

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 1763
Wednesday, **October 4, 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	Parmele	Gardner	Linker, Legal
Coutant	Randle	Matthews	Counsel
Doherty, Chairman	Selph	Setters	
Draughon, Secretary		Stump	
Kempe		Wilmoth	
Paddock			
Wilson, 1st Vice Chairman			
Woodard			

The notice and agenda of said meeting were posted in the Office of the City Auditor on Tuesday, October 3, 1989 at 11:15 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 1:37 p.m.

MINUTES:

Approval of the Minutes of September 20, 1989, Meeting #1761:

On **MOTION** of **CARNES**, the TMAPC voted 7-0-1 (Carnes, Coutant, Doherty, Draughon, Paddock, Wilson, Woodard, "aye"; no "nays"; Kempe, "abstaining"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Minutes of September 20, 1989, Meeting #1761**.

REPORTS:

Chairman's Report:

Chairman Doherty advised he has referred to Staff a request from two legislators regarding the extension of 49th West Avenue (north from Edison) as being in conformance with the Comprehensive Plan. After appropriate research by Staff, he will draft a letter responding to this request.

Committee Reports:

Mr. Paddock advised of **Rules & Regulations Committee** meeting this date regarding the continued review of amendments to the Sign Code. He stated the Committee recessed their noon meeting till adjournment of the TMAPC meeting in order to finish the review of amendments. Mr. Paddock announced another meeting had been scheduled for October 11th to review the final document to be forwarded to the various interest groups.

Director's Report:

- a) Ms. Dane Matthews submitted a request to call a public hearing for October 25, 1989 to consider amendments to the District 2 Plan Map and Text as relates to the Extension/Lincoln/Dunbar/Cherokee Sectors. Hearing no objection from the Commission, Chairman Doherty directed Staff proceed with the appropriate notice of public hearing.
- b) **Resolution No. 1761:690** Amending the District 2 Plan Map & Text as relates to the Osage/Emerson Sectors. (Public hearing held 9/20/89.)

TMAPC ACTION: 8 members present

On **MOTION** of **COUTANT**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE Resolution No. 1761:690**, amending the **District 2 Plan Map & Text** as relates to the **Osage/Emerson Sectors**.

SUBDIVISIONS:

PRELIMINARY PLAT:

Jenks Southeast Campus (2883) SW/c of East 101st Street & South Yale Avenue
[May also be ready for Final] (RM-2, RM-0, RS-2, RS-3)

This plat was originally submitted for preliminary approval but due to changes and extension of streets required by the TAC, it was recommended only for SKETCH plat approval on 8/10/89. At the TMAPC hearings there was considerable discussion regarding the extension of 103rd Street and South Vandalia Avenue. The plat was eventually approved as a sketch plat, eliminating the street extension requirement and the Board of Adjustment subsequently approved the school use, including provisions that no access be provided to the street stubs, and that the west and south property lines be fenced to further prohibit access. These details were in the minutes of the TMAPC and Board of Adjustment meeting provided, with Staff comments in the margin as applicable to the current plat.

Jenks Southeast Campus - Cont

The Staff presented the plat with the applicant represented by Phil Smith and Adrian Smith.

An updated plat was provided that met additional requirements made in the sketch plat review.

The TAC voted unanimously to recommend **approval** of the PRELIMINARY plat of Jenks Southeast Campus, subject to the following conditions:

1. Any construction over the existing pipelines crossing this property shall be approved by the owners of the pipelines. Care shall be taken to provide protection of the pipelines in accordance with the owners thereof. (Williams Pipeline has been sent a copy of the plat and notice of the meetings.) A release letter from the pipeline owners shall be a condition of approval before the final plat is approved.
2. Access points shall be approved by the Traffic Engineer. (Two additional access points are shown on the plat that are not utilized at this time according to the concept plan.)
3. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements should be tied to or related to property lines and/or lot lines. Show ONG easement along South Yale. Show Book/Page reference.
4. Water plans shall be approved by the Water and Sewer Department prior to release of final plat. Include language for Water and Sewer facilities in covenants. (Provide loop and fire lines as recommended, including necessary easements.)
5. Pavement or landscape repair within restricted water line, sewer line, or utility easements as a result of water or sewer line or other utility repairs due to breaks and failures, shall be borne by the owner(s) of the lot(s).
6. A request for creation of a Sewer Improvement District shall be submitted to the Water and Sewer Department prior to release of final plat. (Significant fees will be required.)
7. Paving and/or drainage plans shall be approved by Stormwater Management and/or City Engineer, including storm drainage, detention design and Watershed Development Permit application subject to criteria approved by City Commission. (Show second storm water pond as directed.)
8. A request for a Privately Financed Public Improvement (PFPI) shall be submitted to the City Engineer.
9. It is recommended that the developer coordinate with Traffic Engineer during the early stages of street construction concerning the ordering, purchase, and installation of street marker signs. (Advisory, not a condition for release of plat.)

