Novick.

Mr. Novick asked, at this point with the removal of these two properties, if the interested parties have any objection to the requested rezoning, and if they don't then perhaps it is unnecessary to go through this process.

Mr. Ard stated that the Planning Commission has a process and interested parties need to be heard. If they choose not to speak because that issue was their issue, then we can go through it and have our review and vote on the issue. Mr. Ard indicated that the Planning Commission would be happy to hear from anyone wishing to speak to this application item.

Mr. Bayles stated that what she understood was that Mr. Novick is willing to expedite the process and the Chairman just called Heath Hardcastle, who with relationship to the application, is representing the owners of the lots in question.

Mr. Ard stated that Mr. Hardcastle could choose to come forward or not to speak because he doesn't need to.

Mr. Novick stated that Mr. Hardcastle has the right to speak.

**INTERESTED PARTIES:**

**Heath Hardcastle**, 2600 Bank of America Center, 74119, stated that he withdraws the request for a continuance with the exclusion of the two properties that his clients own from the rezoning application.

**Barbara VanHanken**, 2212 East 38<sup>th</sup> Street, 74105, President of the Peaceful Terwilliger HOA, stated that she is in support of the rezoning. She described the setbacks and homes that have been designed by nationally known architects.

Ms. Bayles asked Ms. VanHanken what degree of significance the subject area has besides the four homes that she cited as the reason for an historic overlay. Typically it requires something more than four homes designed by nationally known architects. Ms. VanHanken stated that she has discussed this with Amanda DeCort and she has gone before the commission. Ms. VanHanken further stated that she believes that the nature of the setbacks and the history of the neighborhood is why they were encouraged. Ms. VanHanken commented that that she couldn't speak for them because she doesn't know why they encouraged the neighborhood, but they did because they felt this was a neighborhood that was worth preserving as much as possible.

Ms. Bayles asked if there was any discussion about preservation easements or conservation easements on these homes in particular. In response, Ms. VanHanken stated that it was on the whole neighborhood in particular. Ms. Bayles asked if any particular home was acknowledged regarding easements. Ms. VanHanken stated that they were impressed that there was a William Caudill

home in the subject area. There are Charles Dilbeck homes in the subject area as well and Mr. Walton is welcome to come to the neighborhood and see these homes.

Ms. Bayles stated that she did have a conversation with Mr. Walton, and in this particular case his support was for the owners of the two properties in question and that they be removed from the zoning application. Ms. VanHanken stated that there is nothing to preserve on the two lots in question because they are two blank lots. Ms. Bayles stated that this is a statement for record then.

**INTERESTED PARTIES:**

**Virginia Mudd**, 2221 East 38<sup>th</sup> Street, 74105, stated that she supports the RS-1 zoning request.

**Ms. Montgomery**, 2254 East 38<sup>th</sup> Street, 74105, stated that she supports the RS-1 zoning request. She indicated that after the neighborhood applied for the rezoning to RS-1 the developer purchased the property adjacent to her and filed for a lot-split and that is the reason for applying for the RS-1 zoning in the first place.

**Garrett Waller**, 2226 East 38<sup>th</sup> Street, 74105, stated that he is present to earn credit toward his citizenship in the community merit badge, which is necessary for his Eagle Scout. Mr. Waller indicated that he is representing his father since he is unable to be present. Mr. Waller read his father's comments and indicated that he is in full agreement with the comments (Exhibit A-1). Mr. Waller requested that the Planning Commission approve the RS-1 zoning.

Mr. Ard thanked Mr. Waller for coming and wished him good luck with his Eagle Scout and for taking part in the process.

**Patty Southmayd**, 2251 East 38<sup>th</sup> Street, 74105, submitted a photograph of her home (Exhibit A-2) and stated that when the neighborhood filed for the rezoning they were unaware that Mr. Enterline had purchased the property on which he is requesting a lot-split. She indicated that Mr. Enterline is not intending to live on the street, but merely using it as a way to make money. It is very unfortunate that no one is standing up for midtown neighborhoods where there are lot-splits being requested and it will have to be dragged into civil court. She doesn't believe that it is ethically right that Mr. Enterline is able to come into her neighborhood and do whatever he wants. It is not about money, but it is about the City of Tulsa and she is a taxpayer. She purchased her home on this street because of its beauty and the size of the lots, which she doubts Mr. Enterline has any intention of giving that any consideration.

Mr. Midget stated that he can appreciate Ms. Southmayd's concern. The zoning as it exists today allows Mr. Enterline to do what he has requested. The only thing the Planning Commission has done is exclude his property from the

rezoning and move forward on the neighborhood's request to down-zone their property. In response, Ms. Southmayd stated that she understands that, but it was the intention of her down-zoning request to include Mr. Enterline's property, which the owner he purchased it from was in Houston, Texas. It was the neighborhood's intention to include that property to avoid lot-splits. The neighborhood applied for the zoning application on June 20, 2006 and Mr. Enterline closed on the property July 7, 2006 and he did exactly what the neighborhood was afraid would happen. He filed for the lot-split application and he wants to leave his options open, which means he wants to make as much money as he can. He doesn't care what happens to the neighborhood and most of the neighbors have lived there ten to 20 years.

Mr. Wofford stated that if the neighborhood had done this a year ago, then this wouldn't be a problem and it is under the current zoning, which is what the Planning Commission has to enforce. Mr. Wofford further stated that he loves the subject area and the center of Tulsa. The Planning Commission has issues that they need to address quickly. Ms. Southmayd cut Mr. Wofford off by stating that it is easy for him to say because addressing these issues will be down the road and she is talking about right now. Mr. Wofford stated that the Planning Commission has a legal obligation to look at the law the way it is and not the way we wish it to be. Ms. Southmayd asked Mr. Wofford what the difference is between the fact that the neighborhood made this application a month before he purchased the property versus a year before he purchased the property. She further stated that the fact is that the neighborhood made the application. In response, Mr. Wofford stated that if the down-zoning had been done prior to his closing on July 7<sup>th</sup>, the property would have been RS-1 rather than RS-2. Ms. Southmayd stated that this is an inconvenience for Mr. Enterline and she understands that or he would not be here trying to get his lot-split. Mr. Wofford reiterated that this is the "fact" situation that the Planning Commission had to deal with. They did not have the luxury of having an RS-1 and then deciding, but rather dealing with property that is zoned RS-2. Ms. Southmayd stated that she understands that, but what she also wants the Planning Commission to understand, and she wants to be on the record, is that Mr. Enterline purchased this property after the zoning application was filed and he is not a long-term resident of the neighborhood. He has no intention of residing in the subject neighborhood. Ms. Southmayd further stated that the fact that when precedents are set with other cases, then those cases could not have been considered before the Planning Commission exempted Mr. Enterline's property from the zoning application. Mr. Wofford asked Ms. Southmayd if she knows the date that Mr. Enterline entered a contract to purchase the property. In response, Ms. Southmayd stated July 7<sup>th</sup>. Mr. Wofford questioned if that was the closing date because it may have closed on July 7<sup>th</sup>, but the contract was probably well before that. Ms. Southmayd agreed, but insisted that she didn't have that information. Mr. Wofford thought that other neighbors had indicated that the zoning application came forward because Mr. Enterline purchased the land. In response, Ms. Southmayd answered negatively. Ms. Southmayd stated that the

reason for applying for RS-1 was because the neighborhood was concerned knowing that the house that Mr. Enterline purchased was being torn down and developers usually want to split the lots and build two houses. Ms. Southmayd stated that Mr. Enterline walks in to the meeting today and acts like he is a certified long-term resident with property rights on her street when he is a business man. In response, Mr. Wofford stated that many people are business men and women. Ms. Southmayd stated that she understands that, but there are only a certain number of people who live on her street.

Mr. Ard recognized Mrs. Charles Oliphant.

**Arline B. Oliphant**, 2260 East 38<sup>th</sup> Street, 74105, stated that she has lived on this street for 57 years. She knows about land speculators and how they develop. Ms. Oliphant indicated that she worked to collect names for the petition and supports the RS-1 zoning requests. She indicated that there has been a covenant within the neighborhood, but she has been informed that it is no longer enforced.

Mr. Ard stated that he can speak for everyone on the Planning Commission that they love Tulsa too and are honored to serve it. He indicated that he lives in midtown and there have been lot-splits on his street, so he understands the frustration, but the reality is that in our current zoning situation the Planning Commission has to deal with the rules as they are written. Mr. Ard requested that the speakers keep their comments on the rezoning because what the Planning Commission is dealing with now is the application for the rezoning of the remainder of the lots. The exclusion of the other two lots are now behind us and he would like to keep the comments more to the issue at hand, which is the rezoning of the remaining lots.

**Louise B. Reid**, 2235 East 38<sup>th</sup> Street, 74105, stated that she is east of Lot 7 and directly across the street from Lot 4. She indicated that she was unaware that zoning had been changed many years ago and thought she was RS-1. She commented that she was never notified that she was being zoned RS-2 many years ago or she would have applied sooner for the RS-1 zoning. She requested that Mr. Enterline to preserve the trees that are directly across the street from her.

**Melissa Waller**, 2226 East 38<sup>th</sup> Street, 74015, stated that she is adjacent to the property excluded. Ms. Waller indicated that she supports RS-1 zoning. She commented that the neighbors have followed all of the instructions given to them by INCOG in order to change the zoning, which has been a lot of work.

**Herb Beattie**, 3474 South Zunis Avenue, 74105, Co-President of the Brookside Neighborhood Association, cited the boundary of the Brookside Neighborhood Association and stated that Peaceful Terwilliger is part of the groups that Brookside represents. He commented that unanimously the Brookside

Neighborhood Association supports the RS-1 zoning request. The other thought he would like to leave with the Planning Commission is that he would speculate that the majority of people who lives on 38<sup>th</sup> Street one year ago had no idea that they would be faced with this threat. This is happening all over town and he would encourage the Planning Commission or whoever to impose a moratorium on lot-splits or give some information to the citizens in town.

Mr. Wofford asked Mr. Beattie if he knows of any other neighborhoods that are planning to seek this kind of protection. In response, Mr. Beattie stated that he doesn't know of any at this moment. Mr. Beattie further stated that this is something that he will discuss at the Brookside Neighborhood Association meeting this Monday and try to figure out what other of the people that he represent are subject to lot-splits. There is a potential for loss of property values with what the Planning Commission has done today.

Mr. Wofford stated that the purpose of his question was to suggest that where appropriate, this is something that needs to be looked at and quickly. Until the Planning Commission has new zoning classes they have very little ability to control this.

Ms. Bayles asked Mr. Beattie if he has read the Lewis study that was released in the last two weeks. In response, Mr. Beattie answered negatively. Ms. Bayles encouraged him to visit the TMAPC website and review the study. Ms. Bayles stated that the last two semesters that she spent in the Midtown Redux were preceded by the Lewis study that was held off with a moratorium within the neighborhood. The outcome came about with long-term recommendations that the Planning Commission hopes to expedite and it is coming before the City Council. Clearly the only opportunity that we have to address the issue of what is built in place of older homes are through issues relating to compatibility and that is the issue that everyone is trying to hammer home. Nothing will ever remain static and as a collective body she believes there is a responsibility to proceed in a very deliberate fashion.

Ms. Cantees stated that Mr. Beattie might want to suggest to some of the HOAs that they do some form of an amendment to the covenants regarding amount of open space and the proportion of the house being built.

**Brent Laughlin**, 2271 East 38<sup>th</sup> Street, 74014, stated that in 1990, the Southmayd's home was under contract from a developer to purchase and split it into two lots. The restrictive covenant was brought forward, which prevented the lot-split and the house was sold as a single dwelling to the Southmayds. He asked why the covenants are in effect and why they haven't been brought forward to prevent this whole issue. He didn't think that the rezoning would be necessary if the covenants covered this issue.



**Mona Miller**, 7211 South Gary Place, 74136, board member of Homeowners for Fair Zoning, stated that she supports the neighbors' petition for RS-1 zoning. Progress should be the benefit to many people and to a detriment of a few and not a detriment to many people and to the benefit of a few.

**Applicant's Rebuttal:**

**Steve Novick**, 1717 South Cheyenne Avenue, 74119, stated that he would like to do a little bit of housekeeping and add to the record as exhibits the materials from the three zoning cases (Exhibit A-3) and a letter of support from a neighbor who could not be present (Exhibit A-1). Mr. Novick submitted photographs of homes within the neighborhood (Exhibit A-2) that show that new development can be done and fit in with the existing homes without creating lot-splits.

Mr. Novick stated that based on the comments that he has heard, he assumes that the proposed lot-split application is a done deal. He would like to note to the Planning Commission that he believes that the lot-split application is defective and when that matter comes up for consideration he can expect to hear from him as to why that lot-split is defective.

Mr. Novick concluded that what the Planning Commission has heard today is truly a microcosm of a clash that is going on and escalating, particularly in our historic midtown neighborhoods. He understands the comments of Ms. Bayles and Mr. Wofford and others who have made comments that this is in process. The problem is that there are people who are going to be hurt now, like his clients, who can't wait for a process that is so long overdue that it is years in the coming. What we have now is at best a weak patchwork of protections for neighborhoods. His clients came in and requested the zoning be changed from RS-2 to RS-1 and that is the best they had available to them. Timing was critical and they thought they were protected by the covenants. They didn't know that they needed to do this. Something needs to be done to simplify this so that ordinary citizens can understand it. He suggested that there are people who need protection now who either don't have the wherewithal, knowledge or the money that it takes to file one of these zoning change applications. This is the Planning Commission and its sole responsibility is not simply to enforce the zoning laws as they exist because the Planning Commission has the power and the authority to do planning and he calls upon the Planning Commission now in its planning capacity to impose a moratorium on lot-splits in the City of Tulsa until the update of the Comprehensive Plan can be put in place so that neighborhoods can be protected from land speculation. He believes that the buildings that will be placed on these lots will not happen now and the homes offered for sale on the open market. He further believes that these lots could be empty for up to one year.

**TMAPC COMMENTS:**

Mr. Wofford stated that he agrees with Mr. Novick that what we have is a situation where in many areas with larger homes who are having lot-splits with

smaller or more massive homes built on them and in areas where there are small homes we seem to have large homes being put on those lots in these infill situations. He agrees that citizens often don't know what they are zoned and not aware that they have potential problems. Mr. Wofford clarified that his comments earlier about doing this a year ago were sympathetic in a sense that he wished he wasn't having to face this today under these conditions. He wished the down-zoning had been done before there was any kind of an issue. It is appropriate to change the zoning from RS-2 to RS-1. Until the Planning Commission has the capability to protect some of these areas from change that isn't proportionate and isn't appropriate nor in keeping with neighborhoods, there will be these types of cases.

