

# TULSA METROPOLITAN AREA PLANNING COMMISSION

## Minutes of Meeting No. 2418

Wednesday, July 20, 2005, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

Members Present	Members Absent	Staff Present	Others Present
Ard	Dick	Alberty	Boulden, Legal
Bayles	Jackson	Chronister	
Bernard	Midget	Huntsinger	
Cantees		Matthews	
Carnes			
Harmon			
Hill			
Horner			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Friday, July 15, 2005 at 11:35 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 Bayles called the meeting to order at 1:30 p.m.

### Minutes:

#### **Approval of the minutes of June 1, 2005, Meeting No. 2414**

On **MOTION** of **HILL** the TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the minutes of the meeting of June 1, 2005, Meeting No. 2414.

### Minutes:

#### **Approval of the minutes of June 15, 2005, Meeting No. 2415**

On **MOTION** of **HILL** the TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner, "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the minutes of the meeting of June 15, 2005, Meeting No. 2415.

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## REPORTS:

### Director's Report:

Mr. Alberty reported on the activities before the BOCC and City Council.

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Chair Bayles reported that there are two items requesting a continuance to July 27, 2005.

**Application No.: PUD-307-B-1**

**MINOR AMENDMENT**

**Applicant:** Jerry W. Ledford, Jr.

(PD-18) (CD-9)

**Location:** North and west of northwest corner East 71<sup>st</sup> Street and South Lewis Avenue

**Application No.: PUD-307-B**

**DETAIL SITE PLAN**

**Applicant:** Sparks Engineering

(PD-18) (CD-9)

**Location:** North and west of northwest corner East 71<sup>st</sup> Street and South Lewis Avenue

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

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

On **MOTION** of **CARNES**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **CONTINUE** the minor amendment for PUD-307-B-1 to July 27, 2005.

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

On **MOTION** of **CARNES**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **CONTINUE** the detail site plan for PUD-307-B to July 27, 2005.

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**SUBDIVISIONS:**

**LOT-SPLITS FOR WAIVER OF SUBDIVISION  
REGULATIONS:**

**L-19847 – Lou Reynolds** (9317)

(PD-6) (CD-9)

2405 East 26<sup>th</sup> Place

**STAFF RECOMMENDATION:**

Tract A contains an existing bridge that is being used to access Tract C. The owner would like to split that bridge and access off Tract B and retain it with Tract C. Both resulting tracts would meet the RS-1 bulk and area requirements; however, both tracts would have more than three side-lot lines. The applicant is requesting a waiver of the Subdivision Regulations that no tract have more than three side-lot lines.

The Technical Advisory Committee requested an additional ten feet of right-of-way along Lewis Avenue, an urban arterial. Staff believes this lot-split would not have an adverse effect on the surrounding properties and recommends **APPROVAL** of the waiver of Subdivision Regulations and of the lot-split, with the condition that ten feet of right-of-way along Lewis Avenue be deeded to the City of Tulsa, and that Tract A be tied to Tract C.

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 HILL, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the waiver of Subdivision Regulations and of the lot-split for L-19847, subject to the condition that ten feet of right-of-way along Lewis Avenue be deeded to the City of Tulsa, and that Tract A be tied to Tract C.

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

**L-19849 – Lou Reynolds** (9317)

(PD 6) (CD 9)

2435 East 28<sup>th</sup> Street

**L-19853 – Karen Layson** (6304)

(County)

West of the northwest corner East 191<sup>st</sup> Street and Yale Avenue

L-19857 – Tony Solow (9201)

(PD 1) (CD 4)

203 South Kenosha Avenue

There were no interested parties wishing to speak.

**TMAPC Action; 8-0-0 members present:**

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

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**PLAT WAIVERS:**

Southpark Center – CO 6979-1 (9429)

(PD-17) (CD-6)

Lot 1, Block 3, east of South 118<sup>th</sup> East Avenue, south of 41<sup>st</sup> Street South

**STAFF RECOMMENDATION:**

The platting requirement was triggered by a use change in the corridor zoning district.

Staff provides the following information from TAC at their July 7, 2005 meeting:

**ZONING:**

TMAPC Staff: The plat waiver is for property zoned CO. The corridor site plan for this lot was approved as CO Z-6979-SP-1 in April 2005.

**STREETS:**

No comment.

**SEWER:**

No comment.

**WATER:**

No comment.

**STORM DRAIN:**

No comment.

**FIRE:**

No comment.

**UTILITIES:**

No comment.

Staff can recommend **APPROVAL** of the plat waiver requested because of the previously platted property and the approved corridor site plan.

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

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

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

- |  | YES | NO |
|--|-----|----|
| 4. Is right-of-way dedication required to comply with Major Street and Highway Plan?                   |     | X  |
| 5. Would restrictive covenants be required to be filed by separate instrument if the plat were waived? | X   |    |
| 6. Infrastructure requirements:  |     |    |
| a) Water   |     |    |
| i. Is a main line water extension required?  |     | X  |
| ii. Is an internal system or fire line required?   |     | X  |
| iii. Are additional easements required?  |     | X  |
| b) Sanitary Sewer  |     |    |
| i. Is a main line extension required?  |     | X  |
| ii. Is an internal system required?  |     | X  |
| iii. Are additional easements required?  |     | X  |
| c) Storm Sewer   |     |    |
| i. Is a P.F.P.I. required?   |     | X  |
| ii. Is an Overland Drainage Easement required?   |     | X  |
| iii. Is on site detention required?  |     | X  |
| iv. Are additional easements required?   |     | X  |
| 7. Floodplain  |     |    |
| a) Does the property contain a City of Tulsa (Regulatory) Floodplain?                                  |     | X  |
| b) Does the property contain a F.E.M.A. (Federal) Floodplain?  |     | X  |
| 8. Change of Access  |     |    |
| a) Are revisions to existing access locations necessary?   |     | X  |

