

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 2521

Wednesday, July 23, 2008, 1:30 p.m.
Francis Campbell City Council Room
Plaza Level, Tulsa Civic Center

Members Present	Members Absent	Staff Present	Others Present
Cantrell	Ard	Alberty	Boulden, Legal
Carnes	Miller	Huntsinger	
Marshall	Shivel	Matthews	
McArtor		Parker	
Midget		Sansone	
Sparks			
Walker			
Wright			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, July 17, 2008 at 12:00 pm., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

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

REPORTS:

Worksession Report:

Ms. Cantrell reported that the Planning Commission held a training session prior to today's meeting. She commented that it was a very informative session.

Director's Report:

Mr. Alberty reported on the BOCC and City Council agendas.

Minutes:

Approval of the minutes of June 25, 2008 Meeting No. 2518

On **MOTION** of **MIDGET**, the TMAPC voted 8-0-0 (Cantrell, Carnes, Marshall, McArtor, Midget, Sparks, Walker, Wright "aye"; no "nays"; none "abstaining"; Ard, Miller, Shivel "absent") to **APPROVE** the minutes of the meeting of June 25, 2008, Meeting No. 2518.

Mr. Midget out at 1:35 p.m.

CONSENT AGENDA

All matters under "Consent" are considered by the Planning Commission to be routine and will be enacted by one motion. Any Planning Commission member may, however, remove an item by request.

2. **LC-111** – Gary Feters-CFH Architects (PD 18C) (CD 5)
Northeast corner of South 83rd East Avenue and East 48th Street, 4747
South 83rd East Avenue
3. **Z-7008-SP-1 – Chris Evertz** (PD-8) (CD-2)
South of the southwest corner of Olympia Avenue and West 71st Street
(Corridor Detail Site Plan for a 7,200 SF restaurant.)

STAFF RECOMMENDATION:

The applicant is requesting approval of a detail site plan for a 7,200 square foot (SF) Buffalo Wild Wings Restaurant. The proposed use, Use Unit 12 – Eating Establishments, other than Drive-ins is a permitted use within the development area of the Corridor District.

The proposed site plan meets all building floor area, lot coverage, building height and setback requirements. Access to the site is provided from one access point to Olympia Avenue. Parking is provided in excess of the Zoning Code and a trash enclosure is provided per corridor plan development standards. Site landscaping exceeds applicable corridor landscape and Zoning Code Standards. Site lighting is limited to 35' in height and is directed down and away from adjoining properties through the application of the Kennebunkport Formula. An interior sidewalk is provided for pedestrian circulation and a sidewalk will be constructed along Olympia Avenue.

Therefore, staff recommends **APPROVAL** of detail site plan for Buffalo Wild Wings, Lot 5, Block 1 (Development Area D) – Tulsa Hills.

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

The Planning Commission considered the consent agenda.

There were no interested parties wishing to speak.

TMAPC Action; 7 members present:

On **MOTION** of **CARNES**, TMAPC voted **7-0-0** (Cantrell, Carnes, Marshall, McArtor, Sparks, Walker, Wright "aye"; no "nays"; none "abstaining"; Ard, Midget, Miller, Shivel "absent") to **APPROVE** the consent agenda Items 2 and 3 per staff recommendation.

Mr. Midget in at 1:36 p.m.

PUBLIC HEARING

5. **Z-7102 – Roy Johnsen** **OL/RM-2 to OH**
Southwest corner of Broken Arrow Expressway and (PD-6) (CD-4)
Utica

STAFF RECOMMENDATION:

ZONING ORDINANCE: Ordinance number 16678 dated September 24, 1986, and 11815 dated June 26, 1970, established zoning for the subject property.

PROPOSED ZONING: OH

PROPOSED USE: Offices

RELEVANT ZONING HISTORY:

Z-7038 October 2006: A request for rezoning a 2+ acre tract of land from RM-2 to CH for new commercial development and parking, on property located north of the northeast corner of South Troost Avenue and East 15^h Street and abutting south of subject property was withdrawn by applicant.

Z-6977/PUD-708-A July 2005: All concurred in approval of a proposed Major Amendment to a PUD on a 1.34+ acre tract of land on property and to allow on property located on the southeast corner East 15th Street and South Utica Avenue. Staff and TMAPC recommended approval to remove HP zoning subject to the removal of the Victor access. The City Council motioned to retain the three lots in HP overlay zoning, and approve the curb-cut onto Victor but not allow to open until the scheduled improvements at 15th and Utica intersection are made; and to approve a landscaping addition to the project at the southeast corner of parking lot providing a buffer and transition into the remaining single-family residential uses to the south.

PUD-708 August 2004: All concurred in approval of a proposed Planned Unit Development on a 1.34+ acre tract of land, to permit the consolidation of several parcels with various zoning, CH, OL, PK, RS-3 and HP to allow for a bank, including drive-thru facility, and office use subject to staff recommendations and eliminating access to Victor Avenue, and to specific traffic flow requirements on property located on the southeast corner of East 15th Street South and South Utica Avenue and southeast of subject property.

PUD-614 August 1999: All concurred in approval of a proposed Planned Unit Development a 1.2+ acre tract for a one-story medical office (KMO Cancer Care Facility) on property located on the southeast corner of East 15th Street and South Victor Avenue.

PUD 553 April 1997: All concurred in approval of a proposed Planned Unit Development on a 2.14± acre tract of land to permit a bank, including drive-in facility, and office use per conditions on property located on the southwest corner of East 15th Street an South Utica Avenue and south of subject property.

PUD-437 August 1988: All concurred in approval of a proposed Planned Unit Development a 1.35± acre tract of land for uses as permitted by right in an OL district excluding drive-in banks and funeral homes and allowing 2 stories on property located on the southeast corner of East 14th Place and South Utica Avenue.

Z-6111 September 1986: A request to rezone a .2 acre tract from OL to CS on property located north of the northwest corner of East 15th Street and Utica Avenue and a portion of the subject property was recommended for approval by staff if the property continues with the commercial lot to the south and if TMAPC amends the Comprehensive plan to include this area otherwise staff recommended denial. The TMAPC recommended denial, however the City Council approved the CS zoning.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property is approximately 2.7± acres in size and is located southwest corner of East 14th Street South and South Utica Avenue. The property appears to be vacant, cleared land and is zoned RM-2/OL.

STREETS:

Exist. Access	MSHP Design	MSHP R/W	Exist. # Lanes
East 14 th Street	N/A	N/A	4 (one-way exit road from the Broken Arrow Expressway; two outer lanes must turn either north or south)
South Utica Avenue	Urban arterial	70'	4
South Troost Avenue	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 office and commercial uses, zoned PUD/CS/PK/RM-2/OL; on the north by the expressway, zoned RS-3; on the south by office/commercial uses, zoned RM-2/CH; and on the west by office/commercial/residential uses, zoned RM-2. It lies midway between the Hillcrest Health Care Center and St. John's Medical Center, both very high intensity uses.

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 being within the Cherry Street Special Consideration Area. According to the Zoning Matrix, the requested OH zoning **may be found** in accord with the Plan by virtue of its location within a Special District. Policies in the Cherry Street refer to Area F as the Bellview Special Development Sub-area and cite the area east of Peoria for Medium Intensity Residential or Office use, and encourage use of the PUD in redevelopment. Area G is designated as a Low Intensity Sub-area, with uses limited to off-street parking, Low Intensity Office or Low Intensity Residential. But for its location in a Special District, the proposed rezoning would not be in accord with the Plan.

STAFF RECOMMENDATION:

The site's location adjacent to a very busy expressway and its eastbound off-ramp argues for its development as a high intensity office use. The surrounding area is clearly in transition and has been in mixed uses for some time. North and south of this site, the Utica Avenue corridor has developed in high intensity, high-rise uses and continues to do so. To the north, the Hillcrest Medical Center complex includes high-rise buildings and OH zoning. The St. John Medical Center does the same on the south. The requested use is of the same nature. Therefore, staff can recommend **APPROVAL** of the requested OH zoning for Z-7102.

Staff further recommends that the District 6 Plan map and text be amended to reflect the appropriateness of high intensity uses on this site. Staff also believes that the Cherry Street Special District study should be reevaluated for relevance during the Comprehensive Plan update process.

TMAPC COMMENTS:

Mr. McArtor asked Ms. Matthews to address the Comprehensive Plan. In response, Ms. Matthews stated that it is a "may be found to be in accord", which means it is in a special district and each case is considered on a case-by-case basis. This plan was done in 1982 or 1983 and the person developing the subject property has purchased all of the residential development that the plan was trying to protect, therefore there is nothing left to protect. This would be the residential property to the west and is on the subject site. In response, Mr. McArtor asked if this is in Area G of the Comprehensive Plan. In response, Ms. Matthews answered affirmatively. Mr. McArtor stated that the Plan map talks about low-intensity development. In response, Ms. Matthews stated that the reason for the original low-intensity development is because it was single-family residential at that point and under separate ownership, which at this time is no longer the case.

Ms. Cantrell asked staff if their position is that the study was only to protect the street along Troost. In response, Ms. Matthews answered affirmatively. In response, Ms. Cantrell asked if there is no need to protect the other neighborhoods in the subject area. In response, Ms. Matthews stated that the

other neighborhoods are buffered by an expressway. Ms. Cantrell stated that west of the subject location has a residential area and it should have protection. In response, Ms. Matthews stated that the protection that the properties to the west will be from the Zoning Code. She further stated that a large number of the properties to the west are medium intensity with mixed uses. Ms. Cantrell stated that with medium intensity, she doesn't believe that office high intensity is a permitted use or in accord with the Comprehensive Plan. In response, Ms. Matthews stated that possibly not, but what better place to put this than next to an expressway. In response, Ms. Cantrell commented right, but her concern is that the expressway actually existed when they came up with the plan. Ms. Cantrell stated that the plan considered many other issues, such as being near two historic neighborhoods. Ms. Matthews stated that Cherry Street would like to be a high-intensity district. The expressway is a high-intensity use, no matter what it is zoned. The policy is that expressways are zoned whatever the adjacent zoning is. Ms. Cantrell asked Ms. Matthews if she sees future high intensity use along 14th Street heading east. In response, Ms. Matthews stated that she couldn't predict the future. Ms. Cantrell asked staff if they believe the rezoning would trigger more intense uses down the road and if so do they see that as being problematic. In response, Ms. Matthews stated that she doesn't believe staff see this as being problematic because of the expressway to the north and Utica with four lanes.

