

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 1756
Wednesday, **August 9, 1989**, 1:30 p.m.
City Commission Room, Plaza Level, Tulsa Civic Center

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

The notice and agenda of said meeting were posted in the Office of the City Auditor on Tuesday, August 8, 1989 at 11:29 a.m., as well as in the Reception Area of the INCOG offices.

After declaring a quorum present, Chairman Doherty called the meeting to order at 1:32 p.m.

MINUTES:

Approval of the Minutes of July 26, 1989, Meeting #1754:

On **MOTION** of **CARNES**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Kempe, Paddock, Selph, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Draughon, Parmele, Randle, "absent") to **APPROVE** the **Minutes of July 26, 1989, Meeting #1754.**

REPORTS:

Committee Reports:

Mr. Paddock advised the Rules & Regulations Committee was scheduled to meet upon adjournment of today's meeting to continue their review of the Sign Code.

ZONING PUBLIC HEARING

Application No.: PUD 413-A (Major Amendment) Present Zoning: RS-3, RM-1, CS
Applicant: Johnsen (Isaacs) Proposed Zoning: Unchanged
Location: NE/c of Keystone Expressway and Gilcrease Museum Road
Date of Hearing: August 9, 1989
Presentation to TMAPC by: Mr. Roy Johnsen, 324 Main Mall (585-5641)

Staff Recommendation:

PUD 413-A is a 10.6 acre tract located at the northeast corner of the Keystone Expressway and Gilcrease Museum Road. The original PUD, with its underlying zoning of CS, RM-1 and RS-3, permitted a mixed use development including retail, office, elderly housing and a conference center. The commercial zoning and land uses in PUD 413 were not supported by Staff since the proposal was contrary to the Comprehensive Plan, but were approved with modifications by the TMAPC and City Commission. The plan as approved permitted one freestanding commercial restaurant at the northeast of Gilcrease Museum Road and the Keystone Expressway with an office buffer to the north to eliminate commercial stripping north on Gilcrease Museum Road. The other permitted commercial use was located on the interior of the PUD tract some 250 feet east of the single-family residences on the west side of Gilcrease Museum Road. The applicant is now requesting a major amendment to permit three freestanding restaurants along the Gilcrease frontage and has eliminated the office buffer.

Staff is not supportive of the request and views the request as the start of commercial strip zoning along Gilcrease Museum Road. Abutting residences west of the subject tract would be negatively impacted with this proposal and would be candidates for commercial zoning in the future. Those homes further to the west would then abut commercial development. Therefore, Staff recommends **DENIAL** of PUD 413-A.

For the record, with only minor revisions the applicant's new layout could accommodate Mazzio's Pizza in Area 1, Braum's Ice Cream in Area 5 and one story office buildings in Areas 2 and 3 and meet the approved concept of the original PUD 413. Signage for the two commercial uses could be oriented toward the Keystone Expressway, 250 feet or more from the nearest residence fronting Cameron Street. If the Commission agrees with this assessment, the Staff would recommend a three week continuance for revision and Staff comment.

Applicant's Comments:

Mr. Roy Johnsen, representing the applicant, advised there was no change in the underlying zoning and he reviewed the original PUD as to the various development areas and permitted uses. Mr. Johnsen also reviewed the restrictive covenants agreement entered into by the applicant and advised these were still in effect, and would need no modification if the TMAPC approved today's proposal. Mr. Johnsen commented that even though this intersection has not been designated as a node, it did meet several of the concepts of a node. He pointed out there were very few restaurants available along the expressway between Tulsa and Sand Springs, and two

major food chains considering this location was an indication that these types of services were needed. Mr. Johnsen commented that during the 3+ years since the original PUD was approved, the applicant has been unable to find an office user and/or "sit down" type restaurant; i.e. Shoney's.

Mr. Johnsen commented that the original PUD proposed a conference center within the interior of the tract, having the Tulsa Childrens Home structure as its focal point. The easterly portion of the site was proposed development as a multi-story retirement residence for the elderly. He stated there were no immediate development plans for these two areas. Mr. Johnsen advised the previously proposed multi-family was formally being deleted from the PUD. In recognition of current market demand, Mr. Johnsen stated it was proposed to change the use of the frontage along Gilcrease Museum Road to three restaurant sites.

Mr. Johnsen reviewed the conceptual site plan and the other development areas of the amended proposal, advising of the meetings and notices to the area residents. He reviewed the internal access and landscaping. Mr. Johnsen reviewed the specific allocations of the original PUD, and noted that the 14,500 square feet of commercial floor area currently proposed was an overall reduction in floor area. He then reviewed the signage proposed, which attempted to take into account the differences of the two food facilities (Braum's and Mazzio's). Mr. Johnsen concluded by stating the applicant has attempted to stay, as closely as possible, within the approved concepts of the original PUD. He submitted photos of the tract and a letter from the West-O-Main Improvement Association Executive Commission which stated unanimous support. Mr. Johnsen also submitted a letter of support from the Gilcrease Hills Homeowners Association, and advised the District 10 Cochairman had expressed support for the project. Mr. Johnsen submitted a petition with 30+ signatures supporting the application, and noted the petition contained 23 signatures of property owners within the immediate vicinity of the subject tract.

