

**TULSA METROPOLITAN AREA PLANNING COMMISSION**  
**Minutes of Meeting No. 2358**

Wednesday, October 1, 2003, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

<b>Members Present</b>	<b>Members Absent</b>	<b>Staff Present</b>	<b>Others Present</b>
Carnes	Bayles	Chronister	Romig, Legal
Collins	Horner	Dunlap	
Coutant		Fernandez	
Harmon		Huntsinger	
Hill			
Jackson			
Ledford			
Midget			
Westervelt			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Tuesday, September 30, 2003 at 9:43 a.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

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

**Minutes:**

**TMAPC COMMENTS:**

**Approval of the minutes of August 27, 2003, Meeting No. 2354**

On **MOTION** of **WESTERVELT** the TMAPC voted 6-0-2 (Collins, Coutant, Harmon, Jackson, Ledford, Westervelt "aye"; no "nays"; Carnes, Hill "abstaining"; Bayles, Horner "absent") to **APPROVE** the minutes of the meeting of August 27, 2003, Meeting No. 2354.

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## **REPORTS:**

### **Worksession Report:**

Mr. Jackson reported that the Planning Commission had a worksession September 24, 2003 regarding the Brady Village Infill Development Guidelines. There will be an additional worksession on this item before bringing it to the Planning Commission.

### **Director's Report:**

Mr. Dunlap reported that there are a few items on the City Council agenda October 2, 2003. He indicated that he would be attending the meeting.

## **SUBDIVISIONS:**

### **LOT-SPLIT TO RESCIND TIE-AGREEMENT:**

**L-19598 – David Hagaman (9329)**

(PD-6) (CD-9)

2426 East 44<sup>th</sup> Place

### **STAFF RECOMMENDATION:**

In September 2002, L-19424 received prior approval that split Lot 14, tying the west half of Lot 14 to Lot 15 (Tract 1) and tying the east half of Lot 14 to Lot 13 (Tract 2). The owner of Tract 2, wanting to purchase the west half of Lot 14, is asking that the tie agreement for the west half of Lot 14 to Lot 15 be rescinded. If approved, a new tie agreement will be required that will tie the west half of Lot 14 to Tract 2 (the east half of Lot 14 and Lot 13). Lot 15 will revert to the originally platted tract.

Staff believes this lot-split would not have an adverse effect on the surrounding properties and recommends **RESCINDING** the tie language for Tract 1 of L-19424, and recommends **APPROVAL** of the current lot-split request, L-19598.

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

**Applicant was not present.**

### **TMAPC Action; 8 members present:**

On **MOTION** of **HARMON** TMAPC voted 8-0-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Horner, Midget "absent") recommends **RESCINDING** the tie language for Tract 1 of L-19424, and recommends **APPROVAL** of the current lot-split request, L-19598 per staff recommendation.

\* \* \* \* \*

LOT-SPLITS FOR RATIFICATION OF PRIOR  
APPROVAL:

L-19573 – David Cole (9308) (PD 6) (CD 4)  
1612 South Atlanta Avenue

L-19591 – Don Rhodes (9230) (PD 23) (County)  
6517 West Skyline Drive

L-19593 – Tanner Consulting (8332) (PD 26) (CD 8)  
11113 South Harvard Avenue

L-19594 – Sack & Associates (0227) (PD 11) (CD 1)  
1426 North Waco Avenue

STAFF RECOMMENDATION:

Ms. Chronister stated that all of these lot-splits meet the requirements and staff recommends **APPROVAL**.

**TMAPC Action; 8 members present:**

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

\* \* \* \* \*

PRELIMINARY PLAT:

Roskam Ranch Estates – AG (0174) (PD 19) (County)  
185<sup>th</sup> East Avenue and 127<sup>th</sup> Street South

STAFF RECOMMENDATION:

This plat consists of 19 lots, four blocks, on 60.21 acres.

The following issues were discussed September 4, 2003 and September 18, 2003 at the Technical Advisory Committee (TAC) meetings:

1. **Zoning:** The property is zoned AG. A sketch plat on the property was reviewed on the site on February 6, 2003. The sketch plat consisted of 21 lots in two blocks, and proposed to use well water. The cemetery easement needs to be defined on the plat and in the covenants. The section of the subdivision regulations concerning oil wells needs to be followed strictly, as neighbors have suggested that the owner of the property may not have mineral rights on the site. Unplugged oil wells need to be shown with 200-foot setbacks. The Subdivision Regulations must be followed and waivers are needed to radius requirements.
2. **Streets:** There are multiple errors on the legal description. There is no date of preparation on the plat. Label surrounding areas as unplatting. Reference the dedication of right-of-way of South 185<sup>th</sup> East Avenue. The PSO easement and oil well conflict with the street right-of-way. On the concept plan the pavement section detail and street notes do not agree with the paved street width (22 or 24 feet wide). The applicant said it will be 24 feet in width. Limits of No Access is needed along 185<sup>th</sup> Street.
3. **Sewer:** Aerobic systems are proposed.
4. **Water:** Rural Water District 5 will serve the addition.
5. **Storm Drainage:** A detention easement should not be placed over the top of the PSO easement without their written approval. Show the floodplain for Broken Arrow Creek on the face of the plat. Detention cannot be placed in the floodplain. Please vary the line types for various lines and callouts. Section 1.d of the Covenants should include storm sewers.
6. **Utilities:** No comment at first TAC. **Cox:** Additional easements, especially for the side lot lines, are needed.
7. **Other:** Broken Arrow sent a letter of concerns for the sketch plat. They revised those concerns and sent a new letter after the TAC meeting (letter attached).

The County Engineer needs records of plugged oil wells before the plat is filed of record. (The applicant has stated that it is his intent to have the wells plugged.) The cemetery must be maintained by a homeowners' association or other group acceptable to the County Engineer. The applicant stated that they will contact the Indian Association in the hopes that they will take the cemetery over for maintenance. The covenants must define ownership of the cemetery easement and maintenance for the cemetery. It is not acceptable for the cemetery to just belong to whoever buys the nearby lot.

Staff can recommend APPROVAL of the preliminary plat as long as the cemetery and oil well issues are worked out to the County Engineer's satisfaction and subject to the special and standard conditions below.

**Waivers of Subdivision Regulations:**

1. None requested.

**Special Conditions:**

1. The concerns of the County Engineer must be taken care of to his satisfaction.

**Standard Conditions:**

1. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements shall be tied to or related to property line and/or lot lines.
2. Water and sanitary sewer plans shall be approved by the Public Works Department prior to release of final plat. (Include language for W/S facilities in covenants.)
3. Pavement or landscape repair within restricted water line, sewer line, or utility easements as a result of water or sewer line or other utility repairs due to breaks and failures, shall be borne by the owner(s) of the lot(s).
4. Any request for creation of a Sewer Improvement District shall be submitted to the Public Works Department Engineer prior to release of final plat.
5. Paving and/or drainage plans (as required) shall be approved by the Public Works Department.
6. Any request for a Privately Financed Public Improvement (PFPI) shall be submitted to the Public Works Department.
7. A topography map shall be submitted for review by TAC (Subdivision Regulations). (Submit with drainage plans as directed.)
8. Street names shall be approved by the Public Works Department and shown on plat.
9. All curve data, including corner radii, shall be shown on final plat as applicable.

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

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

**Applicant's Comments:**

**Kyle Roskam**, 7651 South 305th East Avenue, Broken Arrow, Oklahoma 74014, stated that the deed mentions that the cemetery belongs to the heirs of Louis McKenry, a Civil War Confederate officer who is buried there. He commented that he feels that the question of the cemetery is under control and out of his hands since it is in the deed. He has taken provisions to protect the cemetery and the homeowners' association would care for the cemetery in the case that the Creek Indians or the heirs do not. The oil wells are proposed to be plugged once the plat is approved.

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

**TMAPC Action; 8 members present:**

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

\* \* \* \* \*

**Tallgrass Office Park – PUD 579 A (8407)**

(PD 18) (CD 8)

Southwest corner of East 79<sup>th</sup> Street South and South 101<sup>st</sup> East Avenue

**STAFF RECOMMENDATION:**

This plat consists of twelve lots, one block, on 7.5 acres.

The following issues were discussed September 18, 2003 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned PUD 579-A. This will further divide Lot 1, Block 1, of the existing Tall Grass subdivision. All PUD conditions must be followed.

2. **Streets:** Show and reference the 17.5-foot utility easement on the east side of the TTCU plat. If the cul-de-sac is to be dedicated to the public, design pavement layout to match City of Tulsa standard street design and have City approval. Get the street name for the cul-de-sac. Increase the island radius if necessary.
3. **Sewer:** The wrong atlas page is on the concept plan. Easements between lots where sanitary sewer is proposed are too small. Fifteen feet is the minimum allowed and ductile iron pipe is required for that size easement. The unidentifiable line ends 100 feet from the manhole at a lamp hole. A new manhole is required and must be numbered. Ductile iron pipe is required for mystery manhole to Manhole 3.
4. **Water:** Plat is okay. Conceptual needs AP764 line size. Label existing ten-inch line. Label ten-inch gate valve installed between tap sleeve valve and possible fire hydrant and valve inserted on looped line.
5. **Storm Drainage:** No comments on plat and covenants. The original Tallgrass PFPI is not approved. The PFPI needs to be completed on the first project. Reserve in south corner needs maintenance for it. On the conceptual plan, unless there is not another alternative, please do not cut the recently constructed 101<sup>st</sup> East Avenue.
6. **Utilities: Cox:** Additional easements are needed.
7. **Other:** N/A

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

#### **Waivers of Subdivision Regulations:**

1. None requested.

#### **Special Conditions:**

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

#### **Standard Conditions:**

1. Utility easements shall meet the approval of the utilities. Coordinate with Subsurface Committee if underground plant is planned. Show additional easements as required. Existing easements shall be tied to or related to property line and/or lot lines.