Mr. Midget stated that he would support this application. He further stated that when the Planning Commission has had similar situations in similar neighborhoods they have encouraged neighborhoods to look at their area and to make a decision to down-zone in order to protect it.

**TMAPC Action; 6 members present:**

On **MOTION** of **WOFFORD**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the RS-1 zoning for Z-7030 per staff recommendation.

**Legal Description for Z-7030:**

Lots 1, 2, 3, 5, 6, 7, 8, of Block 8 and Lots 7, 8, 9, west 1/2 of Lot 11, west 11.5 of Lot 12 and pt of Lot 13 beg. sec TH West 85.85 N.L.E. 83.8 to NEC S. 175 to BEGINNING, and W. 34 Lpt 13 Block 7 and 50 of VAC 100 Terwilleger of Block 7 of Lewis Road Estates. Lot 7 and S 18 of Lot 8, Block 10 and 1/2 VAC Terwilleger and Lots 6 and 7 of Block 10 of Highland Park Estates, Lot 6, Block 10 Highland Park Estates and all Lot 1 & W 25 Lot 2 & E/2 Terwilleger Boulevard Adjacent Thereof Lot 1, Block 8 & W/2 Terwilleger Boulevard Adjacent Lot 6, Block 10 Highland Park Estate. Also included E 125 Lot 2, N 39 Lot 13, Lot 3 & 35 Lot 12, Lots 4, 5, 6, and 7 Block 8 Lewis Road Estates, the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof, **From RS-2 (Residential Single Family Medium Density District) To RS-1 (Residential Single Family Low Density District).**

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**Application No.: Z-7032**

**OL/RS-3 to CS**

**Applicant:** Charles E. Norman

(PD-26) (CD-8)

**Location:** West side of South Memorial Drive at East 106<sup>th</sup> Street

**STAFF RECOMMENDATION:**

**Z-6952/PUD-707 October 2004:** All concurred in approving a request to rezone a 37.25+ acre tract from AG to RS-3/RD/OL and a Planned Unit Development overlay for a mixed use development with office park, single-family residential and duplex uses per staff recommendation.

**Z-6922/PUD-370-B February 2004:** All concurred in approving a request to rezone a 9.87+ acre tract from RM-1/RS-2/PUD to CS/OL/RM-1/RS-2/PUD and a Major Amendment to PUD with modifications made by the TMAPC pertaining to an 8 foot privacy fence on western boundary, restricting windows on the 2<sup>nd</sup> story of west walls and office buildings being residential in character.

**Z-6810/PUD-646 July 2001:** A request to rezone a 35+ acre tract located north and east of the northeast corner of East 111<sup>th</sup> Street South and South Sheridan Road from AG to RS-2 and PUD. The request for RS-2 zoning was denied and RE zoning was recommended with a maximum of 20 lots if the development provided only one access point. The applicant revised the request by including an additional 4.1 acres of land and TMAPC and City Council approved RS-1 zoning and approved the PUD for a maximum of 30 lots with two points of access being provided.

**PUD-570-A April 2001:** All concurred in approval of a Major Amendment to a PUD on a .74+ acre tract to add Use Unit 18 to permitted uses, and change the parking setback from west boundary on property located north of the northwest corner of East 111<sup>th</sup> Street and South Memorial.

**Z-6795/PUD-578-A January 2001:** All concurred in approval of a request to rezone 4.5 acres of the existing PUD-578 from RS-3, RM-1 and OL to CS and a Major Amendment to the PUD to consolidate the original development areas A and B, to delete the previously approved residential uses, and to establish new standards for commercial uses. The property is located in the northwest corner of East 111<sup>th</sup> Street South and South Memorial Drive.

**Z-6722/PUD-619 December 2000:** A request to rezone a 34+ acre tract from AG to CS/OL/RS-3 with a Planned Unit Development overlay zoning for a commercial, office and residential development. The TMAPC recommended approval per staff recommendation and the City Council concurred in approval subject to modifications of the development standards.

**PUD-578 February 1998:** A request for a Planned Unit Development on a 35.7± acre tract, located at the northwest corner of E. 111<sup>th</sup> Street S. and S. Memorial Drive and abutting the subject tract on the south, to allow for a commercial and mixed dwelling type residential development was approved, subject to conditions.

**Z-6604/PUD-570 February 1998:** All concurred in approval of a request to rezone a 2.7± acre tract located north of the northwest corner of E. 111<sup>th</sup> Street S. and S. Memorial and south of the subject tract from OL to CS with a PUD for a four lot commercial development.

**PUD-370-A July 1997:** All concurred in approval of a major amendment to allow a telecommunication tower on the property abutting the subject tract on the north and to the west of the existing church that is located on the property.

**PUD-378-A January 1997:** A request for a major amendment to change the permitted uses in development areas, in PUD-378 originally approved for an office and commercial development, from greenbelt and offices uses to a single-family gated, residential development. The property is located on the southwest corner of East 101<sup>st</sup> Street South and South Memorial Drive.

**PUD-485-A February 1995:** All concurred in approval of a major amendment to PUD-485 to increase the permitted floor area to approximately 30% from 30,000 square feet to 38,859 square feet to accommodate a basketball and batting area and a mezzanine. The property is abutting the subject tract on the southeast east.

**Z-6350/PUD-485 March 1992.** All concurred in approval of a request to rezone a 2.5 acre tract located abutting the subject property on the southeast east, from AG to CS to permit an indoor and outdoor athletic training center.

**BOA-14410 April 1987:** The Board of Adjustment approved, per conditions, a special exception to permit a golf driving range and related activities, in an AG zoned district on the subject tract.

**Z-5973/PUD-370 September 1984:** A request was made to rezone 10 acres abutting the subject tract on the north from AG to RM-1/PUD for a church and multifamily uses. All concurred in approval of RM-1 zoning on the east 350' and RS-2 on the balance of the tract and the Planned Unit Development.

#### **AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately 7.5± acres in size and is located on the west side of Memorial Drive at 106<sup>th</sup> Street. The property contains a golf driving range and is zoned OL/RS-3/PUD.

**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Memorial Drive	Primary arterial	120'	4 lanes

**UTILITIES:** The subject tract has municipal water and sewer available.

**SURROUNDING AREA:** The subject tract is abutted on the east by South Memorial Drive, which is the corporate boundary for the City of Bixby and the City of Tulsa, adjacent to which are commercial uses zoned CS and CG; on the north by an office park development zoned CS, OL, RM-1 and RS-2, all of which are in PUD 370-A and PUD 370-B; on the west by two residential uses on a large acreage zoned AG; and on the south by indoor recreation (Champion's) and commercial uses, including Wal-Mart SuperCenter, on a combination of parcels zoned CS, RM-1 and RS-3 contained within three Planned Unit Developments: PUD 485-A, PUD 570/ PUD 570-A and PUD 578-A.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 26 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the east 400' extending along South Memorial Drive right-of-way, as Medium Intensity Linear Development – No Specific Land Use. The balance of the property is designated as Low Intensity – No Specific Land Use. According to the Zoning Matrix, the requested CS is in accord with the Plan as regards Medium Intensity Linear Development – No Specific Land Use and is **not** in accord with the Low Intensity – No Specific Land Use designation.

**STAFF RECOMMENDATION:**

This intersection does not qualify as a node and therefore does not meet the Development Guidelines criteria. The only medium intensity land use according to the Plan Map is in the linear development area. If the accompanying PUD allocates the requested floor area appropriately, staff can support the request. Otherwise, staff cannot support the requested CS zoning and recommends **DENIAL** of Z-7032.

Mr. Norman asked if the Planning Commission wanted to hear the zoning and PUD case together.

In response to Mr. Ard, Ms. Matthews stated that it would be cleaner to look at them separately.

Mr. Norman stated that he prefers to present both cases together because they are intertwined and the project as recommended cannot occur without the rezoning that has been requested. Customarily, it has been the policy of the Planning Commission to hear the rezoning and the PUD at the same time.

Ms. Bayles agreed with Mr. Norman.

**RELATED ITEM:**

**Application No.:** PUD-619-A

**MAJOR AMENDMENT**

**Applicant:** Charles E. Norman

(PD-26) (CD-8)

**Location:** West side of South Memorial Drive at East 106<sup>th</sup> Street

**STAFF RECOMMENDATION:**

**Z-6952/PUD-707 October 2004:** All concurred in approving a request to rezone a 37.25± acre tract from AG to RS-3/RD/OL and a Planned Unit Development overlay for a mixed use development with office park, single-family residential and duplex uses per staff recommendation.

**Z-6922/PUD-370-B February 2004:** All concurred in approving a request to rezone a 9.87± acre tract from RM-1/RS-2/PUD to CS/OL/RM-1/RS-2/PUD and a Major Amendment to PUD with modifications made by the TMAPC pertaining to an 8 foot privacy fence on western boundary, restricting windows on the 2<sup>nd</sup> story of west walls and office buildings being residential in character.

**Z-6810/PUD-646 July 2001:** A request to rezone a 35± acre tract located north and east of the northeast corner of East 111<sup>th</sup> Street South and South Sheridan Road from AG to RS-2 and PUD. The request for RS-2 zoning was denied and RE zoning was recommended with a maximum of 20 lots if the development provided only one access point. The applicant revised the request by including an additional 4.1 acres of land and TMAPC and City Council approved RS-1 zoning and approved the PUD for a maximum of 30 lots with two points of access being provided.

**PUD-570-A April 2001:** All concurred in approval of a Major Amendment to a PUD on a .74± acre tract to add Use Unit 18 to permitted uses, and change the parking setback from west boundary on property located north of the northwest corner of East 111<sup>th</sup> Street and South Memorial.

**Z-6795/PUD-578-A January 2001:** All concurred in approval of a request to rezone 4.5 acres of the existing PUD-578 from RS-3, RM-1 and OL to CS and a Major Amendment to the PUD to consolidate the original development areas A and B, to delete the previously approved residential uses, and to establish new standards for commercial uses. The property is located in the northwest corner of East 111<sup>th</sup> Street South and South Memorial Drive.

**Z-6722/PUD-619 December 2000:** A request to rezone a 34± acre tract from AG to CS/OL/RS-3 with a Planned Unit Development overlay zoning for a commercial, office and residential development. The TMAPC recommended approval per staff recommendation and the City Council concurred in approval subject to modifications of the development standards.

**PUD-578 February 1998:** A request for a Planned Unit Development on a 35.7± acre tract, located at the northwest corner of East 111<sup>th</sup> Street South and South Memorial Drive and abutting the subject tract on the south, to allow for a commercial and mixed dwelling type residential development was approved, subject to conditions.

**Z-6604/PUD-570 February 1998:** All concurred in approval of a request to rezone a 2.7± acre tract located north of the northwest corner of East 111<sup>th</sup> Street South and South Memorial and south of the subject tract from OL to CS with a PUD for a four lot commercial development.

**PUD-370-A July 1997:** All concurred in approval of a major amendment to allow a telecommunication tower on the property abutting the subject tract on the north and to the west of the existing church that is located on the property.

**PUD-378-A January 1997:** A request for a major amendment to change the permitted uses in development areas, in PUD-378 originally approved for an office and commercial development, from greenbelt and offices uses to a single-family gated, residential development. The property is located on the southwest corner of East 101<sup>st</sup> Street South and South Memorial Drive.

**PUD-485-A February 1995:** All concurred in approval of a major amendment to PUD-485 to increase the permitted floor area to approximately 30% from 30,000 square feet to 38,859 square feet to accommodate a basketball and batting area and a mezzanine. The property is abutting the subject tract on the southeast east.

**Z-6350/PUD-485 March 1992.** All concurred in approval of a request to rezone a 2.5 acre tract located abutting the subject property on the southeast east, from AG to CS to permit an indoor and outdoor athletic training center.

**BOA-14410 April 1987:** The Board of Adjustment approved, per conditions, a special exception to permit a golf driving range and related activities, in an AG zoned district on the subject tract.

**Z-5973/PUD-370 September 1984:** A request was made to rezone 10 acres abutting the subject tract on the north from AG to RM-1/PUD for a church and multifamily uses. All concurred in approval of RM-1 zoning on the east 350' and RS-2 on the balance of the tract and the Planned Unit Development.

**AREA DESCRIPTION:**

**SITE ANALYSIS:**

The subject property is approximately 31.7± acres in size and is located ¼ mile north of East 111<sup>th</sup> Street South on the west side of South Memorial Road. J & J Golf driving range and miniature golf has been operating on the property for more than ten years. The property is wooded along the north boundary, contains a small pond near the southwest corner and is zoned CS along the Memorial frontage; OL in the center of the property and RS-3 on the western two-thirds of the property.

**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Memorial Drive	Primary Arterial	varies	4 lanes

**UTILITIES:** The subject tract has municipal water and sewer available.

**SURROUNDING AREA:** The subject tract is abutted on the east by South Memorial Drive, which is the corporate boundary for the City of Bixby and the City of Tulsa, adjacent to which are commercial uses zoned CS and CG; on the north by an office park development zoned CS, OL, RM-1 and RS-2, all of which are in PUD-370-A and PUD-370-B; on the west by two residential uses on a large acreage zoned AG; and on the south by indoor recreation (Champion’s) and commercial uses, including Wal-Mart SuperCenter, on a combination of parcels zoned CS, RM-1 and RS-3 contained within three Planned Unit Developments: PUD-485-A, PUD-570/ PUD-570-A and PUD-578-A.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 26 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the east 400’ extending along S. Memorial Drive right-of-way, as Medium Intensity Linear Development – No Specific Land Use. The balance of the property is designated as Low Intensity – No Specific Land Use. At the intensity proposed, the development is **not in accordance** with the Comprehensive Plan.

**STAFF RECOMMENDATION:**

The applicant is proposing a major amendment to PUD-619, approved by the Tulsa City Council on December 14, 2000. The property is presently being used as a golf driving range approved by the Board of Adjustment in 1987.

PUD-619 as approved in 2000 consists of Development Areas A, A-1, B and C under which 105,870 square feet of commercial building floor area, 56,800 square feet of office building floor area and 210 multifamily dwelling units are permitted. The planned unit development permits the commercial floor area to be increased to as much as 141,670 square feet, if building floor area allocated to office use in Area C is not developed.



Since the approval of PUD-619, Development Area A-1 consisting of 1.66 net acres has been platted with 21,000 square feet of office area allocated to that parcel and is being used as a branch of First Priority Bank.

The purposes of the proposed major amendment to PUD-619 are to combine the several development areas into one and to utilize the property for a lifestyle retail center with a mid-rise hotel. Because staff is not recommending approval of the corresponding request for additional CS zoning (Z-7032), staff recommendation for the major amendment is based upon existing underlying CS and OL zoning. Therefore, a maximum floor area of 162,569 square feet is permitted for commercial floor area and 98,317 square feet (represents a .40 FAR) is permitted for light office uses.