- |     |   |   |
|-----|---|---|
| 9.  | Is the property in a P.U.D.?  | X |
|     | a) If yes, was plat recorded for the original P.U.D.  |   |
| 10. | Is this a Major Amendment to a P.U.D.?  | X |
|     | a) If yes, does the amendment make changes to the proposed physical development of the P.U.D.?  |   |
| 11. | Are mutual access easements needed to assure adequate access to the site?   | X |
| 12. | Are there existing or planned medians near the site which would necessitate additional right-of-way dedication or other special considerations? | X |

**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 **CARNES**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the plat waiver for Southpark Center per staff recommendation.

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**First Amendment to Platted Covenants of Waterstone –** (PD-26) (CD-8)  
(3383, 3283)

South of East 111<sup>th</sup> Street, east side of Riverside Parkway

**STAFF RECOMMENDATION:**

This is a request to amend the platted covenants of Waterstone to correct a scrivener's error and staff recommends **APPROVAL**.

**The applicant was not present.**

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

**TMAPC Action; 8 members present:**

On **MOTION** of **HILL**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the first amendment to platted covenants of Waterstone per staff recommendation.

**Amendment of Deed of Dedication of Tudors II – (9213)**

(PD-7) (CD-9)

Southwest corner of West 21<sup>st</sup> Street and Main Street

**STAFF RECOMMENDATION:**

This is a request to amend the deed of dedication for Tudors II in order to comply with an approved minor amendment of PUD-703 and staff recommends **APPROVAL**.

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 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the amendment of deed of dedication of Tudors II per staff recommendation.

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**CONTINUED ZONING PUBLIC HEARING:**

Application No.: Z-6994

OL to CS

Applicant: Riad Habib

(PD-18) (CD-7)

**Location:** West of northwest corner of East 61<sup>st</sup> Street and South Mingo Road

**STAFF RECOMMENDATION:**

Ms. Matthews reported that there has been a request from the applicant for a 60-day continuance.

**INTERESTED PARTIES:**

**Donna Ford**, 9212 East 60<sup>th</sup> Street, Tulsa, Oklahoma 74145, stated that she objects to the continuance to October 5, 2005. She explained that the application has already been continued for 30 days and she is wondering why it is being continued again.

Ms. Bayles asked Ms. Ford if she has read the staff recommendation for the approval of the CS zoning on the east 276 feet and the balance of the tract to remain OL. In response, Ms. Ford answered affirmatively.

Ms. Bayles explained without the applicant being present it would be difficult to hear this case. She further explained that the continuance would allow the applicant time to reconsider the staff recommendation, as well as, the concern for the neighbors surrounding the subject area. The Planning Commission, as a matter of courtesy, accepts a continuance request by either the applicant or the interested parties.

Ms. Ford stated that she understood that the last continuance was to give the applicant time to determine if he wanted go with the straight zoning or to change it or withdraw it.

Ms. Bayles stated that the letter from the applicant indicates that he had to travel overseas and he would like the extension to reconsider all of his options properly.

Ms. Ford stated that she assumed that the previous continuance would bring this to a decision today.

**TMAPC Action; 8 members present:**

On **MOTION** of **HILL**, TMAPC voted **8-0-0** (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **CONTINUE** Z-6994 to October 5, 2005.

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**Application No.: PUD-268-C-1**

**MINOR AMENDMENT**

**Applicant:** Mike Lester

(PD-18) (CD-8)

**Location:** West of southwest corner of East 91<sup>st</sup> Street South and South Mingo Road

**STAFF RECOMMENDATION:**

This proposed minor amendment is to allow a wrought iron fence along the south boundary of the site instead of the PUD-mandated screening wall or fence with brick columns, in order to discourage neighborhood and other youths from hiding behind the wall or fence. All other conditions of PUD-268-C shall remain in place. The ordinance requires a solid screening mechanism to protect adjacent residential land uses. A wrought iron fence, unless heavily augmented with landscaping, will not fulfill that requirement. However, a wrought iron fence with dense landscaping will allow persons to hide behind it, as would a solid screening fence. Staff believes this is an issue the TMAPC should consider. Staff can support the request for wrought iron fencing in lieu of a solid wall or fence only if the residents adjacent to it are in agreement with it.



Staff can support this proposal, if tangible evidence from the adjacent residential land owners is presented indicating that they agree this will have no adverse effects on the neighborhood. With this condition, staff recommends **APPROVAL** of PUD-268-C-1. If no such evidence is presented, staff recommends **DENIAL**.

**Applicant's Comments:**

**Dave Sanders**, 1502 South 66<sup>th</sup> East Avenue, Bixby, Oklahoma 74008, representing Mike Lester, stated that he agrees with the staff recommendation regarding the fence, but he had also asked for a change in the building setbacks. He explained that on the east and west he had requested a reduction in the setbacks and he doesn't see this in the staff recommendation.

**TMAPC COMMENTS:**

Mr. Ard asked staff to restate the setbacks because it is not defined in the packet.

Ms. Matthews stated that they are requesting a reduction in the minimum building setback from 30 feet to 13 feet on the west boundary and reducing the minimum setback from 30 feet to 24 feet on the east boundary, which abuts the residential. She indicated that staff would be in agreement with this request.