2. Water and sanitary sewer plans shall be approved by the Public Works Department prior to release of final plat. (Include language for W/S facilities in covenants.)
3. Pavement or landscape repair within restricted water line, sewer line, or utility easements as a result of water or sewer line or other utility repairs due to breaks and failures, shall be borne by the owner(s) of the lot(s).
4. Any request for creation of a Sewer Improvement District shall be submitted to the Public Works Department Engineer prior to release of final plat.
5. Paving and/or drainage plans (as required) shall be approved by the Public Works Department.
6. Any request for a Privately Financed Public Improvement (PFPI) shall be submitted to the Public Works Department.
7. A topography map shall be submitted for review by TAC (Subdivision Regulations). (Submit with drainage plans as directed.)
8. Street names shall be approved by the Public Works Department and shown on plat.
9. All curve data, including corner radii, shall be shown on final plat as applicable.
10. Bearings, or true N/S, etc., shall be shown on perimeter of land being platted or other bearings as directed by the County Engineer.
11. All adjacent streets, intersections and/or widths thereof shall be shown on plat.
12. It is recommended that the developer coordinate with the Public Works Department during the early stages of street construction concerning the ordering, purchase and installation of street marker signs. (Advisory, not a condition for plat release.)
13. It is recommended that the applicant and/or his engineer or developer coordinate with the Tulsa City/County Health Department for solid waste disposal, particularly during the construction phase and/or clearing of the project. Burning of solid waste is prohibited.
14. The method of sewage disposal and plans therefore shall be approved by the City/County Health Department. [Percolation tests (if applicable) are required prior to preliminary approval of plat.]

15. The owner(s) shall provide the following information on sewage disposal system if it is to be privately operated on each lot: type, size and general location. (This information to be included in restrictive covenants on plat.)
16. The method of water supply and plans therefore shall be approved by the City/County Health Department.
17. All lots, streets, building lines, easements, etc., shall be completely dimensioned.
18. The key or location map shall be complete.
19. A Corporation Commission letter, Certificate of Non-Development, or other records as may be on file, shall be provided concerning any oil and/or gas wells before plat is released. (A building line shall be shown on plat on any wells not officially plugged. If plugged, provide plugging records.)
20. A "Letter of Assurance" regarding installation of improvements shall be provided prior to release of final plat. (Including documents required under 3.6.5 Subdivision Regulations.)
21. Applicant is advised of his responsibility to contact the U.S. Army Corps of Engineers regarding Section 404 of the Clean Waters Act.
22. All other Subdivision Regulations shall be met prior to release of final plat.
23. All PUD standards and conditions shall be included in the covenants of the plat and adequate mechanisms established to assure initial and continued compliance with the standards and conditions.
24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

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

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

**TMAPC Action; 8 members present:**

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

Mr. Midget in at 1:45 p.m.

**PLAT WAIVER:**

**CZ-322/PUD 683 – (2333)**

(PD 14) (County)

Southwest corner of North Yale Avenue and East 136<sup>th</sup>  
Street North

**STAFF RECOMMENDATION:**

The platting requirement was triggered by rezoning.

*Staff provides the following information from TAC at their September 18, 2003 meeting:*

**ZONING:**

TMAPC Staff: The plat waiver is for property recently rezoned to IL/PUD. Plats are typically required for property rezoned to PUD. A minor subdivision plat may serve this purpose for the site.

**STREETS:**

Drawing is not to scale, therefore it is difficult to determine how much right-of-way is needed. Both East 136<sup>th</sup> Street North and North Yale Avenue are secondary arterials and require a right-of-way of 100 feet with an extra eight feet along East 136<sup>th</sup> Street North for a possible future turn bay. Create Limits of No Access restrictions per Traffic Engineer. Radius needs to be 30 feet.

**SEWER:**

This is out of the City service area.

**WATER:**

No comment. This will be served by Rural Water District # 3.

**STORM DRAIN:**

No comment.

**FIRE:**

No comment.

**UTILITIES:**

No comment.

**OTHER:** The County Engineer has reviewed draft copies of two separate instrument documents for dedications. Access needs to be 40 feet in width.

Staff cannot recommend approval of the plat waiver requested because the property has just been rezoned to Industrial Light under a Planned Unit Development. Planned Unit Developments should be platted and staff is concerned that the plat waiver would set a precedent for future PUD development. There are separate instrument dedications needed for access, right-of-way, and restrictive covenants if the plat waiver is granted.

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

	Yes	No
1. Has property previously been platted?		X
2. Are there restrictive covenants contained in a previously filed plat?		X
3. Is property adequately described by surrounding platted properties or street R/W?		X

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

	YES	NO
4. Is right-of-way dedication required to comply with Major Street and Highway Plan?		X
5. Would restrictive covenants be required to be filed by separate instrument if the plat were waived?		X
6. Infrastructure requirements:		
a) Water		
i. Is a main line water extension required?		X
ii. Is an internal system or fire line required?		X
iii. Are additional easements required?		X
b) Sanitary Sewer		
i. Is a main line extension required?		X
ii. Is an internal system required?		X
iii. Are additional easements required?		X
c) Storm Sewer		
i. Is a P.F.P.I. required?		X
ii. Is an Overland Drainage Easement required?		X
iii. Is on-site detention required?		X
iv. Are additional easements required?		X

- |   |   |
|---|---|
| 7. Floodplain   |   |
| a) Does the property contain a City of Tulsa (Regulatory) floodplain?   | X |
| b) Does the property contain a F.E.M.A. (Federal) floodplain?   | X |
| 8. Change of Access   |   |
| a) Are revisions to existing access locations necessary?  | X |
| 9. Is the property in a P.U.D.?   | X |
| a) If yes, was plat recorded for the original P.U.D.  | X |
| 10. Is this a Major Amendment to a P.U.D.?  | X |
| a) If yes, does the amendment make changes to the proposed physical development of the P.U.D.?  |   |
| 11. Are mutual access easements needed to assure adequate access to the site?   | X |
| 12. Are there existing or planned medians near the site which would necessitate additional right-of-way dedication or other special considerations? | X |

**TMAPC COMMENTS:**

Mr. Harmon asked staff if the letter from the County Engineer has any bearing on reconsideration of the recommendation. In response, Mrs. Fernandez stated that from a planning prospective of when there are PUDs, there is specific zoning and typically staff would ask for a plat every time there is a PUD.

**Applicant's Comments:**

**Lou Reynolds**, 2727 East 21<sup>st</sup> Street, Tulsa, Oklahoma 74114, stated that all of the specific issues, whether it is a PUD or rezoning, have been met by the restrictive covenants that were drafted and would be filed of record. The details have been worked out regarding the dedication that would be accomplished by a plat, as well as a limitation of access. The County Engineer approved his documents and they are ready to file. He stated that he has met the substance on every issue for the subject property. The boundaries are clearly defined (lying east to the east of Highway 75, south of 136<sup>th</sup> Street North and west of Yale). There is no reason to submit this one-acre tract of land that has transitory use to the platting process, expense and the delay, etc., when the requirements can be accomplished through separate instruments.

Mr. Harmon stated that based on staff's research, and not wanting to set a precedent on any future PUD developments, he would support the recommendation for denial.

**TMAPC Action; 9 members present:**

On **MOTION** of **HARMON** TMAPC voted 6-2-1 (Carnes, Coutant, Harmon, Hill, Ledford, Westervelt "aye"; Collins, Jackson "nays"; Midget "abstaining"; Bayles, Horner "absent") to **DENY** the plat waiver for CZ-322/PUD-683 per staff's recommendation.

Mr. Carnes asked Commissioner Collins if he felt comfortable with the County Engineer's letter. He requested that there be a reconsideration and discuss this issue with Commissioner Collins.

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES** TMAPC voted 8-1-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Westervelt "aye"; Midget "nays"; none "abstaining"; Bayles, Horner "absent") to **RECONSIDER** the plat waiver for CZ-322/PUD-683.

**TMAPC COMMENTS:**

Mr. Midget asked for some discussion before going back to voting on staff's recommendation for denial.

Mr. Westervelt stated that Mr. Carnes thought the Planning Commission should have consulted our County representative before moving forward with the vote.

Mr. Collins stated that he requested the County Engineer to review this application and he is supporting the County Engineer.

Mr. Harmon stated that he respects the County Commissioner and the County Engineer, but he still would not want to set a precedent.

**TMAPC Action; 9 members present:**

On **MOTION** of **HARMON** TMAPC voted 3-5-1 (Harmon, Hill, Ledford "aye"; Carnes, Collins, Coutant, Jackson, Westervelt "nays"; Midget "abstaining"; Bayles, Horner "absent") to **DENY** the plat waiver for CZ-322/PUD-683 per staff recommendation.

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES** TMAPC voted 5-3-1 (Carnes, Collins, Coutant, Jackson, Westervelt "aye"; Harmon, Hill, Ledford "nays"; Midget "abstaining"; Bayles, Horner "absent") to **APPROVE** the plat waiver for CZ-322/PUD-683.

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**AUTHORIZATION FOR AN ACCELERATED BUILDING PERMIT:**

**Cox Communications – (9429)**

(PD 18) (CD 6)

South of the Broken Arrow Expressway, North of East  
51<sup>st</sup> Street

**STAFF RECOMMENDATION:**

This request is for an accelerated release of building permits for foundation and shell permits for the new Cox Communications Center.

Review of this application must focus on the extraordinary or exceptional circumstances that serve as a basis for the request and must comply in all respects with the requirements of the approved Preliminary Plat per Section 2.5 of the Subdivision Regulations.

TMAPC approved the Preliminary Plat for Cox Communications Center on August 20, 2003. The plat consists of one lot, one block, on 15 acres. The property is zoned IL.

The Technical Advisory Committee reviewed this request at their September 18, 2003 meeting. The staff of Development Services discussed the request and whether or not a PFPI or other plans had been submitted for the site. The water could come from a possible mainline extension along Broken Arrow frontage. Stormwater stated that they needed existing and proposed contours, drainage channels and structures and easements. A sewer main extension is required before a building permit is issued. Sanitary sewer is not available to the site. Traffic/transportation areas had no objection but wanted to know what extraordinary circumstances existed and what benefits and protections were involved for the City.

Staff can recommend **APPROVAL** for the authorization for an accelerated building permit based on the site plan submitted.

**Applicant's Comments:**

**Ted Sack**, Sack and Associates, 111 South Elgin, Tulsa, Oklahoma 74120, stated that he is in agreement with staff's recommendation.