Ms. Cantrell asked staff to explain what the uses are in OH zoning and their requirements. Ms. Matthews read the uses allowed in OH and the bulk and area requirements from the Zoning Code.

Ms. Cantrell asked staff if they are aware of any development, besides the hospital, along this strip that has the floor area ratio. In response, Ms. Matthews stated that the hospital has not filed a PUD.

Mr. Marshall requested that staff supply the square footage on the history report. He expressed concerns with the square footage available for development on the subject site.

Ms. Cantrell asked staff if they suggested to the developer that he submit a PUD. In response, Ms. Matthews stated that it has been suggested, but the Planning Commission can't require a PUD.

Ms. Wright expressed her concerns about not having a PUD filed with the rezoning request. She made a statement that once the subject property is zoned OH the Planning Commission would never see it again. In response, Mr. Alberty stated that Ms. Wright's statement is incorrect about never seeing it again.

Mr. Alberty stated that he would like to address some of the issues that have been raised with regards to the staff's evaluation. The Comprehensive Plan that was adopted is over 30 years old. The last special study done in the subject

area was 19 years ago (Utica Corridor Study). Since that time there has been considerable change in the corridor from 11th Street to 21st Street. These properties are definitely in a transition and the zoning that had been approved and had in been place for a number of years permits high-rise. The CH zoning at the intersection corner has been redeveloping into high-rise offices, for example the bank buildings. Hillcrest Hospital has approved OH, CH, and OMH zoning and the same thing has been approved on the St. John's Hospital property. The property immediately to the south of the subject property is zoned CH and it is only a matter of time until that property will redevelop. Staff has to look at the changing conditions over the last 19 years, and based on that, staff sees a very definite trend towards redevelopment within this corridor. The expressway, even though it has been slow to affect development, it is now to that point where development is starting to happen in a consistency with the area and the transportation system. If the subject property wasn't already zoned, it would probably be considered for corridor, which is high-rise, high-intensity zoning. These are the factors that staff took into consideration. This is staff's evaluation and a recommendation to the Planning Commission. Mr. Alberty read from the Comprehensive Plan regarding recommending a PUD and when it is appropriate to not require a PUD.

Ms. Cantrell stated that so far it appears that everything in the subject area has developed according to plan and she is trying to get a grasp on what staff sees as justifying disregarding that. In response, Mr. Alberty stated that it is not necessarily disregarding the Plan and he believes that the PUD is a valid tool to be used in certain circumstances. When staff evaluated this, they had to first look at the possibility of requiring a PUD and that was staff's initial reaction. After further evaluation and analysis, staff felt that they could support the OH zoning and didn't feel it would be necessary to require a PUD.

Ms. Wright asked for the pros and cons of a PUD for the subject property. In response, Ms. Matthews stated that it is principally because the applicant didn't own all of the properties and there were residential properties to the west, but at this point those residential properties have been acquired and cleared and those were the residential properties that would have been protected by a PUD. Ms. Matthews stated that she is not sure what the pros would be to have a PUD on the subject site. She reiterated that Mr. Alberty stated that this fits the description of a corridor and corridors do not require PUDs.

Ms. Wright stated that this is the first time she has ever heard about the Utica Corridor Study and it wasn't included in the agenda packets. If this is being used to supplement or support this application, she would like further time to review it. If the study was an attempt to protect neighborhoods, and it has been circumvented by purchasing the properties and eradicating the properties, then we are looking at a different situation altogether. Ms. Wright commented on the surrounding traffic issues and stated that it is a high pedestrian area. In response, Ms. Matthews stated that the Utica Corridor Study was incorporated

into part of the District 6 Plan and it can be seen in the first page of the District 6 Plan where it was incorporated, it will also indicate the exact pages that it is incorporated into. Ms. Cantrell asked if that was page 3.7. In response, Ms. Matthews answered affirmatively. Ms. Matthews stated that she doesn't know what more she can tell Ms. Wright about study, but she believes that common sense would tell one that this is south of the expressway and it will not redevelop as single-family residential.

Ms. Cantrell read the opening statement and rules of conduct for the TMAPC meeting.

Ms. Cantrell stated that she used to be on the Yorktown Neighborhood Committee and she is no longer on that committee, so she will participate in this discussion because she doesn't believe she has any bias and is completely open to hearing all information.

Applicant's Comments:

Roy Johnsen, 201 West 5th Street, Suite 501, 74103, stated that he is representing John and Chris Bumgarner, owners of the 2.7-acre tract. Mr. Johnsen further stated that the east half of the subject property is zoned OL and the west half is zoned RM-2. He explained that when the subject property was zoned, the two hospitals were not as large as they are now and the expressway was not indicated on the maps. The expressway didn't come in until the mid 60's or early 70's. Someone recognized that the subject area may need some transitional use over time and all of the property to the west is zoned RM-2. RM-2 is considered medium intensity and OL is considered low intensity. If one reads the ordinance carefully, an OM by Board of Adjustment action can be permitted in an RM-2 district. In the 1950's along Utica the lower intensity zoning was in front of the higher intensity zoning to the west. Mr. Johnsen cited his opinion of why the subject and surrounding properties were zoned as they are today. In the subject block there were significant single-family residential uses and the zoning was to protect these homes. Now 50 years have gone by and now those properties have been acquired, which makes an assembled property. Most of the Plan is written to protect single lots from being acquired and developed and to protect the residential lots. Now there are 2.7 acres with frontage on Troost, 14th Street and Utica and there are no houses or office buildings on the subject property any longer. The subject property is ready for significant infill development. Mr. Johnsen cited the Infill Study of 1999 and stated that it is the most current study. Infill will always be at a higher intensity and the subject property is an excellent infill site. This is an opportunity site because there is a node at the southwest corner of an expressway service road and arterial street called Utica. This is traditional place for high intensity use. The OH district is for something like this with the expressway tract, exceptional accessibility with a four-way diamond that allows exit and entry onto the Broken Arrow Expressway. Troost gives an opportunity for access into a parking garage with an entry and exit onto 14th Street and Utica. Mr. Johnsen submitted an

aerial photograph of the subject area (Exhibit A-2) and cited the changes over the years. Mr. Johnsen explained the CH zoning and that there are no height limitations, no setbacks except Major Street and Highway Plan right-of-way, and no floor area limitation, which is within the immediate vicinity of the subject property. Mr. Johnsen pointed out the OH zoning along Utica, which is the St. John's Hospital complex. He indicated that there are portions of the St. John's Hospital that is under a PUD. Mr. Johnsen indicated that part of the Hillcrest Hospital is under a PUD, but the main campus is non-PUD. The 1999 Infill Study was seeking the protection of the economic base so that the City of Tulsa could continue to grow in an appropriate manner and density and intensities will have to increase. It would be a serious mistake to hold the subject property to an OL use and it would be a gross misuse of property.

Mr. Johnsen stated that the PUD has been very good when there is mixed use, in a retail complex where there is an underlying zoning of CS that may permit some things that wouldn't be appropriate in a particular setting if it is next to a traditional neighborhood. PUDs give one an opportunity to restrict the uses and gives some flexibility to apply extra landscaping if necessary to protect the traditional or nearby zoning neighborhood. Office parks that want private streets will have to file a PUD in order to have the private streets. Mr. Johnsen cited the types of uses that PUDs can restrict. The proposal today is for an office use that will be a modern office. The nature of the use is known and it is basically a daytime use with peak traffic in the morning and afternoon, but after 6:00 p.m. it is quiet. The proposal would be next to an expressway and frontage on the north side, on the south it would be next to a service station, duplex and commercial, on the west it would be next to RM-2, Medium Intensity, Multifamily, which has been historically recognized as an appropriate use next to commercial to buffer single-family that might be on the other side. Now there will be a landscape chapter that applies to the proposal whether it is a PUD or if it isn't. There will be extremely restrictive signs and a parking requirement. He explained that none of these restrictions existed with the previous developments on the subject lot. Mr. Johnsen asked what the Planning Commission would be achieving with a PUD. He commented that he doesn't see the need for it, especially when one is looking at an expressway property.

Mr. Johnsen stated that the proposal will increase the traffic, but there is an important thing occurring at this time and that is the improvement at 15th and Utica. When this project is completed, the intersection will be totally different with turning lanes all four ways at the intersection. He reminded the Planning Commission that during the platting process, the City will review the ingress and egress for the subject property.

Mr. Johnsen indicated that there was a neighborhood meeting held Saturday, July 19, 2008. He believes that it was productive and there were some who spoke in favor of the subject proposal. Some wanted a PUD, some wanted to be included in the process and some were totally against the proposal. Mr. Johnsen

commented that his client has discussed this with property owners north of 15th Street and there is a letter of support from the Cherry Street Merchants' Association (Exhibit A-1). The Cherry Street Merchants will be closely affected by the subject proposal and they support it. It will strengthen them because they will have customers nearby and a new vibrancy of new jobs. Mr. Johnsen indicated that he hasn't heard of any protest north of 15th Street, south of the expressway, or west of Troost. This is not a traditional neighborhood and the proposal is an opportunity to do something very meaningful.

Mr. Johnsen cited the prominent projects that Mr. Bumgarner has done in the Midtown Utica Square area. He explained that his client is trying to secure a very large tenant that might take as much as 150,000 SF. The tenant wants a presence, wants all of their offices contiguous and needs a big floor plate. The tenant would want to have input on how the building is designed and Mr. Bumgarner's position is that this building is not designed and will not until he has some idea of what the zoning will be.

TMAPC COMMENTS:

Mr. Carnes asked if the visitor parking will also be underground for the office building. In response, Mr. Johnsen answered affirmatively.