Mr. Ard asked if there was any reason why the setback requests were not in the formal staff recommendation as it normally would be. Ms. Matthews stated that she believes that the only conversation he had with the applicant dealt with the fence.

**Mike Lester**, 3800 South Yellow Pine, Broken Arrow, 74012, stated that he researched the tax records of all of the five adjoining property owners and sent them letters with his proposal. He explained that he sent self-addressed envelopes with his letters for their response and included his office phone number and cell phone number. He indicated that he received one letter back from the property owner on the west property line on the south end.

Mr. Lester indicated that he has worked closely with the neighborhood during the development and particularly with the property owners who adjoin the subject property. It was the adjoining property owner's recommendation that there be a wrought iron fence installed to prevent kids from hiding behind a solid screening fence.

Mr. Boulden expressed concern with regard to the Open Meeting Act due to the setback requests not being addressed in the agenda nor the staff recommendation. He suggested that the setback issue would have to be properly posted on the agenda.

Ms. Bayles asked if this item should be continued for readvertising. In response, Mr. Carnes stated that the fence could be voted on today because it is advertised.

Mr. Lester stated that he needs both requests to proceed and it doesn't matter if the it is continued for readvertising if the Planning Commission would rather handle both requests together at a later date.

Mr. Alberty explained that there was a typed request on the application and then a handwritten request. When the person advertised it they only picked up the handwritten portion of the request. The typed portion was not advertised and therefore, the Planning Commission can act on the screening fence today and then staff will have to advertise the request for the setbacks.

Mr. Harmon stated that staff has only received one letter from subject area regarding the fence. He asked staff if the one letter is enough to allow this application to move forward and considering silence as consent. In response, Ms. Matthews stated that it is her position that silence is consent. She explained that the Planning Commission has taken this same stand with rezoning issues. Ms. Matthews stated that she doesn't know what else the applicant could do to attempt to contact the neighbors and he can't make them sign. Mr. Harmon stated that it is true that the applicant can't make them sign the letter and that is why he has had a problem with this recommendation. He suggested that the staff recommendation should either recommend it for approval or denial. Ms. Matthews stated that an applicant could represent anything, but staff wanted tangible evidence that the neighborhood wanted this change or otherwise go with the letter of the law and the ordinance states a solid screening fence.

Mr. Lester explained that he discussed this proposal with the neighbors and they wanted to keep car traffic away from their fence as possible and that is the reason the parking is in front of the building rather than moving the buildings down and putting the parking on the west side of the building.

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the minor amendment to allow a wrought iron fence along the south boundary of the site per staff recommendation.

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**Application No.:** Z-6987

**RS-2 to OL**

**Applicant:** Jeffrey Levinson

(PD-6) (CD-9)

**Location:** East of the northeast corner of East 45<sup>th</sup> Street South and South Harvard (3311 East 45<sup>th</sup> Street South)

**STAFF RECOMMENDATION:**

**6988 May 2005:** A request to rezone the adjoining lot to the east, requesting to rezone the property from RS-1 to OL was denied.

**Z-6906/PUD-690 October 2003:** A recommendation to approve a request to rezone a 1.5 acre tract located south and east of the southeast corner of East 41<sup>st</sup> Street South and South Harvard from RM-2 to CS with a PUD for the development of a Wal-Mart Neighborhood Market. City Council denied the request.

**PUD-642 January 2000:** All concurred in approval of a Planned Unit Development for a proposed office park development. The property is located north of the subject tract and south of the southeast corner of East 41<sup>st</sup> Street and South Harvard Avenue.

**Z-6532 May 1996:** All concurred in approval of a request to rezone the lot located on the southwest corner of East 45<sup>th</sup> Street South and South Harvard Avenue from RS-1 to OL.

PUD-351-A October 1989: A major amendment was approved to permit a drive-in banking facility, and on property located north of the northeast corner of East 45<sup>th</sup> Street and South Harvard Avenue and abutting the subject property.

**Z-5920/PUD-351 May 1984:** Approval was granted to rezone a small 62' x 100' tract located on the southeast corner of a larger one acre parcel located on the east side of South Harvard and north of East 45<sup>th</sup> Street from RS-1 to OL. Approval was also granted for the requested PUD on the one acre tract which included this small parcel. The PUD proposed office development and to exceed the one-store limitation in the OL zoned district. The PUD was approved subject to conditions regarding the second story windows that faced residential homes.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is located adjacent to a mixed commercial/office strip that largely fronts Harvard Avenue, zoned OL to the west; PUD-351 to the north; and to a stable single-family residential neighborhood to the east. It contains a single-family residential use.

**STREETS:**

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
South Harvard Avenue	Secondary arterial	100'	4 lanes
East 45 <sup>th</sup> Street South	Residential	60'	2 lanes

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

**SURROUNDING AREA:** The site abuts mixed office/commercial uses to the west, zoned OL; single-family residential uses on the south and east, zoned RS-1 and mixed office/commercial uses on the north and northwest, zoned PUD-351.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 6 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this property as Low Intensity-No Specific land use. According to the Zoning Matrix, the requested OL **may be found** in accord with the Comprehensive Plan.

**STAFF RECOMMENDATION:**

Staff cannot support the requested OL zoning, based on the fact that this property abuts single-family residential uses on the east and is across the street from/faces single-family residential uses. Although this case is accompanied by a PUD, the fact remains that the property abuts and fronts existing residential uses within a stable single-family neighborhood. Staff recommends **DENIAL** of OL zoning for Z-6987.