**TMAPC COMMENTS:**

Mr. Westervelt asked Mr. Sack what the extraordinary exceptional circumstances are to request an accelerated building permit.

Mr. Sack stated that his client would like to get started. This is a one-lot, one-block issue and they are consolidating all of their activities into this one site. All of his client's leases are up in November of next year and they need to have their building completed by then.

**TMAPC Action; 9 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 9-0-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Horner "absent") to **APPROVE** the authorization for an accelerated building permit for Cox Communications per site plan submitted and per staff recommendation.

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## **ZONING PUBLIC HEARING**

**Application No.: CZ-331**

**RS to CS**

**Applicant:** Ray P. Bates

(PD-24) (County)

**Location:** Southeast corner of East 67<sup>th</sup> Street North and North Peoria Avenue

### **STAFF RECOMMENDATION:**

**CZ-320 MAY 2003:** All concurred in approval of a request to rezone the property at 7102 North Peoria from RS to CS for a doughnut shop, north and west of the subject property.

**CZ-287 OCTOBER 2001:** All concurred in approval of a request to rezone the property immediately south of the subject property at East 66<sup>th</sup> Street North and North Peoria Avenue from RS to CS.

### **AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is 100' x 120' in size and is located on the southeast corner of East 67<sup>th</sup> Street North and North Peoria Avenue. The property is flat, non-wooded, contains a private lodge and accessory storage building, and is zoned RS. It has a gravel driveway in the front (west side) and a paved driveway on the rear (east side). The requirement for minimum frontage CS zoning in Tulsa County is 150' on an arterial, and as the chart below indicates, this lot does not meet that requirement.

### **STREETS:**

<b>Exist. Access</b>	<b>MSHP Design.</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
North Peoria Avenue	Secondary arterial	Varies	4 lanes
East 67 <sup>th</sup> Street North	Residential	50'	2 lanes

**UTILITIES:** Water to the site is served by the Turley Water System. Tulsa Public Works provides sewer service.

**SURROUNDING AREA:** The subject property is abutted on the north by two single-family residences, zoned CS; on the east by single-family residences, zoned RS; on the south by a gear shop (possibly vacant, and the subject of a previous zoning case), zoned CS; and on the west by a wrecker service and related automotive uses, zoned IL and RS.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 24 area is within the Peoria Special District, and the Plan recognizes that commercial trends in this area will continue. The proposed rezoning **may be found** in accord with the Plan by virtue of its location within a Special District.

**STAFF RECOMMENDATION:**

Based on provisions of the Plan and trends in the area, staff could support the requested rezoning, but the lot does not meet the minimum frontage requirement of 150'. Furthermore, it is not clear at this time whether adequate on-site parking could be provided. If the requested CS zoning is approved, it is apparent some Board of Adjustment actions will be required if the property is to be used as a restaurant. Staff therefore recommends **DENIAL** of CS zoning for CZ-331. Note: The property would meet the CG frontage requirements, but if the TMAPC were to recommend approval for this rezoning, it would require re-advertisement.

**TMAPC COMMENTS:**

Mr. Harmon stated that it appears that this request is in keeping with the trend in the area and asked staff to clarify.

Mr. Dunlap pointed out that he did not prepare the recommendation. He stated that he read the recommendation and thought it said it was in keeping with the trend. In response, Mr. Harmon stated that he must have read the recommendation incorrectly.

Mr. Dunlap stated that the piece of property to the south had recently been rezoned to CS and this would be consistent with the zoning in the subject area. He further stated that the only thing staff has concerns with is insufficient frontage on Peoria. If the zoning was approved it would be creating a non-conforming lot.

Mr. Westervelt stated that the CG zoning makes him uncomfortable because of the potential automotive uses that could happen. The Planning Commission does not zone CS subject to Board of Adjustment approval, but could encourage the applicant to go to the BOA for relief and then it for CS zoning. He asked Legal if this is the proper procedure. In response, Mr. Romig answered affirmatively.

**Applicant's Comments:**

**Ray Bates**, 7968 Rock School Road, Skiatook, Oklahoma, 74070, stated that the Lion's Club has utilized the subject building for meetings. He further stated that he thought the rezoning was consistent with the subject area.

**TMAPC COMMENTS:**

Mr. Jackson stated that the zoning is a may be found; however, it does not have the required street frontage. He explained that the applicant should go before the Board of Adjustment and get relief for the street frontage and then come back before the Planning Commission to hear the case again.

Mr. Westervelt explained that according to the surrounding zoning and from a zoning land use staff was not uncomfortable with the CS use. In the CS district it is required to have 150 feet of street frontage, which has been discovered that the subject property does not meet. The Planning Commission is comfortable with the CS zoning requested, but cannot grant it because the zoning laws do not allow it because it does not have the 150 feet of street frontage. The applicant can go before the Board of Adjustment (BOA) with today's minutes that indicate the Planning Commission urged him to go before the BOA for relief in order to consider the CS zoning.

Mr. Bates stated that he doesn't have a problem with that if it would solve the problems. He further stated that he understood that the CS zoning would be required in order to have a restaurant in the subject building.

Mr. Dunlap asked Mr. Bates to call the INCOG offices Thursday to set up a meeting regarding filing for the BOA relief.

**TMAPC Action; 9 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 9-0-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Midget, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Horner "absent") to **CONTINUE CZ-331** to November 19, 2003 at 1:30 p.m.

\* \* \* \* \*

**Application No.: PUD-692**

**AG to AG/PUD**

**Applicant:** Clayton Morris

(PD-21) (County)

**Location:** Northeast corner and northwest corner of East 181<sup>st</sup> Street and South Lewis

**Withdrawn by the applicant.**

**Application No.: PUD-375-C**

**MAJOR AMENDMENT**

**Applicant:** Roy D. Johnsen

(PD-8) (CD-2)

**Location:** Northwest corner of West 61<sup>st</sup> Street and South Union Avenue

**STAFF RECOMMENDATION:**

The subject tract consists of 29.79 acres of land (net) located at the northwest corner of the intersection of West 61<sup>st</sup> Street South and South Union Avenue. The tract is substantially rectangular in shape and has approximately 1070 feet of frontage on South Union Avenue and approximately 1218 feet of frontage on West 61<sup>st</sup> Street, both of which are designated by the Major Street and Highway Plan as arterial streets. An interchange of West 61<sup>st</sup> Street and Highway 75 is located approximately ¼ mile east of the property.

The subject tract is zoned CS/OL/RS-3/PUD-375. The tract is abutted on the north by duplexes and single-family dwellings, zoned RD and RS-3, and on the west by vacant property zoned RM-1/RS-3/PUD-375. The tract abutting on the west is the subject of a recent major amendment request (PUD-375-B), which proposes multifamily and office uses abutting the subject tract. TMAPC has recommended approval of PUD-375-B and it is before the City Council at this time. To the east of the tract, across South Union Avenue, is an apartment complex zoned RM-1 and vacant CS-zoned property. To the south of the tract, across west 61<sup>st</sup> Street, is an existing convenience store and vacant property zoned CS, and also single-family uses zoned RM-1 and RS-3.

The subject tract is a part of PUD-375, which was approved September 14, 1984 and established development areas (See Exhibit E) applicable to the subject property as follows:

Commercial	18.92 Acres	299,911 SF of floor area (.36 FAR)
Office	9.67 Acres	97,030 SF of floor area (.23 FAR)
Multifamily	<u>1.20 Acres</u>	29 dwelling units (24 per acre)
<b>TOTAL:</b>	<b>29.79 Acres</b>	

This amendment proposes within the subject tract, the deletion of the office development areas, the reduction and reconfiguration of the commercial development areas and the establishment of a multifamily development area on the balance of the subject property as follows:

Commercial	15.79 Acres	254,490 SF of floor area (.37 FAR)
Multifamily	<u>14.00 Acres</u>	281 dwelling units (20 per acre)
<b>TOTAL:</b>	29.79 Acres	

There has been no transfer of intensity from the subject tract to any other parcel within the original PUD and no change in the underlying zoning is requested.

Staff finds the uses and intensities of development proposed and as modified by staff to be in harmony with the spirit and intent of the Code. Based on the following conditions, staff finds PUD-375-C, as modified by staff, to be: (1) consistent with the Comprehensive Plan; (2) in harmony with the existing and expected development of surrounding areas; (3) a unified treatment of the development possibilities of the site; and (4) consistent with the stated purposes and standards of the PUD Chapter of the Zoning Code.

Therefore, staff recommends **APPROVAL** of PUD-375-C subject to the following conditions:

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

#### DEVELOPMENT AREA A

**Net Land Area:** 14.00 Acres

**Permitted Uses:**

Multifamily dwellings and similar uses as set forth within Use Unit 8 and customary accessory uses.

**Maximum Number of Dwelling Units:** 281

**Minimum Livability Space Per Dwelling Unit:** 600 SF

**Maximum Building Height:**

Three stories not to exceed 35 42 feet in height.

**Minimum Building Setbacks:**

From centerline of 61 <sup>st</sup> Street	210 FT
From north boundary of Development Area	
One-story buildings	25 FT
Two-story buildings	50 FT
Three-story buildings	100 FT
From other development area boundaries	25 FT

**Other Bulk and Area Requirements:**

As established within a RM-1 district.

<b>Parking Area Setbacks from North Boundary of Development Area (including parking lot aisles or access drives)</b>	25 FT
--	-------

**DEVELOPMENT AREA B**

**Net Land Area:** 3.16 Acres

**Permitted Uses:**

As permitted by right within a CS district except Use Unit 12a.

**Maximum Floor Area Ratio:** .37

**Maximum Floor Area:** 50,944 SF

**Maximum Building Height:** Two stories

**Minimum Building Setbacks:**

From centerline of Union Avenue	100 FT
From north boundary of Development Area	50 FT
From west boundary of Development Area	30 FT
From the south boundary of Development Area	20 FT

From interior boundaries if divided	10 FT
<b>Setback of Access Points onto Union Avenue from North Boundary of Development Area:</b>	150 FT
<b>Parking Ratio:</b>	
As provided within the applicable use unit.	
<b>Minimum Landscaped Area:</b>	
10% of net lot area.	
<b>Bulk Trash Container Setback from North Boundary of Development Area:</b>	<u>200</u> <u>100</u> FT
<b>Parking Area and Access Drive Setback From Northern Boundary of Development Area:</b>	25 FT

### DEVELOPMENT AREA C

<b>Net Land Area:</b>	8.40 acres
<b>Permitted Uses:</b>	
As permitted by right within a CS district.	
<b>Maximum Floor Area Ratio:</b>	.37
<b>Maximum Floor Area:</b>	135,311 SF
<b>Maximum Building Height:</b>	Three stories
<b>Minimum Building Setbacks:</b>	
From Centerline of 61 <sup>st</sup> Street	100 FT
From west and north boundary of Development Area	30 FT
From east boundary of Development Area	20 FT
From interior boundaries if divided	10 FT
<b>Parking Ratio:</b>	
As provided within the applicable use unit.	