Jenks Southeast Campus - Cont

10. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City-County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
11. A Corporation Commission letter (or Certificate of Nondevelopment) shall be submitted concerning any oil and/or gas wells before plat is released. A building line shall be shown on plat on any wells not officially plugged.
12. A "Letter of Assurance" regarding installation of improvements shall be submitted prior to release of final plat, including documents required under Section 3.6-5 of Subdivision Regulations.
13. All (other) Subdivision Regulations shall be met prior to release of final plat.

Comments & Discussion:

Mr. Wilmoth confirmed the listed conditions had been met, release letters received, and the Final Plat was also ready for approval. In response to Mr. Paddock, Mr. Wilmoth clarified the various conditions of approval as reviewed by the TAC.

TMAPC ACTION: 8 members present

On **MOTION** of **CARNES**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Preliminary & Final Plat of Jenks Southeast Campus** and release same as having met all conditions of approval.

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Gilcrease Oaks (PUD 413-A)(392) NE/c of Keystone Exprwy & Gilcrease Museum Rd

On **MOTION** of **CARNES**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **CONTINUE** Consideration of the **Preliminary Plat for Gilcrease Oaks** until Wednesday, **October 18, 1989** at 1:30 p.m. in the City Commission Room, City Hall, Tulsa Civic Center.

FINAL PLAT APPROVAL & RELEASE:

Square Ninety-One (PUD 448)(1383) NE/c of 91st St & So Memorial Dr (CS, RM-1)

On **MOTION** of **WOODARD**, the TMAPC voted **7-0-1** (Carnes, Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; Draughon, "abstaining"; Parmele, Randle, Selph, "absent") to **APPROVE** the Final Plat of **Square Ninety-One** and release same as having met all conditions of approval.

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Sweetbriar South (PUD 250-A)(1183) East 79th St & South 77 East Ave (RS-3)

On **MOTION** of **PADDOCK**, the TMAPC voted **7-0-1** (Carnes, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; Coutant, "abstaining"; Parmele, Randle, Selph, "absent") to **APPROVE** the Final Plat of **Sweetbriar South** and release same as having met all conditions of approval.

REQUEST FOR WAIVER (Section 260):

Villa Grove Heights #1 (PUD 351-A)(2893) 4431 South Harvard Avenue (OL)

This tract was reviewed by the TAC and the plat requirement waived on Z-5284 and PUD 351, subject to several conditions recommended by TAC. Those recommendations included:

- a) Dedication of an 11' utility easement on the north, east and south sides of the lot.
- b) Approval of the access point(s) by Traffic Engineering.
- c) Approval of drainage and grading plans through the permit process. (On-site detention was required.)

Staff mailed the necessary easement forms to the applicant, but they were never returned. The two previous projects did not materialize so the waiver process was never completed.

The current request is for a bank facility for Southern National Bank. A review of the site plan indicates that additional easements would not conflict with the building proposed. Since the plat requirement had been waived on two previous applications, Staff recommends approval, subject to the previous conditions, and adding to condition (a) a 17.5' utility easement parallel to South Harvard Avenue on the west side of the lot. Additional recommendations as item (d) will be to file the PUD conditions by separate instrument.

Villa Grove Heights No. 1 - Cont

The Traffic Engineer had no objections to the access as shown, subject to an access agreement being filed.

The applicant was not represented.

The TAC voted unanimously to recommend **approval** of WAIVER OF PLAT on PUD 351-A, subject to the following conditions:

- a) Dedicate utility easements on the east side, 11' wide and 17.5' on the west parallel to Harvard Avenue.
- b) Access limitation agreement to be filed to the two access points shown on the plat.
- c) Drainage and grading plan approval of Department of Stormwater Management through the permit process (on-site detention.)
- d) File PUD conditions by separate instrument.