Mr. Paddock inquired if Mazzio's Pizza customarily had a drive-thru window with their facilities. Mr. Johnsen remarked that they had a pick up window for phone in orders, but a person could not place orders from the window. He advised the Braum's store proposed for this site did have a drive-thru window for taking orders. In response to Mr. Paddock regarding dedication on Gilcrease Museum Road, Mr. Johnsen stated the proposal substantially exceeded the setback requirements for CS.

Interested Parties:

Mr. Frank Keith (3220 North Ridge Avenue, Sand Springs) advised he had an office at 2223 Charles Page Blvd. which was in the area of the subject tract. Mr. Keith commented that he supported the original zoning back in the 70's for the psychiatric center, and also supported the original PUD which offered the senior citizen uses and a Shoney's type restaurant. However, he was opposed to the current presentation due to the resulting treatment of the PUD text for the CS shopping center. Mr. Keith stated he felt this was strip zoning and should be denied in order to protect the neighborhood.

Mr. Curt Proud (1935 North Nogales) advised he was speaking on behalf of several of the neighborhood residents in support of the request. Mr. Proud stated his mother lives at 2319 West Easton and he was raised in this area. He commented that the residents feel the request was a reasonable use of the land. In reply to Mr. Paddock as to the need for the three proposed restaurants, Mr. Proud commented that, although there was some disappointment that a Shoney's did not come through, he felt Mazzio's and Braum's were very well accepted.

Mr. D.W. Brasler (2517 West Brady) advised his property was located directly west of the subject tract. Mr. Brasler stated he felt the originally approved PUD which disallowed fast food restaurants should be upheld.

Mr. J.L. Sullivent (2526 West Cameron) admitted that, although he opposed the original PUD, he has seen the applicant make several improvements to the tract. Mr. Sullivent commented he had no objection to the restaurant use and he felt this was an ideal location since it was next to the expressway.

Mr. Claude Rutledge (2501 West Easton Place) spoke in support of the request as he felt the elderly residents in the neighborhood would benefit from the restaurant use.

Mr. W.S. Pyles (516 North 23rd West Avenue) commented he felt this proposal was the best opportunity offered to the neighborhood and residents. Mr. Pyles spoke in support of locating the Braum's and Mazzio's facilities on the tract.

Ms. Andrea Buthod (2520 West Easton) advised of other restaurants and food services that did not survive the economy in this area. Ms. Buthod suggested keeping the Braum's and work on getting a sit down type restaurant instead of another fast food restaurant. She voiced concern that the landscaping may not be properly maintained.

Mr. Larry Duke (1919 West Seminole), representing the Gilcrease Hills Homeowners Association, encouraged the TMAPC to look favorably on the PUD amendments. Mr. Duke stated he felt the proposal would be a welcome and attractive addition to the community.

Applicant's Rebuttal:

Mr. Jerry Isaacs, owner of the tract, mentioned that over the past six years he has had an opportunity to get to know and work with the residents in this area. Mr. Isaacs spoke of the pride of these people and a sense of "why can't we have some nice things here". He advised of the efforts, although unsuccessful, in trying to get Shoney's to place a restaurant at this location. Mr. Isaacs stated he was committed to installing and maintaining the landscaping as indicated on the landscape plan, and he had made a further commitment with the setbacks, dedication of public street, etc.

Mr. Johnsen reiterated this project comes to the TMAPC with strong support from the residents, both vocally and in written response. As to the fast food restaurant, Mr. Johnsen commented that a pizza establishment was not really considered as a "fast food" service. In regard to Staff's suggestion to place the Braum's at the location of the children's home, Mr. Johnsen commented that the District 10 Plan encouraged the preservation of this structure due to its historic and architectural values. Mr. Johnsen pointed out that the landscaping proposal was a comprehensive plan involving the three restaurant uses, and the facilities would not be using their own discretion for landscaping. In summary, Mr. Johnsen commented that he felt this proposal, although a departure from that previously approved, met several of the planning considerations. In comparison to the original PUD, he stated the floor areas were actually less; landscaping was increased; signage was slightly less; and the project as a whole, for restaurant use, properly addressed the planning issues.

Ms. Wilson inquired as to the proposal for office use in the original PUD. Mr. Johnsen stated that this may have been a joint effort of Staff and the applicant. He added the applicant had been hopeful that he could market office use, but that has not been the case.