Mr. Marshall asked Mr. Johnsen if the other Bumgarner developments are fully occupied. In response, Mr. Johnsen answered affirmatively. Mr. Marshall stated that there is more demand for office in the Utica Square area. In response, Mr. Johnsen stated that there is in the Utica Square area and near downtown. Mr. Marshall expressed concerns with the large amount of square footage requested and questioned that it could all be filled with occupancy. In response, Mr. Johnsen stated that his client has studied the market and they would like the 250,000 SF opportunity and that requires OH to get it. Mr. Marshall expressed concerns with the OH zoning and if there was a PUD filed with it, the Planning Commission could specify what the uses would be and keep it as office. There would also be a square footage stated that is accurate, rather than having the 940,000 SF. Mr. Johnsen stated that as a practical matter there really isn't much that is going to happen and it will be an office. One wouldn't assemble this kind of ground, which took eight years to assemble, and then do a substandard development with this kind of investment. His client hopes that it makes the 250,000 SF or more. There is a market out there and the City of Tulsa is not at a great risk. He reminded the Planning Commission that his client would still have to meet the landscaping requirements, parking, signage, etc. Mr. Marshall stated that with OMH zoning and a PUD it would keep the square footage down to 235,000 SF. Mr. Marshall stated that there is a big discrepancy going from OMH to OH. There isn't anything in between and that is why a PUD would really help. Mr. Johnsen stated that the subject proposal has some setbacks that are very honest.

In response, Mr. Johnsen stated that a substantial part of Hillcrest is not in a PUD and when the east side started getting closer to substantial neighborhoods, they did file a PUD for institutional use and the same is true of St. John's. The subject property is unique in what is being sought and how it is located. There is no traditional neighborhood on the west side of Utica. Multifamily is a very important use, but under the normal scheme of things, high-rise office and multifamily are compatible.

Mr. Carnes asked Mr. Johnsen what his client would do if the Planning Commission recommended OH zoning with a PUD. In response, Mr. Johnsen stated that his instructions are that he can't agree with a PUD.

Ms. Wright asked Mr. Johnsen why he made the assumption that there are no traditional family homes because it is a high density area of families. In response, Mr. Johnsen stated that it is not an assumption. Mr. Johnsen reiterated that what he stated was that it is not a traditional single-family neighborhood. Ms. Wright stated that many of the single-family homes have been destroyed and replaced by intense loft developments, there are still single-family homes and families living in them throughout this entire area. In response, Mr. Johnsen reiterated that there are some single-family homes in the subject area, but in the subject block there will not be any single-family homes. In the next block west there are two homes in the west half of the block and the rest are all apartments. Ms. Wright stated that Mr. Johnsen also mentioned an entrance into a parking lot off of Troost and that is a residential street. One of the things that was mentioned at the Saturday meeting was not to have any entrances from Troost onto a residential street and it was agreed to after the meeting. In response, Mr. Johnsen stated that it was not agreed upon and Mr. Bumgarner never agreed to there never being access to Troost. Mr. Johnsen stated that his client has talked to some of the property owners who live in the subject area and they are in support.

Mr. McArtor asked Mr. Johnsen what he thought the concerns of the neighbors or the people who attended the meeting on Saturday. In response, Mr. Johnsen stated that traffic was one of the concerns. He indicated that some of the people speaking at the meeting were pretty far removed from the actual subject property. Mr. Johnsen stated that he heard Commissioner Wright talking about the utilities and sanitary sewer problems to the west. Mr. Johnsen indicated that he asked his engineer to investigate the sewer. The sewer line goes north and will tie in to the north. The west half will not be aggravated by this development and that is true with the other utilities as well. Mostly he heard that the citizens wanted a PUD so that they could be involved on how it is designed, plus it is too big and too dense. In response, Mr. McArtor asked Mr. Johnsen if his client has any ideas about the height of the proposal. In response, Mr. Johnsen stated that the building is not designed, but he believes it will be ten to twelve stories, which would be very consistent with the two major hospitals. The two banks in the

subject area are four to five stories in height, both of which were impacted by historic neighborhoods.

Ms. Cantrell asked about the setback. In response, Mr. Johnsen stated that there will be a street separating, then a ten-foot setback and an office building is an excellent neighbor. Ms. Cantrell stated that it is an eight to ten story office use. She questioned if an all-night clinic could be in the office building. In response, Mr. Johnsen stated that it would be possible. He further stated that there might be some hospital-related offices that would be in the nature of administrative offices that could free up space on the actual hospital campus where treatment is provided. His clients do not anticipate medical uses on the premises. Ms. Cantrell stated that she is looking at all of the possibilities and the land is actually being zoned, not the developer. There are no time limits or restrictions on office uses.

Ms. Cantrell expressed concerns with the leap from OL to OH. She expressed concerns that this would bring in more OH zoning along 14th Street and then it would be near single-family homes. In response, Mr. Johnsen stated that on the other side of Utica there is a more traditional neighborhood to the east and it is single-family. He commented that if someone could assemble enough property to propose OH to the east, he would be amazed. He further commented that if someone were able to assemble property and propose OH to the east, there are single-family homes and that would be a different position from what his client is proposing because to the west of the proposal is RM-2.

Mr. McArtor discussed the fact that the St. John's Hospital has single-family housing immediately adjacent to it.

Mr. Alberty stated that the portion of St. John's Hospital that is adjacent to single-family residences has a PUD. St. John's probably has more property in their development that is zoned RS-3. A PUD was required to build the high-rise physician buildings and the multilevel parking garages. Utica Park is a PUD north of the subject project and it has a large portion zoned RS-3 adjacent to single-family homes. He explained that the distinction that staff has made is that all of the proposal will be office zoning and it wouldn't require a PUD.

Ms. Wright stated that actually it sounds like to her that Mr. Alberty could be arguing sensibly for a PUD. This is contained entirely within a historic low density environment, so based on what she just heard, it seems that Mr. Alberty strongly supports a PUD and it sounds like a good idea. In response to Ms. Wright, Mr. Alberty stated that he must have been unclear or Ms. Wright didn't understand. The reason why the PUDs were required in the other instances is because they had single-family zoning within the development area or within the project area and there is a difference between adjacent to RS-3 and within the project area. The subject proposal doesn't have any RS-3 in the project area or abutting the project area and that is a big difference.

Mr. Midget asked if staff normally considers a “may be found” as a big departure from the Comprehensive Plan. In response, Ms. Matthews stated that a “may be found” means that it is considered on a case-by-case basis. Staff looks at what uses are around or what trends are occurring around it. In this case the neighborhood, as originally mentioned, that was being protected has been acquired and cleared.

Ms. Cantrell asked staff if they do not consider the text of the Comprehensive Plan when determining whether to recommend approval or denial. In response, Ms. Matthews stated that staff considers the text and she would say it is about a 50/50 by looking at the text and the changes that have occurred.

Ms. Cantrell asked staff if this was not in a special district neither a medium-intensity nor low-intensity, would office high be in accord with the Comprehensive Plan. In response, Ms. Matthews stated that it would depend on what the Matrix stated. Ms. Cantrell stated that she believes the Matrix indicates that it would not be in compliance. Ms. Matthews reiterated that the Comprehensive Plan was predicated on what was around it and all of that has changed. The applicant has acquired the property and included it within their rezoning. Ms. Cantrell stated that it would be very hard to say that this proposal meets the Comprehensive Plan, given the text, the underlying intensities that are allowed. Ms. Matthews stated that hence the recommendation that states the Comprehensive Plan would have to be amended.

Ms. Wright asked what the maximum use could be under OH zoning. In response, Mr. Alberty stated that it has already been stated that it would be 900,000 SF maximum and there is no height limitation. Ms. Wright asked how 900,000 SF could be done without stories. In response, Mr. Alberty stated that he doesn't think it could be done without stories. Ms. Wright asked how tall the building would be. In response, Mr. Alberty stated that he hasn't done the calculations, but he assumes it could be nine to ten stories if all of the land was covered.

Mr. Boulden asked Mr. Johnsen if he disagreed with Mr. Alberty's statement. In response, Mr. Johnsen stated that the building could go higher under the Code and it is determined by the floor plate. If the floor plat is smaller, there are more stories.

Ms. Cantrell stated that there are approximately five people signed up and requests that they keep their comments to three to five minutes.

Interested Parties Opposing:

Susan McKee, Vice President of Yorktown Historic District, 1616 South Victor, 74104; **Aaron Griffith**, 2561 East 17th Street, 74104; **Kimberly Norman**, Co-

President of Forrest Orchard Neighborhood, 2433 South Troost, 74114; **Chip Atkins**, Swan Lake Neighborhood, 1638 East 17th Place, 74120.

Interested Parties Comments (Opposing):

Traffic issues; too many stories being proposed (ten to twelve); concerned that the building hasn't been designed; isn't consistent with the Comprehensive Plan; the neighbors live in the subject area 24/7 and some of the property owners on the west side of the subject property are owners, but do not live in the subject area; nothing has been discussed about pedestrian safety with this type of use; huge changes shouldn't be made until the new Comprehensive Plan is completed; would like to have input and know ahead of time what is going on; prefer a PUD be filed with the rezoning application; 14th Street is a one-way street; trust and verify regarding neighbors being in support; haven't heard anything from the Preservation Commission; haven't consulted any City Planners; be in the best interest of the City and the public's faith and public planning process to get some other opinion besides INCOG staff on this issue; need to hear from the Urban Planning Department; the most recent study, "Tulsa Midtown Redux Study" hasn't been consulted; need verification that the subject property was blighted; Bumgarner's have owned the property for several years and let it become blighted; received six negative responses from Forest Orchard Neighborhood out of 100 members; there are five National Trust Neighborhoods attending the meeting with the applicant; homeowners were not anticipating OH zoning when purchasing their homes in the subject area; there has been no traffic study; zone the property and not the developer;

Interested Parties Supporting:

Pastor Dean Maas, representing Trinity Ministries, 1244 South Utica, 74114; and **Kimberly Norman**, representing her own views for O'Fallen Property located at 14th and Troost across the street from proposal, 2433 South Troost, 74114.

Interested Parties Comments (Supporting):

East 21st to 11th Street is in deteriorating condition; the City renews itself from inside out; Hillcrest has had a positive impact on the neighborhood; support the proposal and property values will go up; more people want to live closer to downtown and he believes all of the development will go down the corridor to 11th Street; what pulls a neighborhood together is what is wrong within the neighborhood and not what is on Utica; met with John Bumgarner and discussed the project, concerns and having Mr. Bumgarner join the Cherry Street Village Neighbors; Mr. Bumgarner was open to suggestions and requests; in favor of the subject proposal.