TMAPC ACTION: 8 members present

On **MOTION** of **CARNES**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Waiver Request for Village Grove Heights #1**, subject to the conditions as recommended by the TAC and Staff.

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BOA 15245 Unplatted (1192) W/side of Arkansas River, N of 21st St. (AG, FD)

This is a request to waive plat on approximately one acre on the west bank of the Arkansas River. This location is intended for a rowing club facility for Sooner Rowing Association, a nonprofit corporation. It is leased from River Parks and includes a floating dock and storage building. The jogging trail will remain in its present location. Since this is city property and is only a lease, Staff has no objection to a waiver of the platting requirements. Conditions relating to its use will be established by the Board of Adjustment. Staff recommends **APPROVAL** of the waiver request.

TMAPC ACTION: 8 members present

On **MOTION** of **CARNES**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Waiver Request for BOA 15245 Unplatted**, as recommended by Staff.

LOT SPLITS FOR RATIFICATION OF PRIOR APPROVAL:

L-17211 (1883) Shafer/River	L-17231 (2903) Castle
L-17225 (1792) Cutright/Satterfield	L-17232 (2193) Rauch/Johnson
L-17228 (3602) TDA	L-17233 (3602) TDA
L-17229 (2693) Local American Bank	L-17235 (1893) Hobbs
L-17230 (594) J. Wells/Hacker	

TMAPC ACTION: 8 members present

On **MOTION** of **WILSON**, the TMAPC voted **7-0-1** (Carnes, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; Coutant, "abstaining"; Parmele, Randle, Selph, "absent") to **APPROVE** the Above Listed Lot Splits for Ratification of Prior Approval, as recommended by Staff.

OTHER BUSINESS:

PUD 420-A-2: Minor Amendment of Required Side Yard

East of the SE/c of East 103rd Street & South Granite Avenue

Staff Recommendation:

PUD 420-A is a 40.19 acre development containing 120 lots and has an underlying zoning of RS-2. The subject tract is a single-family lot located two lots east of the southeast corner of East 103rd Street South and South Granite Avenue (Lot 20, Block 4 Camelot Park), and is being considered for an amendment to the 10' side yard to 8'. Notice of the request has been given to abutting property owners.

Review of the applicant's submitted plans indicate an encroachment of less than 1' on the dwelling, with the fireplace 6.90' from the property line (fireplaces are permitted a 2' encroachment into a required yard).

Staff finds the request to be minor in nature and in substantial compliance with the PUD standards. Therefore Staff recommends **APPROVAL** of minor amendment PUD 420-A-2 per the applicant's submitted plans.

TMAPC ACTION: 8 members present

On **MOTION** of **WOODARD**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Minor Amendment to PUD 420-A-2 (Ledford)**, as recommended by Staff.

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**PUD 417-A: Detail Site Plan & Detail Landscape Plan for Portions of Area A
NE/c of South Utica Avenue & East 21st Street South**

Staff Recommendation:

The St. Johns Medical Center is proposing modifications to two areas within Area A of PUD 417-A. The first area is the parking lot south of the main hospital building adjacent to 21st Street. The applicant is proposing a modification of the lot which consists of removal of the existing entrance ramp from and exit ramp to 21st Street, west of the existing 21st Street parkade.

The existing surface parking lot south of the hospital will be extended into the area vacated by removal of the existing exit drive. The area vacated by the existing entry drive will become largely landscaped area. Entrance to the modified parking lot will be from Wheeling Ave. Only the existing entrance to an underground parking garage for doctors will remain on 21st Street.

Staff finds the elimination of entry and exit movements from 21st Street to be an improvement to traffic circulation and the parking lot layout to be satisfactory. Therefore, Staff recommends **APPROVAL** of the Detail Site Plan for the redesign of this parking lot.

The second area is at the northwest corner of Wheeling Avenue and 21st Street. This construction consists of the demolition of the Getman Drug Building and the development of surface parking in its place. This parking lot will be coordinated with the future widening of Wheeling Avenue and a new signalized intersection at 21st and Wheeling. These public right-of-way improvements are now being reviewed by the City Engineering Department. The applicant proposes to use the new parking lot immediately and after the redesign of the 21st and Wheeling intersection is finalized, present a Detail Landscape Plan and final Detail Site Plan for this area to the Planning Commission. Staff finds the proposal to be reasonable in light of the intersection improvements now being processed.