**RELATED:**

**Application No.:** PUD-720

**RS-3 to OL/PUD**

**Applicant:** Jeffrey Levinson

(PD-6) (CD-9)

**Location:** 3311 East 45<sup>th</sup> Street

**STAFF RECOMMENDATION:**

This application is to allow an office building east of the northeast corner of East 45<sup>th</sup> Street South and South Harvard Avenue. An existing single-family house (vacant and in poor condition) is on the lot and is to be renovated and reused as the office building under terms of this PUD. An accompanying rezoning request from RS-1 to OL (Z-6987) has been submitted and should be considered in tandem with this PUD. The property abuts office uses on the west, north and southwest. It fronts single-family residential uses on the south and abuts a single-family residential use (the subject of an earlier rezoning request) on the

east (both RS-1). Principal access is to be from East 45<sup>th</sup> Street, a residential street. Development standards are to be in accord with OL standards of the Zoning Code.

For many years the Planning Commission and City have held the zoning line at the frontage properties along Harvard in this area. Even with a PUD, this proposed rezoning appears to have potential injurious effects on adjacent properties to the south and east and set a precedent for further intrusions into this stable residential area. Staff therefore cannot support the request and recommends **DENIAL** of PUD-720 and the accompanying Z-6987. Should the TMAPC deem it appropriate to approve both applications, staff recommends a continuance of the PUD to allow the staff to recommend appropriate conditions.

**TMAPC COMMENTS:**

Mr. Harmon asked if anything has changed from the original application. In response, Ms. Matthews stated that the applicant has applied for a PUD and given more detail.

Mr. Ard stated that he had ex parte communication with the applicant in this case.

**Applicant's Comments:**

**Jeffrey Levinson**, 9308 South Toledo Avenue, Tulsa, Oklahoma 74136, representing R.D. Bryant Investments, Inc. stated that currently there is a vacant home on the subject property, which is un-inhabitable.

Mr. Levinson described the size of the house and lot. He further described the history of the actions requested in the subject area. Mr. Levinson cited the various uses within the subject area facing Harvard. He pointed out the zoning line for OL and RS-1 in the subject area.

Mr. Levinson stated that his client would like to use the subject property for his appraisal business (office use, 1,900 SF, one story). He explained that his client would use the existing house after it is renovated. The PUD has eliminated any chance that another building or another type of structure that may not be harmonious to the neighborhood from happening. He explained that the PUD would be restricted to office use. The parking spaces (six or eight spaces) will face Harvard and not into the neighborhood. He doesn't believe that the parking and the use of the existing home will have a negative impact on the subject area.

Mr. Levinson stated that his client is present today and he has had contact with his neighbors. He commented that most of the neighbors that they have talked with are in favor of this proposal.

**TMAPC COMMENTS:**

Mr. Ard stated that there is no verbiage in the packet relating to using the exact footprint and parking facing Harvard. If this PUD is allowed eh asked if the verbiage should include that the same footprint for the single-story house has to be used, unless it comes back before the Planning Commission. Ms. Matthews stated that under the OL zoning the building would have to remain one story.

Mr. Bernard asked about the screening next to the residential neighbors.

Mr. Levinson stated that the PUD would incorporate all of the Code requirements. He indicated his willingness to address language or restrictions that the Planning Commission felt was needed.

**R.D. Bryant**, 2664 East 37<sup>th</sup> Street, Tulsa, Oklahoma 74105, owner of the subject property, stated that he purchased the property for his office. Mr. Bryant submitted photographs (Exhibit A-2) of properties within the subject area that have converted homes into office buildings and offices along Harvard adjacent to the subject property. He cited that the past has established that the (corridor) subject area is for office use. He pointed out office uses in the subject area that do not have access directly onto Harvard.

Mr. Bryant stated that after talking with staff and the Planning Commission members, it was determined that a PUD should be filed with the zoning case. He reiterated that he intends to use the existing home for his office and place the parking facing Harvard, along with landscaping and fencing as required by the Zoning Code. His office would continue to look like a home and meet with the corridor by the use of an office.

**TMAPC COMMENTS:**

Mr. Ard asked Mr. Bryant how long he has owned the property. In response, Mr. Bryant stated that he has owned the property five months. He asked Mr. Bryant if the subject property was rental property previously. Mr. Bryant stated that the previous owner passed away or was placed in a nursing home. Mr. Bryant further stated that the previous owner's son lived in the home last and then left and the house was vacant when he purchased the home.

Mr. Ard asked if the property to the east is still vacant. Mr. Bryant stated that the property to the east has been vacant for over two years. He commented that the only time there was a contract on the vacant house it was with a pending contract, but once the rezoning failed the contract was dropped.

**INTERESTED PARTIES:**

**Kathy Bocharadt**, 3331 East 45<sup>th</sup> Street, Tulsa, Oklahoma 74135, stated that she is the fourth lot from Harvard with a full acre lot. The first three lots from Harvard sold off half of their lots for the office adjacent to them. Ms. Bocharadt cited the history of the neighborhood with regard to past and present owners of property in the immediate area.

Ms. Bocharadt expressed concerns that Mr. Bryant wouldn't stay as the tenant and sell or lease the property for any type of use that would be allowed in OL zoning. She believes that this proposal would ruin her joy and use of her property and that of surrounding property owners. Ms. Bocharadt expressed concerns with the drainage problems in the subject area.