Principal access to the proposed development is to be by an existing median cut at East 106<sup>th</sup> Street South. A secondary right-turn out entrance and exit is proposed at the southeast corner of the property. The Comprehensive Plan indicates a collector street west through the property at approximately East 106<sup>th</sup> Street South; however, no through-streets to the adjacent property to the west are proposed, nor is access to the abutting commercial properties along the property's south boundary provided. Pedestrian circulation is accommodated by sidewalks on both sides of the major driveways and within the parking areas as noted in Exhibit D, and on the west side of South Memorial Road.

As proposed, staff finds PUD-619-A to be (a) inconsistent with the Comprehensive Plan; (b) in excess of existing and expected development of surrounding areas (Tulsa corporate limits); (c) an incomplete consideration of the development possibilities of the project site; and (d) inconsistent with the stated purposes and standards of the PUD Chapter. Therefore, staff recommends APPROVAL of PUD-619-A as modified by staff subject to the following conditions:

1. TMAPC and City Council approval of the related zoning request, Z-7032 and a related amendment to the Comprehensive Plan
2. The Outline Development Plan shall be made a condition of approval unless modified herein.
3. Development Standards:

AREA:

Net:	29.3 AC	1,276,308 SF
Gross:	31.7 AC	1,379.733 SF

**PERMITTED USES:**

The uses permitted as a matter of right in the OL-Office Light and CS-Commercial Shopping districts, excluding Use Unit 12a; and Use Unit 19, Hotel-Motel only; and uses customarily accessory to permitted uses.

**MAXIMUM PERMITTED FLOOR AREA:**

Commercial	162,569 SF
Office	98,527 SF

**MAXIMUM BUILDING HEIGHT:**

Commercial Building	35 FT
Hotel – Motel	75 FT

**MINIMUM BUILDING SETBACKS:**

Commercial Buildings:

From South Memorial Drive right-of-way	70 FT
From the west boundary	105 FT
From the north boundary	50 FT
From the south boundary	25 FT

Hotel – Motel:

From South Memorial Drive right-of-way	350 FT
From the west boundary	450 <del>600</del> FT
From the north boundary	50 FT
From the south boundary	25 FT

Internal building setbacks shall be established by the detail site plan review.

**OFF-STREET PARKING:**

Off-street parking as required by the applicable Use Units.

**MINIMUM INTERNAL LANDSCAPED OPEN SPACE:**

A minimum of 10% of the net land area shall be improved in accord with the Landscape Chapter of the Tulsa Zoning Code as internal landscaped open space, which shall include at least five feet of public street frontage landscaped area.

A landscaped open space not less than 75 feet in width and in substantial conformance with the 'Landscape and Screening Details – West Boundary', Exhibit C, shall be located along the west boundary of the planned unit development.

For purposes of calculating the landscaping required under Section 1002 of the Tulsa Zoning Code, the South memorial drive street-yard shall be considered as 50 feet from the west right-of-way line.

#### SCREENING:

A minimum six-foot high masonry screening fence on concrete footings shall be required along the west boundary of the planned unit development. A combination of five to six-foot high Lob Lolly pine trees and six-foot high Canabert Junipers shall be provided in substantial conformance with the Landscape and Screening Detail – West Boundary, Exhibit 'C', along the west boundary to provide additional buffering and screening.

#### ACCESS AND CIRCULATION:

According to the Long-Range Transportation Plan, South Memorial Road is scheduled to be widened to six lanes in 2008. In keeping, staff recommends that a Traffic Impact Study be performed by a Professional Consulting Engineer prior to the design stage (PFPI) in order to determine the best traffic control solutions. Mutual access is recommended to the south (Wal-Mart) and also to and from the existing bank at the property's northeast corner. The Comprehensive Plan calls for an east-west collector street at approximately 106<sup>th</sup> Street South.

Pedestrian circulation shall be provided by sidewalks along South Memorial Road, on both sides of the major driveways and within the parking areas. Pedestrian access-ways through the parking lots to the buildings shall be separated by no more than 400 feet and pedestrian access shall be provided from sidewalks along South Memorial Road to the entrances of buildings fronting South Memorial Road.

#### SIGNS:

- 1) Two ground signs, each not to exceed 150 square feet of display surface area and 25 feet in height, are permitted along the South Memorial Drive frontage.
- 2) One center and tenant identification ground sign shall be permitted at the principal entrance on South Memorial Drive with a maximum of 240 square feet of display surface area and 25 feet in height.
- 3) One center and tenant identification ground sign shall be permitted at the secondary (southern) entrance on South Memorial drive with a maximum of 160 square feet of display surface area and 25 feet in height.
- 4) Wall signs shall be permitted not to exceed 2.0 square feet of display surface area per lineal foot of the building wall to which it is attached. The length of a tenant wall sign shall not exceed 75% of the frontage of the tenant space. No wall signs shall be permitted on the west-facing walls of the building within ~~550~~ 650 feet of the west boundary of the planned unit development.

- 5) Building directories and occupant identity signs may be attached to building walls as permitted under the Zoning Code.

#### LIGHTING:

Light standards within 200 feet of the west boundary shall not exceed 12 feet in height. Light standards within the remainder of the planned unit development shall not exceed ~~25~~ 30 feet in height.

No outdoor lighting shall be permitted within the west 75 feet of the planned unit development.

All lights, including building mounted, shall be hooded and directed downward and away from the west and north boundaries of the planned unit development. Shielding of outdoor lighting shall be designed so as to prevent the light producing element or reflector of the light fixture from being visible to a person standing at ground level in adjacent residential areas. Compliance with these standards shall be verified by application of the Kennebunkport Formula. Consideration of topography must be included in the calculations.

#### EXTERIOR WALL MATERIALS:

All exterior walls of buildings within 300 feet of the west boundary of the planned unit development shall be constructed of similar materials as the side and front walls of such buildings and shall be of a color complementary with the side and front walls.

#### BULK AND TRASH CONTAINER SETBACKS:

Bulk and trash containers shall be set back from the west boundary of the planned unit development a minimum distance of 120 feet.

#### TRASH, MECHANICAL AND EQUIPMENT AREAS:

All trash, mechanical and equipment areas, including building-mounted, shall be screened from public view in such a manner that the areas cannot be seen by a person standing at ground level at the west and north boundary of the planned unit development.

4. No zoning clearance permit shall be issued for a lot within the PUD until a detail site plan for the lot, which includes all buildings, parking, screening fences and landscaping areas, has been submitted to the TMAPC and approved as being in compliance with the approved PUD development standards.
5. A detail landscape plan for each lot shall be approved by the TMAPC prior to issuance of a building permit. A landscape architect registered in the State of Oklahoma shall certify to the zoning officer that all required

landscaping and screening fences have been installed in accordance with the approved landscape plan for the lot, prior to occupancy or at the soonest appropriate planting time. The landscaping materials required under the approved plan shall be maintained and replaced as needed, as a continuing condition of the granting of an occupancy permit.

6. No sign permits shall be issued for erection of a sign on a lot within the PUD until a detail sign plan for that lot has been submitted to the TMAPC and approved as being in compliance with the approved PUD development standards.
7. The Department of Public Works or a professional engineer registered in the State of Oklahoma shall certify to the appropriate City official that all required Stormwater drainage structures and detention areas serving a lot have been installed in accordance with the approved plans prior to issuance of an occupancy permit on that lot.
8. No building permit shall be issued until the requirements of Section 1107F of the Zoning Code have been satisfied and approved by the TMAPC and filed of record in the County Clerk's office, incorporating within the restrictive covenants the PUD conditions of approval and making the City beneficiary to said covenants that relate to PUD conditions.
9. Subject to conditions recommended by the Technical Advisory Committee during the subdivision platting process which are approved by TMAPC.
10. Approval of the PUD is not an endorsement of the conceptual layout. This will be done during detail site plan review or the subdivision platting process.

**TAC Comments from 7/20/06:**

**PUD 619-A – West side of South Memorial Drive at East 106<sup>th</sup> Street**

**General:** No comments.

**Water:** A water main extension will be required. The water main will need to be installed in a 20 feet restricted water line easement. There will be a connection fee in the amount of \$10,000.00 for the two connections onto the existing 12" water main applied.

**Fire:** Where a portion of the facility or building hereafter constructed or moved into or within the jurisdiction is more than 400 feet (122 m) from a hydrant on a fire apparatus access road, as measured by an approved route around the exterior of the facility or building, on-site fire hydrants and mains shall be provided where required by the fire code official.

**Exceptions:**

1. The distance requirement shall be 600 feet (183 m) for Group R-3 and Group U occupancies.
2. For buildings equipped throughout with an approved automatic fire sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, the distance requirement shall be 600 feet (183 m).

**Stormwater:** No Comment.

**Wastewater:** Sanitary sewer access must be provided to all lots within the development area.

**Transportation:** ODOT approval and documentation of right-of-way along Memorial will be required. Transportation supports the sidewalk requirement in the Subdivision Regulations.

**MSHP:** Memorial Drive, between 101<sup>st</sup> St. S. and 111<sup>th</sup> St. S., designated as primary arterial. LRTP: Memorial Drive, between 101<sup>st</sup> St. S. and 111<sup>th</sup> St. S., planned 6 lanes, Recommend coordination with ODOT, as Memorial expansion is scheduled for 2008. Recommend no additional median cuts. Consideration for internal access between commercial developments north and south of property.

**TMP:** No existing trail planned for property; however Fry Ditch Creek trail planned west of property if developer wishes to consider this future amenity.

**Transit:** No existing or future plans for this location

**Traffic:** Traffic Engineering recommend that a Traffic Impact Study be performed by a Professional Consulting Engineer prior to the design stage (PFPI) in order to determine the best traffic control solutions for this major 300,000 sq. ft. generator. Mutual access is recommended to the South (Wal-Mart) and also to and from the Bank. Recommend a redesign of an internal intersection in order to reduce its conflict points, intersect the major boulevard close to 90 degrees and lengthen WB turn bay.

**GIS:** No comments.

**County Engineer:** No comments.

#### **Applicant's Comments:**

**Charles Norman**, 401 South Boston, Suite 2900, Tulsa, OK 74103-4065, representing Keith Jones and the Expert Companies, stated that the present PUD permits 105,000 SF of commercial floor area, 56,000 SF of office floor area and 210 multifamily dwelling units in the rear of the subject property. The proposal is for a lifestyle center that has smaller retails and is pedestrian oriented. Most of the development standards that were outlined are those that were volunteered and proposed by the applicant. One that needs to be discussed more thoroughly is the 75-foot greenbelt on the west side of the property adjacent to Alan Carlton's property and adjacent at the northwest corner of Bridle Trail's subdivision.

Mr. Norman described the subject property and surrounding property. He indicated that the subject property is across the street from Bixby and that is a critical issue regarding the zoning. He indicated that Bixby has been more liberal with the zoning than the City of Tulsa. Mr. Norman described the depth of

commercial zoning on the surrounding properties. He further described Mr. Carlton's property in relationship to the subject property.

Mr. Norman stated that he was unable to finalize his negotiations with Mr. Carlton in time to be considered by the staff for the staff recommendations. The negotiations were submitted to staff and they have been made part of the Planning Commission packets. This agreement is a formal amendment to the proposed PUD as reviewed by the staff.

Mr. Norman indicated that the amendment increases the building setbacks in several instances and revises the minimum landscaped open space, and Mr. Carlton doesn't plan to sell or develop his property for some time in the future, but he anticipates it would be upper-scale single-family residences. Mr. Carlton has stated that he prefers to have appropriate relationship with the backs of the commercial buildings and to have his property adjacent to the multifamily area that is presently in place. As a result of this, he has developed a very detailed set of amendments. Mr. Norman described the various amendments that he has agreed to with Mr. Carlton.

Mr. Norman indicated that he reviewed all of these amendments with Delise Tomlinson and she advised him that she has no problems with these being accepted by the Planning Commission, although they vary in some details and the only other area would be that staff is recommending a six-foot high masonry fence and his agreement with Mr. Carlton calls for an eight-foot high masonry and wooden fence.

Mr. Norman asked Mr. Alberty if staff has any objections to the amendments that have been agreed upon to be made a part of the record with respect to the PUD.

Mr. Alberty stated that there are two things working. Mr. Norman has a private agreement, which typically, staff doesn't enter into, but in this situation he is asking that his application be amended based on this private agreement. This would be an addendum to what he has submitted. It would be in addition to what the staff has recommended and the two are not consistent. Procedurally, there may be some issues in how we incorporate those within the final recommendation. He believes this can be done and presented to the City Council. There is no way to modify those at today's meeting and the Planning Commission would have to accept the fact that he is amending it based on this private agreement.

Mr. Ard asked if staff is in agreement with all of the changes that Mr. Norman has stated with the exception of the conflict for the fencing. In response, Mr. Alberty stated that staff has no problem with those amendments. Wherever they would differ is more restrictive than what the recommendation would restrict. In most cases his private agreement is more restrictive and more detailed.

Mr. Ard asked staff about the trees being smaller in size but having more in number. In response, Mr. Alberty stated that he doesn't see any problem with Mr. Norman's amended application, but it may conflict in some instances with the staff recommendation.

Mr. Norman stated that he is accepting the staff recommendation on 25 feet of height for the maximum height for light standards. There are no light standards in excess of 12 feet within the west 200 feet and no lights within the west 75 feet at all. The only conflict that he is aware of is the difference between a masonry and concrete fence as compared to the one that is described in the amendment. He has written the letter of agreement in a form that can be incorporated into the staff recommendation if that is accepted by the Planning Commission because it refers to sentences, sections and paragraphs.

Mr. Norman stated that Mr. Carlton is a member of Bridle Trails Homeowners Association and representative of that group is present today, Alyne Eiland. He indicated that she has handed him a letter endorsing the recommendations and proposed amendments and offer support.