**Minimum Landscaped Area:**

10% of net lot area.

**DEVELOPMENT AREA D**

**Net Land Area:** 4.23 Acres

**Permitted Uses:**

As permitted by right within a CS district.

**Maximum Floor Area Ratio:** .37

**Maximum Floor Area:** 68,197 SF

**Maximum Building Height:** Two stories

**Minimum Building Setbacks:**

From centerline of Union Avenue 100 FT

From centerline of 61<sup>st</sup> Street 100 FT

From north boundary of Development Area 20 FT

From west boundary of Development Area 20 FT

From interior boundaries if divided 10 FT

**Parking Ratio:**

As provided within the applicable use unit.

**Minimum Landscaped Area:**

10% of net lot area.

3. Signs:

- A. Within Development Area A, signs shall be limited to one project identification sign located along the 61<sup>st</sup> Street frontage and complying with the sign provisions of an RM-1 district.

- B. Within Development Area B, signs shall be limited to:
  - (1) One ground sign to be located along the Union Avenue frontage a minimum of 200 feet from the north boundary of the Development Area, not exceeding 25 feet in height and a display surface area of 160 square feet, and
  - (2) Walls signs not exceeding one square foot of display surface per lineal foot of building wall to which affixed and the length of a wall sign shall not exceed 75% of the tenant space. No wall signs shall be permitted on north-facing walls.
- C. Within Development Area C, signs shall be limited to:
  - (1) One ground sign to be located along the 61<sup>st</sup> Street frontage, not exceeding 25 feet in height and a display surface area of 160 square feet, and
  - (2) Wall signs not exceeding two square feet of display surface per lineal foot of building wall to which affixed and the length of a wall sign shall not exceed 75% of the tenant space.
- D. Within Development Area D, signs shall be limited to:
  - (1) One ground sign to be located along the Union Avenue frontage not exceeding 25 feet in height and a display surface area of 160 square feet, and
  - (2) Wall signs not exceeding two square feet of display surface per lineal foot of building wall to which affixed and the length of a wall sign shall not exceed 75% of the tenant space.

4. Access:

Mutual access shall be provided to and from Development Areas B, C and D. All access shall be approved by Public Works. Pedestrian access shall be reviewed during detail site plan review.

No access drive from Union Avenue to Development Area A shall be within 150 feet of the north boundary of the PUD. Emergency access only for multifamily with 25-foot setback.

5. Transfer of allocated floor area shall be subject to approval by TMAPC of a minor amendment.
6. A six-foot screening fence or wall meeting the requirements of Section 212A. shall be erected along the north boundary of Development Area A. a six-foot masonry wall shall be erected along the north boundary of Development Area B.
7. No zoning clearance permit shall be issued for a lot within the PUD until a detail site plan for the lot, which includes all buildings, parking screening fences and landscaping areas, has been submitted to the TMAPC and approved as being in compliance with the approved PUD development standards.
8. A detail landscape plan for each lot shall be approved by the TMAPC prior to issuance of a building permit. A landscape architect registered in the State of Oklahoma shall certify to the zoning officer that all required landscaping and screening fences have been installed in accordance with the approved landscape plan for the lot, prior to 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.
9. No sign permits shall be issued for erection of a sign on a lot within the PUD until a detail sign plan for that lot has been submitted to the TMAPC and approved as being in compliance with the approved PUD development standards.
10. Flashing signs, changeable copy signs, running light or twinkle signs, animated signs, revolving or rotating signs or signs with movement shall be prohibited.
11. All trash, mechanical and equipment areas, including building mounted, shall be screened from public view in such a manner that the areas cannot be seen by persons standing at ground level.
12. Lighting used to illuminate the subject tract shall be so arranged as to shield and direct the light away from adjacent residential areas. Shielding of such light shall be designed so as to prevent the light-producing element or reflector of the light fixture from being visible to a person standing in the adjacent residential areas or street right-of-way. ~~No light standard nor building-mounted light shall exceed 15 feet in height. Light standards or building-mounted light heights shall be determined during detail site plan review and approved by the TMAPC.~~

13. The Department of Public Works or a professional engineer registered in the State of Oklahoma shall certify to the appropriate City official that all required stormwater drainage structures and detention areas serving a lot have been installed in accordance with the approved plans prior to issuance of an occupancy permit on that lot.
14. No building permit shall be issued until the requirements of Section 1107F of the Zoning Code have been satisfied and approved by the TMAPC and filed of record in the County Clerk's office, incorporating within the restrictive covenants the PUD conditions of approval and making the City beneficiary to said covenants that relate to PUD conditions.
15. Subject to conditions recommended by the Technical Advisory Committee during the subdivision platting process which are approved by TMAPC.
16. Approval of the PUD is not an endorsement of the conceptual layout. This will be done during detail site plan review or the subdivision platting process.
17. There shall be no outside storage of recyclable material, trash or similar material outside a screened receptacle, nor shall trucks or truck trailers be parked in the PUD except while they are actively being loaded or unloaded. Truck trailers and shipping containers shall not be used for storage in the PUD.
18. There shall be no development in the regulatory floodplain.

**TAC MINUTES:**

**PUD 375-C, Northwest corner of 61<sup>st</sup> and Union**

**Water** - Looped water line in 20 right-of-way easement.

**Stormwater** – Exhibit “F” does not show a proposed drainage plan, only an existing storm sewer, which outlets onto the school property. Development of this site will require the detention of all additional runoff due to said development. The 100-year Water Surface Elevation in the FEMA Floodplain on the school site cannot be raised; i.e., the “0” rise policy will be enforced for the Mooser Creek FEMA Floodplain. Add drainage narrative to the PUD.

**Wastewater** - Sanitary sewer mainline extension require serving all development areas.

**Transportation** – No comment.

**Traffic** - Align apartment drive with existing street. Widen two major commercial drives to provide lanes (two out and one in). Tie apartment sidewalk to 61<sup>st</sup> Street via a pedestrian gate.

**Applicant's Comments:**

**Roy D. Johnsen**, 201 West 5<sup>th</sup>, Suite 501, Tulsa, Oklahoma 74103, stated that this is an old PUD that was developed in 1984. The subject property was approved primarily for commercial, office and small portion of multifamily area in the southwest corner. The zoning pattern is peculiar and doesn't meet the normal zoning pattern, but it was approved in this fashion with a PUD overlay. There is no single-family along the 61<sup>st</sup> Street frontage of the subject property. Mr. Johnsen cited the surrounding zonings.

Mr. Johnsen stated that the proposal is for commercial along the Union frontage and along a portion of the 61<sup>st</sup> Street frontage. Commercial zoning would be for Development Areas B, C and D, which are less than what was approved in 1984. There is no change in the underlying zoning and this proposal as submitted is well below what the underlying zoning permits.

Mr. Johnsen pointed out that there are a few items on the staff recommendation that he would like to discuss. The first issue, in Development Area B, which is proposed for commercial use, is that staff recommended the trash container be located 200 feet south of the north boundary and he would like to suggest 100 feet. The next issue is regarding an access point from Development Area A (multifamily) west to South Union, which is also an access point for the retail. The principal entry into the multifamily would be at 61<sup>st</sup> Street and the developers are mindful that there is a need for a second access for emergency purposes. He commented that he didn't know at the time that the emergency access is intended for emergencies only and that it would be gated. He would like to propose to have an emergency drive across the commercial tract (gated) and that would fully address staff's concerns.

Mr. Johnsen stated that he had proposed a six-foot screening fence along the entire north boundary, which is standard. Staff has recommended masonry, but he is not sure if that is a firm policy of the Planning Commission at this point. With a duplex development north of the commercial, and given what has been previously approved with virtually no restrictions, it seemed that a wood fence would be sufficient in this instance. He requested that a standard screening fence be permitted.

Mr. Johnsen explained that staff recommended that lighting not exceed 15 feet in height. He stated that the lights have to be shielded and directed away from the adjoining residential. Recently, a restriction has been added that a person should not be able to see the lights if he/she is an adjoining property owner. He requested that the restriction be 15 feet in height if the light standard is within 50 feet of the north boundary and elsewhere it could be 25 feet in height. He commented that lighting gets a very close look during detail site plan. All of this could be addressed during detail site plan, but he would not want a uniform 15 feet limitation anywhere located within this PUD. He concluded that with the modifications he mentioned, the staff recommendation is acceptable.

**TMAPC COMMENTS:**

Mr. Carnes asked Mr. Johnsen about the proposed access. In response, Mr. Johnsen stated that the access he is speaking about would be gated for emergency access only and that is why he doesn't see why a masonry wall is necessary. He further stated that this would be a typical retail area with 25 feet of grass, 25 feet of drive, and then a building setback of 50 feet. A wood screening fence has been the standard for many years and it would be appropriate in this instance because there are duplexes north of the subject area. If masonry is going to be the standard, then the community should be informed that in any PUD where it abuts any type of residential, it would be required.

Ms. Hill asked what the setbacks are for the existing apartments. In response, Mr. Johnsen stated that they are two-story apartments that are 50 feet from the north property line and a minimum of 25-foot setback for drives or parking, and basically there would not be any drives or parking on the north side.

Mr. Westervelt asked Mr. Johnsen if he would be comfortable with the Planning Commission determining the height of the light standards during detail site plan review. In response, Mr. Johnsen stated that he would agree with that.

Mr. Midget asked Mr. Johnsen to demonstrate where he is requesting the trash container to be located. In response, Mr. Johnsen stated that staff recommended 200 feet from the north boundary and he would like to request 100 feet from the north boundary. The trash container will be screened and closed as required.