Ms. Bocharadt stated that this application is largely opposed in the neighborhood. She concluded by requesting the Planning Commission to deny this application.

Ms. Bayles asked Ms. Bocharadt to submit the letters she has collected from the neighbors opposing this application. In response, Ms. Bocharadt stated that she fully intends to submit the letters to be made part of the record, but she would like to read the letters first (Exhibit A-3).

**Steve Novick**, 3843 South Florence Place, Tulsa, Oklahoma 74105, representing Ranch Acres Neighborhood, stated that he supports the staff's recommendation for denial. He commented that the properties along Harvard that have been rezoned to OL actually face Harvard and the subject property actually faces 45<sup>th</sup> Street with access through 45<sup>th</sup> Street, which requires going into the neighborhood. This proposal would set a new precedent if approved. The PUD doesn't do anything for this application.

Mr. Ard asked Mr. Novick if he viewed the photographs that Mr. Bryant submitted and it appears to have two office buildings with entry off of 46<sup>th</sup> Street and no Harvard frontage. In response, Mr. Novick stated that he believes the offices that are on 46<sup>th</sup> Street are a part of another PUD. He commented that he can't tell from the pictures submitted by Mr. Bryant how these properties are situated in relation to Harvard Avenue or to each other. To take a single piece of residential property and try to say that this is a PUD was not the intended purpose for PUDs. This is a bastardization of the PUD concept.

**Steve Sembritzky**, 4525 South Jamestown, Tulsa, Oklahoma 74135, stated that when one purchased a home for a residence, for most families the residence becomes their largest financial investment. One buys a home knowing what the zoning is and where the lines are drawn. The applicant wants to change the zoning and there is no compelling reason to change it. There are plenty of locations for his office where it is currently zoned for office. He suggested that the applicant office out of his own home or go to an established office location. The applicant shouldn't have an investment that is at the expense of all of the

neighbors. He expressed concerns with this application causing a domino effect into the neighborhood.

Mr. Sembritzky stated that the photographs submitted by Mr. Bryant (Exhibit A-2) indicate that there are offices in homes, but no residence would have a parking lot as depicted in the photographs and makes it look like a commercial property. Although the pictures do show an improvement in the homes prior to their renovation, it could change at any time if a new owner moves in. Mr. Sembritzky stated that the interest of the applicant should not outweigh the neighborhood interest.

**Linda Schafer**, 3312 East 45<sup>th</sup>, Tulsa, Oklahoma 74135, stated that she lives across the street from the subject property and has lived there since 1992. She commented that her neighbor to the east of her didn't come to today's hearing because he felt that the application would be an improvement. She indicated that many of the neighbors feel that this application would be compatible and that is why they didn't come to the meeting today.

Ms. Schafer stated that she is in favor of this application and it will improve the neighborhood. The subject house has been vacant for many years, as has the house to the east. On the east side of Harvard there are three offices that face 46<sup>th</sup> Street that are commercial use. She doesn't believe this application would harm her property or her neighbors' properties. Ms. Schafer concluded by stating that she has never experienced any drainage problems and is unaware of any drainage problems in the immediate vicinity.

Ms. Bayles asked how part of Ms. Schafer's property became zoned OL. In response, Ms. Matthews stated that it happened during the zoning patterns which happened 1970 or before.

Ms. Bayles asked if in 1970 the City of Tulsa was already considering this area an OL district. In response, Ms. Matthews stated that some of the zoning patterns were already in place in 1970.

**Bob Dennis**, 4367 South Jamestown, Tulsa, Oklahoma 74135, stated that he is opposed to this application and believes the subject area should be kept residential. He commented that Mr. Bryant has cleaned up the subject property; however, it is still residential property. He doesn't agree with the zoning changes on 46<sup>th</sup> Street and wouldn't want this to happen to his neighborhood. The owner to the east of Mr. Bryant intends to watch this application and come back to ask for the same thing if this application is successful. He requested that the line for residential be held and maintain the neighborhood as residential.



**Applicant's Rebuttal:**

Mr. Levinson stated that the PUD restricts this use to Use Unit 11 for offices. It can only be an office. Two stories are not allowed and the client doesn't want two stories. He would be willing to add this to the PUD language. Ms. Bochardt sent out letters and only received two responses. He suggested that at the last meeting there were several people attending and today there are very few because they do not care about the rezoning and PUD.

Mr. Levinson stated that Mr. Bryant spoke to several people in the Ranch Acres neighborhood and they indicated that Mr. Novick doesn't speak for them. He doesn't agree with the claims of Mr. Novick that this is a bastardization of the PUD. He believes that this is exactly what the PUD is for because it will protect the neighborhood by using the existing house with the existing architecture and limiting the use. He requested that the drainage issues will be handled by the City of Tulsa. He is sorry that people have had problems in the past, but the subject property has nothing to do with those issues.

Mr. Levinson reiterated that his client's intent is to use the existing house with a small parking lot, which would access from Harvard. If the Planning Commission would like to add language to the PUD, he would be agreeable.

Ms. Bochardt asked to speak again.

Ms. Bayles informed her that someone from the Planning Commission would have to recognize her. She commented that in her opinion she believes that the Planning Commission has heard sufficient information to make a decision.

Ms. Bochardt stated that the Planning Commission has wrong information from Mr. Levinson and she would like to correct it.

Ms. Bayles stated that no one has taken an oath and if someone is willing to recognize Ms. Bochardt then the Planning Commission will hear from her again.