Mr. Norman stated that the rezoning is needed in order to make this PUD work. He explained that staff analyzed the existing zoning, some of which was converted to achieve the multifamily apartment units in 2000 and staff has recommended 162,000 SF of commercial floor area and 98,000 SF of office, but his project doesn't incorporate or include in part of its concept office use. He indicated that he does have a proposal for a hotel, which he believes will be an accessory use to this kind of lifestyle center and also in support of the Bixby Convention Center that is being constructed in the immediate neighborhood. The hotel is a four-story hotel and uses up floor area. The commercial floor area that has been recommended by staff would be added to the office area that would achieve a total building floor area ratio of 20.2 percent and what has been requested would result in a floor area ratio of 23.5 percent. Everyone is in agreement that the commercial buildings would be located along the back boundary. The staff recommendation for the floor area ratio for the commercial use is only 162,000 SF, which is a floor area ratio of 12 percent. Typically a 25 percent FAR is what can be accomplished under a PUD with the landscaping that is required and with the parking ratio that is required to support the floor area. The 23 percent is slightly below what typically would be accomplished, but the 12 percent FAR wouldn't allow the project to work. The additional rezoning is important to this particular application. The gross area of the buildings is only about ten percent difference between the 20.2 and 23.5 percent. Staff has referred to the Comprehensive Plan for District 26, which was adopted in 1987. The linear development area was added as a result of some decisions made by the Planning Commission. Within the text of the district plan there is no mention of a dimension; it only refers to a portion of west side of South Memorial between 103<sup>rd</sup> and 110<sup>th</sup>. The Comprehensive Plan states the qualifications for a change of the linear development area as he has proposed. He believes that he has met



those qualifications in each every instance by providing compatibility with the existing and planned uses, avoiding strip zoning by assembling parcels into the larger tract, avoiding through traffic into the residential neighborhood, screening parking areas and having setbacks from transitional uses. He has not asked for any variances of the lot widths required and the sign controls recommended by staff are acceptable. There is not a development sensitive area, and he has dealt with the stormwater drainage issues. The spreading of the intensities is to be evaluated on a case-by-case basis. Mr. Norman cited another zoning case he applied for while developing the Wal-Mart in the subject area and that zoning line is the same zoning line he is requesting today. Mr. Norman read the staff recommendation for the additional zoning he requested for the Wal-Mart development when staff recommended approval with the condition that the PUD was approved or some modified version. He explains that there is already a precedent setback to the 600-foot depth that he requested for the Wal-Mart outside of the node itself. He planned the subject project on that precedent. He believes that this particular project is identical to the Wal-Mart project. He further believes that the Planning Commission should consider that Bixby has been more liberal than Tulsa has been in actual zoning.

Mr. Norman concluded that he is before the Planning Commission today to state that he has accomplished all of the things that are required under the Comprehensive Plan. He has no differences with the staff recommendation and they have none with his expanded PUD. He stated that he can't make this project work with a 12 percent commercial floor area ratio. He requested the Planning Commission approve the zoning request for Z-7032.

Mr. Norman cited the additional sales tax that would be created for the City of Tulsa by developing this project.

**TMAPC COMMENTS:**

Mr. Ard asked staff if they are able to support the rezoning after hearing the changes and amendments to the accompanying PUD. In response, Ms. Matthews stated that staff could recommend approval for the rezoning since the PUD has been changed and is more restrictive in many ways. Ms. Matthews indicated that staff would recommend approval of Z-7032 based upon the changes that Mr. Norman has offered.

**INTERESTED PARTIES:**

**Alyne Eiland**, 7515 East 106<sup>th</sup> Street, 74133, submitted a letter of agreement for the July 19, 2006 letter from Alan Carlton (Exhibit B-1). Ms. Eiland stated that this is a good plan and she is in agreement with the amendments. She requested that the Planning Commission follow the final amendment from Alan Carlton and should there be any changes, she would like to be timely notified.

Mr. Norman explained that Mr. Carlton is traveling and couldn't be present.

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the CS zoning for Z-7032.

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the major amendment for PUD-619-A per the amendment that has been offered by Mr. Norman and agreed to by Alan W. Carlton, dated July 26, 2006 Exhibit "A". (Language with a strike-through has been deleted and language with an underline has been added.)

Ms. Matthews asked for a point of clarification for PUD-619-A. She asked if the approval of the PUD addressed the fence issue.

Mr. Ard believes that the motion would have been for the specific items as Mr. Norman has spelled them out, which would be basically staff's lighting requirements and allowing a wood fence with masonry pedestals periodically and maximum height of 25 feet for lighting fixtures. Mr. Midget agreed with this clarification.

**Legal Description for Z-7032:**

Commencing at the SE/c of said Section; N 00°00'31" W 1655.09' along the Section line to a point; Thence S 88°47'01" W a distance of 330' to the Point of Beginning; Thence S 88°47'01" W a distance of 330'; thence N 01°01'04" W a distance of 985.27'; Thence Easterly along the North line of said NE/4, SE/4 a distance of 330'; Thence S 01°01'04" E a distance of 985.27' to the Point of Beginning, said tract being 7.46 acres more or less, the City of Tulsa, Tulsa County, State of Oklahoma, **From RS-3/OL (Residential Single Family High Density District/Office Low Intensity District) To CS (Commercial Shopping Center District).**

**Legal Description for PUD-619-A:**

The North 10 acres of the NE/4, SE/4, Section 26, T-18-N, R-13-E of the IBM, Tulsa County, State of Oklahoma, according to the U.S. Government survey thereof, less and except the following two tracts: The first tract deeded for Highway described as follows, to-wit: Beginning at the Northeast corner of said NE/4, SE/4; thence South along the East line of said NE/4, SE/4 a distance of 330.00'; Thence West a distance of 105.00'; Thence N 01°00'31" W a distance of 292.49'; Thence N 4°35'05" W a distance of 37.17' to a point on the North line of said NE/4, SE/4; Thence East along said North line a distance of 107.32' to the Point of Beginning; The second tract consisting of Lot 1, Block 1 of First Priority Bank, Plat number 5511, as recorded with the Tulsa County Clerk, AND A tract of land located in the NE/4, SE/4 of Section 26, T-18-N, R-13-E of the IBM, Tulsa

County, State of Oklahoma, according to the U.S. Government survey thereof, more particularly described as follows: Commencing at the intersection of the center line of Memorial Drive and 111th Street South, this also being the Southeast corner of said Section; Thence N 00°00'31" W 1655.09' along the existing centerline of Memorial Drive; thence S 88°47'01" W 115.00' to a point on the West right-of-way line of Memorial Drive (U.S. Highway 64) being the Point of Beginning; Thence S 88°47'01" W 650.15'; Thence S01°00'31" E 335.00'; Thence S 88°47'01"W 296.65'; Thence N 62°37'55" W 67.58'; Thence N 90°00'00" W 10.99'; Thence N 00°00'00" E 126.15'; Thence N 90°00'00" W 131.86' to a point of curvature on a curve concave to the southeast; Thence along said curve with a radius of 57.00' a distance of 90.48' to a point on non-tangent line; Thence N 01°01'04" W a distance of 885.45'; Thence N 88°47'15" E 1215.02' to a point on the west right-of-way line of Memorial Drive: Thence S 01°00'31" E 307.73'; Thence S 04°42'07" W 100.50'; Thence S 01°00'31" E 247.37' to the Point of Beginning. Containing 29.338 acres more or less, the City of Tulsa, Tulsa County, State of Oklahoma, **FROM CS/RS-3/OL/PUD (Commercial Shopping Center District/Residential Single Family District/Office Low Intensity District/ Planned Unit Development [PUD-619]) TO CS /PUD (Commercial Shopping Center District/Planned Unit Development [PUD-619-A]).**

\*\*\*\*\*



**NORMAN WOHLGEMUTH CHANDLER & DOWDELL**

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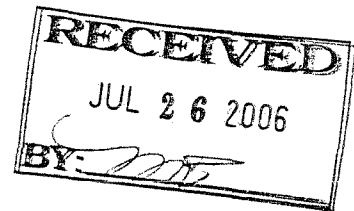
July 26, 2006

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Tulsa Metropolitan Area Planning Commission  
INCOG  
201 West Fifth Street, Sixth Floor  
Tulsa, OK 74103

Re: Memorial Commons  
Planned Unit Development No. 619-A



Dear Commission Members:

Mr. and Mrs. Alan Carlton are the owners of a tract of land containing approximately 47 acres which is adjacent to the entire west boundary of Memorial Commons. Mr. Carlton is a member of the Bridle Trails Homeowners Association which abuts the Carlton property on the north and is at the northwest corner of Memorial Commons.

Mr. Carlton and the developer of Memorial Commons have had extended discussions and negotiations about the development standards for the Memorial Commons major amendment to the existing Planned Unit Development, Number 619, which permits a total of 210 multi-family dwelling units within the west 10 acres of Planned Unit Development No. 619 abutting the Carlton property. Mr. Carlton prefers that his property, which will be developed some time in the future for residential uses, be adjacent to upscale commercial development rather than an apartment complex. Mr. Carlton has reviewed his negotiations with the Memorial Commons developer with the Bridle Trails Homeowners Association. As a result, the applicant has agreed to amend and add to the development standards proposed in the original application. Mr. Carlton has agreed to support the requested additional CS zoning and the planned unit development amendment.

The applicant hereby amends the application for Memorial Commons, Planned Unit Development No. 619-A, as follows:

**1. Permitted Uses:**

Permitted uses shall include the uses permitted as a matter of right in the CS - Commercial Shopping district, and uses customarily accessory to permitted uses; but

EXHIBIT "A"

shall exclude Use Unit 12A and Use Unit 19 other than Hotel-Motel Only. Any future applications for Use by Exception or rezoning within the planned unit development, including lots split therefrom, will require advanced notice to all property owners within 300 feet of the Memorial Commons exterior boundaries plus the owners of the 46 acre property located at 10400 South Memorial Drive currently owned by Mr. A.J. (Tony) Solow. Such notice shall be given by both the owners of Memorial Commons and the Tulsa Metropolitan Area Planning Commission Staff.

**2. Minimum Building Setbacks:**

The minimum building setback for a Hotel-Motel from the west boundary of Memorial Commons is hereby increased from 450 feet to 600 feet.

**3. Minimum Internal Landscaped Open Space:**

The second paragraph under the caption "Minimum Landscaped Open Space" is hereby amended to read as follows:

"A landscaped, open space not less than 75 feet in width shall be located along the west boundary of the planned unit development. A minimum of 57.5 feet of the 75 feet width shall be planted in trees as a buffer zone, on a spacing of not more than 177 square feet per loblolly pine tree or southern magnolia tree (each tree 15 feet on center from the next). Canarti juniper trees shall be positioned between all loblollies or magnolias on a checkerboard pattern. All trees shall be one gallon size when planted. The entire buffer zone shall have irrigation provided and any trees dying shall be replaced in a timely manner and at the expense of the then-property owner(s)."

**4. Signs:**

Paragraph (4) under the caption "Signs" is hereby amended to read as follows:

"(4) Wall signs shall be permitted not to exceed 2.0 square feet of display surface area per lineal foot of the building wall to which it is attached. The length of a tenant wall sign shall not exceed 75% of the frontage of the tenant space. No wall signs shall be permitted on the west-facing walls of any building within 650 feet of the west boundary of the planned unit development."

Paragraph (5) under the caption "Signs" is hereby amended to read as follows:

"(5) Building directories and occupant identity signs may be attached to building walls as permitted by the Zoning Code, so long as such directories and signs do not conflict with other provisions of the planned unit development, provided, tenant identity signs on rear walls shall not exceed one-half of a square foot in area."

**5. Lighting:**

Change the first paragraph of the original application to read as follows:

"Light standards within 200 feet of the west boundary shall not exceed 12 feet in height and shall illuminate in an easterly direction. Light standards within the remainder of the planned unit development shall not exceed 30 feet in height, or such lesser height as may be recommended by Tulsa Metropolitan Area Planning Commission staff."

Delete the word "residential" from the last line of the third paragraph under the caption "Lighting." (The Carlton property to the west is within the AG district; the purpose of the deletion is to make certain that the requirement of shielding outside lighting will be applicable to the Carlton property to the west.)

**6. Exterior Wall Materials:**

Add the following sentence:

"All items affixed thereto shall be painted to match the building (this may exclude those portions of utility-owned meters prohibited from painting by the utility company)."

**7. Bulk and Trash Container Setbacks and Screening:**

Amend the section to read as follows:

"Bulk and trash containers shall be set back from the west boundary of the planned unit development a minimum distance of 120 feet and shall be screened from view from the west, ignoring the boundary fence. All screening materials shall be similar to the building materials and of a complimentary color. All screens shall be maintained by the owners of Memorial Commons and not be allowed to fall into disrepair or unsightliness."

**8. Trash, Mechanical and Equipment Areas:**

Amend the section to read as follows:

"Ignoring the screening fence along the west boundary of the planned unit development; all trash, mechanical, electrical, HVAC and equipment areas, including building mounted, shall be screened from public view in such a manner that the areas cannot be seen by a person standing at ground level adjacent at the west boundary of, or the west 300 feet of the north boundary of the planned unit development. All screens other than the screening fence along the west boundary of the planned unit development shall be constructed of materials having an appearance similar to the buildings themselves and be of complementary color. All screens and fences shall be maintained by the owners of Memorial Commons and not be allowed to fall into disrepair or unsightliness."

**9. Outside Storage:**

Amend the section to read as follows:

"Ignoring the screening fence along the west boundary of the planned unit development; no outside storage or recyclable materials, inventory, trash, pallets, racks, service equipment or similar materials shall be permitted outside of a screened area which shall keep them from being visible from the west boundary or the west 300 feet of the north boundary of the planned unit development. All such screens shall be constructed of materials having an appearance similar to the buildings themselves and be of complementary color. No storage shall be permitted in transport or rented containers or in temporary storage units. Trucks or truck trailers shall not be parked within 250 feet of the west or north boundaries of the planned unit development except while they are actively loading or unloading. Truck trailers shall not be used for storage or inventory."

**10. Landscape and Screening Concept:**

The last sentence of the third paragraph referring to a 6 foot high fence is hereby deleted and the following paragraph added to the Landscape and Screening Requirements:

"A permanent, solid, screening and security fence similar or superior to that constructed along part of the south property line of the Carlton property within Raven's Crossing shall be constructed along the entire 1320 feet



common property line between the Carlton property and Memorial Commons, including along the west boundary of the Regional Storm Water Detention Facility. (The owners of the Carlton property have agreed to pay the proportionate costs of the south 105 feet of the screening fence.) Features of the screening and security fence shall, at the least, include a footing of not less than 2 foot width and depth with tied rebar included (not less than 4 pieces of 1/2 inch), and a 2 foot high by 8 inch wide stemwall built thereupon, with tied rebar included (not less than 2 pieces of 1/2 inch). The stemwall shall be topped with brick or stone to match the 2'x2'x8' capped brick or stone columns spaced roughly every 50 feet with 6 foot high panels between. All fence posts between are to be of 2 inch galvanized steel. Fence panels, if of wood, will be built on 3 pressure-treated stringers and 6 feet vertical cedar pickets above the stemwall. All fencing stringers are to be attached firmly to all brick or stone columns and steel posts. The vertical fence pickets shall be on the Memorial Commons side of the screening and security fence and shall be treated with a waterproofing sealer. All fences shall be maintained by the owners of Memorial Commons and not be allowed to fall into disrepair or unsightliness."

**11. Building Rear Parapets:**

Add a new section to read as follows:

"All walls facing west and all walls facing north within 300 feet of the west boundary of the planned unit development shall be built with a 4 to 6 foot parapet to conceal roof-mounted vents and equipment. Building rear (or side where applicable) parapets shall be constructed at a height equal to the height of a front wall parapet plus the roof elevation drop across the building.