TMAPC Review Session:

After a great deal of discussion and questions to the Staff, a suggestion to continue this case was made in order to allow the applicant and Staff time to review the details of the revised PUD proposal, in light of the statements of support from the neighborhood. The Commission's main areas of concern involved the appearance of strip zoning in this area or commercialization on the remaining corners of the node; the internal access on the tract; fast food and/or drive-thru facilities which were originally prohibited in the PUD; and the proposal for three restaurant services at this location, as opposed to two facilities. (Note: The record is to show that the interested parties who spoke had no specific objections to either the proposed Mazzio's or Braum's.)

TMAPC ACTION: 8 members present

On **MOTION** of SELPH, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Kempe, Paddock, Selph, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Draughon, Parmele, Randle, "absent") to **CONTINUE** Consideration of **PUD 413-A Johnsen (Isaacs)** until Wednesday, **September 6, 1989** at 1:30 p.m. in the City Commission Room, City Hall, Tulsa Civic Center.

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Application No.: Z-6260 Present Zoning: RM-1
Applicant: Norman (Riverbend Development Assoc.) Proposed Zoning: CS
Location: SW/c of East 81st Street & South Yorktown Avenue
Date of Hearing: August 9, 1989
Presentation to TMAPC by: Charles Norman, 2900 Mid Continent Tower (583-7571)

Relationship to the Comprehensive Plan:

The District 18 Plan, a part of the Comprehensive Plan for the Tulsa Metropolitan Area, designates the subject property Low Intensity - No Specific Land Use.

According to the Zoning Matrix the requested CS District is not in accordance with the Plan Map.

Staff Recommendation:

Site Analysis: The subject tract is approximately .9 acres in size and is located at the southwest corner of East 81st Street South and South Yorktown Avenue. It is partially wooded, gently sloping, vacant and is zoned RM-1.

Surrounding Area Analysis: The tract is abutted on the north by vacant property zoned CO and AG; on the east across South Yorktown by a commercial development zoned CS; and on the south and west by vacant property zoned RM-1.

Zoning and BOA Historical Summary: Commercial zoning, slightly exceeding 10 acres at the Node, has been approved east of the subject tract. Additional corridor zoning was approved north of the subject tract, west to the Fred Creek Channel.

Conclusion: Although the subject tract is designated Low Intensity - No Specific Land Use by the Comprehensive Plan, it is abutted to the north by both AG zoning and CO zoning which extends west to the Fred Creek Channel. The 8.26 acre tract located northeast of the subject tract is designated both Medium and Low Intensity - No Specific Land Use, but the owner will likely seek CS zoning based on the surrounding zoning patterns in the Area. Therefore, based on the zoning patterns in the area, Staff could support commercial zoning on the east 90 feet of the subject tract in order to line up with the 10 acre tract at the northwest corner of the intersection.

Therefore, Staff recommends **APPROVAL** of CS zoning for the east 90' of the subject tract and denial on the balance. **NOTE:** This zoning pattern would necessitate the use of a PUD amendment in order to utilize the proposed tract of land for commercial purposes.

Comments & Discussion:

Mr. Charles Norman, representing the applicant, advised he would be working with Staff on the development standards for the related PUD proposal, which has requested a continuance for this purpose.

TMAPC ACTION: 6 members present

On **MOTION** of **WOODARD**, the TMAPC voted **6-0-0** (Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **APPROVE Z-6260 Norman (Riverbend Development Association)**, as recommended by Staff.

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Application No.: **PUD 105-A** Present Zoning: **RM-1**
Applicant: **Norman (Riverbend Development Assoc.)** Proposed Zoning: **CS pending**
Location: **SW/c of East 81st Street & South Yorktown Avenue**
Date of Hearing: **August 9, 1989**
Continuance Requested to: **August 16, 1989 (requested by applicant)**

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **6-0-0** (Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **CONTINUE** Consideration of **PUD 105-A Norman (Riverbend Development Assoc.)** until Wednesday, August 16, 1989 at 1:30 p.m. in the City Commission Room, City Hall, Tulsa Civic Center.

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Application No.: **PUD 360-A (Major Amendment)** Present Zoning: **CS, RM-0**
Applicant: **McCormick (Homeland)** Proposed Zoning: **Unchanged**
Location: **NW/c of East 91st Street & South Memorial Drive**
Date of Hearing: **August 9, 1989**
Presentation to TMAPC by: **Joseph McCormick, 111 East First, #100 (583-1111)**

Staff Recommendation:

PUD 360 is an approximate 20 acre development with underlying zoning of CS and RM-0. The original PUD allowed commercial uses to spread over the entire tract and permit a maximum floor area of 217,800 square feet. Additionally, the original PUD imposed minimal building setbacks and a 15% (net) landscaped open space as a means to insure compatibility with surrounding residential uses.