**Mr. Harmon recognized Ms. Bochardt.**

Ms. Bochardt stated that she didn't send out blanket-formed letters, but she did write letters to Doug Powers and Linda Schafer. She commented that she didn't send letters to Amber Munoz and Lorena Sublet. For Mr. Levinson to make suppositions is in violation of his code as an attorney. The City will not benefit by the rezoning with regard to taxes.

**TMAPC COMMENTS:**

Mr. Harmon stated that this is one of those applications that are borderline situations to approve or not to approve. The entrance into a neighborhood establishes the tone as to what happens in that neighborhood. Even though this line is irregular, he doesn't think it should be the deciding factor. This is

residential property and it appears to be residential property. He would be in favor of supporting the denial as staff has recommended.

Mr. Harmon made a motion to deny Z-6987/PUD-720.

Mr. Ard stated that he understands and agrees with Mr. Harmon; however, in this case he has been down the street several times and those two houses have been vacant for a while. He understands value and he would say that Mr. Bryant's reconstruction or renovation of the subject house is going to do more good than it would do harm to the neighborhood. The house adjacent to the east of the subject property has been vacant for a longer period of time. He believes that the reuse in the proposed PUD is a good use of the subject property considering what is going on next door and considering the state the subject property has been in for quite some time.

Mr. Carnes stated that he travels this neighborhood and it wasn't by accident that the other properties were cleaned up because it was done through the PUD process. This application is not OL, but rather OL under a PUD, which means that the applicant can't add any more rooms and they have to do landscaping. This PUD, in his opinion, would clean the neighborhood up and take the vacant house away.

Ms. Bayles stated that she agrees with Mr. Harmon to deny this application. She understands the concerns of Mr. Carnes and Mr. Ard, but 45<sup>th</sup> Street is the first entrance into the subject neighborhood south of 41<sup>st</sup> Street.

**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted **5-3-0** (Bayles, Bernard, Cantees, Harmon, Horner "aye"; Ard, Carnes, Hill "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to recommend **DENIAL** of the OL zoning for Z-6987 per staff recommendation.

**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted **5-3-0** (Bayles, Bernard, Cantees, Harmon, Horner "aye"; Ard, Carnes, Hill "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to recommend **DENIAL** of PUD-720 per staff recommendation.

\* \* \* \* \*

## ZONING PUBLIC HEARING

Application No.: Z-6998

RM-2 TO IL

**Applicant:** Tulsa Engineering & Planning (PD-16) (CD-6)

**Location:** South and west of southwest corner of East Pine and Highway 169

### STAFF RECOMMENDATION:

**Z-6789 November 2000:** Approval was granted on a request to rezone the subject property from IL to RM-2 for multifamily uses with the intended use by students from Spartan School of Aeronautics.

**Z-6687 June 1999:** All concurred in approval of a request to rezone a 4.5-acre tract located south of the southwest corner of East Pine Street and North Garnett Road from RS-3 to IL.

**Z-6651 October 1998:** A request to rezone a 4.5-acre tract located south of the southwest corner of East Pine Street and North Garnett Road from RS-3 to IL was approved.

**Z-6583 March 1997:** All concurred in approval of a request to rezone a tract of land located east of the southeast corner of East Pine Street and North Garnett Road from RS-3 to IL for light industrial uses.

### AREA DESCRIPTION:

**SITE ANALYSIS:** The subject property is approximately 38 acres in size and is located west of the southwest corner of East Pine Street and U. S. Highway 169. The property is flat, non-wooded, vacant, and zoned RM-2. It is located between the Mingo Valley Expressway and the Mingo Creek drainage-way.

### STREETS:

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
East Pine Street North	100'	100'	2 lanes

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

### SURROUNDING AREA:

The subject property is located adjacent to industrial uses to the north and east, zoned IL; to the south by vacant property, zoned IL; and to the west by the Mingo Creek drainage-way, zoned IL. Farther west across the creek are two mobile home parks.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 16 Detail Plan designates this property Special District 1 – Tulsa International Airport and related uses. Plan policies call for this to be a high-intensity special district (Section 3.1) and for future development to be in accord with the adopted noise study for the airport. Staff notes that as a general rule, industrial uses are compatible with airport uses. The requested IL zoning **may be found** in accord with the District 6 Plan, by virtue of its location within a special district.

**STAFF RECOMMENDATION:**

Based on the Comprehensive Plan and existing nearby land uses, staff can support the requested IL zoning and recommends **APPROVAL** of Z-6998.

**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** (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to recommend **APPROVAL** the IL zoning for Z-6998 per staff recommendation.

**Legal Description for Z-6998:**

A tract of land located in the E/2, NW/4 of Section 31, T-20-N, R-14-E of the IBM, Tulsa County, State of Oklahoma, according to the official U. S. Government survey thereof, being more particularly described as follows: Commencing from the north quarter corner of Section 31; thence S 89°59'37" W along the north line of the NW/4 of Section 31 a distance of 50.00'; Thence S 00°07'43" W along a line that is 50.00' measured perpendicular to the east line of the NW/4 of Section 31 a distance of 50.00' to the Point of Beginning; thence continuing S 00°07'43" W along a line that is 50.00' measured perpendicular to the east line of the NW/4 of Section 31 also being the west line of Braniff Park West II, an addition to the City of Tulsa, Tulsa County, State of Oklahoma, according to the official recorded plat thereof, a distance of 1,340.61' to the west line of Braniff Park West II; thence S 89°59'36" W along the west line of Braniff Park West II a distance of 80.81' to the corner of Braniff Park West II; thence S 00°07'43" W along the west line of Braniff Park West II a distance of 512.81' to the corner of Braniff Park West II thence N 89°59'46" E along the west line of Braniff Park West II a distance of 130.81' to the corner of Braniff Park West II also being of the east line of the NW/4 of Section 31; thence S 00°07'43" W along the west line of Braniff Park West II and along the east line of the NW/4 of Section 31 a distance of 137.08' to the most southerly corner of Braniff Park West II also being on the westerly right-of-way of Mingo Valley Expressway, U. S. Highway 169; thence S 16°57'15" W along the westerly right-of-way of Mingo Valley Expressway a distance of 201.10' to a point that is 407.55' measured perpendicular to the south