For the purposes of the calculation of the required height of the parapet, the height of the front parapet shall be assumed to be 2 feet and the roof drop shall be assumed to be 3% from the front to the rear of the roof depth. For example, a building with a depth of 75 feet with an assumed 2 foot high front wall parapet and a roof drop of 3% would require a rear parapet of 4.25 feet in height. Such building parapets shall be constructed on all buildings having their rear wall facing west or which are within 300 feet of the west boundary and facing north, provided, no such parapet shall be required to exceed 6 feet in height above the roof deck level immediately adjacent."

**12. Noise:**

Add a new section to read as follows:

" Between the hours of 10:00 p.m. and 7:00 a.m., no trash pickup, deliveries, trash compaction, nor exterior music shall be permitted. Neither regular nor sustained noise shall exceed 65 decibels at any time when measured at the west boundary of Memorial Commons, except for "Temporary Events". Temporary Events shall include promotional fairs, carnivals and concerts, and may exceed the permitted 65 decibel level not longer than 8 hours on any one day, and only between the hours of 12 noon and 10 p.m. Temporary events shall not occur on more than 12 days in each calendar year."

**13. Odor:**

Add a new section to read as follows:

"No offensive odors (e.g. from grease traps or ripe garbage) shall be permitted to emanate from any facility within the planned unit development on a regular or ongoing basis. Should any such odors occur, the current management of the Memorial Commons properties shall take all steps necessary to end and remediate such odors as soon as practicable."

**14. Soils:**

The paragraph captioned "Soils" under Environmental Analysis is hereby amended to read as follows:

"The soils in the area are dark yellowish orange, moist to very moist, low plasticity, soft to firm sandy lean clays to a depth of roughly eight feet deep. Below the sandy lean clay is dark yellowish orange, very moist, non-plastic, medium dense silty sand. The soils are highly friable, so stormwater runoff water velocity and volume must be dealt with sufficiently to avoid erosion."

**15. Stormwater Drainage:**

Add a new section to read as follows:

"Roof and pavement drainage from the western buildings and adjacent areas will be collected in a minor storm sewer system and conveyed to the regional detention facility. No stormwater runoff across the west boundary of Memorial Commons shall be permitted, except normal stormwater runoff from rain falling on the landscape easement comprising the west 75 feet of Memorial Commons."

**16. Notice:**

**Add a new section to read as follows:**

"Prior notice and advance copies of all detail site, landscaping, screening and fencing plans and the plat of Memorial Commons, including those pertaining to any lots split therefrom, and all other requested changes, including all minor or major amendments to PUD 619-A shall be given by both the owners of Memorial Commons and the Tulsa Metropolitan Area Planning Commission staff to the owners of the Carlton property, the owners of the Solow property and to the Bridle Trails Homeowners Association. All notices shall be given in writing to the following addresses, or such others as may be provided in writing by the following persons from time to time:

Alan and Carolyn Carlton  
10770 South 77th East Avenue  
Tulsa, OK 74133

A. J. (Tony) Solow  
10400 South Memorial Drive  
Tulsa, OK 74133

Bridle Trails Homeowners Association  
c/o Craig and Alyne Eiland  
7515 East 106th Street South  
Tulsa, OK 74133"

**17. Other Matters:**

**Amend the section to read as follows:**

The applicant and the Carltons hereby state that they are in agreement with the additional CS zoning as requested in Z-7032 and all other matters contained within the application for Planned Unit Development No. 619-A as amended hereby, and request approval of the rezoning and the amended Planned Unit Development as amended herein by the applicant.

Sincerely,

*Charles E. Norman / by permission*  
Charles E. Norman

CEN/jcd  
Enclosures

July 26, 2006  
Page 8

cc: Mr. Wayne Alberty

APPLICANT:  
South Memorial Properties, L.L.C.  
And its successors, heirs and assigns

By: B. Keith Jones  
B. Keith Jones, Managing Member

Approved this 26<sup>th</sup> day of July, 2006.

Carolyn C. Carlton Revocable Living Trust

By: Alan W. Carlton  
Alan W. Carlton, Trustee

EXHIBIT "A"

**Application No.: Z-6277-SP-3/Z-6484-SP-1/Z-6718- SP-1      CORRIDOR SITE PLAN**

**Applicant:** Khoury Engineering

(PD-18) (CD-8)

**Location:** 6483 South 101<sup>st</sup> East Avenue

**STAFF RECOMMENDATION:**

**PUD-599-C September 2001:** All concurred in approval of a Major Amendment to a PUD to permit automobile body repair center and coffee shop on Lot 1 of PUD-599-A on a 1.52+ acre tract located north of subject property, subject to modifications and conditions as recommended by the TMAPC.

**Z-6725 December 1999:** All concurred in approval of a request to rezone a 34.78± acre tract from CO to AG for church and accessory uses on property located on the southeast corner of East 66<sup>th</sup> Street and South Mingo Road.

**Z-6718 October 1999:** A request to rezone a 1.18-acre tract located on the northeast corner of East 66<sup>th</sup> Street S. and S. 101<sup>st</sup> East Avenue, apart of the subject tract, from RS-3 to CO was approved by TMAPC and the City Council.

**PUD-599-A August 1999:** All concurred in approval of a major amendment located north of the subject property to allow a three-story, 49,600 square foot office building and a 61-room, three-story hotel.

**Z-6673-SP-1/AC-47 April 1999:** All concurred in approval of a Corridor Site Plan on 4.56+ acre tract for a 75,000 square foot recreational vehicle storage and self-storage facility located and abutting subject property to the north; also approving an Alternative Compliance to landscape requirements.

**BOA-18357 March 23, 1990:** The Board of Adjustment approved a Variance of the land are coverage by building from 30% to 41% in a CO district on property abutting subject property to the north.

**Z-6722-SP-2 March 1999:** On a proposed Corridor Site Plan to re-approve an existing outdoor advertising sign (Z-6722-SP-1 originally approved sign April 17, 1990 for a period of 5 years) on a 2.2± acre tract, staff recommended denial but TMAPC recommended approval due to it's placement in a freeway corridor, and the City Council approved it per TMAPC recommendation.

**Z-6673 February 1999:** All concurred in approval of a request to rezone a 4.5-acre tract located on the southeast corner of E. 63<sup>rd</sup> Place S. and S. 103<sup>rd</sup> East Avenue from RS-3 to CO.

**PUD-595-A/Z-5970-SP-4 February 1999:** All concurred in approval of a Major Amendment to PUD/Corridor Site Plan to change land area, maximum building floor area and building height of previously approved PUD-595/Z-5970-SP-3 on property located south, abutting subject property.

**PUD-595/Z-5970-SP-3 October 1998:** All concurred in approval for a PUD/Corridor Site Plan for a proposed retail furniture sales center on property located south, abutting subject property.

**BOA-17848 October 1997:** The Board of Adjustment approved a request for a special exception to allow church and accessory uses and a special exception to allow a school in an RS-3 zoned district, located on part of subject property.

**Z-6078-SP-4 September 1997:** All concurred in approval of a Corridor Site Plan to permit a mobile home on property located north of northwest corner of East 66<sup>th</sup> Street and South 101<sup>st</sup> Avenue East.

**Z-6078-SP-3 February 1997:** All concurred in approval of a Corridor Site Plan to permit a mobile home on property located on northwest corner of East 66<sup>th</sup> Street and South 101<sup>st</sup> Avenue East.

**Z-6484 April 1995:** All concurred in approval of a request to rezone a 6.7-acre tract located as part of the subject tract and south of the southeast corner of E. 65<sup>th</sup> Place S. and S. 103<sup>rd</sup> East Avenue from RS-3 to CO.

**Z-6078-SP-2 March 1995:** All concurred in approval of a Corridor Site Plan to permit a mobile home on property located north of northwest corner of East 66<sup>th</sup> Street and South 101<sup>st</sup> Avenue East.

**Z-6345/PUD-489 May 1992:** All concurred in approval of a request to rezone a 5.4-acre tract located west of the northwest corner of East 71<sup>st</sup> Street South and S. Mingo Valley Expressway from CO to CS/PUD for a shopping center development.

**Z-6345/PUD-481 March 1992:** All concurred in approval of a request to rezone a 35-acre tract located north of E. 71<sup>st</sup> Street and west of the Mingo Valley Expressway and south of the subject tract, from CS and CO to CS/PUD.

**Z-6277 January 1990:** All concurred in approval of a request to rezone a two-acre tract located as part of the subject tract on the northwest corner of East 66<sup>th</sup> Street S. and S. Mingo Valley Expressway, from RS-3 to CO.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately 13.1 ± acres in size, is located north and west of U.S. Highway 169 and East 71<sup>st</sup> Street South and is

zoned CO, Corridor. The property is vacant, fairly void of trees and generally slopes downward from the boundaries of the site toward the center, which appears to be a natural drainage channel. The property is bounded on the south by East 66<sup>th</sup> Street South, a partially vacated unimproved street; on the west by South 101<sup>st</sup> East Avenue; on the north by existing residential with two residential streets (South 102<sup>nd</sup> East Avenue and South 103<sup>rd</sup> East Avenue) terminating perpendicularly at the site's north boundary; and on the east by South 105<sup>th</sup> East Avenue, a private street, with U.S. Highway 169 right-of-way a short distance to the east.

**STREETS:**

Exist. Access	MSHP Design	MSHP ROW	Exist. # Lanes
South 101 <sup>st</sup> E. Ave.	Collector	60'	2
South 105 <sup>th</sup> E. Ave.		30'	2

**UTILITIES:** The subject tract has municipal water and sewer.

**SURROUNDING AREA:** The subject tract is abutted on the east by South 105<sup>th</sup> East Avenue and U.S. Highway 169; on the north by vacant land zoned CO and by existing residential zoned RS-3 and by the Union School's practice field zoned RS-3; on the south by Mathis Brothers Furniture Store and Warehouse, zoned CO and on the west by existing residential, zoned CO.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:** The District 18 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this area as Low-Intensity Corridor. The combined office and commercial development **may be found** in accordance with Plan.

**STAFF RECOMMENDATION:**

Per the Comprehensive Plan within the designated corridor district, medium-intensity uses could be supported adjacent to U.S. Highway 169, with low-intensity uses west of this frontage. The only public access to the property, upon closing of the thirty-foot South 105<sup>th</sup> East Avenue right-of-way, will be per South 101<sup>st</sup> East Avenue. This collector street runs north from 71<sup>st</sup> East Avenue to East 62<sup>nd</sup> Street, the east/west street running along the south boundary of Union Junior High School. Access to individual lots within the development will be from East 65<sup>th</sup> Street South/ South 104<sup>th</sup> East Avenue, a proposed private street. The remaining 30 feet of East 66<sup>th</sup> Street South right-of-way along the property's south boundary is proposed to be closed. South 105<sup>th</sup> East Avenue (along the property's east boundary) will be developed as a private street from East 63<sup>rd</sup> Street to the south boundary of the property (per PFPI #2876) and will connect on the south to the 32-foot mutual access easement running along the east side of the Mathis Brother's site southward through Mingo Market Place, which eventually connects back to East 71<sup>st</sup> Street South. Therefore, the proposed

development generally follows the same pattern of access established to this point north of East 71<sup>st</sup> Street and west of the Highway 169 frontage.

Although the area is in transition, there are single-family uses that abut the property on the north and west across South 101<sup>st</sup> East Avenue. Therefore, lower-intensity uses are more appropriate in the west half of the development within the existing Lots 9 and 10, Block 6, Union Gardens. Because the proposed development is generally consistent with the Comprehensive Plan, harmonizes with the existing and expected development of surrounding areas, is a unified treatment of the development possibilities of the project site, and is consistent with the stated purposes and standards of the PUD Chapter of the zoning code, staff recommends **APPROVAL** of Z-6277-SP-3/Z-6484-SP-1/Z-6718-SP-1 as amended by staff and 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:**

**NET LAND AREA:** 13.1 AC 570,636 S.F.

**PERMITTED USES:**

Lots 9 & 10, Union Gardens – existing plat;

(Lots 6-15, Block 1, 169 Business Park- replat): Use Units 11 & 16\*

Lots 5,6,7 & 8, Block 6 Union Gardens – existing plat;

(Lots 1-5, 16-18, Block 1, 169 Business Park – replat): Use Units 11, 12 (excluding 12a), 13, 14, 16\*, 19 & 23 (for existing outdoor advertising sign only) (excluding slot car track)

*\*Mini-storage permitted per use conditions of Section 404.1, excluding 404.1.4, of the zoning code.*

**MINIMUM LOT AREA:** 0.5 AC 21,780 S.F.

**MAXIMUM LAND COVERAGE OF BUILDINGS:** 30%

**MAXIMUM FLOOR AREA RATIO PER LOT:** 30%



**MINIMUM LOT FRONTAGE:** 100 FT

**MINIMUM BUILDING SETBACKS:**

From east R.O.W line of 101<sup>st</sup> East Ave. 50 FT  
From north property line of Lot 10, Blk. 6, Union Gardens  
(Lots 11-15, Block 1, 169 Business Park) 40 ~~25~~ FT  
From east R.O.W. line of 103<sup>rd</sup> East Avenue 40 FT  
From north property line of Lot 5, Blk, 6, Union Gardens  
( Lot 18, Block 1, 169 Business Park) 40 FT  
From west R.O.W. line of 105<sup>th</sup> East Avenue (*private*) 50 FT  
From the south boundary of the corridor site plan  
(or, if E. 66<sup>th</sup> St. South is not closed, 20 FT  
setback from E. 66<sup>th</sup> St. R.O.W.) 50 ~~40~~ FT  
Setback from internal street R.O.W. 15 FT  
Internal lot line 10 FT

**MAXIMUM BUILDING HEIGHT:**

West half of Lots 5, 6, & 7, Blk. 6, Union Gardens  
(Lots 16, 17 & 18, Block 1, 169 Business Park)  
And Lots 9 & 10, Blk. 6, Union Gardens  
(Lots 6-15, Block 1, 169 Business Park) 2-story  
  
East half of Lots 5, 6, & 7 and Lot 8  
(Lots 1-5, Block 1, 169 Business Park) no height limitation

**OFF-STREET PARKING:**

Per the applicable Use Unit of the City of Tulsa Zoning Code.

**SIGNAGE:**

**Lots 9 & 10, Block 6, Union Gardens  
(Lots 6-15, Block 1, 169 Business Park):** One ground or wall sign  
per each lot not to exceed  
32 square feet of display  
surface area; ground signs  
may not exceed 8 feet in  
height; no north-facing wall  
signs permitted on Lot 10,  
(Lots 11-15)

**Lots 5-8, Block 5, Union Gardens  
(Lots 1-5, 16-18):** For lots fronting South  
105<sup>th</sup> East Avenue, one  
ground sign permitted per  
lot not to exceed 125  
square feet of display

surface area and 25 feet in height; for lots with frontage only on the interior street one ground sign permitted per lot not to exceed 50 square feet of display surface area and 12 feet in height.