The applicant is requesting an amendment to reduce the building setbacks from both South Memorial Drive and East 91st Street South and reduce the required 15% minimum internal landscaped open space.

After review of the applicant's submitted plans, the existing and approved development in the area, in particular PUD 405 on the southwest corner, and PUD 448 at the northeast corner of the intersection, Staff can support a modified version of the request. However, in order to obtain some consistency of shopping center setbacks along South Memorial and East 91st Street South, Staff recommends approval of building setbacks as proposed on Memorial Drive. These setbacks are similar to the proposed development east of the subject tract and would provide continuity along the arterial. On East 91st Street Staff can support a modified request with a 100' setback from the right-of-way on the west 600' (150' from centerline) and a 50' setback (110' from centerline) on the eastern balance (approximately 225'). The landscape plan reflects a 11.6% landscaped internal open space which adequately buffers the abutting residences as well as adding to the overall aesthetics of the development.

Therefore, Staff recommends **APPROVAL**, subject to the following conditions:

- 1) Minimum Building Setback, from R/W of:

Memorial Drive (north 393.9')	90'
Memorial Drive (south 450')	50'
East 91st Street (west 600')	100'
East 91st Street (east 225')	50'
- 2) Minimum Landscaped Open Space: 11.6% Net
- 3) All other conditions of PUD 360 remain as originally approved.

Applicant's Comments:

Mr. Joe McCormick, representing the owner of tract and Homeland Stores, advised a contract was pending. Mr. McCormick submitted and reviewed a copy of the landscaping proposal, commenting the 11.6% proposed was the internal landscaping which exceeded the 10% standard requirement. He then reviewed the conceptual site plan as to the store's location in regard to the location of the "out parcels" on the tract.

Mr. McCormick reiterated Staff's comment that the main area of difference was in relation to the 100' right-of-way on the south boundary (91st Street). He advised they have discussed this proposal with the neighborhood residents.

In response to questions from the Commission, Mr. Gardner clarified the procedure for measuring in regard to the right-of-way dedication and setback as indicated on the Major Street and Highway Plan for this intersection. In regard to this particular request, Mr. Gardner stated that, to approve a 75' building setback from centerline, the applicant would need a hardship variance, and the applicant had no hardship as there was nothing unique or unusual about this tract. Further, there were no other waivers of setback for developments in this area.

Interested Parties:

Mr. Larry Henry (1000 Oak Plaza), representing Chimney Hills Estates Homeowners Association, advised that Homeland Stores has worked with their group on this development. Mr. Henry commented that, due to the "domino effect", they felt a greenbelt buffer was needed in order to promote continued use of proper landscaping, buffering, screening, etc.

Mr. Bob Martin (9011 South 77th East Place) commented that he was not sure if a Homeland store was really needed as there were five food stores within three miles of this location. Mr. Martin also expressed doubt that additional commercial establishments were needed or necessary, and he did not feel another gas station was needed at this location. He pointed out that his property backed up to the subject tract and he was confused why Mr. Henry was appearing on behalf of Chimney Hill Estates since it was more than a 1/4 mile away from this site. Mr. Martin stated concerns with drainage, and advised that water from this tract currently runs off through his property and he has experienced problems in the past from this situation. The Commission discussed the drainage concerns with Mr. Martin referring to a letter from the Department of Stormwater Management to the project engineer.

Mr. Daryl Richter (8925 South 77th East Place) submitted a petition from 72 residents living in Chimney Hills South who would be directly impacted by this development. Mr. Richter commented they were not trying to stop development, they just wanted a project that would benefit more than its developer. He stated the petition requested the TMAPC to "stipulate that all trees be incorporated into the landscaping of the 40' greenbelt proposed at this west property line." Mr. Richter also submitted photos and a detailed outline of the reasons for the request made in their petition in regard to preserving the trees.

Mr. Gardner clarified the item before the TMAPC was not the detail landscape plan, and he reviewed the procedure for PUD's as to Detail Site Plan, Detail Landscape Plan, Detail Sign Plan, etc., advising the interested parties they would be notified of these presentations. He added that the only differences between this proposal and the previous PUD were the slight decrease in landscaping (which was still over the 10% required by the PUD), and relocating the structures closer to the streets.

Applicant's Rebuttal:

Mr. McCormick stated the applicant would certainly try to keep the trees, but he asked that a condition not be imposed requiring that the trees be retained on the western boundary since they still did not know what grading and utility requirements would be imposed upon them. He commented they were in the process of replatting, and this would give an opportunity for review of any drainage concerns.