line of the NW/4 of Section 31; thence S 89°58'57" W along a line that is 407.55' measured perpendicular to the south line of the NW/4 of Section 31 a distance of 861.65' to a point that is 400.00' measured perpendicular to the west line of the E/2 of the NW/4 of Section 31; thence N 00°08'21" E along a line that is 400.00' measured perpendicular to the west line of the E/2 of the NW/4 of Section 31 a distance of 983.94' to a tangent curve to the right; thence along a tangent curve to the right with a central angle of 24°15'17", a radius of 800.00', and an arc length of 338.66'; thence N 24°23'38" E a distance of 286.04' to the south line of the NW/4 of the NE/4 of the NW/4 of Section 31; thence N 89°59'27" E along the south line of NW/4 of the NE/4 of the NW/4 of Section 31 a distance of 71.66' to the southeast corner of the NW/4 of the NE/4 of the NW/4 of Section 31; thence N 00°08'02" E along the east line of the NW/4 of the NE/4 of the NW/4 of Section 31 a distance of 310.13'; thence N 14°10'09" E a distance of 309.42' to a point that is 50.00' south and measured perpendicular to the north line of the NW/4 of Section 31; thence N 89°59'37" E along a line that is 50.00' measured perpendicular to the north line of the NW/4 of Section 31 a distance of 534.69' to the Point of Beginning; containing 38.0354 acres, and located south and west of the southwest corner of East Pine Street North and Highway 169 North, Tulsa, Oklahoma, **From RM-2 (Residential Multifamily Medium Density District) To IL (Industrial Light District).**

\* \* \* \* \*

**Application No.: PUD-600-A-4**

**MINOR AMENDMENT**

**Applicant:** Jeffrey Levinson

(PD-18) (CD-8)

**Location:** West of southwest corner of East 91<sup>st</sup> Street and South Yale

**STAFF RECOMMENDATION:**

This application is a request to eliminate required landscaping area, access drive setback and parking setback on the south side of Lot 7, Block 3 of Ashton Creek Office Park. The subject property lies north of and abuts Lot 1, Block 1 and Reserve Area D of the residential development The Village at Ashton Creek. Lot 1, Block 1 was originally to be a residential lot but has since been made the site of a swimming pool and community center through a minor amendment to the Village plat. Therefore, the proposed office development on Lot 7, Block 3 will not abut a single-family residential use but rather a pool and community center. The applicant has requested adding text language to the PUD to reflect the eliminations of landscaping area, access drive setback and parking setback on the south side of the subject property.

Staff can support this request, finding that land use changes on the adjacent property to the south have eliminated the need for the required landscaping and

setbacks, and the proposed changes appear to be in keeping with the spirit and intent of the PUD. Therefore, staff recommends **APPROVAL** of PUD-600-A-4.

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 **CARNES**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the minor amendment for PUD-600-A-4 per staff recommendation.

\* \* \* \* \*

**Application No.: PUD-681-4**

**MINOR AMENDMENT**

**Applicant:** Tanner Consultants/Ricky Jones (PD-26) (CD-8)

**Location:** South and east of South Louisville and East 111<sup>th</sup> Street

**STAFF RECOMMENDATION:**

This is an application to reduce the required 35' building setback line to 30' and reduce the required 15' side yard setback to 10' for the Estates of Waterstone. The underlying zoning is RS-1, which requires a 35' front yard setback and a 10'5' side yard setback. Previously approved minor amendments have permitted the conversion of a stub street to a cul-de-sac, an increase in allowed number of lots from 15 to 17 and reduction of the side yard setbacks on perimeter lots from 25' to 17.5'.

The current request is due to a scrivener's error on the subdivision plat, which specified a 30' building setback line rather than a 35' setback. Several homes in the PUD have been built to this specification. Reduction in the side yard setbacks is requested to respond to market conditions (preference for smaller lots).

While staff is reluctant to recommend approval of the reduced building setbacks after the fact, the request for this reduction and for reduced side yard setbacks appear to be minor in nature and in keeping with the spirit and intent of the PUD. The total allowed number of units remains the same (17) and no other PUD requirements are affected. Therefore, staff recommends **APPROVAL** of PUD-681-4.

The applicant indicated his agreement with staff's recommendation.

**TMAPC COMMENTS:**

Mr. Ard asked if the scrivener's error was relating to the side yard. In response, Ms. Matthews stated that this is in relation to the front yard setback. The plat indicates 30 feet and it should have been 35 feet. Mr. Ard asked if the actual number of lots will change. In response, Ms. Matthews stated that staff can support this amendment knowing that the number of lots will not change (17 lots).

Mr. Ard asked why the side yard setbacks need to be reduced. In response, Ms. Matthews stated that she will defer to Mr. Jones.