Therefore, Staff recommends **APPROVAL** of a temporary Detail Site Plan with approval to occupy the parking lot immediately, conditioned upon submittal and approval by the TMAPC of a final Detail Site Plan and Detail Landscape Plan by April 1, 1990.

Comments & Discussion:

Mr. Mike Galeski (1717 South Boulder, #106) answered questions from the Commission clarifying the the design layout for the 21st and Wheeling intersection and the landscape plans for this area.

Ms. Wilson moved approval of the Detail Site Plan only, since the Landscape Plan would be presented at a later date. Mr. Stump clarified the applicant was submitting a Detail Site Plan for both areas to be used as parking. However, a condition of the PUD required the Landscaping Plan

(for the Getman Drug Building area) prior to occupancy. Staff was recommending the TMAPC waive this requirement in order to allow the applicant temporary use of this area for parking until such time as the intersection alignment was finalized. He pointed out the Staff's recommendation was to approve the request conditioned upon submittal and approval of the final Detail Site Plan and Detail Landscape Plan by April 1, 1990. Ms. Wilson amended her motion accordingly.

In reply to Mr. Paddock, Mr. Stump commented the TMAPC has not issued temporary Site Plan approval before this case. However, there were unique circumstances associated with this application since they were having to displace some existing parking during construction of the adjacent parking garage.

TMAPC ACTION: 8 members present

On **MOTION** of **WILSON**, the TMAPC voted **7-0-1** (Carnes, Doherty, Draughon, Kempe, Paddock, Wilson, Woodard, "aye"; no "nays"; Coutant, "abstaining"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Detail Site Plan & Detail Landscape Plan for PUD 417-A**, as recommended by Staff.

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**PUD 446: Detail Landscape Plan (for Oklahoma Junior College)
West of the SW/c of East 71st Street & Memorial Drive**

Staff Recommendation:

Staff finds the Detail Landscape Plan submitted by the applicant to be in conformance with the PUD development standards. Therefore, Staff recommends APPROVAL of the Detail Landscape Plan.

Applicant's Comments:

Mr. Ron Percefull from Arrowhead Landscaping (11033 South Delaware) answered questions from the Commission in regard to details of the landscaping to be installed, berming, schedule of plantings, etc. He clarified that he could not deal with the detention pond as that was "beyond his scope of duty."

Chairman Doherty expressed that any following comments were not directed to or critical of the landscaper, but there were concerns to be voiced in regard to the Oklahoma Junior College construction, building occupancy, etc.

Comments & Discussion:

In response to Mr. Doherty, Mr. Stump verified that, according to the PUD conditions, the landscape plan was to be approved and the landscaping installed per the plan prior to occupancy of the building. Mr. Stump commented that Oklahoma Junior College was currently occupying the structure, and was doing so without an issued Occupancy Permit. In reply to Mr. Coutant, Mr. Stump confirmed there were no landscaping requirements in regard to the abutting park area. He further clarified there was existing landscaping/screening around the Fire Station on the western edge of the tract.

Ms. Paula Hubbard, Protective Inspections Department, advised Oklahoma Junior College applied for the Occupancy Permit on September 13th; however, being aware of the problems with this case, she has not issued the Permit. Ms. Hubbard advised she also feels the Building Permit for remodeling of the structure should not have been issued at the time, as it appears the release of the Building Permit came 5 - 6 days before the plat was filed. In reply to Mr. Doherty, Ms. Hubbard stated she did not know the date the applicant took occupancy of the building. Chairman Doherty inquired as to the course of action taken when an applicant continues to occupy a building without the required Occupancy Permit, or occupies without meeting the required conditions or obtaining the required approvals for landscaping, stormwater, etc. Ms. Hubbard deferred to Legal Counsel to respond, and Mr. Linker advised the matter would have to be brought to the attention of the City Commission. The City would then authorize any legal action or enforcement, which could be at the recommendation of the TMAPC. To respond to Mr. Coutant, Mr. Linker commented he did not think the prosecutor would want to try prosecution in this type of situation. Therefore, it would probably be a civil action in the form of some type of injunctive relief. He added the prosecutor could act without having to go to the City Commission, but they most likely would want a recommendation or input from the City Commission before taking action.