Wall signs are permitted not to exceed 2 square feet per lineal foot of building wall of tenant space. No west-facing wall signs permitted on Lot 5 & 6, Union Gardens (Lots 17 & 18, 169 Business Park).

**PEDESTRIAN AND VEHICULAR CIRCULATION:**

South 105<sup>th</sup> East Avenue is part of PFPI project # 2876 and proposes pavement width of 27 feet measured back of curb to back of curb. Sidewalks are also proposed along the west side of South 105<sup>th</sup> East Avenue, only.

The minimum pavement width of the internal street, East 65<sup>th</sup> Street South/ South 104<sup>th</sup> East Avenue, shall be 27 feet, measured back-of-curb to back-of-curb. Sidewalks are required on both sides of the street and are proposed within the 40 foot private street right-of-way/ Reserve "A".

An additional twenty-five feet of right-of-way is required for South 103<sup>rd</sup> East Avenue. No access from the development to South 103<sup>rd</sup> East Avenue is permitted.

Sidewalks are required on the east side of South 101<sup>st</sup> East Avenue.

Pedestrian access shall be provided from the sidewalks to building entrances.

A 20-foot wide trail easement shall be provided for the trail extension that will be developed along the west side of U.S. Highway 169.

**SCREENING AND LANDSCAPING:**

Each lot shall be landscaped in accordance with the landscape chapter of the zoning code, and shall provide a minimum five-foot wide landscaped strip, except at vehicular access points, along the right-of-way of all private

and public streets. It is recommended that an easement be provided for this landscape strip.

An eight-foot tall screening fence shall be provided along the north boundary of the corridor site plan, and along the west boundary adjacent to the right-of-way of South 103<sup>rd</sup> East Avenue, where adjacent to residential use. Two emergency access gates shall be provided at the terminus of South 102<sup>nd</sup> East Avenue and South 103<sup>rd</sup> East Avenue, design of which must be approved by TMAPC, the Fire Marshall and Traffic Engineering.

#### **LIGHTING:**

**Lots 9 & 10, Block 6, Union Gardens (Lots 6-15, Block 1, 169 Business Park):** No light standard, whether pole or building-mounted, shall exceed 25 feet in height; however, no light standard shall exceed 8 feet in height if within 25 feet of the north boundary of the corridor site plan.

**Lots 5-8, Block 5, Union Gardens (Lots 1-5, 16-18):** No light standard, whether pole or building-mounted, shall exceed 25 feet in height; however, no light standard shall exceed 8 feet in height if within 25 feet of the South 103<sup>rd</sup> East Avenue right-of-way.

3. No zoning clearance permit shall be issued for a lot within the Corridor Site Plan until a detail site plan for the lot, which includes all buildings, parking, screening fences and landscaping areas, has been submitted to the TMAPC and approved as being in compliance with the approved Corridor Site Plan development standards.
4. A detail landscape plan for each lot shall be approved by the TMAPC prior to issuance of a building permit. A landscape architect registered in the State of Oklahoma shall certify to the zoning officer that all required landscaping and screening fences have been installed in accordance with the approved landscape plan for the lot, prior to occupancy or at the soonest appropriate planting time. The landscaping materials required under the approved plan shall be maintained and replaced as needed, as a continuing condition of the granting of an occupancy permit.
5. No sign permits shall be issued for erection of a sign on a lot within the Corridor Site Plan until a detail sign plan for that lot has been submitted to the TMAPC and approved as being in compliance with the approved Corridor Site Plan development standards.
6. Flashing signs, changeable copy signs, running light or twinkle signs, animated signs, revolving or rotating signs or signs with movement shall be prohibited.

7. All trash, mechanical and equipment areas (excluding utility service transformers, pedestals, or equipment provided by franchise utility providers), including building mounted, shall be screened from public view in such a manner that the areas cannot be seen by persons standing at ground level.
8. The Department of Public Works or a professional engineer registered in the State of Oklahoma shall certify to the appropriate City official that all required Stormwater drainage structures and detention areas serving a lot have been installed in accordance with the approved plans prior to issuance of an occupancy permit on that lot.
9. No building permit shall be issued until the requirements of Section 1107F of the Zoning Code have been satisfied and approved by the TMAPC and filed of record in the County Clerk's office, incorporating within the restrictive covenants the Corridor Site plan conditions of approval and making the City beneficiary to said covenants that relate to the Corridor Site Plan conditions.
10. Subject to conditions recommended by the Technical Advisory Committee during the subdivision platting process which are approved by TMAPC.
11. Approval of the Corridor Site Plan is not an endorsement of the conceptual layout. This will be done during detail site plan review or the subdivision platting process.
12. There shall be no outside storage of recyclable material, trash or similar material outside a screened receptacle, nor shall trucks or truck trailers be parked in the Corridor Site Plan except while they are actively being loaded or unloaded. Truck trailers and shipping containers shall not be used for storage in the Corridor Site Plan.

**TAC Comments from 7/20/06:**

**General:** Site Plan differs from PFPI #2876 with regard to number and sizes of lots.

**Water:** A water main extension will be required.

**Fire:** Provide mutual access easement through Lots 13 and 15 for emergency fire department access to 102<sup>nd</sup> and 103<sup>rd</sup> East Avenue. (Per Fire Marshall approval and dedication per separate easement.)

**Stormwater:** Public overland drainage channel is being placed in what is labeled as a D/E and U/E on Exhibit B. It is not acceptable to place utilities in what should be an Overland Drainage Easement, nor is it acceptable to place U/E inside the Reserve "C" Detention Easement. We have some concern about the types of

material that were used to elevate this site. (If open channel, easements must be separated.)

**Wastewater:** All properties within the subdivision will require sanitary sewer.

**Transportation:** Property ownership with private street frontage for Union Gardens properties and north is a concern regarding access to a public street. Private street maintenance responsibility will need to be clearly defined. Sidewalks on the west side of 105<sup>th</sup> E. Ave. have been included in the PFPI; the requirement for sidewalks on all street frontages is supported.

**MSHP:** Recommend the construction of sidewalks per the Subdivision Regulations along 105<sup>th</sup>, 65<sup>th</sup>, & 101<sup>st</sup>.

**LRTP:** Mingo Road, between 61<sup>st</sup> St. S. and 71<sup>st</sup> St. S., existing 4 lanes. US-169, between 61<sup>st</sup> St. S. and 71<sup>st</sup> St. S., planned 8 lanes. 71<sup>st</sup> St. S., between Mingo Road and US-169, existing 6 lanes. 61<sup>st</sup> St. S., between Mingo Road and US-169, existing 4 lanes.

**TMP:** Mingo Trail funded along 169 Corridor. Request 20' easement, location coordinated with Public Works Transportation Design Division, as trail is designed.

**Transit:** Currently, Tulsa Transit operates existing routes in less than a mile from this location. According to MTTA future plans, this location will continue to be served by transit routes. Therefore, consideration for access to public transportation should be included in the development.

**Traffic:** Include Construction Standards (width, etc.) for both Private Streets in the Development Standards. No objection to the closure of two ½ street rights-of-way. The Private Street (South 105<sup>th</sup> East Avenue) shall connect with the existing service road to the south and extend to 63<sup>rd</sup> Street.

**GIS:** No comments.

**County Engineer:** No comments.

**PSO:** Separate drainage and utility easements; Designate landscape easement within or adjacent to utility easement so utilities can avoid locating in planting areas (trees).

### **Applicant's Comments:**

**Dennis Blind**, 4645 South 83<sup>rd</sup> East Avenue, 74145, representing the developer and land owner, stated that he has received the staff recommendations and he has a few clarifications to make. He indicated that he overlooked an item on the Use Units and would like to add Use Unit 21, Billboards, because there is a billboard in the southeast corner, which was probably an error when the plan text was submitted.

Mr. Ard asked Mr. Blind to identify which lot the Use Unit 21 would be in. In response, Mr. Blind stated that it would be in Lot 3, in the southeast corner of Lot 3. Mr. Blind further stated that this is an existing outdoor sign.

Mr. Blind requested the following changes on the building setbacks: From north property line of Lot 10, Block 6, Union Gardens, Lots 11-15, Block 1 of 169 Business Park be 25 FT as shown on the submitted plan. The suggested 40 FT by staff encroaches into the lots and makes them difficult to build on. The northwest portion of the subject property becomes thin. He indicated that he is

matching the setback on the southern boundary where he is adjacent to Mathis Brothers, which is 40 FT and staff has changed it to 50 FT. He requested that it be 40 FT. Signage for Lots 9 & 10, Block 6 and Lots 6-15, Block 1 should read "one ground or wall sign per each lot", and staff excluded the language per each lot. There is no indication regarding the 20-foot easement, where it might be located for the trail or might be requested and he doesn't know how to address that issue at this point, but he is willing to work with the trail.

Ms. Matthews stated that the trails easement could be addressed during the platting process and advised consulting the staff planner who is working on the trails.

Mr. Blind continued that on screening and landscaping he is in agreement with staff's recommendation. He stated that he has shown an eight-foot tall screening fence along the northern property line and the western property line where the residential areas are located. However, he did not show an eight-foot screening fence along the northernmost property line because that property is currently being marketed for a commercial use. He requested that this be amended.

Mr. Midget asked if he wanted the screening on the northernmost area excluded permanently or temporarily. In response, Mr. Blind stated that he would like it to be permanently because it is being marketed for commercial use.

Mr. Ard asked if the property is still being used as residential. Mr. Blind stated that it is zoned CO.

Mr. Blind stated that there is drainage coming from two lots north of the subject property that he is taking care of in the master detention facility on his site, and if there is a fence there it could have the potential of blocking the stormwater drainage as it comes into the detention facility.

Mr. Midget asked staff about the amended setbacks. In response, Ms. Matthews stated that staff would agree with the setback amendments and would agree with everything that Mr. Blind has requested today.

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the corridor site plan for Z-6277-SP-3/Z-6484-SP-1/Z-6718-SP-1 per staff recommendation as amended by the applicant. (Language with a strike-through has been deleted and language with an underline has been added.)

\*\*\*\*\*

**Application No.: PUD-702-A**

**MAJOR AMENDMENT**

**Applicant:** Jeffrey G. Levinson

(PD-26) (CD-8)

**Location:** 110<sup>th</sup> Street and South Sheridan Avenue

**STAFF RECOMMENDATION:**

**PUD-702/Z-6933 May 2004:** All concurred in approving a request to rezone a 4.64± acre tract from AG to RS-2 and a Planned Unit Development for Single Family Residential development on subject property.

**Z-6810/PUD-646 July 2001:** An application was filed to rezone a 35± acre tract located north and east of the northeast corner of East 111<sup>th</sup> Street South and South Sheridan Road from AG to RS-2 and PUD. The request for RS-2 zoning was denied and RE zoning was recommended with a maximum of 20 lots if the development provided only one access point. The applicant revised the request by including an additional 4.1 acres of land and TMAPC and City Council approved RS-1 zoning and approved the PUD for a maximum of 30 lots with two points of access being provided.

**Z-6807/PUD-645 May 2001:** A request to rezone the 10 acre node, located on the northwest corner of East 111<sup>th</sup> Street and South Sheridan Road from AG to CS and OL for future commercial and office development. TMAPC recommended approval of the request as submitted but City Council denied the request for rezoning. The request was appealed to district court and the district court upheld the decision of City Council.

**Z-6753/PUD-450-A March 2000:** All concurred in approval of a request for a major amendment and the rezoning of the 4.5-acre tract located on the southwest corner of East 111<sup>th</sup> Street and South Sheridan Road and south of the subject tract from CS/PUD-450 to RS-4/PUD-450-A for a gated single family development.

**Z-6730/PUD-627 March 2000:** A request to rezone a 10 acre tract located on the southwest corner of East 108<sup>th</sup> Street South and South Sheridan Road from AG to RS-2/PUD for single-family development. Staff and TMAPC recommended denial of RS-2 and recommended approval of RS-1 with PUD-627. City Council concurred in approval per TMAPC recommendation.

**Z-6700/PUD-611 June 1999:** All concurred in approval of a request to rezone a 20-acre tract located west of the northwest corner of East 111<sup>th</sup> Street South and South Sheridan Road from AG to RS-2/PUD for a residential development.

**BOA-17569 November 1996:** A request to allow a 110' cellular tower on property located north of the northwest corner of East 111<sup>th</sup> Street South and South Sheridan Road, and zoned AG, was denied.

**Z-6525/PUID-543 April 1996:** A request to rezone a 14.6 acre tract located between East 104<sup>th</sup> Street and East 106<sup>th</sup> Street on west side of Sheridan from AG to RS-2/PUD. All concurred in approval of RS-2/PUD for single-family development.

**Z-6249/PUD-450 July 1989:** A request to rezone a 4.5-acre tract located on the southwest corner of East 111<sup>th</sup> Street South and South Sheridan Road, from AG to CS/PUD for commercial shopping center. The request was approved subject to the PUD standards and conditions.

**Z-6249 May 1989:** An application was filed to rezone a 44.6-acre tract located on the southwest corner of East 111<sup>th</sup> Street South and South Sheridan Road, from AG to RS-2 and CS. TMAPC recommended approval of RS-1 on the west 140' of the tract, RS-2 on the balance of the tract less the proposed commercial node (675' x 290'). All concurred in approval of the residential zoning and recommended the applicant submit a PUD along with the rezoning application for CS on the 4.5-acre node of the property.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately 4.64± acres in size and is located. The property is sloping, wooded, vacant and is zoned RS-2.

**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Sheridan Road	Secondary Arterial	100'	2 lanes

**UTILITIES:** The subject tract has access municipal water and sewer available.

**SURROUNDING AREA:** The property is abutted on the north and east by single-family dwellings on large lots, zoned AG; to the south and west by vacant property, zoned AG.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 26 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the subject tract as Special District 1 – an area of steep slopes and erodible soils, and Low Intensity-No Specific land use.

**STAFF RECOMMENDATION:**

The existing PUD 702 was developed as a twelve-lot residential development situated at 110<sup>th</sup> Street and South Sheridan Road and is currently platted per the



'Amended Plat of Augustus'. The plat contains an approximate six-foot strip on its northern boundary labeled as Reserve Area "B", which was created per a minor amendment to the PUD, PUD 702-1, on March 1, 2006 for purpose of conveyance to the adjoining property owner to the north. (The minor amendment application did not indicate that the proposed reserve area was intended for conveyance. This came to light at the public hearing.)