TMAPC COMMENTS:

In response to Ms. Cantrell, Ms. McKee stated that she wasn't involved with the Comprehensive Plan when it was adopted in 1989. Ms. McKee indicated that

she wasn't involved with the Cherry Street Plan either. Ms. McKee stated that she purchased her home because of the quaint low-intensity of Cherry Street and if that is taken away the draw will be gone.

Ms. Wright asked Mr. Griffith if he was involved in the Midtown Redux Study. In response, Mr. Griffith stated that he participated as a public citizen. What did it encompass as far as the Utica and 15th Street region? In response, Mr. Griffith stated that the definitions seemed to change during the study and as the process continued it was described as a hypothetical area case study and has nothing to do with the particular area. Mr. Griffith stated that to him it looked like the citizens wanted more in the line of the Arvest Bank and Stillwater National Bank being at the high end of development intensity. Mr. Griffith stated that he would support this project with OMH zoning and he is not opposed to development, but it needs to be within scale and harmony of the surrounding neighborhoods. It should be through a public process.

Mr. Walker asked Mr. Griffith what his point would be about 14th Street being a one-way street. In response, Mr. Griffith stated that there is only one way to go on 14th Street. He believes that this will cause cars circling around through the neighborhoods to access the subject property. Mr. Walker reminded Mr. Griffith that there is no median on Utica and there would be ingress/egress into the subject property. Ms. Wright commented that she believes there is a median in front of the subject property on Utica. Mr. Walker stated that he would have to differ with the Ms. Wright and Mr. Griffith because there is no center median.

Ms. Matthews stated that she would like to clarify that the Midtown Redux Study was never adopted and it has no official standing.

Mr. Boulden stated that Mr. Griffith cited the subject property as being historic and not hearing from the Preservation District, but looking at the records it does not indicate there is any HP zoning on the subject property. In response, Mr. Griffith stated that he is not contending that it has HP zoning, but he is saying that we are considering a major change to the Comprehensive Plan and he believes it would be a good idea for the City of Tulsa to have their staff take a look at this and see if they would come to the same agreement as the INCOG staff. He commented that he hopes the Council does carry forward with the Tulsa City Planning Commission they are currently looking at and doing away with the TMAPC. Mr. Boulden stated that this doesn't answer his question and asked why he believes this is a historic area. In response, Mr. Griffith stated that it is marketed as a historic area "Historic Cherry Street".

Mr. McArtor asked Pastor Maas if the subject proposal will help his project that his church is proposing. In response, Pastor Maas stated that he doesn't know if it will help it, but he doesn't believe it will hinder it. Pastor Maas stated that his church is planning to build a senior center, which will be a combination of

independent, assisted living and memory care. He believes it is a great location because of the hospitals and medical buildings nearby. This is an urban setting.

In response to Ms. Cantrell, Ms. Norman stated that she is speaking for Forrest Orchard Neighborhood regarding the negative response; however, she has her own view and it is different from that of the neighborhood.

Mr. Midget asked how many people were surveyed in Forest Orchard. In response, Ms. Norman stated that the primary means of communication is through email and there are approximately 100 people on the email roster, She received six negative responses. Mr. Midget asked if it was safe to say that normally there would be a greater response if there is some issue that was tremendously important to the neighborhood or if they have a strong opinion one way or the other. In response, Ms. Norman answered affirmatively.

Ms. Wright asked Mr. Atkins about the National Trust Property line being the south boundary and if she understands it correctly, that between the expressway and 15th Street there is no-mans land that is not really zoned. In response, Mr. Atkins stated that it was not considered because of the changes in the office buildings that were done along 15th Street Corridor. He further stated that he tried to get this area in, but the TMAPC wouldn't allow it at that time. Mr. Atkins confirmed that the center median has been removed from Utica in order to place the left-turn lanes in at 15th Street.

Mr. Walker asked Mr. Atkins what alternative use he would propose for the subject property. In response, Mr. Atkins stated that an office building is a good use, but OH without a PUD is an issue. He understands why an applicant wouldn't want to go to the expense of a PUD without knowing that they have the zoning. He personally believes OMH would be best, but OH with a PUD would be great as well. Mr. Atkins expressed concerns with regard to the infrastructure and the need to update it. He believes that the proposed development would bring the updates necessary for the infrastructure.

Applicant's Rebuttal:

Mr. Johnsen stated that the median has been removed and Mr. Bumgarner has participated in the program with the City and made considerable contribution. The median will go back in, but it will be smaller and there will be a license agreement to landscape it. The median will allow a left turn into the subject property.

Mr. Johnsen stated that the support letters have been submitted to the Planning Commission from the Cherry Street Merchants, Cherry Street Association and he has not heard from anyone who owns property north of 15th, west of Utica or south of the expressway.

Mr. Johnsen stated that infill has been part of the Comprehensive Plan since 1999 and perhaps the Plan should have been amended then. This was an adopted policy and there will be infill development. It is critical to the City and will be at higher density. Infill is difficult to do and it is extremely hard to assemble because there is usually resistance. In this instance there has been a significant assembly and there are unusual land use patterns on the west side of Utica, north of 15th Street. Mr. Johnsen reiterated the existing zoning in the subject area. Office is one of the best uses because it has a morning peak and an afternoon peak, then it is quiet after that. It also requires less of the public services than most other uses and it will contribute substantially to the tax base and the school district. This project is a great benefit to the City of Tulsa that is a thirty million dollar project. The subject site should be viewed as an intersection node site and it is not back in a neighborhood nor on 15th Street in the traditional sense.

Mr. Johnsen stated that in this type of development, large single-use for office, the developer will want tenant input into the design of the building. His client's position is that he needs the flexibility to respond to future tenants in the final design of the subject building. The PUD process has extended hearings and detailed review, neighborhood involvement and still do not know what will be approved or denied. His client doesn't want to file a PUD and fails to see the need for it in this instance. Mr. Johnsen stated that the PUD wouldn't bring the City much in the public interest that is served by having the additional, very lengthy and very expensive review. A PUD application is a lot of money to spend to be able to fully address all the issues. Mr. Johnsen requested that the Planning Commission approve the staff recommendation without a PUD.

TMAPC COMMENTS:

Ms. Cantrell stated that she understands the need for flexibility, but a PUD wouldn't have to dictate the design. The concern the Planning Commission is hearing is the square footage proposed. The Planning Commission could limit some of the intensity and leave the details of design to the developer. A PUD would only be to approve the bulk and area requirements and general site plan, but not be design specific. In response, Mr. Johnsen stated that is not what has transpired in the most recent discussion and development of the Arvest Bank on 15th. That was much more than conceptual and bulk and area with endless meetings. In response, Ms. Cantrell stated that she believes that traffic played a major role in the Arvest development. She further stated that what has happened in the past doesn't necessarily mean that is what will happen in the future.

Mr. Johnsen stated that the Comprehensive Plan by its very own terms says it is a guide and not a regulation. It is important and it should be looked at and considered, but it has to be put in the context of what the physical facts currently existing. Everyone has acknowledged that the Comprehensive Plan is outdated, but one can't stop zoning and development when there is an opportunity to have

a very meaningful project. There is more than just the matrix as well; there are other matters in the Comprehensive Plan. Economic well-being in the City of Tulsa is an important factor and is recognized in the Comprehensive Plan.

Mr. Carnes requested that Mr. Johnsen talk with his client regarding filing a PUD.

In response to Mr. Sparks, Ms. Matthews stated that St. John's did not go through a PUD for all of its property nor did Hillcrest Hospital. The development has changed so much since the Comprehensive Plan was first adopted. A lot of the subject property was residential and facing Utica. Ms. Matthews reiterated that the residential area that particular Area G and Cherry Street was designed to protect has been purchased and will be part of the subject development. There has been a change since the 1970's and 1980's when this plan was adopted. Staff looks at the Comprehensive Plan and when the plan was created, and looks at the existing development.

Ms. Wright asked if the hospitals were allowed to develop without PUDs because they were existed before the Comprehensive Plan was adopted. In response, Ms. Matthews answered negatively.

Mr. Sparks stated that portions of Hillcrest and St. John developments that are under a PUD are primarily office spaces.

Mr. Johnsen stated that his client is willing to cap the floor area, but he is not willing to do a PUD. His client is willing to cap it 250,000 SF.

Ms. Matthews stated that straight zoning doesn't allow conditions.

Mr. Johnsen stated that his client will voluntarily submit a covenant to the City of Tulsa. In response, Mr. Boulden stated that a private covenant could be filed to cap the floor area to 250,000 SF.

Mr. Midget asked if the private covenant can be filed now or wait until he comes back with the development. In response, Mr. Boulden stated that it doesn't have anything to do with the zoning and so he would say no.

Mr. Carnes stated that he would make a motion to approve the OH zoning with the covenant for 250,000 SF cap of the office building.

Mr. McArtor stated that he would second.

Ms. Cantrell stated that she is very uncomfortable with the covenant and this has never been done before. There has never been a zoning approved by the Planning Commission with the condition that they file a covenant.

Mr. Boulden stated that this zoning is a legislative action and the covenant would be a private covenant with the City of Tulsa. It is basically a promise to submit the covenant later, but the zoning would have to go into effect, unless the covenant could be submitted before the zoning action is taken by the City Council.

Mr. Midget stated that the covenant would have to be a recommendation that it be attached and it is not beyond the scope of what the Planning Commission can do. In order to more adequately affect what the Planning Commission is doing, the covenant should be filed before the zoning action went into place.

Ms. Cantrell asked if this has ever been done before and whether the Planning Commission can do this legally. In response, Mr. Midget stated that he doesn't recall ever doing this, but it is not uncommon for the Planning Commission to take an issue or make a recommendation like this when something comes up. The Planning Commission is always finding themselves in unique situations. This wouldn't be beyond our scope to make a recommendation that it be done and the TMAPC has made recommendations before. The caveat would be whether this could be done prior to the zoning action going into place.

Mr. Carnes withdrew his motion.

Ms. Cantrell stated that Mr. Carnes has withdrawn his motion and requested further discussion before another motion is made.

The second was not withdrawn.