In reply to Mr. Coutant, Mr. McCormick stated he had asked for more than what Staff was recommending in regard to setbacks. He commented the confusion stemmed from the fact that he was requesting from the centerline, and Staff was referring to the property line. Mr. Doherty inquired why the applicant was asking for so much less than the Code required. Mr. McCormick replied that the engineer felt the extra room was needed in order to get buildings in the corner "out parcel". The Homeland Store staff also wanted additional space to plan for future expansion.

TMAPC Review Session:

Mr. Paddock moved for approval per the Staff recommendation. Chairman Doherty commented that when the Landscape Plan was present he would be taking a good, hard look for existing trees, grading, waterflow, etc. Ms. Wilson suggested an amendment to the motion so as to include a condition #4 to "red flag" the drainage concerns, stipulating that the Department of Stormwater Management have a current review of the water run-off conditions on the western boundary of the PUD to assure this development does not worsen the existing run-off. Mr. Paddock agreed to modify his motion as desired by Ms. Wilson.

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **6-0-0** (Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **APPROVE** the Major Amendment to PUD 360-A McCormick (Homeland Stores), as recommended by Staff, adding condition #4 stipulating that the Department of Stormwater Management have a current review of the water run-off conditions on the western boundary of the PUD to assure this development does not worsen the existing run-off.

Legal Description:

A part of the SE/4 of the SE/4 of Section 14, T-18-N, R-13-E, Tulsa County, State of Oklahoma, described by metes and bounds, as follows: Beginning at the southeast corner of Section 14, T-18-N, R-13-E, Tulsa County, State of Oklahoma; thence due west along the south line of Section 14 a distance of 933.90'; thence north 00°04'10" east a distance of 933.90'; thence due east 933.90' to a point on the east line of Section 14; thence south along the east line a distance of 933.90' to the POB, less and except dedicated streets, which property contains a total of 16.645 acres, more or less.

* * * * *

Application No.: Z-6254-SP-1 Present Zoning: CO
Applicant: Melton (Corridor Detail Site Plan) Proposed Zoning: Unchanged
Location: NE/c of East 63rd Street & South Mingo Road
Date of Hearing: August 9, 1989
Presentation to TMAPC by: Mr. Sam Melton, 3225 East Admiral Place 834-2405

Staff Recommendation:

The subject property is located at the northeast of 63rd Street and Mingo Road. The tract is zoned Corridor (CO) with 79 feet of frontage on Mingo, and 236 feet of frontage on 63rd Street. The surrounding area contains single-family residences to the east, a large recreational building (indoor soccer) to the north, a residence and mini-storage to the west, and a nonconforming commercial building to the south. The applicant, Melton's Appliance Company, is requesting approval to utilize the existing building as their second location.

The existing building does not meet the Zoning Code Corridor requirement for building setback from the centerline of Mingo Road. The structure is set back only 74 feet and the Zoning Code requires 200 feet. The applicant's request contains a pole sign which is 28 feet in height with 120 square feet of surface area. The exterior of the building is to be covered with metal paneling. The proposed parking lot layout needs improvement.

The subject request, if approved, would represent the first retail use south of 61st Street (node). To date, two service uses have been approved, mini-storage and recreation center (indoor sport activities). The nonconforming business to the south is a tree and mowing service. Signage for these uses is limited to monument signs. Because of the limited size of the building and the nature of the retail business (household appliances), the impact on the area should be minimal. The service aspect of the business is consistent with other business services in the area.

Based on the physical facts in the area and the applicant's limited use of the property which is uniquely small for Corridor consideration, the Staff finds the proposal, as amended, to be: (1) consistent with the Comprehensive Plan; (2) in harmony with surrounding properties; and (3) consistent with the stated purposes of the Zoning Code and in all other respects suitable for Corridor Development.

Therefore, the Staff recommends **APPROVAL** of the Detail Site Plan, subject to the following modifications and conditions:

- 1) Land:
 - Gross Area 18,644 sf
 - Net Area * 16,724 sf
 - Width (Mingo Frontage) 79'
 - Depth (63rd Street) 236'

* After right-of-way dedication consistent with Major Street Plan.