Although the conveyance (Deed) transferred title to Reserve "B" to the adjoining property owner, the obligation for the upkeep of Reserve "B" arguably remains with the Homeowner's Association to be established per the Amended Plat of Augustus. The proposed amendment will delete Reserve Area "B" from the PUD and vest its maintenance with the adjoining property owner. The Association does not have access to Reserve "B", which is situated behind an existing fence on the northern boundary of the platted property.

Therefore, PUD 702-A proposes to (1) delete and abandon Reserve Area "B" from the Amended Plat of Augustus; and (2) change the name of the PUD and Plat from The Amended Plat of Augustus to the Broadmoor. Because sidewalks were not required at the time of approval of the original PUD, staff would further recommend that sidewalks be installed along South Sheridan Road in compliance with the current subdivision regulations.

Upon finding the proposed amendment to be (a) consistent with the Comprehensive Plan; (b) in harmony with the existing and expected development of surrounding areas; (c) a unified treatment of the development possibilities of the project site; and (d) consistent with the stated purposes and standards of the PUD chapter of the zoning code, staff recommends APPROVAL of PUD 702-A subject to the following conditions:

1. All remaining development standards of PUD 702 shall remain applicable and in effect.
- ~~2. Installation of sidewalks along South Sheridan Road in compliance with subdivision regulations.~~
3. The plat and corresponding Deeds of Dedication and Restrictive Covenants be amended to reflect abandonment of Reserve "B".

**TAC Comments from 7/20/06:**

**General:** No comments.

**Water:** No comments.

**Fire:** No comments.

**Stormwater:** No comments.

**Wastewater:** No comments.

**Transportation:** No comments.

**MSHP:** Sheridan, between 101<sup>st</sup> St. S. and 111<sup>th</sup> St. S., designated as secondary arterial. Recommend the construction of sidewalks per the Subdivision Regulations along Sheridan & E 110<sup>th</sup> St.

**LRTP:** Sheridan, between 101<sup>st</sup> St. S. and 111<sup>th</sup> St. S., existing 2 lanes.

**TMP:** No existing trail planned for vicinity.

**Transit:** Currently, Tulsa Transit operates existing routes in less than a mile from this location. According to MTTA future plans, this location will continue to be served by transit routes. Therefore, consideration for access to public transportation should be included in the development.

**Traffic:** No comments.

**GIS:** No comments.

**County Engineer:** No comments.

### **TMAPC COMMENTS:**

Mr. Boulden stated that he discussed the sidewalk issue with Mr. Levinson and has done some research on this. He believes that to require the sidewalks on this application to amend the PUD to remove property from the PUD would be inappropriate. There is no relationship that he can see regarding the application and the imposition of the requirement of sidewalks in this particular case. Mr. Boulden expanded that there should be a reasonable relationship between the relief applied for and the imposition of requirement for sidewalks for this particular circumstance. To require the sidewalk when the applicant is merely doing some corrective work on the PUD and not do any further development would be inappropriate at this time.

### **Applicant's Comments:**

**Jeffrey Levinson**, 9308 South Toledo Avenue, Tulsa, Oklahoma 74136, stated that his client is in full agreement with the staff recommendation with the exception the condition of installing sidewalks. He indicated that he is simply trying to clean up the PUD and remove Reserve Area B because there is no access to it.

### **INTERESTED PARTIES:**

**Greg Bledsoe**, 1717 South Cheyenne, 74115, stated that he is a passionate advocate for sidewalks. He commended the Planning Commission for holding firm on sidewalk requirements during last weeks TMAPC meeting. He commented that sidewalks can change a neighborhood. He has been lobbying for a sidewalk between 21<sup>st</sup> and 31<sup>st</sup> Streets along South Peoria. Finally the sidewalk is in place and it has dramatically changed the character of the neighborhood for the better. Mr. Bledsoe cited the various people who utilize the sidewalk and how it has changed his neighborhood. He requested that the Planning Commission required the sidewalk for this PUD. He further requested that Mr. Boulden explain why he feels that the requirement is inappropriate at this time.

**TMAPC COMMENTS:**

Mr. Ard stated that the Planning Commission has been adamant regarding enforcement of required sidewalks for at least the last two years. In response, Ms. Matthews stated that the original PUD was before the Planning Commission in May of 2004 and it was probably one of the last PUDs to get approved before the Planning Commission started enforcing the required sidewalks.

**Applicant's Rebuttal:**

Mr. Levinson stated that this is a new subdivision and he is not present to argue whether or not sidewalks are a good idea. He agrees with Mr. Boulden because he doesn't believe the Planning Commission can legally enforce the sidewalks because the sidewalks are 100% unrelated to the application before the Planning Commission today. It seeks only to clean up the PUD and remove the Reserve Area B and to change the name. If it becomes policy to start adding things when an amendment is filed, then developers would quit coming before the Planning Commission. His client shouldn't be penalized for trying to clean up the PUD. Mr. Levinson indicated that it was his idea to have his client clean up the PUD.

Mr. Boulden stated that he has been forced to look at this issue a lot closer because the City of Tulsa and the Planning Commission have taken a stand on the sidewalk requirements. He is particularly looking at cases that address exactions or when someone wants to develop property and the impact of that development requires widening of streets or the requiring of sidewalks in the public right-of-way. The cases he has seen are referenced as Nollan and another named Dolan. He explained that these two cases talk about exactions (in essence the donation of right-of-way or easements) to the governing body. To do this the exaction must be reasonably related to the development and in this case the development is already there, and the Planning Commission is being asked to allow a change in the name of the PUD, as well as to remove a requirement for a Reserve Area to be maintained by the people there. He sees no relationship in that part of this development to the imposition of a sidewalk requirement in this application. Mr. Boulden made a distinction that the Planning Commission's sidewalk requirements do not necessarily require the giving of land in every case. These cases he has referenced are not necessarily on point and he thinks it is more appropriate to whether or not the Subdivision Regulations have a reasonable relationship to the action that the Planning Commission is asked to take. For this reason he believes, if the Planning Commission agrees, that this is an appropriate time to not impose the sidewalk requirement.

Mr. Ard recognized Mr. Bledsoe.

Mr. Bledsoe stated that it seems to him that this is an important legal issue and it may affect many other decisions other than this individual decision. He suggested that the Planning Commission should request a formal written legal opinion from the City Attorney that other attorneys and interested parties can

comment on and express their opinions. He would like the opportunity to read the two cases that Mr. Boulden cited and comment on them to argue from a legal prospective that this can be done.

Mr. Midget stated that he would move to approve this major amendment per staff recommendation subject to excluding the sidewalk requirement based upon Legal's advice.

Mr. Ard stated that he would second that motion. He further stated that he agrees with Mr. Boulden that to come in for a name change and to clean up some legal issues shouldn't throw this PUD into a situation where it would have to have sidewalks. Mr. Boulden's explanation sounded reasonable to him.

Ms. Bayles stated that the Planning Commission discussed the situation where there could be PUDs in process when the Subdivision Regulations were being updated. She asked Mr. Alberty if he recalled the conversation regarding this that there would be PUDs periodically come through that would be subject to this type of action. Ms. Bayles further asked if her memory is sufficient on that subject. In response, Mr. Alberty stated that he can confirm Ms. Bayle's memory, but he doesn't know if that was in a form of a question or she wanted him to confirm what she said. Ms. Bayles stated that she wants Mr. Alberty to confirm her statement, because she has to agree with Mr. Boulden. She believes that the Planning Commission would be taking punitive action on this particular developer at this time.

Mr. Alberty stated that the staff recommendation is a reflection of an attitude that the Planning Commission is trying to promote and he, too, wouldn't want to go against what Mr. Boulden has advised.

**TMAPC Action; 6 members present:**

On **MOTION** of **MDIGET**, TMAPC voted **6-0-0** (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes Harmon, Jackson, "absent") to recommend **APPROVAL** of the major amendment for PUD-702-A subject to excluding the installation of sidewalks along South Sheridan Road per staff recommendation based upon Legal's advice regarding this issue. (Language with a strike-through has been deleted and language with an underline has been added.)

**Legal Description for PUD-702-A:**

All of the Amended Plat of Augustus, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat #5997, **FROM RS-2/ PUD (Residential Single Family District/ Planned Unit Development [PUD-702]) TO RS-2 /PUD (Residential Single Family District/ Planned Unit Development [PUD-702-A]).**

\* \* \* \* \*

**Application No.: PUD-571-2**

**MINOR AMENDMENT**

**Applicant:** Zone Systems, Inc.

(PD-18) (CD-8)

**Location:** 8289 East 81<sup>st</sup> Street (8307 East 81<sup>st</sup> Street)

**STAFF RECOMMENDATION:**

The applicant is proposing a minor amendment to PUD-571 for the purpose of locating a 160-foot tall communication tower on the northwest corner of the subject property, which has been developed as mini-storage. Development standards do not permit the proposed use; however, because the underlying zoning is CS, Commercial Shopping, the applicant may request inclusion of the communication tower use (Use Unit 4) by minor amendment.

Per Section 1204.3.g of the zoning code, communication towers must be setback a distance equal to at least one hundred ten percent (110%) of the height of the tower from any adjoining lot line of a residential, office or agricultural zoned lot. The proposed tower location is within a CS district; the closest residential district zones are more than 200 feet to the north and 197 feet to the east. However, multi-family has been developed immediately adjacent to the proposed tower location.

Because the height of the tower is 160 feet and existing multifamily residential is well within 160 feet of the proposed tower location, staff finds the proposed minor amendment to be incompatible with existing development and recommends **DENIAL** of PUD-571-2 as proposed.

**Applicant's Comments:**

**Peter Kavanaugh**, 1620 Haudley, Suite A, Dallas, Texas 75208, representing Verizon Wireless, submitted an aerial photograph of the subject area (Exhibit C-1), cited the surrounding uses and surrounding properties. He explained that the antenna would be at the corner of the multifamily use (apartments). The PUD allowed the apartments to be built in commercial zoning and his proposal is in fact setback a minimum of 110 percent from the zoning line, but it is not 110 percent back from the apartment units. The people who built the apartments and the people who live there traded, by being in commercial zoning, whatever benefit they would have not being in commercial zoning. He commented that the cell tower will not create any noise or traffic. He compared the various uses in the subject area and their impact on the apartment dwellings.

Mr. Kavanaugh stated that people depend on their cell phones working and this tower is necessary for that to happen. There have to be antennas in a pattern close enough to provide service. He concluded that the cell tower is proposed at a mini-storage in CS zoning as it should be and the people in the apartments should expect to see things that are commercial when they live next to it. The

tower can only be seen from the apartments at an angle. Mr. Kavanaugh concluded by stating that he meets the letter of the law and staff has a good point that they felt that the spirit of the law states that the cell tower should be some distance away from residential. This is multifamily and not single-family living and they should have expected this type of request giving that they are in a commercially zoned property and adjacent to a mini-storage.

**TMAPC COMMENTS:**

Mr. Midget asked if the mini-storage set the piece of property aside for the cell tower prior to the apartments being built. In response, Mr. Kavanaugh answered negatively.

**There were no interested parties wishing to speak.**

Mr. Midget stated that Mr. Kavanaugh makes a very valid point about it being in a commercial area and he knows the apartment buildings are near, but the way they build radio towers now is not that intrusive. Under normal circumstances one would probably not want to have the cell tower there, but he believes it is back far enough and it wouldn't be that intrusive. Mr. Midget moved to approve the minor amendment for the cell tower to be located in PUD-571-2.

Ms. Cantees seconded the motion.

Mr. Ard stated that his opinion is 180 degrees the other direction. This is a very tight area and on three sides there are commercial uses, but the pole will be within a few feet of the apartments, which he is uncomfortable with.

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 2-4-0 (Cantees, Midget "aye"; Ard, Bayles, Collins, Wofford "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **APPROVE** the minor amendment for PUD-571-2

**MOTION FAILED TO LACK OF MAJORITY VOTE.**

**NO FURTHER ACTION WAS TAKEN AND THEREFORE THE APPLICATION IS DENIED.**

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**OTHER BUSINESS:**

**Application No.:** PUD-513-A

**DETAIL SITE PLAN**

**Applicant:** DeShazo, Tang & Associates

(PD-18) (CD-9)

**Location:** South side of 51<sup>st</sup> Street between Lewis and Harvard/2916 East 51<sup>st</sup> Street

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan for a mini-storage addition. The proposed use, Use Unit 16, Mini-Storage, is in conformance with Development Standards of PUD 513-A.

The proposed buildings comply with setback requirements and maximum height restriction. The north and west elevations of building 'A' and the west elevation of building 'B' are concrete tilt-up as required by development standards. Proposed parking and landscaping also comply with development standards and the zoning code. Proposed building mounted lights are on interior building walls and are mounted below the maximum building height and should therefore be shielded from view.

Therefore, staff recommends **APPROVAL** of PUD-513-A detail site plan as proposed.

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

**The applicant indicated his agreement with staff's recommendation.**

**There were no interested parties wishing to speak.**

**TMAPC Action; 6 members present:**

On **MOTION** of **BAYLES**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **APPROVE** the detail site plan for PUD-513-A per staff recommendation.

\*\*\*\*\*

**Application No.: Z-7020**

**AG to IL**

**Applicant:** Robert Johnson/City Council's Request for a Reconsideration

**Location:** West of the southwest corner East 56<sup>th</sup> Street North and North 145<sup>th</sup> East Avenue

**STAFF RECOMMENDATION:**

Ms. Matthews stated that there is a letter from the City Council requesting the Planning Commission to reconsider Z-7020.

Ms. Matthews cited the history of the applicant.

**Applicant was not present.**

**TMAPC COMMENTS:**

Ms. Bayles stated that she attended a meeting at Councilor Turner's request. She very clearly spoke to his Council Aide and acknowledged the fact that she was not Chair and she was both uncomfortable and inconvenient and it was perhaps inappropriate for her to be the representative who was designated. However, she was told that her participation was requested at the Urban and Economic Development Committee meeting that morning. Ms. Bayles documented the development of that case and provided it to the Planning Commissioners.

Ms. Bayles talked with John Fothergill regarding Mr. Johnson's participation since he is not here. She requested that the Planning Commission continue this item to August 16, 2006 so that the information can be distilled from what staff has provided and what she had provided today. She acknowledged that Mr. Johnson's attendance is of the utmost importance and confirmed that he has received notification and verification of this application being heard a second time.

Mr. Midget requested that this be continued to August 23, 2006 due to the previous continuances. Ms. Matthews stated that the next meeting will have the Zoning Code amendments on it and it may be a lengthy meeting. Mr. Midget suggested that this be continued to September 6, 2006.

Mr. Midget stated that if this is brought back on August 16<sup>th</sup> and the Planning Commission votes to reconsider it, then there is another discussion about the issues. He expressed his concerns about the previous continued items to the next two meetings.