Mr. Midget stated that it would be unfair to hold the subject property to a zoning classification where the condition and environment has changed so drastically. It is certainly not the neighborhood it was 50 years ago. The neighborhood is gone and the question is what would be protected with a PUD. The subject property would not be selected for new home construction under today's environment. The Planning Commission will review the detail site plan and the plat as it comes through. He believes that development potential could coexist and the Planning Commission has a responsibility to ensure that this development, like all developments, gives the City of Tulsa an opportunity to create some new vibrancy in the area. This will bring major employers back into the area and that is what the City is trying to do. He believes this a good example of how important infill is to the City of Tulsa. Infill is going to be difficult and it will continue to be a tough issue for the Planning Commission, but the Planning Commission has to be willing to address infill in a way that would help our City grow and prosper if we are to ever regain our competitive edge. He is unclear of what the Planning Commission is trying to protect because nothing surrounds the subject property that raises the concern to preserve some historical characteristic. That neighborhood is not there anymore and the Planning Commission has to be willing to be open to infill development of this type if Tulsa is to ever grow. If this

development were to be on the east side of Utica, then those physical facts would be totally different, but it is not. The subject property is right off of the expressway and if the Planning Commission can't be willing to open themselves up to new development, infill development, of this type then Tulsa is going to lose. There has to be this type of development to make people want to come back to our City. Larger development like this is what people are looking for. What better location for an employer looking to consolidate his site and bring everyone under one roof? This is needed to keep Tulsa competitive and he doesn't understand why the Planning Commission can't support the zoning without the PUD considering the location. It would require the Planning Commission holding the subject site hostage to a zoning that existed 50 years ago and no longer exists today.

Mr. Walker stated that he agrees with Mr. Midget. This is located on the corner of a highway and Utica and he believes the use fits. This would be in harmony with the corridor and the history of the developer and his projects this would be an improvement.

Mr. Walker stated that he would support motion for approval of the application of OH zoning.

Ms. Cantrell stated that she would like to make clear that this is not zoned a corridor area. In response, Mr. Walker stated that he was referring to the Utica Corridor. Mr. Walker further stated that he has heard more support than opposition.

Ms. Wright stated that she sees support for this application with a PUD and there is no reason to not require a PUD here.

Mr. Carnes stated that he believes that there was more opposition to the size of the project and the developer and attorney have both been in Tulsa a long time. They both publicly pledged to reduce the square footage to 250,000 SF.

Ms. Wright stated that unless the reduction is in writing, that is a non-issue. Right now we are changing the zoning from OL to OH and she believes the Planning Commission needs to stick with the issue at hand rather than what it might be. In response, Mr. Carnes stated that the Planning Commission is staying with the issue at hand. With the commitment of 250,000 SF, which is only a smidge over OMH, he would strongly support this issue.

Ms. Wright stated that she is strongly opposed to what is happening right now. What is on the table right now is whether or not the Planning Commission will recommend going from OL to OH. All the other side topics are what could happen or what might happen. If the Planning Commission changes the subject property to OH, a lot of things could happen. The developer could sell the property tomorrow and that would be it. The Planning Commission needs to

concern themselves with the property and not the personalities. Personalities change and the designation remains.

Ms. Cantrell stated that she believes it is very bad policy for the Planning Commission to start making their decisions based on who is the developer. She commented that she is sure that Mr. Bumgarner is a reputable man, but she asked whether the Planning Commission would deny somebody zoning because they do not believe he/she is reputable.

Mr. Carnes stated that he totally disagrees with Ms. Cantrell on this. The reason why is one has to look at a track record of people when they beautify a neighborhood. This is an infill development that is beautifying and they will be spending a lot of money on the subject property to make it look nice. This will be an asset to the neighborhood.

Ms. Cantrell reminded Mr. Carnes that the Planning Commission zones the land and not the developer. Mr. Carnes stated that this is an application that the Planning Commission is voting on and he would stay with the approval.

Ms. Wright stated that the Planning Commission is voting on the property and not the applicant and we need to stick to that policy of not getting involved with personalities.

Mr. Carnes stated that the Planning Commission is now into a cat fight and he would again move to approve the OH zoning.

Mr. Walker seconded the motion.

Mr. McArtor asked Mr. Carnes if he would accept a friendly amendment to the motion. He requested an amendment to the motion that a recommendation to the property owner that he files his covenant to cap the development at 250,000 SF of office use, which he has agreed to publicly. This covenant, once it is filed, runs with the land and it is a significant encumbrance on Mr. Bumgarner if he ever decides to sell the subject property. Whoever comes in after Mr. Bumgarner would have the same restriction from the covenant. He believes that this is rather unprecedented for a developer to make such a commitment. It constitutes nearly a 75% decrease in the available square footage of rezoning. He believes that this is something that the Planning Commission can accept in good faith because this gentleman didn't move here yesterday.

Mr. Carnes stated that he would accept the amendment.

Ms. Cantrell stated that she doesn't believe that everyone has had an opportunity to speak.

Mr. Marshall asked Mr. Alberty his opinion of the amendment. In response, Mr. Alberty stated that he believes the Planning Commission should ask Legal for their opinion.

Mr. Marshall stated that he believes that this is an excellent infill site, being next to an expressway and it is a beautiful piece of property. He believes that the developer will do a good job developing the subject property. Mr. Marshall stated that he was going to go with OMH until Mr. Johnsen pointed out that the side yard requirements are the setbacks and he can understand that they wouldn't want to go with that zoning. With the cap of square footage he can support this zoning. Mr. Marshall concluded that he believes that Mr. Bumgarner will do what he says he will do. The developer has to know what he can do with his property and this applicant has spent a lot of money on the subject property.

Ms. Cantrell stated that she would like to comment with regard to the Comprehensive Plan. Tulsa is about to spend millions of dollars on the Comprehensive Plan update and this is the City of Tulsa's plan. The subject area was studied time and time again. It is a very conflicted area and there is a lot of land use that can actually cause tremendous problems for historic neighborhoods and for the historic Cherry Street district. This was a compromise (Comprehensive Plan) that these people reached and maybe it is not applicable any longer. She believes that the goals and objectives that were set down are still applicable and the need to balance the land uses. If this was an OM or OMH, that would be a little jump or come in as a PUD, but this application is going from a low intensity designation to a high intensity designation. If the Comprehensive Plan needs to be updated, then it still belongs to the people and it should have been done first. Ms. Cantrell stated that she is very uncomfortable disregarding something simply because one developer asks for it. If you want people to lose faith in the system, this is how you do it. People purchase property based on the Comprehensive Plan, based on the designation and everything that has developed so far has been according to the plan. The Comprehensive Plan calls for a PUD and Arvest Bank and Stillwater National Bank did so. Now because this developer comes in the Planning Commission is willing to let him not follow the same rules that everybody else had to follow. This is a great area for redevelopment and it should be done according to the Comprehensive Plan. If it needs to be amended, then that should be done first. Ms. Cantrell indicated that she is opposed to this proposal and she is very concerned that people are not going to want to participate in planning if they see the Planning Commission so carelessly disregard what the plan says.

Mr. McArtor stated that to look at this the other way, this might be a very good illustration of why we are writing a new Comprehensive Plan. The Comprehensive Plan is antique and a little obsolete, and this is why the Planning Commission has difficulties with it. Instead of people saying that the Planning Commission is not going to follow the plan and therefore why should I be involved in coming up with a new plan, the answer to that would be that the

Planning Commission is having difficulty following the existing plan that is 45 to 50 years old and that is why the public is being asked to come to the table to provide a new plan that is more up-to-date so that they can have something more faithful to follow. He doesn't think anyone comes to the meetings and says "oh boy, here is another opportunity to sock it to the Comprehensive Plan". The Comprehensive Plan is a guideline and in some cases the Planning Commission tries to go by the guideline. If one looks up and down Utica from 21st Street to 11th Street, they see all of the development that seems to be going in this direction. It is hard not to just see this as the next logical step when there isn't any unique neighborhood that is being destroyed here. Mr. McArtor stated that he is impressed with the letter from Christine DeVoe of the Cherry Street Association that organizes the businesses along Cherry Street, in which they are supportive. Mr. McArtor stated that he is not on the Planning Commission to rubber stamp one developer and there are a lot of good developers who come before the Planning Commission.

Ms. Cantrell agrees the Comprehensive Plan is a guideline, but she believes that when the Planning Commission decides to not follow it, there has to be a very specific reason. Each one of the developments that has come before the Planning Commission in the last 20 years since this was adopted in 1989 has followed that guideline.

Mr. Carnes reminded the Chairman that there is a motion on the floor and it has been seconded. He stated that we can vote now or wait until 11:30 p.m.

Ms. Cantrell stated that she will be very brief. Mr. McArtor stated that he would like to hear what Ms. Cantrell has to say.

Ms. Cantrell stated that she believes that all the developments in the subject area have proceeded according to the plan and they were required to do so. She believes that the plan is working. None of the surrounding neighborhoods have lost value and they have been able to maintain their integrity. If the plan is working, then she believes the Planning Commission should stick to it. Ms. Cantrell stated that she hasn't seen anything that indicates it is not working.

Mr. McArtor asked Ms. Cantrell if the cap at 250,000 SF of office space would influence her opinion at all. In response, Ms. Cantrell stated that if it were in a PUD it would, but she is uncomfortable with a promise. Mr. McArtor stated that we don't seriously think that he is not going to file the covenant since his counsel has made a public declaration that it is going to happen. Ms. Cantrell stated that in all due respect the applicant could be hit by a car tomorrow.

Mr. Midget stated that it is his understanding that the covenant would be filed before it gets to the City Council for final approval. He can assure the Planning Commission that this will be almost a month and he says that because staff will have to transmit it, there will be a couple of readings before it comes up for

approval. There may be some time in there to file the covenant. The Planning Commission is not making the final determination on the zoning because it is merely a recommending body. If the recommendation is that the zoning be approved only with the accompanying covenant, then the City Council does not have to approve it until it is done. He commented that he is not concerned that this is setting a precedent because the Planning Commission makes recommendations all of the time. Every piece of property is unique in Tulsa and we are an urban city. The Planning Commission will have to work with developers and neighborhoods to reach compromises on how to continue to grow. He is so concerned about Tulsa's ability to grow and we can't continue to hold development hostage to way this community was when he was in the 10th or 12th grade. Tulsa has changed, and every community around Tulsa has changed. The Planning Commission needs to consider that. Tulsa has young people whom we would like to get back to this community and it is not going to happen if Tulsa is not willing to come into the 21st century and be an urban area.