Mr. Carnes commented he felt it "absolutely necessary" that the TMAPC take some kind of action toward recommendation. He added it would be unfair to do anything that might impact the students as they were unaware of these violations.

In response to Mr. Draughon, Ms. Hubbard explained that during her six week leave of absence, someone had issued the Building Permit for this case, which should not have been issued until the plat was filed. Ms. Hubbard clarified the Building Permit was a twofold document containing a Zoning Clearance and a Building Permit, and she is involved only with the Zoning Clearance aspect of the Permit.

Mr. Jack Page, Department of Stormwater Management (DSM), advised on-site detention was required for this tract due to the increased imperviousness from the additional parking lot(s), and the required DSM permit was approved for the parking lot and detention pond on May 8th. Mr. Page stated that, learning in September that the parking lot was constructed without completion of the detention, DSM wrote a letter to Protective Inspections requesting

a hold be put on the Occupancy Permit or final inspection pending written DSM approval for the project. He added DSM had contacted the engineer associated with the project, who expressed concern and was upset that the project was apparently constructed without implementation of the detention facility, and he (engineer) was unable to explain why this was not completed. In the pursuit of investigating this situation, the engineer determined that, according to the applicant, it was the architect's responsibility to construct the detention facility. Mr. Page remarked he advised of DSM's intent to pursue enforcement and/or revocation of permits before the City Commission. It was at this time, DSM was informed the detention pond was to be part of the landscaping plan. Mr. Page commented he had concerns in that, from what he is hearing today, the landscape architect would utilize some of the dirt from the pond for berming. However, the structural improvements to the detention pond itself were not a part of the contract with the landscape architect. Mr. Page added that, even though there might be some excavation, he still had concerns regarding completion of the detention pond.

In response to Mr. Draughon, Mr. Page reiterated DSM had fairly strict enforcement powers through the ordinance, and he had concerns that the detention issue remained unresolved. He stressed that excavation only was being done, and not the installation of pipes associated with the pond. This being the case, he felt duty-bound to proceed with enforcement action. In this regard and in response to Mr. Carnes, Mr. Page reviewed the legal actions available through the DSM ordinance against a property owner.

TMAPC Review Session:

Mr. Linker commented there were two issues being discussed here; i.e. stormwater violations and the building/occupancy permitting process. He again commented on the relief available through civil action, although quite cumbersome.

Chairman Doherty stated it bothered him a great deal that someone could "thumb their nose at the process" by moving in and occupying the premises, as it more or less made moot the PUD provisions. Ms. Kempe agreed with Mr. Doherty's comment. Chairman Doherty commented that, obviously, the issue before the TMAPC today was only the Detail Landscape Plan. However, as pointed out by Mr. Page, the landscape plan should include provisions for the detention facility, which the landscape architect indicates he has not been instructed to prepare.

Mr. Percefull advised that, although not a part of his work contract with Oklahoma Junior College, he was given the location of the detention pond only as relates to installation of landscaping around the pond. He commented it was his understanding the College had hired a firm to build the detention facility. However, he was also informed that, upon getting approval of the landscape plan, they would then build the detention pond and berms.

Mr. Coutant commented the TMAPC had a Detail Landscape Plan which, according to Staff, was in accordance with the PUD and, although there may be a multiplicity of objectives in whatever action the TMAPC takes, he felt one should be to "give these people what they need to get into compliance". For this reason, Mr. Coutant stated he was in favor of approving the Landscape Plan as proposed. He added, from comments made, enforcement of the apparent violation was quite time consuming, but he felt "we should get started" and encourage those making the enforcement decisions to proceed vigorously to prosecute, sue, impose fees, etc.

Mr. Paddock suggested the TMAPC could approve the Detail Landscape Plan subject to the construction and completion of an approved detention facility; therefore, the two items could be linked together.