Mr. Westervelt stated that he would prefer that the masonry fence remain in the standards and the trash container setback remain as staff recommended.

Mr. Midget stated that masonry fence along the north boundary and wood fence on the remainder would be acceptable.

Motion: to accept the change from 42' in the three-story multifamily residential area because of its 100-foot setback, trash container setback at 200 feet in AREA B, emergency access only, screening fence with masonry wall on the commercial side and the rest would be wooden fence and determine the lighting standard height would be determined at detail site plan review.

Mr. Harmon questioned why the trash container should be at 200 feet when there is a masonry wall for screening. In response, Mr. Westervelt stated that he looked at the site and didn't see any inconvenience of keeping it at 200 feet. Mr. Ledford stated that the site plan is misleading because it doesn't show the 25 feet and with 25 feet set back and a 25-foot drive, then some type of separation between the drive and the building setbacks at 60 feet and therefore the trash container would be 140 feet from the north end of the building.

Mr. Westervelt asked Mr. Midget if the trash container is 100 or 200 feet at this point. In response, Mr. Midget stated that he left it 100 feet because of the screening.

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

**TMAPC Action; 9 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 9-0-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Midget, Westervelt no "aye"; "nays"; none "abstaining"; Bayles, Horner "absent") to recommend **APPROVAL** of the major amendment for PUD-375-C per staff recommendation as amended by the TMAPC with the following modifications: three story, 42 feet in Area A, multifamily, trash container setback 100 feet in Area B, sign 25 feet in height and 160 square feet of display surface, emergency access only for multifamily with a setback of 25 feet. (Words deleted are shown as strikeout; words added or substituted are underlined.)

**Applicant's Comments:**

Mr. Johnsen asked if all six items were approved except the masonry wall. Mr. Westervelt stated that on the requested modifications, the Planning Commission recommends approval for items; 1, 2, 3, 4 and denial of item 5, and item 6 will be determined during detail site plan review.

**Legal Description for PUD-375-C:**

A TRACT OF LAND IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER (SE/4, SE/4) OF SECTION 34, T-19-N, R-12-E, OF THE IBM, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE U.S. GOVERNMENT SURVEY THEREOF, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT: "BEGINNING AT A POINT" THAT IS THE SOUTHEAST CORNER OF SAID SECTION 34; THENCE N 89°56'27" W ALONG THE SOUTH LINE OF SAID SECTION A DISTANCE OF 1,267.64'; THENCE DUE NORTH A DISTANCE OF 1,068.95' TO THE SOUTHWEST CORNER OF BLOCK 6 OF THE AMENDED PLAT OF WOODVIEW HEIGHTS, AN ADDITION TO THE CITY OF TULSA, TULSA COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF; THENCE N 75°00'00" E ALONG THE SOUTH LINE OF SAID BLOCK 6 A DISTANCE OF 230.49'; THENCE DUE EAST ALONG THE SOUTH LINE OF SAID BLOCK 6 AND AN EASTERLY EXTENSION THEREOF A DISTANCE OF 1,045.00' TO A POINT ON THE EAST LINE OF SAID SECTION 34; THENCE DUE SOUTH ALONG SAID EAST LINE OF SECTION 34 A DISTANCE OF 1,129.91' TO THE "POINT OF BEGINNING" OF SAID TRACT OF LAND, and located on the northwest corner of West 61<sup>st</sup> Street South and South Union Avenue, Tulsa, Oklahoma, From RS-3/RM-1/OL/CS/PUD (Residential Single-family High Density District/Residential Multifamily Low Density District/Office Low Intensity

District/Commercial Shopping Center District/Planned Unit Development [PUD-375-B]) To RS-3/RM-1/OL/CS/PUD (Residential Single-family High Density District/Residential Multifamily Low Density District/Office Low Intensity District/Commercial Shopping Center District/Planned Unit Development [PUD-375-C]).

\* \* \* \* \*

Mr. Midget out at 2:31 p.m.

Application No.: PUD-680-1

MINOR AMENDMENT

Applicant: Roy D. Johnsen

(PD-6) (CD-9)

Location: Southeast corner of East 22<sup>nd</sup> Street and South Utica

**STAFF RECOMMENDATION:**

The applicant is proposing to reduce the number of dwelling units, increase the office floor area, and modify setbacks within PUD-680.

The PUD was approved by the City Council in June 2003. The PUD consists of 4.352 acres (net) located at the southeast corner of East 22<sup>nd</sup> Place and South Utica Avenue. A mixed-use development was approved permitting single-family detached dwellings, condominium dwellings and office space.

The PUD permitted 33 dwelling units of various designs and a nine-story office building containing 81,937 square feet of office floor area. This minor amendment proposes a reduction in dwelling units (from 33 to 19) and an increase in office floor area (from 81,937 SF to 90,327 SF). The principal concepts of mixed use, the location of detached single-family residences along the west and south perimeters, structured parking including residential guest parking, the nine-story building containing office space and residential condominiums, and consistent architecture remain applicable. Residential uses are no longer proposed above the parking garage.

The proposed amendment would result in the following intensity of development which is permitted by the underlying zoning:

Office/Residential Condominium Building:

Office Floor Area	
As Approved	81,937 SF
Proposed increase	<u>8,400 SF</u>
Total:	90,327 SF

Penthouse Residential		
As approved	7 dwelling units	
Proposed decrease	<u>(1) dwelling unit</u>	
Total:	6 dwelling units	
Townhomes		
As approved	4 dwelling units	
Proposed decrease	<u>(4) dwelling units</u>	
Total:	0 dwelling units	
Terrace Homes		
As approved	10 dwelling units	
Proposed decrease	<u>(10) dwelling units</u>	
	0 dwelling unit	
Courtyard Villas		
As approved	12 dwelling units	
Proposed increase	<u>(1) dwelling unit</u>	
Total:	13 dwelling units	
<b>TOTAL:</b>	19 dwelling units	90,327 SF

It is further proposed that minor modification of building setbacks be made as follows:

#### Office Building/Penthouse Residences

Minimum Building Setbacks:	As approved	As proposed
From centerline of 22 <sup>nd</sup> Place	35 FT	35 FT
From centerline of Utica	470 FT	472 FT
From east boundary of PUD	35 FT	35 FT
From Reserve A	0 FT	0 FT*

\*The common boundary of Reserve A and the Office Building/Penthouse Residences is proposed to be moved three feet south.

#### Parking Building

Minimum Building Setbacks:	As approved	As proposed
From centerline of 22 <sup>nd</sup> Place	32 FT	32 FT
From centerline of Utica	185 FT	150 FT
From east boundary of PUD	195 FT	195 FT
From Reserve A	0 FT	0 FT

Except as above modified, the development standards as established by the initial approval of PUD-680 will remain applicable.

Staff finds the request to be minor in nature and therefore recommends **APPROVAL** of the request subject to the following conditions:

1. The requirements of PUD-680 shall apply unless modified below.
2. Development Standards:

#### DEVELOPMENT AREA A

Maximum Number of Dwelling Units: 2

#### DEVELOPMENT AREA B

Maximum Number of Dwelling Units: 11

#### DEVELOPMENT AREA C

Permitted Uses: Structured Parking

Minimum Parking Building Setbacks

From centerline of 22 <sup>nd</sup> Place	32 FT
From centerline of Utica	150 FT
From east boundary of PUD	195 FT
From Reserve A	0 FT

#### DEVELOPMENT AREA D

Maximum Number of Dwelling Units: 6

Maximum Office Floor Area: 90,327 SF

Minimum Building Setbacks:

From centerline of 22 <sup>nd</sup> Place	35 FT
From centerline of Utica	472 FT

From east boundary of PUD	35 FT
From Reserve A	0 FT

**TMAPC COMMENTS:**

Mr. Westervelt asked if the changes are substantial enough to create any problems for the Fire Marshal. In response, Mr. Dunlap stated that he has not discussed this with the Fire Marshal, but he was at the TAC meeting and heard the things that were discussed. He doesn't believe it to be a problem. He doesn't remember if the applicant suggested that setback, but it was a setback that TAC and staff were comfortable with and there was not a lot of discussion on it. He doesn't believe it is a critical issue for the Fire Department.

**Applicant's Comments:**

**Roy D. Johnsen**, 201 West 5<sup>th</sup>, Suite 501, Tulsa, Oklahoma 74103, stated that the office building restriction doesn't change in height or setback from the east, which is where Temple Israel was concerned. The relationship with Temple Israel does not change. The parking garage moved west, but the access points are essentially the same. The concept of ground level residential along the west and the south remains the same. The common architecture, the fire protection, and the secondary access points would all remain the same. The actual building plans have been refined and the project concept does not change nor cause any impact on the adjoining property.

**INTERESTED PARTIES:**

**John Sieler**, 2923 East 95<sup>th</sup> Place, Tulsa, Oklahoma 74137, representing Temple Israel, stated that he would like to be kept informed of any type of changes in the future. He explained that he has to report to the Board when any changes take place.

**TMAPC Action; 8 members present:**

On **MOTION** of **WESTERVELT** TMAPC voted 8-0-0 (Carnes, Collins, Coutant, Harmon, Hill, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Horner, Midget "absent") to **APPROVE** the minor amendment for PUD-680-1 per staff recommendation.

\* \* \* \* \*

**Mr. Collins out at 2:42 p.m.**

## **OTHER BUSINESS:**

**Application No.: PUD-561**

**DETAIL SITE PLAN**

**Applicant:** J. Richard Blissett

(PD-6) (CD-4)

**Location:** 1304 East 18<sup>th</sup> Street

### **STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan for a two-story, single-family residential dwelling located on the southeast corner of South Peoria Avenue and East 18<sup>th</sup> Street South. The proposed use, Use Unit 6, is in conformance with development standards.

The proposed dwelling complies with all development standards regarding livability space, maximum height permitted and setback requirements. Because this site is located within an HP District, the applicant will be required to obtain a Certificate of Appropriateness from TPC prior to obtaining a Building Permit.

Staff recommends **APPROVAL** of PUD-561 detail site plan contingent upon the applicant obtaining a Certificate of Appropriateness from TPC.