	<u>Proposed</u>	<u>Recommended</u>
2) Maximum Building Area	1,610 (existing)	1,610
3) Minimum Parking Spaces	9	9 *
4) Maximum Building Height	1 Story	1 Story
5) Building Coverages	9%	9%
6) Minimum Building Setbacks:		
from South Boundary	27' 5"	25'
from North Boundary	22' 11"	20'
from East Boundary	144' 1"	140'
from West Boundary	74' 3"	74'
7) Minimum Setback for trash containers (dumpsters)		100' from the west boundary
8) A 6' solid wooden fence shall be constructed on the east boundary.		
9) <u>Signs:</u>		
a) One monument sign shall be permitted along Mingo Road with a maximum of 60 square feet of display surface area and 6' in height, setback a minimum of 50' from the centerline of Mingo. (Amended; see motion and vote by TMAPC.)		
b) Wall signs (one each on west and south) be permitted not to exceed 1.0 square feet of display surface area per lineal foot of building wall to which attached.		
10) <u>Lighting:</u> All exterior and parking lot lighting shall be directed downward and away from adjacent areas. Freestanding parking lot lighting shall not exceed 16' in height.		
11) That no Building Permits shall be issued until said Corridor Site Plan has been modified to meet the parking requirements as recommended by Staff.		
12) That a Detail Landscape Plan shall be submitted to the TMAPC for review and approval. A landscape architect registered in the State of Oklahoma shall certify that all landscaping and screening fences have been installed in accordance with the approved landscape plan prior to issuance of an Occupancy Permit. The landscaping materials required under the approved Plan shall be maintained and replaced as needed, as a continuing condition of the granting of an Occupancy Permit. (Amended; see motion and vote by TMAPC.)		
13) No Building Permits shall be issued for erection of a sign within the project until a Detail Sign Plan has been submitted to the TMAPC and approved as being in compliance with the approved CO Development Standards.		

* Requiring modification of proposed layout requiring six of the nine spaces to be located on the east side of the existing building with a sidewalk extending to the main building entrance on the south side.

- 14) That no Building Permit shall be issued until the requirements of Section 260 of the Zoning Code have been satisfied and approved by the TMAPC and filed of record in the County Clerk's Office, incorporating within the Restrictive Covenants the conditions of approval, making City of Tulsa beneficiary to said Covenants.
- 15) Front building setback (74' existing) shall be subject to Board of Adjustment approval if this Site Plan is approved by the TMAPC.

Comments & Discussion:

Mr. Sam Melton, commented he had differences with the Staff's recommendation in two areas. He requested the monument sign be permitted for 80 square feet, which was a substantial reduction from the 120 square feet proposed by his sign contractor. Mr. Melton also requested that, since this was a small business operation, he not be required to hire a registered landscaped architect to certify the landscaping (condition #12).

Mr. Gardner advised that, after discussion with the applicant, the Staff had a "comfort level" with the requested use due to the fact the existing structure would be used, and this was a product/service oriented operation, and not a typical retail outlet. Mr. Gardner agreed condition #12 could be relaxed, as requested by the applicant, due to the small size of the tract. He stated the applicant would be coming back with a Detail Landscape Plan for the small amount of landscaping required.

Mr. Paddock moved for approval with the modifications as proposed. Mr. Coutant commented that he had a problem with this request, as he was not comfortable with the notion that Mingo Road would continue to strip down this corridor to 71st Street. Therefore, he would be voting against the motion.

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **5-1-0** (Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; Coutant, "nay"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **APPROVE Z-6254-SP-1 (Melton) Corridor Detail Site Plan**, as recommended by Staff, with the following modifications:

- 1) Amend the permitted monument sign for a maximum 80 square feet of display surface area.
- 2) Delete from the wording of condition #12: "A landscape architect registered in the State of Oklahoma shall certify that all landscaping and screening fences have been installed in accordance with the approved landscape plan prior to issuance of an Occupancy Permit."

Legal Description:

The south 79' of the west 236', Lot 5, Block 4, UNION GARDENS ADDITION, to the City and County of Tulsa, Oklahoma.

OTHER BUSINESS:

PUD 448-1: Minor Amendment to Modify Internal Development Area Boundary Lines NE/c of East 91st Street & South Memorial Drive

Staff Recommendation:

PUD 448 is a 32.6 acre project with underlying zoning of CS and RM-1 and is located at the northeast corner of East 91st Street South and South Memorial Drive. The PUD was approved to permit 217,800 square feet of retail sales and 282 multi-family dwelling units. The applicant is now requesting a minor amendment to shift a portion of the internal boundary line by 58' to increase Development Area A and reduce Development Area B. Development Area A will increase from 21.03 acres to 22.09 acres (4.8%) with no increase in commercial floor area. Development Area B will decrease from 10.73 acres to 9.66 acres and will reduce the permitted density from 282 dwelling units to 254 dwelling units. Notice of the application has been given to abutting property owners.

After review of the applicant's submitted exhibit and text, Staff finds the request to be minor in nature and consistent with the original PUD. Staff would note that the RM-1 buffer is not adversely affected by the 58' reduction and the property in question is still across from CO zoned property to the south.

Therefore, Staff recommends **APPROVAL** of minor amendment PUD 448-1 per the applicant's exhibit and text.