Ms. Wright stated that no one is arguing whether or not we are going to be an urban area or not. What is being discussed today is whether or not the Planning Commission should follow procedure in what has been an established requirement as a PUD or be inconsistent and do something that has not been done in that area.

Mr. Carnes requested a vote for his motion again.

Ms. Wright continued to stated that If we are going to make a radical change to the Comprehensive Plan, then lets bring back to the table the stakeholders who were involved in the Cherry Street Plan and the historic neighborhood in the surrounding area and the Metro Redux, all the people who were originally listened to and formed the Comprehensive Plan. Many of these things have been adopted and are in place. By doing this and not following simple procedure we are slapping them in the face. There is nothing here that shows a significant hardship to deviate from this.

Mr. Midget stated that the Planning Commission doesn't zone on hardship and he is not going to discuss this too much again. In response, Ms. Wright stated of course not. Mr. Midget stated that the Planning Commission makes recommendations and there is a unique situation that exists all of the time and that is why the Planning Commission exists. The Planning Commission is to determine what zoning patterns there are or what conditions there are and make recommendations. One can't hold a zoning philosophy or zoning regulation for one piece of property and necessarily take it to another piece of property when the conditions are different. It is up to the Planning Commission and that is why we are here, so that it can be looked at and a recommendation made by using the Comprehensive Plan as a guideline. It is not a ordinance and no one will go to jail and you can't be imprisoned. It is a guideline for human beings to look at it

and then make a determination given the facts before us. The Comprehensive Plan is always going to change.

Ms. Wright asked how this is different from the Arvest Bank or Stillwater Bank requirements that necessitated a PUD.

Ms. Cantrell stated that she does believe that the Planning Commission is getting too broad and off track. She doesn't believe this is something that we all are going to be able to resolve at this point there are too many different approaches.

Ms. Matthews stated that the PUDs that Ms. Wright and Ms. Cantrell are discussing came in with mixed-use developments, mixed zoning. The subject property is asking for one straight zoning category. That is staff's rationale for agreeing that OH is an appropriate use along with the other physical facts.

TMAPC Action; 8 members present:

On **MOTION** of **CARNES**, TMAPC voted **6-2-0** (Carnes, Marshall, McArtor, Midget, Sparks, Walker "aye"; Cantrell, Wright "nays"; none "abstaining"; Ard, Shivel, Miller "absent") to recommend **APPROVAL** of the OH zoning for Z-7102 per staff recommendation, with a recommendation that the applicant file a restrictive covenant reducing the development to 250,000 SF as proposed by the applicant.

Legal Description for Z-7102:

LOTS 1 THROUGH 7 INCLUSIVE, AND THE NORTH HALF OF LOT 8, BLOCK 4, AND THE EAST HALF OF THE VACATED ALLEY ADJACENT TO SAID LOTS, AND ALSO LOTS 17 THROUGH 24 INCLUSIVE, BLOCK 4, AND THE WEST HALF OF THE VACATED ALLEY ADJACENT TO SAID LOTS, LAKE VIEW ADDITION, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF;
From RM-2/OL (Residential Multi-family District/Office Low Intensity District) To OH (Office High Intensity District).

Mr. Midget out at 3:55 p.m.

6. **Z-5636-SP-2a – Whistler Sign Company, LLC** (PD-18) (CD-5)

Located along the northbound exit ramp of U.S. 51 to U.S. 169 (Corridor Minor Amendment for relocating the previously approved outdoor advertising sign 237 feet to the west and to add LED Technology per the conditions of Section 1221-G of the Zoning Code.)

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to Z-5636-SP-2 for the purpose of relocating the previously approved Outdoor Advertising (O/A) sign 237 feet to the west of a previously-approved outdoor advertising sign location (see Exhibit A) and to add LED technology per the conditions of Section 1221-G of the Zoning Code. The outdoor advertising sign was approved as a permitted use in its existing location through the detail sign plan process in 1994.

Spacing verification for the proposed location was approved by the City of Tulsa Board of Adjustment (BOA) in case #20702 on 6/24/08. The outdoor advertising sign:

- Is an existing permitted use;
- Is permitted since the addition of the LED technology is permitted by Section 1221-G of the Code and by meeting the requirements of 1221-G, the LED technology does not meet the definition of flashing illumination; and
- The new location has had the spacing verified by the BOA.

Therefore, staff recommends **APPROVAL** of minor amendment Z-5636-SP-2a with the condition that the overall height of the sign does not increase, and the permitted display surface area (672 SF) of the sign as approved by Z-5636-SP-2 will remain effective. Certification of compliance with Section 1221-G of the Zoning Code (see Exhibit B) must be supplied to the City of Tulsa Zoning Official prior to the release of sign permits.

Note: Approval of a minor amendment does not constitute detail site, sign, or landscape plan approval

Applicant's Comments:

Mike Joyce, 1717 South Boulder, Suite 200, 74119, stated that his client, Whistler Outdoor, currently operates the existing billboard and are under contract to acquire the tract of land. Whistler has an opportunity to relocate the sign that is more conducive to develop the subject property. In addition, the City recently passed an ordinance which allows for the LED billboards to be developed. His client has received a permit from the City of Tulsa to construct the LED billboard. However, ODOT placed a highway sign that substantially obstructs visibility of the existing billboard. His client would like to move the existing sign several

hundred feet directly to the west so it would clear the obstruction of that ODOT sign. The billboard will be the same height and will have the same square footage of face, but it will move slightly to the west and will have LED technology. He indicated that he concurs with staff's recommendation and requested that this application be approved.

Interested Parties Comments:

John W. Moody, 3723 East 64th Place, 74136, representing Big Time Billboards and Joshua Operating Company, stated that by moving the digital sign it would place a digital sign closer to his client's offices and their tenants and to some degree move a digital sign closer to the existing apartments, which was a concern of the Planning Commission's for a non-digital billboard on his client's property.

Mr. Moody stated that there will be some major changes within the interchange and the ODOT sign may or may not be in the existing location. Perhaps there will be no need to move the subject sign. He doesn't see any reason to move the digital sign farther to the northwest and closer to his client's office buildings. He indicated that he has appealed the decision of the Planning Commission to the City Council regarding his billboard, which was recommended by the Planning Commission for denial. Mr. Moody expressed concerns whether there would be enough spacing between the existing sign and his proposed sign.

TMAPC COMMENTS:

Mr. Marshall asked Mr. Moody if he knew whether there would be enough separation between the subject sign and his proposed sign, should the City Council approve it. In response, Mr. Moody stated that he doesn't believe there is, but he hasn't had a surveyor go out to measure. Based on the frontage and right-of-way, it appears that he might be all right, but he can't tell without a surveyor confirming it.

Mr. Boulden stated that the measurement standard is a straight line from the center of the sign structure to the center of sign structure. Mr. Moody stated that there may be a problem, then, until he can laser the measurement. He requested a continuance to allow him to do the measurements.

Ms. Cantrell stated that she didn't see anything about the proposed sign being moved and asked staff if they were aware that they are moving the sign. In response, Mr. Sansone stated that Exhibit A in the agenda packet shows the sign being moved 237 feet to the west.

Applicant's Rebuttal:

Mr. Joyce stated that Mr. Moody's concerns are misplaced and in error. Spacing is measured from an existing sign and Mr. Moody and his clients were before the Planning Commission seeking a billboard sign and the Planning Commission recommended denial. The existing billboard has lights on it and it is bright during

the evening and daytime and it is currently visible from the adjacent property. However, the tenants go home in the evening and there are very significant restrictions placed on the brightness of LED signs. They are dimmer than the lights on traditional billboards under the Code, Section 1221.

Mr. Joyce stated that it requires 1,200 feet from existing signs and ODOT regulates and controls signs on the routes. This is on Highway 51 and Mr. Moody's client is seeking a sign on Highway 169, but most importantly, this Planning Commission recommended to the City Council that they not change the zoning to allow a new billboard on that corridor. Mr. Moody doesn't have an existing sign he is requesting to be moved, but a new sign that will greatly impact the corridor. It is an additional sign, additional brightness and lights that will shine in the apartments. He doesn't know if the subject proposal will affect the spacing to Mr. Moody's speculative sign. Mr. Joyce requested that the Planning Commission not hold up his client based on something that may or may not happen in the future and that may or may not have spacing that impacts them. He doesn't believe that City Council will approve zoning for a new sign that will impact the corridor, especially when the Federal Highway Administration has issued its proclamation that States shall not spot zone for billboards. Mr. Moody's client is changing the zoning for the existing development to add an outdoor sign. The Federal Highway Administration will withhold funds from States that spot zone at ten percent of their highway funding, which is sixty million dollars to the State of Oklahoma. The State informed Mr. Joyce that communities that spot zone for billboards will be penalized by the State with the loss of the Federal Highway funds.

TMAPC COMMENTS:

Mr. Marshall asked Mr. Joyce if he measured from his sign to Mr. Moody's proposed sign. In response, Mr. Joyce stated that he didn't because that would be speculative. He is not concerned with what Mr. Moody or his client may propose. His concern is the lack of visibility from the subject property that his client is acquiring with an existing sign, in an investment of half a million dollars, when the view is substantially obstructed by the ODOT sign. The ODOT sign and the existing sign are virtually parallel to each other and the visibility will be greatly improved and without additional impact to the corridor. The digital sign will not be brighter to the tenants adjacent or the apartments. The digital sign will be thousands of feet away from the apartments. The office complex will have less brightness since it is an LED sign.

Mr. Marshall stated that his problem is that the City Council could approve Mr. Moody's billboard and then there would be a problem with spacing in between. Mr. Marshall stated that Mr. Joyce should have measured the spacing between the existing signage and Mr. Moody's proposed signage that has been recommended for denial by the Planning Commission. Mr. Joyce asked Mr. Marshall why he should have to measure because his sign is existing on the corridor and he is asking under his existing right, which the subject property is

zoned to have a billboard on it. He is simply adding the additional LED use to make it more visible. Mr. Joyce asked why he should have to be concerned or come second to a speculative sign, which doesn't exist because that is not what spacing is required it is from existing signs. The existing signs are 7,000 feet to the east and 3,000 feet to the west and Mr. Moody's billboard may or may not ever happen.