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

**The applicant was not present.**

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

**TMAPC Action; 7 members present:**

On **MOTION** of **WESTERVELT** TMAPC voted 7-0-0 (Carnes, Coutant, Harmon, Hill, Jackson, Ledford, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Collins, Horner, Midget "absent") to **APPROVE** the detail site plan per staff recommendation.

\* \* \* \* \*

**Mr. Ledford stated that he would be abstaining from the following PUD-573.**

**Mr. Ledford out at 2:44 p.m.**

**Application No.: PUD-573**

**DETAIL SITE PLAN**

**Applicant:** Dwayne Wilkerson

(PD-18) (CD-8)

**Location:** 7712 South Yale

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan of an office building. Proposed uses are 14,695.5 square feet of general office and 2799 square feet of medical office and are in conformance with Development Standards. At its August 20, 2003 meeting, TMAPC approved the detail site plan for the office building and the parking lot area only to allow an internal remodeling permit to be issued, and subject to the condition that the applicant would not be allowed an occupancy permit until a site plan for the entire site is approved by TMAPC and construction per the approved plan. TMAPC further stated that "such plans shall include a retaining wall built to some future specifications".

This is an existing development which was not built in conformance with the originally approved site plan. Detail Site Plan review is of measures to bring the site into compliance. At 855.10 feet mean sea level, the building is under the maximum height permitted. No retaining walls along the west boundary are proposed. Staff recommends that the applicant provide certification from a soils/structural engineer that the site as currently graded and developed is stable and no retaining walls are required near the west boundary.

Building setbacks as shown on the detail site plan are in conformance with Development Standards as amended by PUD-573-1. Parking per the detail site plan meets minimum setback requirements. Current striping, however, is not in compliance with zoning code requirements. New striping is proposed to meet design requirements and additional spaces are proposed to provide in excess of the 61 spaces required. The existing curb height is seven inches except in a portion on the parking lot's west side that was replaced earlier and is now as low as 4.5" high. This area needs to be replaced with a curb that is at least seven inches high to provide substantial "stops" for vehicles parking near the steep slope along the site's west boundary. A retaining wall or walls are recommended by staff and are proposed east of the new parking area that is located on the west side of the building.

Landscaped area per the site plan and detail landscaping per the landscape plan are in compliance with minimum street yard and minimum net lot area requirements. Per Minor Amendment PUD-573-1, screening is required on both the west and north boundaries. Staff recommends screening of the west boundary be provided by landscaping, including plantings of junipers, closely spaced, beginning at the southern edge of the existing natural tree mass south of

the northwest corner of the site and extending to and adjacent along the western edge of the parking lot to a point in line with the southwest corner of the building. Staff also recommends that the existing tree mass along the north boundary be left undisturbed, and that screening of the north boundary be required only if existing screening on the residential property is removed. The applicant's submitted landscape plan complies with staff's recommendations.

As located and with shielding as proposed per the detail lighting plan, the ten-foot high pole-mounted parking lot lights are in compliance with development standards. The bulk trash container meets minimum setback requirements, but current screening appears to be supported by 2" x 4" boards.

Staff recommends **APPROVAL** of PUD-573 detail site and landscape plans with the following conditions: (1) that prior to occupancy, landscaping of the west boundary be installed in accordance with the approved landscape plan; (2) that prior to occupancy, the parking lot be re-striped per the approved detail site plan and the curb repaired to a minimum 7" height; (3) that prior to occupancy, the additional parking spaces and related retaining wall(s) adjacent to the new parking spaces be constructed ; (4) that prior to occupancy, screening of the bulk trash container be completed in such a way that all supporting braces face the interior; and (5) that the applicant provide certification from a soils/structural engineer that the site as currently graded and developed is stable and no retaining walls are required near the west boundary.

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

Mr. Dunlap stated that there is a request for a continuance from Mr. Stephen Schuller.

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

**INTERESTED PARTIES:**

**Steve Schuller**, 100 West 5<sup>th</sup> Street, Suite 500, Tulsa, Oklahoma 74103, representing Mr. and Mrs. Stephen Parks, stated that he is requesting a continuance because he received the site plan last week and for the first time it did not show a retaining wall. The retaining wall was of considerable discussion during the August meeting. He would like to request the continuance in order to allow his clients to hire an engineer to perform the requisite studies on the hillside and slope to determine what the effect of having no retaining wall would be and if he is going to insist on a retaining wall, what the elements and standards for such a retaining wall would be.

Mr. Jackson stated that the applicant had an engineer who stated a retaining wall is not necessary and then Mr. Parks hired an engineer who stated a retaining wall is needed, and the issue is in the same spot. Mr. Jackson asked Mr. Schuller if his client would be amenable if his engineer stamped and certified his

drawings and then the engineer's errors and omission insurance take care of any problems in the future. In response, Mr. Schuller stated that the statute of limitations on a claim against an engineer would only be two years and there is a line of case law precedence that provides that an engineer making such a certification in this type of situation would likely be able to avoid any liability for his certification so this doesn't seem to solve the problem.

Mr. Westervelt stated that the Planning Commission has been trying to hear this case in order to fix the situation for a long period of time. The Planning Commission has had extensive ex parte communication. He indicated that he spent two hours on the site yesterday because it was necessary to see what is exactly happening on the entire property. He explained that Mr. Stump went to visit the site with a staff engineer to look at the application after the site plan was submitted. INCOG's staff engineer stated that the bank is vegetated and stable, and to put a retaining wall at the top end of the site and not have it piersed at the bottom is not going to improve things, but could make it less stable. Additionally, the idea of having boulders at the top of the area appeared to be precarious if there were some movement and they could roll down the hill into homes. If this is continued in order to have Mr. Parks hire an engineer to say that the retaining wall is necessary, then the applicant's engineer is stating that it is not necessary.

Mr. Romig stated that he hasn't looked at the statute of limitations issue, but in discussing it with another engineer; he was told that his errors and omissions continue indefinitely.

Mr. Westervelt stated that it would be possible for four engineers to have four different reports and the Planning Commission would still be no closer to a decision because the Planning Commission doesn't have the expertise to make that final decision.

Mr. Schuller stated that he doesn't have an answer on how to get around short limitation periods and he would like to have some time to look into that. He commented that he is prepared to discuss the detail site plan today, if the Planning Commission decides to hear this today. He stated that he has requested the continuance in order to allow his engineer the ability to perform an analysis.

Mr. Westervelt stated that Mr. Schuller has requested a continuance in order to have another engineer present to tell the Planning Commission the opposite of what they are going to hear from the first engineer. In response, Mr. Schuller stated that the request is in order to have the engineer present to tell you that after making the requisite study in order to address the Planning Commission intelligently and with some background, which he does not have at this time.

**Applicant's Comments:**

**Jeff Levinson**, 35 East 18<sup>th</sup>, Tulsa, Oklahoma 74119, representing Land Point Place, LLC, owner of the subject building, stated that he does not want this application continued today. He further stated that he has three engineers present today and two soils experts from Standard Testing who did the original work on this application and recently revisited the site. He commented that there are a couple of misconceptions.

Mr. Levinson stated that Mr. Parks purchased his home November 15, 2000, after the subject building was completed. This proposal has been filed since June 2003 and the applicant has had months, if not years, to get engineering reports. His clients would like to get this project completed and is willing to do whatever he can to do so. He basically gave up and agreed to put a retaining wall up. After meeting with Mr. Stump and Delise Tomlinson, it was apparent that a retaining wall was totally unnecessary and dangerous. The new site plan was prepared after that meeting and they withdrew the retaining wall. The interested parties have had plenty of time to get an engineering report and it would seem that they should have wanted one prior to today's meeting to see if a wall would be needed or dangerous.

Mr. Westervelt asked Mr. Levinson if he knew anything about the statute of limitations on their engineering seal that goes on a set of drawings.

Mr. Westervelt asked Legal if the Planning Commission has the power, during site plan review, to require a retaining wall. In response, Mr. Romig stated that he would have to look at the original site plan. Mr. Romig explained that the Planning Commission cannot impose conditions that are more restrictive than what was originally approved, unless there is a change in the site plan that can be related to the change.

Mr. Levinson stated that his engineer's understanding is that there is no limitation on their errors and omissions insurance. The engineers did borings and the building and its plans were all stamped and approved. The City already has all of the stamped plans. The Planning Commission is only requested to approve or deny a site plan, not to do engineering.

Mr. Westervelt stated that his concern is that the City and homeowners do not spend any money if something is not right.

Mr. Levinson stated that he would like everyone to understand that the subject building was built under the proper procedure. The engineers did a thorough job during the whole process. He asked why an engineering report is needed now, when there wasn't one needed when the wall was shown on the detail site plan. He commented that he would want an engineer to tell him if the wall would help.

Mr. Schuller stated that he senses that the Planning Commission is not inclined to continue this application and he is prepared to discuss the wall and how the building was not developed not in accordance with all of the approvals that have been given, contrary to Mr. Levinson's claims.

Mr. Jackson stated that he believes that the retaining wall is not the Planning Commission's concern. When this goes through the permitting process and the City feels that the wall is necessary, then it would be their place to inform the developer that it is needed.

Mr. Westervelt stated that an engineer was contacted during the discussion and that there are no statutes of limitation on errors and omissions insurance for this particular situation.

Mr. Jackson recommended that this be heard today. The application has been delayed seven months due to a detail site plan.

**Ms. Hill out at 2:55 p.m.**

**Ms. Coutant out at 2:56 p.m.**

**No discussion due the quorum not being present.**

**Ms. Hill and Ms. Coutant in at 2:57 p.m.**

**Quorum present and discussion resume.**

Mr. Westervelt stated that Legal has informed him that changes to the parking lot are not substantial enough to give the Planning Commission the ability to require a retaining wall. Additionally, knowing that there are no statutes of limitations on an engineer's seal, he believes there is no logical reason to not hear this case.

**TMAPC Action; 6 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 6-0-0 (Carnes, Coutant, Harmon, Hill, Jackson, Westervelt "aye"; no "nays"; none "abstaining"; Bayles, Collins, Horner, Ledford, Midget, "absent") to **DENY** the request for a continuance.

Mr. Jackson stated that staff has given their presentation and are inclined to recommend approval.