Comments & Discussion:

Mr. Linker commented this action, if approved, would add approximately one acre of commercial and, based on his calculations, would reduce the residential buffer by 20%. He stated the only notice given was to abutting property owners and not to those within 300', and notice was not posted by signs or publication. Therefore, he felt the change, if approved, would violate statutes by not also being approved by the City Commission. He added he felt there was no question this application was a zoning change.

Applicant's Comments:

Mr. Charles Norman, representing Wal-Mart Stores, reviewed the original PUD for the Wal-Mart Store, shopping center and apartments, and the proposed amendment to accommodate an expansion of the store facility only. In regard to Mr. Linker's statement, Mr. Norman commented that he was sorry to hear Legal Counsel had reached his conclusions without hearing more of the facts, as he felt they were relevant to the procedure followed for many years in administering the PUD text.

Mr. Norman pointed out that the proposed plan occurred as a result of negotiations between the developer and land user. He reviewed the outline plan, indicating that the Wal-Mart store has become larger, and the remaining retail stores (still conceptual), have by necessity become smaller. Mr. Norman stressed that an important fact to remember was that there was no change in the development standards or permitted floor area.

Therefore, the requested change was only to accommodate a 58' modification in the internal boundaries a moving of 1.06 acres from Area B to Area A, which resulted in a 9.9% decrease in Area B.

Mr. Norman referred to the language in the Code (Section 1170.7) and stated that he felt this was not a substantial or significant departure from the Outline Development Plan. The requested amendment was substantially in accordance with the original concept of the PUD. Mr. Norman remarked he was aware of the ongoing discussions on the issue of major/minor amendments. He pointed out that these types of changes in a PUD do not come about deliberately, but most often arise as a result of decisions by property owners, tenants, architects, etc., and were sometimes not even discussed until applying for a Building Permit. In this instance, an out-of-state engineering firm handled the grading plan, with a local firm handling the plat, with two sets of architects (one for Wal-Mart and one locally). These sets of circumstances produce changes that cannot be anticipated by the applicant or Staff at the time an Outline Development Plan is presented as a part of the PUD process.

In regard to the major/minor amendment issue and whatever outcome might be reached, Mr. Norman commented that a critical consideration was the time delays for the applicant, developer, etc. He explained the critical factor was the difference between a two or three week period required for processing a minor amendment versus a two or three month period required for a major amendment. Mr. Norman remarked that he had no problem philosophically or legally in appearing before the Technical Advisory Committee, the TMAPC, and/or the City Commission. But there was a practical side that should be recognized in development industry and the regulatory industry as well.

In reply to Mr. Paddock, Mr. Norman verified the type of change requested would result in an amended preliminary plat, and the floor area ratio would decrease as the land area was increased.

Chairman Doherty asked Mr. Norman, considering the advice of Legal Counsel, if he (or his client) was at risk should the TMAPC proceed with an action on this case. Mr. Norman commented that the property owner was always at risk if anyone should challenge an action of the Planning or City Commissions. He added the TMAPC would be seeing a Detail Site Plan shortly after this application was resolved. Mr. Norman reiterated that he had no objections to meeting whatever criteria was decided upon, but stressed that there needed to be some flexibility of administration in this very complex process. He did not agree with Legal Counsel's analogy that any change of a use boundary was a change in zoning, as the underlying zoning has not been changed nor has the supplementary zoning (PUD) been changed. He explained that when the ordinance for this case was passed, it was mapped with a heavy boundary line around the entire 32 acres for CS, RM-1 and PUD. This map was notice that inside the PUD boundary lines there was flexibility through the alternative development process afforded by the PUD.

Mr. Coutant remarked that Mr. Norman has added something to the debate on the major/minor amendment issue, and that was the notion that a zoning change was affected only when the perimeter boundary of the supplement zoning area was changed. Mr. Norman commented that when there was a significant departure from that originally approved or a departure not in substantial compliance, this would constitute a major amendment. He did not mean to imply that only a change in the perimeter boundary was a major amendment. Mr. Norman added that he merely did not perceive this request as a change in zoning, as was Legal Counsel's opinion. If he presented this to the City Commission, they would not change a zoning boundary, only a development standard within the approved zoning boundaries. He asked the Commission's assistance so as to know how to handle these items in order to advise his clients, stating he would comply with whatever the outcome might be. He sincerely suggested that "we do not want to find ourselves in a position where every change requires going through the 90 day process." Discussion followed.

Mr. Linker agreed that an applicant and/or his attorney needed to know how these matters were going to be handled. He stated the TMAPC currently determined whether an amendment was major or minor by looking at the facts of an application, and if the Commission like it, then it minor; if they don't like it, then it is major. In this particular case, the property owners within 300' did not get notice of this amendment. Therefore, they do not show up at the hearing to become aware of the changes proposed, and these property owners have no way of knowing if they want it or not. Mr. Linker stated this proposal was a change in the commercial use, and when use was changed within the internal boundaries, then he was telling the Commission that this was a change in zoning and required notice and approval by the City Commission.