Mr. Ed Rice, Protective Inspections, commented the TMAPC could give a certain length of time to take care of these detention concerns, and at the end of that time, if not completed, orders could be given for vacation of the building. Chairman Doherty inquired as to the normal procedure when Protective Inspections is made aware of a building being occupied in the absence of a Certificate of Occupancy. Mr. Rice advised the Certificate of Occupancy contains a clause which allows certain items to be taken care of after occupancy. He added he would have no problem with this as long as a date for taking care of these items was stipulated. In reply to Mr. Doherty, Mr. Rice indicated he could set the date, and if not completed by that time, then Protective Inspections could take appropriate actions, the most extreme case being a cut-off of utilities.

To offer a better history of this case, Mr. Page commented that one of the problems was an overlapping in the system processes: The remodeling being done to the interior does not go to DSM for review/approval since an interior remodel does not relate to any flooding concerns. The DSM permit was due to a direct application through the PUD requirements to address the increase in imperviousness on the parking lot. A parking lot does not require a Building Permit. Therefore, the crisscrossing; i.e. DSM approval of a project which Protective Inspections does not apply a Building Permit to (the parking lot), and issuance of a Building Permit to a project which DSM does not review (the interior remodel). The only item tying the two projects together is the PUD requirement itself.

Mr. Paddock asked Mr. Page if the desired results could be accomplished by making the TMAPC approval of the Detail Landscape Plan subject to the construction, completion and approval of the detention facility, and perhaps impose a time limit for completion. Mr. Page remarked that the engineer was brought in as a consultant to design a detention pond and was completely unaware of the related permitting/occupancy complications. Another consultant was brought in to do an interior remodel, and now a third consultant has been brought in to do the landscaping plan. Mr. Page pointed out that "we are talking to the consultants, but we are not talking to the applicant." He advised the applicant has been "put on notice" in regard to the TMAPC's and DSM's concerns. Mr. Page advised the

applicant was also informed that, if not resolved, DSM would proceed with action to revoke the DSM permit issued in May. He commented that he, personally, interpreted the applicant's absence from this hearing as an indication the applicant has not resolved the situation, and he did not feel putting a condition on a third party (contractor) would offer any additional control of the project.

Mr. Paddock suggested a continuance might be appropriate so the TMAPC could decide which course of action to take, and involve or include "all the players". Chairman Doherty agreed with the comment that the applicant, by his absence, was making a statement of uncooperativeness. Therefore, he was not in favor of a continuance. Chairman Doherty formally submitted a request that the City Commission begin legal proceedings at the earliest convenience. Mr. Linker agreed going to the City Commission based on the facts revealed would be the best method of handling this situation. He commented he did not know what the result might be if the TMAPC withheld approval of the Detail Landscape Plan, as it could be "just something else" not having approvals and could create more of a problem than currently exists. Mr. Linker suggested the TMAPC keep the process moving by not delaying action on the Detail Landscape Plan, and "let the applicant be the only party not complying."

Mr. Carnes agreed with statements made by Mr. Coutant and Mr. Paddock, reiterating he felt the TMAPC should proceed with action, and then follow up with correspondence to the City Commission expressing the TMAPC's concerns regarding the violations.

Ms. Kempe remarked she was having a problem approving this Plan since it was a one of the conditions for occupancy, and the building was already occupied. Ms. Wilson agreed that this was the "kind of frustration" she was feeling. She added that landscaping was one of the last items to be completed on a project and was an indication that all dirt had been moved, all other outside projects had been completed, etc. She did not understand putting in the landscaping materials now, and then having to remove them in order to lay the piping required for the detention facility.

Mr. Coutant commented he did not think the TMAPC approval of this Plan had anything to do with the timing, nor did it imprint any expectation from the Commission on the timing of these steps of development. He reminded the applicant has had approval from DSM for the design since last May. Ms. Wilson agreed, but pointed out the applicant has done nothing in regard to the detention pond construction.

Chairman Doherty stated his problem with this case was based on the fact that "we rely on the good faith of the applicant on these PUD provisions", and he has always been under the impression there were legal recourses available when an applicant does not demonstrate good faith. Now he finds that "not only do we have the most tenuous of connections with a legal

hammer here, but the process is so cumbersome that, if this becomes general knowledge, then anybody will file anything in a PUD". Chairman Doherty continued by saying he was disturbed by these circumstances as it "makes a mockery of the PUD process". Therefore, he was not inclined to "bless" the project further by approving the Landscape Plan.