Mr. Marshall asked Legal if the measurement is from existing to existing signs for the spacing requirement. In response, Mr. Boulden stated that it would be from existing to existing, because the Code did not provide for speculative signs or signs that have been permitted. The bottom line is the measurement standard is from center of sign structure to center of sign structure.

Mr. Marshall stated that there are applicants who have the right to put a sign up and who haven't put them up. In response, Mr. Joyce stated that, with all due respect, Mr. Moody doesn't have the right to put up a sign because current zoning does not allow a sign on the property Mr. Moody is representing. The Planning Commission recommended to the City Council that it not allow Use Unit 21, Outdoor Advertising.

Mr. Marshall asked if a sign is not on the property, then the lease agreement doesn't apply. In response, Mr. Joyce stated that it doesn't impact already existing signs under the State Law and under the City Ordinance.

Ms. Cantrell recognized Mr. Moody.

Mr. Moody stated that the Planning Commission actually recommended approval of the CO zoning, but not the sign plan. It is not spot zoning because everything around it, including Mr. Joyce's property, is zoned CO. Mr. Joyce comes in with a new location for his existing sign and he is no different now from a new applicant.

In response to Mr. Marshall, Ms. Cantrell stated that this is not a situation where the adjacent property has a right to put a sign and hasn't done so. This is where the Planning Commission actually recommended denial of the sign, but the City Council could overturn that request. At this time she would say the correct position would be is that the Planning Commission is looking at a property that has no rights to put up a billboard and do not know if they will in the future. The application today is for an existing sign to move 237 feet to the west and add LED equipment.

Mr. Sansone stated that if the City Council were inclined to approve Mr. Moody's application, then he would have to go before the Board of Adjustment to verify the spacing on his proposed location.

Mr. McArtor asked if the Planning Commission voted to approve today's recommendation, then where that would that leave Mr. Moody if he couldn't verify the spacing. In response, Mr. Sansone stated that he visited the site twice and Mr. Moody's location from the subject site appears to meet the spacing, but he didn't measure it.

Mr. McArtor stated that the request doesn't seem to be too much and he understands the application because the ODOT sign is in the way. He hasn't heard why an office complex would be impacted by an existing sign moving closer to them. He would support staff's recommendation.

Ms. Cantrell stated that she voiced opposition for the billboard proposed next to the apartments because there are people there all night and the billboard sign would impact them. She doesn't believe it is a good precedent to start, saying that the Planning Commission makes their decisions on what the City Council might do down the line.

TMAPC Action; 7 members present:

On **MOTION** of **MCARTOR**, TMAPC voted **6-1-0** (Cantrell, Marshall, McArtor, Midget, Sparks, Walker, "aye"; Wright "nay"; none "abstaining"; Ard, Carnes, Miller, Shivel "absent") to **APPROVE** the minor amendment Z-5636-SP-2a per staff recommendation, subject to the condition that the overall height of the sign does not increase, and the permitted display surface area (672 SF) of the sign as approved by Z-5636-SP-2 will remain effective. Certification of compliance with Section 1221-G of the Zoning Code (see Exhibit B) must be supplied to the City of Tulsa Zoning Official prior to the release of sign permits.

7. **PUD-559-B/Z-5888-SP-5 – John W. Moody** (PD-18) (CD-8)

North and east of the northeast corner of East 91st Street and South 101st East Avenue (Major Amendment to allow a second outdoor advertising sign within the southern half of Development Area A.)
(Continued from 6/18/08, 6/25/08 and 7/16/08.)

STAFF RECOMMENDATION:

ZONING ORDINANCE: Ordinance number 19538 dated May 17, 1999, established zoning for the subject property.

PROPOSED ZONING: CO/PUD

PROPOSED USE: Use Unit 21, to add a second outdoor advertising sign

RELEVANT ZONING HISTORY:

Z-6503-SP-2 October 19, 2007: Staff approved a proposed sign application in a Corridor Site Plan on a tract of land to replacing a previously approved outdoor sign, on property located east of the southeast corner of East 91st Street South and South Mingo Road, abutting west of the Mingo Valley Expressway and located south of subject property across East 91st Street South.

Z-6503-SP-2 May 2007: All concurred in approval of a proposed Corridor Site Plan on an 8.67± acre tract of land for new commercial and office development, on property located east of the southeast corner of East 91st Street South and South Mingo Road, abutting west of the Mingo Valley Expressway and located south of subject property across East 91st Street South.

Z-7003/PUD-721 January 2006: All concurred in approval of a request for rezoning and a proposed Planned Unit Development on a 40± acre tract of land from AG to RS-3/OL/CS/PUD for mixed use development with four development areas on property located northeast corner of East 91st Street South and South Mingo Road.

Z-5888-SP-4/PUD-586-A January 2002: All concurred in approval of a proposed Corridor Site Plan and Major Amendment to a PUD on a 23.4± acre tract of land to allow Use Unit 21 for two outdoor advertising signs in Development Area A, along the Mingo Valley Expressway with 1,300 feet distance between signs on property located on the northeast corner of East 91st Street South and Mingo Valley Expressway.

Z-6910-SP-2 April 2006: All concurred in approval of a proposed Corridor Site Plan on a 4.45± acre tract of land for commercial and medical office use and to establish the aggregate floor area of 27,380 square feet for office development on property located east of southeast corner of East 91st Street South and South Mingo Road.

Z-6910-SP-1 December 2003: All concurred in approval of a proposed Corridor Site Plan for a four-story medical office building on property located east of southeast corner of East 91st Street South and South Mingo Road.

Z-6910 November 2003: All concurred in approval of a request for rezoning from AG to CO on property located east of southeast corner of East 91st Street South and South Mingo Road.

BOA-19101 June 12, 2001: The Board of Adjustment approved a Special Exception to construct an 80 foot monopole cellular transmission tower on property zoned AG, per plan submitted on property located east of southeast corner of East 91st Street South and South Mingo Road.

BOA-18760 June 13, 2000: The Board of Adjustment approved a Variance of allowable height for existing outdoor advertising sign from 60' to 125', subject to meeting the spacing requirement between outdoor advertising signs finding the hardship to be the elevation of the Broken Arrow South Loop interchange on property located east of the southeast corner of East 91st Street South and South Mingo Road, abutting west of the Mingo Valley Expressway and located south of subject property across East 91st Street South.

BOA-18480 August 1999: The Board of Adjustment denied a request for a variance of the required 1,200' spacing between outdoor advertising signs to 940' to relocate an existing outdoor advertising sign, finding that there is no hardship to support the variance, on property located east of the southeast corner of East 91st Street South and South Mingo Road, abutting west of the Mingo Valley Expressway and located south of subject property across East 91st Street South.

Z-6503-SP-1a June 16, 1999: All concurred in approval of a proposed minor amendment to a Corridor Site Plan to remove an existing outdoor advertising sign, (located in the Mingo Valley Expressway Right-of-way) and erect a new sign that is within 940' of another outdoor advertising sign to the south, subject to applicant applying and receiving approval for a variance from the Board of Adjustment or applicant finding another location that will meet the spacing requirement, on property located east of the southeast corner of East 91st Street South and South Mingo Road, abutting west of the Mingo Valley Expressway and located south of subject property across East 91st Street South.

Z-6503-SP-1 March 1996: All concurred in approval of a proposed Corridor Site Plan on a 10.6± acre tract of land for an outdoor advertising sign subject to the requirements of Section 1221.F of the Tulsa Zoning Code, on property located south of southwest corner of East 91st Street South and South Highway 169.

Z-6503 October 1995: All concurred in approval of a request for rezoning a 10.6± acre tract of land from AG to CO on property located east of southeast corner of East 91st Street South and South Mingo Road and the subject property.

PUD-559-A/Z-5888-SP-3 May 1999: All concurred in approval of a proposed Major Amendment to Planned Unit Development and a Corridor Site Plan on a 58.4± acre tract of land for outdoor advertising sign on property located on the northwest corner of East 91st Street and South Mingo Valley Expressway and a part of the subject property.

PUD-559-A May 1999: Approval was granted for a major amendment to allow two outdoor advertising signs on property located east of the northeast corner of East 91st Street and South 101st East Avenue and within Development Area A of the original PUD-559 that was approved for South Crest Hospital facilities.

PUD-586 June 1998: All concurred in approval of a request for a proposed Planned Unit Development and Detail Corridor Site Plan on a 29± acre tract for a mixed-use development. The development proposed a medical complex, related offices, residential facilities and retail shopping area, located on the northwest corner of East 91st Street South and South Garnett Road.

PUD-559 November 1997: All concurred in approval of a proposed Planned Unit Development on a 60.9± acre tract of land for multi-use development including apartments, offices, colleges and universities was approved on property located on the northwest corner of East 91st Street and South Mingo Valley Expressway and a part of subject property.

Z-6523 March 1996: All concurred in approval of a request for rezoning a .87± acre tract of land from AG to CO on property located east of southeast corner of East 91st Street South and South Mingo Road and south of the subject property.

Z-6503-SP-1 March 1996: All concurred in approval of a proposed Corridor Site Plan on a 10.6± acre tract of land for an outdoor advertising sign subject to the requirements of Section 1221.F of the Tulsa Zoning Code, on property located south of southwest corner of East 91st Street South and South Highway 169.

Z-6503 October 1995: All concurred in approval of a request for rezoning a 10.6± acre tract of land from AG to CO on property located east of southeast corner of East 91st Street South and South Mingo Road.

Z-6194 July 1988: All concurred in approval of a request for rezoning a 4± acre tract located east of the southeast corner of East 91st Street and South Mingo Road from CS to CO.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property is approximately 5.03± acres in size and is located north and east of the northeast corner of East 91st Street and South 101st East Avenue. The property is vacant and is zoned CO/PUD.