Mr. Norman commented that, based on Mr. Linker's statement, if this proposal was for a change of five feet, it would be a violation of the state law. He felt this type of approach to the legal aspect would cripple the entire process. Mr. Norman suggested that if the Commissioners read the statutes, the Tulsa Zoning Code copied the language of the state law on amendments, and this refers to the changes in the maps and changes in the zoning districts. This proposal was not along those lines, as the proposed amendment involved an area within a mapped district. Mr. Norman repeated that he had no objections to appearing before the City Commission on an amendment, whether major or minor, as long as they were handled in a more timely manner.

Mr. Paddock asked if the change proposed by this case would result in a change in a City ordinance. Mr. Norman replied that if this case was presented to the City and approved, it would not be reflected on a map or district line as it involved only internal boundaries. That being the case, Mr. Paddock commented that the TMAPC needed only to determine if the proposal was a significant departure from the original standards of the Outline Development Plan. He stated that in his view the proposal should be approved by the TMAPC, and he so moved.

Ms. Wilson remarked there was more than one way to look at an application; not just viewed from the outside in, but also from the inside out. She commented she felt this should be considered a major amendment, and would be voting against the motion.

Mr. Coutant commented that the debate over legal interpretation was certainly appropriate in the public forum, but he was sorry that it seems to keep coming up. He added that, if he were a judge on this, he was not sure how he would rule since the legal analysis remained the tough issue. However, he did know how his Legal Counsel was advising, and he would therefore be voting against the motion.

Chairman Doherty agreed this issue needed to be resolved as soon as possible. He commented that, in the meantime, the only criteria he had to go by was the policies and procedures the TMAPC has instituted over a long period of time, which he felt was adequate to deal with this case as a minor amendment.

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **4-2-0** (Doherty, Kempe, Paddock, Woodard, "aye"; Coutant, Wilson, "nay"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **APPROVE** the **Minor Amendment** to **PUD 448-1 Norman**, as recommended by Staff.

Additional Comments & Discussion:

Mr. Paddock asked Mr. Norman if he would be in favor of efforts to get approval by state enabling legislation for PUD's. Mr. Norman commented that he would be in favor, but added that he would not want the City to become committed to "that is the only way". He advised one of the provisions of the new charter allowed, for the first time, the City to have the authority to adopt zoning rules and regulations. Under this new provision, the City could then adopt their own procedures, subject to the overriding requirements of due process and notice, and the notice could be modified locally. Mr. Norman commented he would like to see the charter interpreted in this way, as he has always favored "home rule" and the greatest extent of self-government possible on a local basis. Mr. Paddock then inquired if state enabling legislation would still be needed under the amended charter. Mr. Norman replied the legislation would still be needed in order to maintain the Planning Commission as a joint city-county commission, but the Tulsa Zoning Code authority could, in the future, come from the charter. He explained that the City's current zoning authority does not come from Title 19, but from Title 11, which applies only within the city.

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**PUD 196: Detail Sign Plan to Permit Two Temporary Portable Signs
SW/c of East 71st Street & South Memorial Drive**

Staff Recommendation:

This request is to allow two temporary portable signs for the shopping center, one to be located on the 71st Street frontage and one on the South Memorial frontage. No time limit or period as specified by the applicant.

After review of previous actions on the PUD, Staff found where a similar request was approved by the TMAPC on July 12, 1989 to advertise a Saturday sidewalk sale. The Staff and TMAPC approved the request, based on the special and temporary nature for the time periods of July 7 through July 16, 1989 and September 1 through September 10, 1989 only. Staff cannot support any additional temporary portable signs on the property and could foresee this becoming a permanent use.

Therefore, Staff recommends **DENIAL** of the request to permit two temporary portable signs.

Comments & Discussion:

Mr. Steve Greenfield (7124 South Memorial) advised he wished to place one sign on the 71st Street frontage and one on the Memorial frontage. He stated the size of the signs was that of a standard portable sign. Mr. Greenfield advised the dates proposed for display of the signs was two ten day periods: August 18th - 27th and September 22nd - October 1st. He stated these proposed time periods would not interfere with the previously approved temporary signs at this location.

Upon hearing the details of the applicant's proposal, Mr. Gardner advised Staff was not opposed to the request.

TMAPC ACTION: 6 members present

On **MOTION** of **PADDOCK**, the TMAPC voted **6-0-0** (Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Carnes, Draughon, Parmele, Randle, Selph, "absent") to **APPROVE** the Detail Sign Plan for PUD 196 (Advertising Ideas), for only the time periods as verbally presented.

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

Date Approved 8/23/89
James R. Coutant
Chairman

ATTEST:

Art Draughon
Secretary