Ms. Kempe inquired of Legal Counsel as to "how firm" it might be if the TMAPC denied the Detail Landscape Plan based on the applicant's noncompliance with the ordinances and PUD conditions. Mr. Linker advised, "not very firm", if denied on this basis as Staff has admitted (by their recommendation) that the Detail Landscape Plan was in conformance. He added the problem was the TMAPC "was going in a circle by saying we want them to have an Occupancy Permit, but we're not going to give them what they need to get the Occupancy Permit." Chairman Doherty repeated his concerns that the applicant would get the approval and then not follow through.

Mr. Coutant stated, "whether we like it or not, we are not the enforcement agency." He added the TMAPC's responsibility was to make planning decisions, and the ordinances do not stipulate it is up to the Planning Commission for enforcement. Mr. Coutant commented the TMAPC should do what they could to encourage those with the enforcement powers to do what can be done on these cases. He suggested the TMAPC should think "tactically" in this case, and not provide the applicant another reason to not do what was necessary to get their Occupancy Permit. Otherwise, how could the applicant be prosecuted for failing to get the Permit?

Mr. Paddock reiterated the TMAPC could make their approval of the Plan subject to implementation after the DSM facility was completed. Therefore, the sequence would be appropriate, in that the landscaping would not have to be removed to construct the piping for the detention facility.

Mr. Carnes agreed with Mr. Linker's comments, and added that he did not feel the TMAPC "could sit here and tell these people how to do their work". He suggested the detention facility, as shown on the Plan, be a part of the Landscape Plan.

Ms. Kempe expressed concern that, from the PUD standpoint, the TMAPC might be setting a precedent. She pointed out the Occupancy Permit in this PUD was dependent on the approved Detail Landscape Plan, somehow the applicant was already occupying the building with the Plan just now coming before the TMAPC. Ms. Wilson commented she had similar feelings to those expressed by Ms. Kempe, and if the TMAPC was going to "try to make both shoes fit", then the Commission could be "ultra fair" and continue the case for a week in order to send a letter to the applicant requesting their attendance to advise the Commission of their intents.

Mr. Draughon commented he felt there was a definite "tie in" with this Landscape Plan and the building of the detention pond. Further, he could see no reason, in view of the fact the Commission has been given new information, for not continuing the case until the proper authorities have contacted the applicant and give him a chance to implement the construction of the pond. He asked Staff if two weeks would be an adequate time period. Mr. Carnes stated the applicant could build the pond in three days once equipment was on the job, weather permitting. Mr. Page advised that, in terms of enforcing the Watershed Ordinance, the standard has been a ten day period as a reasonable time limit to do the construction. He pointed out that the applicant was currently in

violation of the Ordinance since the parking lot was already constructed. Mr. Page commented that, if continued for two weeks, this would allow him time to notify the applicant, and would then allow ten days for the applicant to complete construction.

Mr. Coutant remarked this was a case where the "applicant has flaunted the violation of the law", and when dealing with such a situation, he felt quick and direct action to get the attention of the offender was needed. Therefore, he felt continuing or not approving this application or worrying about when the detention pond was going to be built or not built, does not affect that result but extends it out even longer. Mr. Coutant suggested the Commission put their energies into determining how to get the applicant's attention through the legal process rather than an informal process. The only way he could see to do this was to make sure the TMAPC's "act is clean" by approving the Landscape Plan and not have it "hanging over us", and then advise the appropriate city agencies of the problem, request enforcement, and leave it to those having the authority. Therefore, he moved for approval of the Detail Landscape Plan as recommended by Staff.

Mr. Paddock requested Legal's opinion on his suggestions to approve the Landscape Plan, but delay its implementation until after construction of the detention facilities. Mr. Linker replied that, if the Commission was going to consider this, then get some input from the landscape architect as to whether the Commission might be creating more problems; i.e., "maybe it's a good move, maybe it's not". Ms. Wilson commented that if the Commissioners did not have a good feeling about the issue or if they had a significant doubt, then she did not think extra time could ever hurt. She suggested a continuance might be appropriate to obtain more information relating to landscaping installation and construction of the pond time schedules.

Mr. Percefull clarified that "there is no intention, nor will I install any landscaping in the perimeter in this facility until all of the site work is done." He advised the Landscape Plan had been reviewed by the City landscape architect and, based on his recommendation, changes were made to the Plan. In reply to Mr. Doherty, Mr. Percefull advised he did not have a contract with the applicant at this time to install the

landscaping, as they were awaiting final approval of the Landscape Plan to arrive at a dollar value for bidding. He added there have only been verbal commitments based on approval of the Plan.