STREETS:

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
91 st Street South	Secondary Arterial	100'	5
South 101 st East Avenue	Commercial Collector	80'	2

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

SURROUNDING AREA: The subject tract is abutted on the east by Highways 169 and 64 zoned RS-3; on the north by Tulsa Community College-Southeast

campus, zoned AG; on the south by Saint Francis Medical facility, zoned CO; and on the west by SouthCrest, 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 being Corridor/Development Sensitive (in conjunction with a floodplain) and Low Intensity-No Specific land use. This means that development to Corridor standards is encouraged; however, if not developed at that higher intensity, then development should be at the Low Intensity-No Specific land use designation. According to the Zoning Matrix the requested zoning is the same as is currently in place. The issue in question is an additional outdoor advertising sign. The Plan does not address this level of detail.

STAFF RECOMMENDATION:

PUD-559-B is an undeveloped 14.86 acre (637,864 SF) tract located east of SouthCrest Hospital and west of the southbound inner-dispersal loop of US Highway 169 and the Creek Turnpike. The major amendment request is to allow a second outdoor advertising (OA) sign within the southern ½ of Development Area A, of PUD-559-A.

This case was continued from 6/25/08 to allow for further legal investigation to verify if a variance for the height of an outdoor advertising sign granted to the property owner to the south is a variance that goes in perpetuity with the land, or is applicable to the permitted sign and therefore a specific assign owner only. Also under consideration was whether the 1,200-foot spacing requirement for O/A signs was a 1,200-foot requirement between existing signs (in the ground), or should the spacing verification consider signs that are not constructed and in the permitting/spacing verification process, but also have an approved detail sign plan.

As approved PUD-559 and PUD-559-A permits two Outdoor Advertising signs. One permitted OA sign location is within the east 100' of Development Area B and one Outdoor Advertising sign within the limits of Development Area A (see Exhibit A). There is one existing Outdoor Advertising sign in the northern ½ of Development Area A along the US 169 right-of-way (ROW) as depicted on attached Exhibits A and B. It appears that this sign is greater than 1,200 feet from any other OA sign.

The proposed new Outdoor Advertising sign location is also depicted on Exhibits A and B, and appears to be located greater than 1,200 feet south of the existing Outdoor Advertising sign within Development Area A.

The new location is less than 1,200 feet from an approved Corridor Site Plan (Corridor site plan # Z-6503-SP-2, located south of the subject property) which has been approved for OA signs as a permitted use, and has historically had an

OA sign on site per Z-6503-SP-1. Staff understands that the property owner of Z-6503-SP-2 currently has an application pending with ODOT for a billboard at this location. Incidentally, an application to ODOT was rejected in August 2007 for Z-6503-SP-2.

Since this proposed location is within 1,200 feet of an existing approved Outdoor Advertising sign location and there are already two billboards permitted in PUD-559, staff recommends **DENIAL** of PUD-559-B/Z-5888-SP-5.

TMAPC COMMENTS:

Mr. Boulden stated that he has no authority that supports the assertions by Mr. Moody. He looked at the application for the variance and according to the application for the variance, it was applied for by the record owner, Quapaw Investments, YMCA. There is a provision that asks if the record owner consents to the filing and it was marked "yes". Another provision asks that if the applicant is other than the owner, indicate interest and it was left blank. The applicant was not the sign company at least on the face of the application. He has not heard from the owner that they want to remove the variance. Regardless, his advice to the Planning Commission is that variances, when granted, are unique to that property and they run with the land. They may not be waived or changed by any user of the property and they do not have any authority over the variances. It is the government entity that does.

Mr. Marshall stated that this is exactly what he was addressing in the other case, because there is not an existing sign to measure from and it presents problems.

Ms. Cantrell stated that on the previous case there had been no approval for a sign and here there is an approval for the sign.

Mr. Alberty stated that the one distinction here is that regardless of who has approval, the first sign that goes in and gets verified by the BOA and receives a permit is the one that will be built. It doesn't matter who has it. The reason for staff recommending denial is because there is an approved detail site plan on the adjacent property for a sign and on the previous case there was no detail site plan approved.

Applicant's Comments:

John W. Moody, 3723 East 64th Place, 74136, stated that Mr. Sansone may have been confused because of this application and the other two. There are only two outdoor advertising signs originally approved on SouthCrest property and one of the sign's location was sold and is owned by Tulsa Community College and so there is only one sign on the SouthCrest Hospital property. He is proposing a sign and he is sure that however this goes, it will end up in court.

Mr. Moody stated that he believes that there are some facts that were stated in the record that are not accurate: 1.) There is only one sign on the SouthCrest

property and only two were originally approved in that spacing area; 2.) Mr. Stokely had a lease on the property and it gave Mr. Stokely the sole ownership of the right to build the outdoor advertising sign. The owner was prohibited from building a sign in competition of Mr. Stokely. The lease also stated that the sign belonged to Mr. Stokely, and if the lease was terminated, he would have to remove the sign, which had to be done within 30 days. Mr. Moody cited the history of the property owners; 3.) The sign that was removed was built by Mr. Stokely after the construction of the expressway and not by this detail sign permit application that was approved by staff. Mr. Stokely built the sign and a variance had to be secured from the BOA for the sign to be built 125 feet in height. Mr. Moody indicated that this is different and unique because if a variance is granted for a setback for a building from one's property line, then obviously it would run with the land because the landowner owns the building. However, outdoor advertising signs are different and they are the personal property. The lease specifically states that they are not fixtures that do not belong to the property owner but by the sign company. The variance attaches with the sign and not the property and that is his legal position. Mr. Moody believes that when the property owner demanded the sign be taken down and before the new sign company received a detail site plan approval, he had written to the City and BOA to rescind the variance. There is no legal sign anymore on the subject property. The other sign company filed their detail sign application a week after the letters were written and he stated specifically that there had been a variance granted for the height of the sign for the prior sign that is being replaced in the exact same spot that they demanded Mr. Stokely to remove because it would interfere with development. Mr. Moody concluded that he believes that the variance was attached to the sign and runs with the lease-hold estate and not the fee owner of the property. The proposed sign will be 60 feet in height. To his knowledge neither his client nor Mr. Joyce's client has a permit at this time for their signs. Mr. Moody stated that he shouldn't be denied on the basis that there is another sign proposed that has not been permitted. Mr. Moody reminded the Planning Commission that his proposed sign is not permitted either.

Mr. Moody stated that he did file a notice and an appeal when he learned of the detail site plan had been approved within ten days of knowledge. He knew that there was no actual language in the Zoning Code that provides for an appeal for such an action. There is a specific language, for example in the PUD, if the staff approves a detail site plan and someone would like to appeal that, then that appeal is to the Planning Commission. In corridor districts it is not in there and there is not remedy for the appeal. He indicated that he knew this when he filed the appeal, but he wanted to have it verified because an applicant has a duty to exhaust their administrative remedies before going to court.

TMAPC COMMENTS:

Mr. Marshall asked Mr. Moody if he indicated that if the Planning Commission rules against him it would go to court. In response, Mr. Moody stated that first he would have to appeal it to the City Council and then see what happens there.

Interested Parties Comments:

Mike Joyce, 1717 South Boulder, Suite 200, 74119, representing DFI Crossroads, owner of the property for the approved detail site plan adjacent to the subject property. He believes that Mr. Moody is trying to cloud the issue that Whistler is somehow engaged in something inappropriate. Whistler is a sign contractor who works for multiple sign companies and outdoor sign companies in the City of Tulsa, northwest Arkansas and surrounding communities. They are a licensed sign contractor, which builds, installs and permit signs for individuals and companies that own their own billboards. DFI, owner of the property, has applied in its own name for an ODOT permit to construct or have constructed for them and own a billboard sign on their property. DFI is a real estate broker and they hire contractors to develop their property.

Mr. Joyce stated that there is an approved sign plan for the DFI property. There is an existing billboard and it was constructed by Stokely Outdoor under a variance, not a conditional variance. It wasn't there for a few years and then expired, but this was a variance without conditions. It is an elemental principle of real estate law, well founded and well settled in every State that variances when granted run with and are attached to the land and all subsequent owners of real estate take the property subject to the variance, which continues unless by its terms it has conditional or timeframes on it. The subject variance did not have any terms or timeframes on it.

Mr. Joyce stated that DFI has an application pending before ODOT with an approved sign plan. The original application was rejected because of ODOT's concern that Highway 169 crossed with the turnpike ramps of the Creek Turnpike, which ODOT asserted was a main-traveled-way, and would make it a double control zone and recommended they adjust the spacing. He explained that he has had a rehearing on the application and he proved through the Oklahoma Turnpike Authorities plans that every ramp is a ramp and they are excluded from double control zone. There is a sign plan approved for billboard and it is 1,700 feet from the nearest billboard and well over 1,300 feet from the nearest Lamar board. He expects the result of the hearing there will be a permit issued and there is a second available site outside the double control on the subject property. ODOT has rejected Mr. Stokely's application for a billboard because it is not properly zoned and it is competing with DFI's application. He requested that the Planning Commission deny the subject application.

Applicant's Rebuttal:

Mr. Moody stated that he will apologize to Mr. Joyce and Whistler if he is incorrect; however, the attachment to the ODOT application indicated that Mr. Whistler has been purchasing the perpetual easement for an outdoor advertising sign.

TMAPC COMMENTS:

Mr. Midget moved to deny the major amendment for PUD-599-B/Z-5888-SP-5 and was seconded by Mr. McArtor.

Ms. Cantrell stated that she would like to make it clear for the record that even given the other circumstances this is a one of those circumstances where the billboard could be denied simply because it is a PUD. The facts in this case are sufficient to say that the Planning Commission could deny because there are already two billboards within the PUD and that was what was approved originally.

TMAPC Action; 7 members present:

On **MOTION** of **MIDGET**, TMAPC voted **6-1-0** (Cantrell, McArtor, Marshall, Midget, Sparks, Walker, "aye"; Wright "nays"; none "abstaining"; Ard, Carnes, Miller, Shivel "absent") to recommend **DENIAL** of the major amendment for PUD-599-B/Z-5888-SP-5 per staff recommendation.

OTHER BUSINESS:

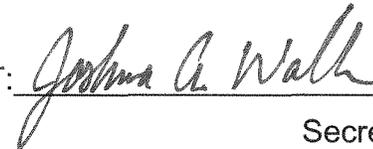
Commissioners' Comments

There being no further business, the Chair declared the meeting adjourned at 4:50 p.m.

Date Approved:

5/20/06


Chairman

ATTEST: 
Secretary