Ms. Matthews asked Mr. Midget if he is proposing to make the decision whether to rehear it to actually rehearing it. In response, Mr. Midget stated that he is suggesting that if the Planning Commission is going to reconsider this case that it is done the week after the Zoning Code Amendments.

Ms. Matthews stated that there needs to be a motion on whether or not the Planning Commission is going to rehear this case first.

Mr. Midget moved that the reconsideration be considered on September 6, 2006.

Ms. Huntsinger asked the Planning Commission if they are stating that they are going to rehear this case and notification should be done.

Mr. Midget asked how it was put on the agenda today. Ms. Huntsinger stated that staff is asking the Planning Commission if they are willing to reconsider this item. Mr. Midget stated that he is suggesting that the Planning Commission postpone considering the reconsideration until September 6, 2006. Mr. Midget further stated that once the Planning Commission decides to rehear this it will be for the full discussion.

Mr. Boulden restated Mr. Midget's motion that he is moving to continue this matter to September 6, 2006.

**TMAPC Action; 6 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **CONTINUE** the Request for Reconsideration for Z-7020 to September 6, 2006.

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**Application No.: PUD-597**

**DETAIL SITE PLAN**

**Applicant:** Sack & Associates/Request for Reconsideration

(PD-18c) (CD-8)

**Location:** 9343 East 95<sup>th</sup> Court South

**STAFF RECOMMENDATION:**

Ms. Matthews stated that this is a request for reconsideration. The Planning Commission had required sidewalks and the applicant is requesting that the Planning Commission reconsider this requirement.

**Applicant's Comments:**

**Fred Stoops**, 400 Riverwalk Terrace, Suite 250, Jenks, 74037, representing NAIW, stated that he is requesting that the Planning Commission not have a knee-jerk reaction to any time a sidewalk issue comes before it that it is automatic that a sidewalk must be in place. Sometimes a sidewalk doesn't make sense. Mr. Stoops indicated that he is a believer in sidewalks and what they can do in the right circumstances. Other times he believes that it is bad for the City to have a sidewalk that starts nowhere and goes nowhere, which is exactly what will happen in this particular event.

Mr. Stoops explained that the street is privately owned and it is not a public right-of-way. The PUD was approved on the subject property in 1998 and the plat was approved in 1999.

Mr. Boulden stated that it seems more appropriate to have the motion to reconsider the reconsideration, then get into the arguments about whether or not the requirement is appropriate.

Mr. Boulden stated that it would be healthy to have a discussion regarding this if the Planning Commission voted to reconsider it.

**TMAPC Action; 6 members present:**

On **MOTION** of **WOFFORD**, TMAPC voted 6-0-0 (Ard, Bayles, Cantees, Collins, Midget, Wofford "aye"; no "nays"; none "abstaining"; Bernard, Carnes, Harmon, Jackson, "absent") to **RECONSIDER Z-7020**.

**Applicant's Comments:**

Mr. Stoops stated that the sidewalk in this particular case is on a privately owned street and not a public street. The street dead-ends 100 feet beyond the end of the subject property. Mr. Stoops submitted an aerial D-1 of the subject area.

Mr. Stoops explained that the building in the aerial is the Tulsa Out-Patient Surgery and there is not sidewalk in front of that building. He has talked with Tulsa Out-Patient Surgery and they indicated that they have no intention of ever installing a sidewalk in front of their facility. The subject property is immediately to the west of Tulsa Out-Patient Surgery and the property lower in the photograph is all expressway and will never be built on. There is a fence on the south side of the property. Mr. Stoops pointed out that there is a building which is the Cancer Care Associates and their access is from Mingo and from a street to the north. He indicated that he called and talked with the building management and they indicated that they would never have any intention of putting a sidewalk in on that facility because it would not benefit them in anyway and would not benefit anyone. There is a residential neighborhood to the north of the subject property and according to the PUD there can never be any access from that neighborhood into the PUD and there would be no people walking from the neighborhood to get to the subject building. The only people coming to the

subject property would be coming from Mingo. Mr. Stoops demonstrated how people walking would have to cross two properties without sidewalks before reaching the subject property where sidewalks are being required. He indicated that there is a 35-foot mutual access agreement that each property owner is granting to all of the others. He explained that there is not room for a sidewalk according to the mutual access agreement and a sidewalk has to be four feet. Mr. Stoops commented that the sidewalk would look funny if it is required on the subject property. This requirement will make the subject property look silly when it connects to grass on one side and never reach it without walking in the street to get to the property. Under these circumstances there is no reason whatsoever to have a sidewalk because no one would ever use it. This PUD by its terms is low intensity and there is no connecting access to the neighborhood and a fence and screening is required between the PUD and the neighborhood and the street dead-ends after the subject property. This would be a case to exercise discretion and draw some lines. This is not a major arterial when a sidewalk is needed for everyone to benefit and use it. The street is a dead-end street and there can never be a connecting sidewalk that anyone can meaningfully use. Mr. Stoops requested that the Planning Commission make the define distinction, rather than requiring a sidewalk simply because this came before them. He believes that one should look for fine distinctions where it helps develop Tulsa in a meaningful way so that it won't be a joke that there is a sidewalk starting nowhere and going nowhere. This is on private property and his clients purchased their property to the south side of the mutual access agreement (to the road) and this would be literally be on their private property that the Planning Commission is asking that a public sidewalk be installed that no one can get to and use.

Mr. Stoops explained to the Planning Commission the purpose of a PUD. He stated that if there is to be a continuity of function and design, either there should be a sidewalk the whole way or a sidewalk none of the way. It is not possible to have a sidewalk the whole way and in this case there should be no sidewalk. People would have to walk in the street and the grass to reach this short sidewalk that will take them nowhere. This is totally contrary to the definition of this body of what a PUD is supposed to accomplish. Mr. Stoops asked the Planning Commission if they had any questions.

**TMAPC COMMENTS:**

Mr. Ard asked Mr. Stoops if the privately owned street will be gated. In response, Mr. Stoops answered negatively.

Mr. Ard asked Mr. Stoops if there is another lot adjacent to the subject property that could be developed. In response, Mr. Stoops stated that there is another lot to the west and the property is almost pie-shaped and he doesn't know how the developer will ever sell the last lot because it is such an irregular configuration and has almost no useable space.

Mr. Boulden asked Mr. Stoops to point out the length of the mutual access easement and how close it goes to Mingo. In response, Mr. Stoops stated that the mutual access easement runs to Mingo and the easement is the road. Mr. Boulden asked if it goes to the west curb-line of Mingo. Mr. Stoops answered affirmatively.

Mr. Midget stated that he recognizes this from the first day that the application came up because he didn't see it as being that useful. Mr. Midget further stated that he supports sidewalks and believes that they are needed. He hates the fact that the Planning Commission, as far as planning is concerned, sidewalks were not enforced. He believes that this is ludicrous to enforce the required sidewalk on the subject property because it serves no purpose. If he was to walk on that sidewalk he would have to drive there and park right in front of it to get out and walk on it and he wouldn't be going anywhere. This doesn't make sense to him. He doesn't believe it is fair to impose a sidewalk requirement on this particular development. The Planning Commission shouldn't just willy-nilly not impose the sidewalks where they believed to not be needed, but in this particular instance he thinks it is very unfair to impose that requirement.

Mr. Wofford asked Mr. Stoops if he is not anticipating that a lot of people from the NAIW building will walk next door for out-patient surgeries. In response, Mr. Stoops stated that he definitely hopes not. He indicated that there are six employees who work at the NAIW. Mr. Stoops stated that Mr. Wofford makes a good point that this is a very low density usage and the point that one would have to drive to the sidewalk to walk on it is also a valid.

**INTERESTED PARTIES:**

**Greg Bledsoe**, 1717 South Cheyenne, 74115, said in relation to this item, the request for a reconsideration, his reflection is that he has heard this argument made by developers repeatedly that it will be a sidewalk to nowhere and now we have no sidewalks. He urged the Planning Commission to stick with this because sooner or later, if the Planning Commission holds firm, there will be sidewalks at these facilities despite what they say in their letters. The reason there will be sidewalks is because public pressure will compel them to have sidewalks because there will be disabled people. If our culture begins to change because of the Planning Commission's decisions regarding sidewalks, then private property will begin putting sidewalks in on their own volition.

Mr. Bledsoe stated that when the Cancer Treatment Center and this medical facility state that they have absolutely no intention of ever putting sidewalks in, they have not reflected upon the requirements of the Americans with Disabilities Act. This requires them to place sidewalks and they are probably in violation of that right now, despite the Planning Commission excusing them from putting in sidewalks in the past. If someone ever decides to enforce that law, which is a challenge because disabled people do not enforce that law and are unable to find lawyers who will, the government may have to step in to make them install the

sidewalks. The culture has to be changed and it starts in small increments in small places.

Mr. Bledsoe stated that he would like to ask the applicant if anyone is going to outside of that building and walk on their lawn. Will a disabled person (perhaps) be employed in that building who might want to go out and enjoy the outside but wouldn't be able to do so because they would have wheel over a lawn and there would be no hard surface for them. He explained that his 92-year-old mother is confined to a motorized wheelchair and she is constantly challenged in the most upscale businesses with lack of accessibility in these very small ways. He understands the applicant stating that this is a sidewalk to nowhere, but if there is another property, and apparently it is being marketed, at the end of the road that will be connected and he suggest that there will be pressure to have a sidewalk all the way to Mingo.

**Ted Sack**, Sack & Associates, 111 South Elgin Avenue, Tulsa, Oklahoma 74120, stated that if a sidewalk had to be put in adjacent to the street, which there is no provision for as part of this PUD, then there would be a problem of an ADA-accessible sidewalk being able to get from the building down to that sidewalk due to the topography that had be dealt with on this property. The subject property is very narrow and it will take a substantial retaining wall to put the building on it and to have an ADA accessible walk from the building down to the sidewalk adjacent to the street would be very difficult to do. It would require a very complicated sidewalk to do this. The site is 140 feet wide and an ADA-accessible sidewalk would be very challenging. The provision was not made in this PUD because there was no requirement for any sidewalks.

**TMAPC COMMENTS:**

Ms. Bayles asked Mr. Boulden if he held the same opinion about required sidewalks with this type of scenario. In response, Mr. Boulden stated that he believes this scenario is different from the previous case. Mr. Boulden explained that when this originally came before the Planning Commission, it was on approval of detail site plan and there was discussion at that time and both staff and Legal thought it was appropriate, if the Planning Commission wanted to, to impose a requirement at the detail site plan. Mr. Boulden explained how he researched the Zoning Code and Subdivision Regulations to come to this determination. Mr. Boulden commented that he believes the Planning Commission should make their own decisions as to what was meant by development standards. He stated that if the PUD didn't require sidewalks then perhaps the detail site plan is not the time to impose the sidewalk requirement.

Mr. Boulden stated that the other issue that has to be dealt with is that this is a private road and a private mutual access. The City of Tulsa cannot expend public monies on a private development. The argument that the developer didn't install the sidewalks on private roads and that the City will have to do it eventually doesn't really fly in this situation. If the other lots ever come in for

something at a later date, then the Planning Commission could require sidewalks. The other side of this argument is that with developments, such as the Tulsa Hills Project, the Planning Commission is requiring sidewalks within the development and it is certainly a private development. He believes that the Planning Commission can impose a requirement for internal pedestrian circulation.

Mr. Midget stated that he is glad to hear that even if it is on private property, the Planning Commission can impose internal sidewalks. This makes him feel more comfortable and he believes that the Planning Commission needs to look at a process and internal policies of what is criteria is going to be used to impose sidewalks. Mr. Midget noted that the information received July 5, 2006 was that no sidewalks were indicated on the site plan and staff did recommend that sidewalks be provided notwithstanding.

Mr. Boulden stated that Nollan and Dolan case talk about exactions where government entities are requiring people to donate rights-of-way or easements and the Planning Commission does this all of the time. In this case the Planning Commission is not requiring that. What this all boils down to is this: There are regulations and are the regulations reasonable. It is similar to a building code requirement and in this case the question would be whether or not this is a reasonable regulation and he would submit that it is reasonable. The other question is whether or not it is appropriate to impose the sidewalk requirement at this time and is it a sidewalk to nowhere.

Ms. Bayles stated that she would like to add something to what Mr. Boulden just said about as if the Planning Commission is codifying this. The development community right now is going through their code cycle, on which the public review closes tomorrow. Ms. Bayles indicated that she had discussed with Mr. Alberty about possibly pulling all of the documentation together besides the Subdivision Regulations and bringing it to the next worksession. She asked Mr. Alberty if that would be possible. She indicated that she spoke with Mr. Jerry Ledford, Sr. about a development seminar that he conducted that she found very valuable. She would appreciate someone like Mr. Ledford and Mr. Sack weighing in on this because the Planning Commission has established some criteria that are equally applied to residential, commercial and industrial. Perhaps this all needs to be revisited to make sure that the policy is consistent and something that the City can buy into without any question.

Mr. Alberty stated that if Ms. Bayles is asking to bring before the Planning Commission all of the codes for the City, that would be an overwhelming issue and he is sure it doesn't apply to Planning Commission issues, which are primarily land use issues and division of land.

Ms. Bayles stated that she is talking about the relevant documentation as it pertains to sidewalks. Mr. Alberty stated that wouldn't be difficult.

Ms. Bayles stated that she would like to request that this be done, without objection from the rest of the Planning Commission.

Mr. Ard stated that the subject lot is immediately adjacent to another lot that is yet to be developed, and could have a sidewalk on it, and to the east of the existing building there are two lots that could have sidewalks on them. It seems to him that if all of a sudden four lots in a subdivision have sidewalks on them, then eventually the other lots may have a sidewalk. One never knows how long someone will own a building and for them to state that they will never build a sidewalk is not necessarily the end of that argument. If there are sidewalks on four lots on either side of one then it wouldn't surprise him if the new owners would build a sidewalk. Right now it looks like the subject property's sidewalk would go nowhere, but the reality is that there are four lots in the subdivision that could have sidewalks on them.

Mr. Midget moved to remove the sidewalk condition from PUD-597 detail site plan.

No second.

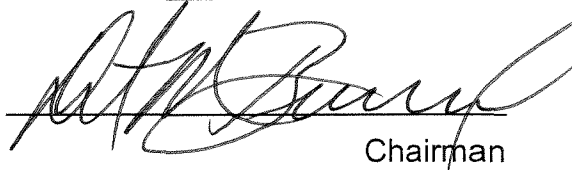
**MOTION FAILED.**

**NO FURTHER ACTION WAS TAKEN.**

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There being no further business, the Chair declared the meeting adjourned at 6:08 p.m.

Date Approved:

  
Chairman

ATTEST   
Secretary