Ms. Kempe stated she was at the point where she felt that maybe the Commission should approve the Landscape Plan with a proviso that no installation of materials shall begin until the detention facility was completed. She added the TMAPC should also pursue the legal recourses available in regard to the violations.

Mr. Gardner cautioned that, if the landscaping installation was subject to completion of the detention pond and the legal issues were drawn out over two or more years, then there would still be no landscaping. He suggested the Commission give a time limit for installation of the landscaping materials, and if the applicant had to dig up half the trees, shrubbery, etc. at a later time for the detention pond, then they must replace every one of the trees, etc. The Commission members expressed doubts that the applicant, based on past performance, would meet a designated time limit for installation of landscaping.

In response to Mr. Carnes, Mr. Coutant stated he would not feel comfortable including a 30 day time limit in his motion, as this would "push the ultimate enforcement activity back 30 days". General discussion followed on whether to proceed with the motion.

Mr. Paddock asked, if the TMAPC votes for the motion, would it prohibit DSM from sending out their letter regarding construction of the detention facility? Mr. Page answered the TMAPC vote on this issue really had no bearing on whether DSM enforces the detention concerns. He added that DSM has forgone any enforcement action on this issue due to being informed of the tie between the detention pond and this Landscaping Plan, but his decisions regarding DSM enforcement would be irrespective of the TMAPC's vote on the Plan.

Ms. Kempe remarked the TMAPC could present a second motion to pursue legal alternatives after a vote on the Landscape Plan. Ms. Wilson commented she would vote for the motion only to not impede the process, but she was "not happy with this at all".

TMAPC ACTION: 8 members present

On **MOTION** of **COUTANT**, the TMAPC voted **7-1-0** (Carnes, Coutant, Doherty, Kempe, Paddock, Wilson, Woodard, "aye"; Draughon, "nay"; no "abstentions"; Parmele, Randle, Selph, "absent") to **APPROVE** the **Detail Landscape Plan for PUD 446**, as recommended by Staff.

Mr. Paddock stated his vote was based on Mr. Percefull's personal assurances, and he felt this was a display of good faith. Chairman Doherty agreed Mr. Percefull was acting in good faith, but he had strong doubts about the applicant acting in good faith. Further, his concerns went beyond this particular application, and if the TMAPC and City "does

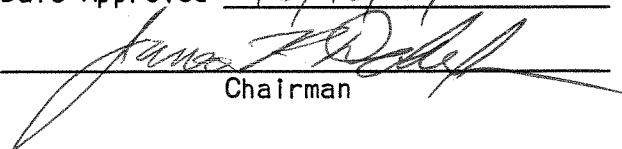
not do something immediately and strenuously and forcefully" he felt the Commissions were sending "the wrong message to anybody else that the PUD provisions were meaningless, move in and then come in for final approval."

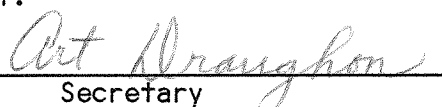
Ms. Kempe moved the TMAPC Chairman draft a letter to the City Commission urging they look into the matter of prosecution regarding violation of the Occupancy Permit. Further, DSM be requested to pursue the stormwater requirements on this particular PUD. Chairman Doherty commented that he would include in the letter that "it was the sense of the Commission that we very reluctantly approved it", and he would transmit copies to other appropriate city agencies.

TMAPC ACTION: 8 members present

On **MOTION** of **KEMPE**, the TMAPC voted **8-0-0** (Carnes, Coutant, Doherty, Draughon, Paddock, Parmele, Wilson, Woodard, "aye"; no "nays"; no "abstentions"; Kempe, Randle, Selph, "absent") to **APPROVE** the drafting of a letter to the City Commission, Department of Stormwater Management, and other appropriate agencies, requesting pursuit of legal recourses and enforcement policies regarding violations of PUD 446, and any other city ordinances being violated.

There being no further business, the Chairman declared the meeting adjourned at 3:16 p.m.

Date Approved 10/18/89

Chairman

ATTEST:

Secretary