Mr. Dunlap stated that staff recommends **APPROVAL** of the detail site plan for PUD-573, subject to the five conditions stated in the staff recommendation.

Mr. Westervelt stated that he thought it was more extensive than the site plan report because of the visit to the site. Mr. Dunlap stated that the recommendation stays.

Mr. Harmon asked if a retaining wall was required on the original site plan. In response, Mr. Dunlap stated that the retaining wall was not a requirement of the PUD, but on the concept plan there was a retaining wall shown but not required. The Planning Commission did not require the retaining wall, nor did the City Council.

Mr. Westervelt suggested that the case be heard and then a decision made after discussing it with the staff, Legal, interested parties and the applicant.

Mr. Jackson requested Mr. Dunlap to read the staff recommendation again.

Mr. Dunlap read the staff recommendation.

**Applicant's Comments:**

**Jeff Levinson**, 35 East 18<sup>th</sup>, Tulsa, Oklahoma 74119, requested that the staff report be approved.

Mr. Westervelt requested to speak with the engineers.

**Engineers for PUD-573: Dwayne Wilkerson**, Sisemore Weisz and Associates, 6111 East 32<sup>nd</sup> Place, Tulsa, Oklahoma 74135, **Carol Beddick and Steve Crane**, Standard Testing, 5358 South 125<sup>th</sup> East Avenue, Suite B, Tulsa, Oklahoma 74146.

Mr. Westervelt submitted a site plan with notations from the field meeting prior to today's meeting (Exhibit B-2).

Mr. Westervelt asked Mr. Wilkerson if he is aware of any limitation on his insurance. In response, Mr. Wilkerson stated that he is not aware of any statute of limitations on his insurance, but he has never discussed this with his insurance carrier.

Mr. Westervelt stated that Mr. Romig went to his office and retrieved the original site plan, which shows a dry-stacked wall (not a retaining wall).

Mr. Westervelt stated that while standing in the parking lot in the area where a retaining wall has been requested, he became more concerned about whether or not a guardrail should be installed to keep any cars from going off of the parking lot. He indicated that they did let the car drift into the curb to test it and it was determined that a small guardrail would be best and not destabilize the bank. Mr. Westervelt asked the engineers if they recommended that a retaining wall was not necessary.

Mr. Wilkerson stated that the original design was done by someone else and his company took the project over at the end to satisfy the site plan amendment issues. He explained that his job was to define exactly what was present, and

then decide what is needed to come into conformance. He stated that there was no evidence that the hillside was sliding off. The parking lot was in place and everything seemed to be stable. It was his recommendation to not put the retaining wall back in and he did have concerns about destroying the vegetation along the hillside if the retaining wall was installed. He believes that the retaining wall would be a waste of time.

Mr. Westervelt stated that it appears that a landscape architect stamped the detail site plan. If the Planning Commission were inclined to approve this application without any need of a retaining wall, he asked if his constructional engineer would supply a report that states a retaining wall is not needed to stabilize the bank. In response, Mr. Crane stated that he is not the constructional engineer on the project. Mr. Crane explained that he is a geotechnical engineer and he performed the only geotechnical study.

Mr. Westervelt stated that if Mr. Crane is not able to stamp the plans, then the applicant needs to have someone who can. The Planning Commission would be at a severe impasse regarding this issue.

Mr. Wilkerson stated that he has never had to seal something that was not required. He explained that he is not sure he can even do such a thing. In response, Mr. Westervelt stated that perhaps someone would have to seal something in order for it (the application) to become approved. In response, Mr. Wilkerson stated that if that is the case, his firm would do something with it. His firm has the ability to seal and stamp a retaining wall if it is required, or if it is not required, his office would work with Standard Testing and come up with something.

Mr. Crane stated that his company did the original geotechnical study for the structure (building and parking lot) and at that time the scope of work did not include a retaining wall and there has not been any geotechnical study to determine design capacities or design information for a retaining wall. Standard Testing issued a letter to Land Point stating that, based on a visual observation of site visit; there is no sign of slope failure. The soils and geology that make up the area are sandstone and shale (inter-bedded with some shale seams) and if boulders are put at the top of the slope, it would increase the surge charge at the top and slopes fail at the toe (bottom of slope) and he would definitely refrain from that. He did notice the cracks in the pavement and they could be from several issues, including lateral movement or compaction issues during construction. He doesn't believe that the compaction of the sub-grade in the parking area would have any effect on the slope in question. There was one other observation at the northwest corner where a utility company had come in to install some utilities along through the slope and cut through it and repaired it with no signs of movement based on visual observation. He indicated that his company has not made any actual drilling to determine whether the slope is

moving. If there was any evidence that the slope was moving, then his company would determine whether there would be additional studies needed.

Mr. Harmon asked what would happen to a dry-stacked retaining wall if the ground was moving beneath it. In response, Mr. Crane stated that it would probably come down. Mr. Harmon asked if the dry-stacked retaining wall would have any significant impact to keep the slope from moving. In response, Mr. Crane answered negatively. Mr. Crane explained that there is no visual evidence that it is moving and the slope consists of a geological formation of rock. Mr. Harmon stated that based on what he is seeing, the most that could be required from the original site plan would be a dry-stacked retaining wall and that would serve no purpose and could possibly be harmful. In response, Mr. Crane explained that the questions to him were if the old existing slope, which was undisturbed during the construction of the property, is stable and would it improve or cause more problems to install a retaining wall. Mr. Crane explained that the slope appears to be stable and by installing a retaining wall it could make the problem worse.

Mr. Wilkerson stated that by building the parking lot with the curb, it has intercepted the water in the parking lot and taken it to Yale. Erosion is greatly limited from what it was in its original condition, which has helped the stability of the hillside.

**INTERESTED PARTIES:**

**Steve Schuller**, 100 West 5<sup>th</sup> Street, Suite 500, Tulsa, Oklahoma 74103, cited the history of the subject property regarding applications, permits and retaining wall. Mr. Schuller cited the previous staff recommendations for the original PUD. He commented that the boring and drilling of soil samples were never performed as directed in the staff recommendation. He reiterated that the dry-stacked retaining wall was never built.

Mr. Harmon asked Mr. Schuller if he was familiar with the purpose or reason for a dry-stacked retaining wall. Mr. Harmon stated that it would appear that it would be for cosmetic reasons only and at the top of the slope it could be a hazard. In response, Mr. Schuller stated that a dry-stacked retaining wall is a new term for him and he isn't sure what its purpose is except to do some type of retaining since it is called a retaining wall. Mr. Schuller further stated that the development standards called for a screening wall or fence along the boundary and it was never built.

Mr. Schuller stated that the landscape plan that was approved five years ago provided that all disturbed areas are to be sodded with U-3 Bermuda grass, which was never done. Mr. Schuller cited several violations and permitting that was incorrectly granted.

Mr. Schuller stated that his client purchased his property in November 2000 and all of the conditions for permitting were on paper as being required. His client did look into this and relied on the plans and requirements to be followed. The notice of the prior proceedings had gone to the previous owner of his client's home. The previous owner never appeared at the meetings to protest or raise any objections.

Mr. Westervelt informed Mr. Schuller that the Planning Commission is very familiar with the history of the subject property. He has had ex parte communication with Mr. Schuller and Mr. Parks. The Planning Commission is interested in remedying the parts that are deficient. Mr. Westervelt suggested that the portion of the site plan that was revised during the site visit be reviewed.

Mr. Schuller requested time to review the site plan that has been marked up.

Mr. Jackson asked Mr. Schuller if he is satisfied with the staff recommendation. In response, Mr. Schuller stated that he wasn't satisfied 100%, but would like to review the marked-up detail site plan.

Mr. Jackson asked Mr. Levinson to come up to review the marked-up detail site plan.

**Mr. Midget in at 3:30 p.m.**

Mr. Westervelt presented the submitted detail site plan and the changes suggested during the site visit.

Mr. Schuller stated that this appears to answer some of the concerns. He suggested that Max Vowel be included in this discussion.

After a lengthy discussion Mr. Schuller requested time to discuss the proposal with his clients.

Mr. Levinson stated that his client is in agreement with the Planning Commission.

Mr. Jackson suggested a five-minute recess.

**Recess at 3:40 p.m.**

**Meeting called back to order at 3:45 p.m.**

Mr. Jackson asked Mr. Levinson if he was in agreement with the marked-up site plan. In response, Mr. Levinson stated that he is in agreement with the suggestions by Mr. Westervelt. He asked for some clarification of number five on the staff recommendation. He explained that number five concerns his clients because of the costs. He commented that this could cost as much as \$20,000.00.

Mr. Westervelt stated that all of the conditions discussed so far, were predicated on the safety concerns were resolved and they have resolved the retaining wall issue. The geo-technical reports have already been completed.

Mr. Levinson stated that all of the studies have been done and everything has already been stamped.

Mr. Westervelt stated that if the plans are already stamped and the liability exists, then why it is going to cost \$20,000.00 to stamp again with an affirmative letter that can be put in the TMAPC files. He explained that the Planning Commission is simply asking the engineer to state in a clear way in order to attach it to the record. The Planning Commission is not comfortable with moving forward without resolving this issue right now. The Planning Commission does not feel the dry-stacked retaining wall would be best because it would be dangerous. The Planning Commission would like something in writing that states that someone's "Executives and Officers" insurance is in force and the City and the neighbors are not at risk.

Steve Crane, Standard Testing, 5358 South 125<sup>th</sup> East Avenue, Tulsa, Oklahoma 74146, stated that his company did the geotechnical study for the office building and the parking. At that time, the retaining wall was not part of the project. He has done no drilling, no samples taken, no laboratory testing, nor engineering testing concerning a retaining wall. If the applicant says that they need a stamp from Standard Testing stating that everything is stable, then he would have move in the drill rig on the slope in question and drill samples of the soil, lab test and strength test. This could easily be \$20,000.00 in costs. He explained that he has done a visual observation and wrote a letter stating that there is no sign of slope failure.

Mr. Westervelt asked if the letter Mr. Crane is speaking of could be stamped. In response, Mr. Crane stated that the letter is not stamped. Mr. Crane explained that typically a visual observation is not stamped and it is not necessarily a recommendation. He stated that he would have to discuss this with his company to see if it could be stamped.

Mr. Westervelt asked Legal if this detail site plan could be approved subject to a stamped letter. In response, Mr. Romig stated that it could be made a condition of the approval.

**MOTION of WESTERVELT to APPROVE** of the detail site plan for PUD-573 subject to submitting the marked-up detail site plan as a part of the record; subject to the receipt of a memorandum/recommendation from a certified structural engineer to Legal Department's satisfaction that it is sufficient to evoke their Errors and Omissions Insurance, should the top of the slope deteriorate over time and create a problem; items shown on the detail site plan which would

be as follows: 1) north side of subject property there would be a row of cedar trees planted (same variety that are adjacent to the parking places on the east side) sufficient to screen from the corner of the property owner's fence on the top, which is over the edge of City of Tulsa's lots over to the large tree that is north of the corner of the subject building; on the west side of the subject property (Mr. Parks's side) starting up against the building, the retaining wall shown on the site plan would not be of dry-stacked boulders and embedded gravel, but rather be masonry retaining walls with a back cut, piersed properly and the foundation done properly as shown on the detail site plan; westerly all required landscaping, shown on the site plan that has been damaged or died would be replaced; the line of cedars would be constructed as shown along the 13 parking places on the west side, there are between 9 to 12 additional trees that have died and are depicted on the site plan that shall be replanted and it would help screen Mr. Parks's home, finding that the slope looks best left undisturbed, the issue of the cars needs to be dealt with and suggests that the detail site plan deal with that by the construction of a properly foundation guardrail or small minimally four-inch welded pipe fence that would be capable of stopping a car drifting across the parking lot and going over the embankment, it would need to be properly anchored with some footings and in place sufficient to keep the vehicles from going over the hillside (first 13 parking places from the northwest corner past the 13 parking place as indicated); additionally, the mechanical HVAC on the roof be screened from the north boundary as shown, which should be sufficient to provide responsible screening when the widening is done of Yale; with these additions, ask applicant to check on the steps that seem to be missing on the sidewalk and any other deficiencies to the Code that are found in the final review by Mr. Ackermann be included as well; request that the dumpster enclosure be replaced with a masonry enclosure to control the noise, finding that masonry in that location with the landscaping as shown would protect Mr. Park from unreasonable noise and disruption of his lifestyle; additionally, any light fixtures in the first 13 parking places on the west boundary be shielded to the rear so that the spillover of light does not go into Mr. Park's home in the most restrictive fashion available in the industry to make those fixtures accommodate this request and have staff site check the lights in the evening hours when this is completed.

Mr. Westervelt welcomed any discussion or suggestions for additional conditions for the motion.

**TMAPC COMMENTS:**

Mr. Harmon stated that the motion appears to address everything including the staff recommendation.

Mr. Romig asked Mr. Westervelt if it was his intent that all of those items be completed prior to certificate of occupancy or any further building permits be released.

Mr. Westervelt stated that it is an absolute requirement that all of these conditions be completed prior to the issuance of the occupancy permit. Everyone has spent time on this project and it is unfortunate that it ever got to the state that it has; however, everything legally that is possible is being done and every effort is being made to minimize the impact.

Mr. Midget second Mr. Westervelt's motion.

Mr. Jackson recognized Mr. Schuller.

Mr. Schuller stated that the motion is as close to perfect as anyone can get. He commented that all of his concerns have been addressed within the motion. There are no light standards along the western edge of the parking lot because they were removed due to being in violation of the Planning Commission's development standards. There are two light standards between the parking lot and the building, which have not been activated. The first light standard along the south side has not been activated either. His client has not been able to tell if these light standards will shine on his property. There is one light standard that is activated and it does shine on his client's property.

Mr. Schuller stated that the other issue of concern is the maintenance of proper irrigation for the landscaping. He understood that the motion required that all of the landscaping meet the Zoning Code requirements and be certified by a landscape architect.

Mr. Levinson stated that the PUD never required the retaining wall and it never required a masonry trash enclosure. He suggested that the bulk and trash container follow the staff recommendation. He objected to having to build a masonry wall. He requested that the motion portion regarding the Executive and Officer's be repeated.

Mr. Jackson read item 5 of the staff recommendation, which is included within the motion for approval. Item No. 5: "The applicant provides certification from a soil or structural engineer that the site as currently graded and developed is stable and no retaining walls are required near the west boundary." Mr. Westervelt added that such memorandum be made part of the record and that it be sufficient for Legal that it would be sufficient to evoke the Errors and Omissions Insurance. Mr. Levinson agreed to the clarification.

Mr. Westervelt clarified two items, that any landscaping being installed has to be sprinkled and that the two light standards that are not activated be removed and that the balance of the lighting that would be installed shall be hooded sufficiently to meet the Kennebunkport Formula at a minimum and have staff site visit in order to observe any overflow. The intent is that the overflow does not hit Mr. Park's property or anywhere nearby.

Mr. Westervelt stated that he visited the site and he is convinced that maintenance has been a problem on this site and hopefully with sufficient rental income things would be better. He indicated that he is not comfortable that the enclosure would look any better today than it did yesterday and it should remain in a masonry enclosure.

Mr. Jackson recognized Mr. Schuller.

Mr. Schuller asked if the staff's satisfaction with the lighting standards is to be a condition of occupancy. In response, Mr. Romig stated that as long as there is a standard in place and it is met, then there is no more can be done.

Mr. Schuller stated that his client would be willing to concede on the masonry trash enclosure and let it remain a wood enclosure if it were moved to the east side of the building.

Mr. Jackson recognized Mr. Max Vowel.

**Mr. Max Vowel**, 7701 South Sandusky, Tulsa, Oklahoma 74136, stated that he is disappointed that the applicant didn't meet his prior agreement. The applicant stated that he would build the retaining wall. Mr. Vowel further stated that the developer and Mr. Levinson both stated that they would build the retaining wall. He expressed concerns regarding the Errors and Omissions Insurance and the possibility that the engineer wouldn't keep his insurance policy.

Mr. Jackson stated that the building has insurance itself and if something injurious were to happen the building has insurance. Mr. Jackson further stated that his point is that more than one insurance coverage would be available, the building insurance, the engineer's insurance, and the owner of the building would be held liable.

Mr. Vowel stated that the standard liability insurance on a building probably does not cover earth movement. He expressed concerns with the applicant following the conditions because it has not been done in the past.

Mr. Harmon reminded Mr. Vowel that the applicant would not be able to occupy the building without following the conditions. In response, Mr. Vowel reminded the Planning Commission that the applicant has received permits in the past when he did not meet the conditions. Mr. Westervelt assured Mr. Vowel that there are more people watching every step of this application than any other application he has seen in ten years and he is very confident that the applicant will comply this time and if he doesn't someone will turn him in.

Mr. Romig stated that he is preparing a memo to the Mayor's Office, Charles Hardt, Mr. Wood's office and Councilor Christiansen's detailing the problems and why they have occurred, as well as the legal ramifications of that. The licensing

group will also receive a memo to notify Legal when everything is in and before the occupancy permit is released.

Mr. Levinson requested that the trash container remain where it is today.

**TMAPC Action; 6 members present:**

On **MOTION** of **WESTERVELT**, TMAPC voted 6-0-0 (Coutant, Harmon, Hill, Jackson, Midget, Westervelt no "aye"; "nays"; none "abstaining"; Bayles, Carnes, Collins, Horner, Ledford "absent") to **APPROVE** the detail site plan for PUD-573 subject to submitting the marked-up detail site plan as a part of the record; subject to the receipt of a memorandum/recommendation from a certified structural engineer to Legal Department's satisfaction that it is sufficient to evoke their Errors and Omissions Insurance, should the top of the slope deteriorate over time and create a problem; items shown on the detail site plan which would be as follows: 1) north side of subject property there would be a row of cedar trees planted (same variety that are adjacent to the parking places on the east side) sufficient to screen from the corner of the property owner's fence on the top, which is over the edge of City of Tulsa's lots over to the large tree that is north of the corner of the subject building; on the west side of the subject property (Mr. Parks's side) starting up against the building, the retaining wall shown on the site plan would not be of dry-stacked boulders and embedded gravel, but rather be masonry retaining walls with a back cut, piersed properly and the foundation done properly as shown on the detail site plan; westerly all required landscaping, shown on the site plan that has been damaged or died would be replaced; the line of cedars would be constructed as shown along the 13 parking places on the west side, there are between 9 to 12 additional trees that have died and are depicted on the site plan that shall be replanted and it would help screen Mr. Parks's home, finding that the slope looks best left undisturbed, the issue of the cars needs to be dealt with and suggests that the detail site plan deal with that by the construction of a properly foundation guardrail or small minimally four-inch welded pipe fence that would be capable of stopping a car drifting across the parking lot and going over the embankment, it would need to be properly anchored with some footings and in place sufficient to keep the vehicles from going over the hillside (first 13 parking places from the northwest corner past the 13 parking place as indicated); additionally, the mechanical HVAC on the roof be screened from the north boundary as shown, which should be sufficient to provide responsible screening when the widening is done of Yale; with these additions, ask applicant to check on the steps that seem to be missing on the sidewalk and any other deficiencies to the Code that are found in the final review by Mr. Ackermann be included as well; request that the dumpster enclosure be replaced with a masonry enclosure to control the noise, finding that masonry in that location with the landscaping as shown would protect Mr. Park from unreasonable noise and disruption of his lifestyle; that any landscaping being installed has to be sprinkled and that the two light standards that are not activated be removed and that the balance of the lighting that would be installed shall be hooded sufficiently to meet the Kennebunkport Formula at a

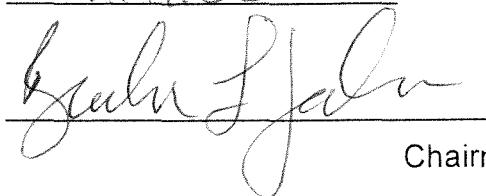
minimum and have staff site visit in order to observe any overflow; The intent is that the overflow does not hit Mr. Park's property or any nearby property; subject to all of these conditions being met prior to a certificate of occupancy being approved.

\* \* \* \* \*

There being no further business, the Chair declared the meeting adjourned at 4:10 p.m.

Date Approved:

11.9.03



Chairman

ATTEST:

Mary E. Wilk

Secretary