**Applicant's Comments:**

**Ricky Jones**, Tanner Consulting, 5323 South Lewis Avenue, Tulsa, Oklahoma 74105, representing Mr. Bob David, stated the developer voluntarily installed wider side yard requirements than the underlying zoning allowed. There is severe topography in the subject area and the reason for the reduced side yards is to accommodate the larger houses the developers want to construct, which would be the typical RS-1 underlying zoning or the RS-2 underlying zoning requirement.

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

**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the minor amendment for PUD-681-4 per staff recommendation.

\* \* \* \* \*

**Application No.:** PUD-405-I-3

**MINOR AMENDMENT**

**Applicant:** John W. Moody

(PD-18) (CD-8)

**Location:** South and west of southwest corner of East 92<sup>nd</sup> Street and South 78<sup>th</sup> East Avenue

**STAFF RECOMMENDATION:**

The application for a major amendment to permit the automobile paint and body shop was approved by the City Council on March 29, 2001, with conditions. One of those conditions was a "six-foot high or higher screening wall or fence shall be provided as shown on the site plan". The owner erected a fence with metal slats which is specifically not permitted by the Zoning Code or detailed on his site plan approval. He has resisted attempts by Neighborhood Inspections to enforce this

provision. Also a detail elevation was approved, which did not include the large exhaust vents on the roof. These vents were installed during the construction when he was told the roof units were not approved and they would have to be screened. He has resisted screening to this point. This application is seeking relief of those requirements.

This is an application to request amendment of the requirement that all properties on the north, west and south sides of the building be screened by a solid screening fence. The applicant proposes to erect a solid metal screening fence of the same color and material as the principal building, six feet in height and screening the north and northwestern corners of the site. The fence is to screen areas in which damaged vehicles are stored. The applicant cites the fact that the property to the south is zoned for a new or used car sales lot as rationale for not requiring screening of undamaged vehicles on applicant's lot.

The applicant further proposes to paint the exhaust vents on top of the building the same color as the principal building and to screen them with a five-foot high solid wall in front of the vents and on the southeast corner, rather than having the vents totally enclosed.

Staff cannot support the requests as presented. No sufficient reason has been demonstrated to eliminate the required screening on either the south property line or total screening of the rooftop exhaust vents. Therefore, staff recommends **DENIAL** of PUD-405-I-3.

**TMAPC COMMENTS:**

Mr. Harmon asked how much time is given to the applicant to correct the insufficiencies. This problem has been going on for more than four years.

**Applicant's Comments:**

**John W. Moody**, 1800 South Baltimore, Suite 900, Tulsa, Oklahoma 74119, stated that he thought the materials he submitted to staff were self-explanatory. He explained that the screening fence will screen all areas where damaged vehicles are stored. All damaged vehicles will be stored inside the building or behind the solid screening fence.

Mr. Moody stated that his client previously was granted a waiver of the screening fence on the west side of the property due to the heavily-wooded reserve area and there is no residential abutting to the property. Mr. Myers erected a fence, which does not meet the requirements or standards for a solid screening fence. His client is proposing a solid metal fence to replace the slatted fence. The adjacent credit union has submitted a letter stating that they have no problem with the existing fence. The solid fence would be made of the same material the building is made of and painted the same color as the building. Mr. Moody stated that his client stores damaged vehicles behind the north part of building, which



would be screened with the solid screening fence. The adjacent credit union abuts the subject property on the north and is the only abutting property owner.

Mr. Moody requested a modification for the screening requirement on the balance of the property (southeast line) based on the following conditions: that there not be any damaged vehicles stored in this area and it would be used for parking of normal automobiles. The reason for this request is that the adjacent property is owned by South Pointe Chevrolet, which the auto dealer purchased to build a Hummer dealership. However, the auto dealer has decided to not build the Hummer dealership and intends to use the vacant land for automotive-related uses in the future. In any event, there is no necessity for a screening requirement on the south side because cars would be parked there. He suggested that there could be a condition or stipulation that there not be any damaged vehicles parked there. All damaged vehicles have to be parked inside the building or behind a solid screening fence.

Mr. Moody submitted photographs (Exhibit A-3) of the exhaust vents and stacks that staff is recommending be screened. His client didn't want to erect a solid screening fence completely around the equipment because from the south side no one would see it, which is why the Planning Commission granted a waiver on the ground solid screening fence requirement. There is nothing to see except trees and a drainage area. It is a reserve area and will never be developed. His client requests erecting a screening fence around the roof equipment at six feet in height and the only thing that would be visible would be the tops of the stacks, which is like a chimney that one would see on most buildings. The proposal is to screen the roof equipment on the east side (visible from the street) and the south side (visible from future used car lot). He indicated that the roof equipment doesn't need screening from the north side because the building is higher than the stacks and acts as screening and would not be visible by anyone. In order to erect a screening fence to completely screen the roof equipment his client would have to have a 12-foot high screening wall and would require trusses and so forth. This would require more support to handle the wind-load factors by having this type of screening and it wouldn't accomplish any real purpose that the Planning Commission is normally interested in. He concluded that he believes this proposal would be compatible with the subject area.

**TMAPC COMMENTS:**

Mr. Bernard asked Mr. Moody if he indicated that there was another business in the subject area without a screening wall around their roof equipment. In response, Mr. Moody stated that there is a body shop that has been erected north of the subject property, which has unscreened vents. Mr. Moody further stated that he believes that providing a six-foot high screening wall for the roof equipment would be sufficient for anyone viewing the building from the ground. A higher screening wall creates some degree of difficulty because of the wind-load. If this subject property was adjacent to a residential property, then he would agree with the 12 feet in height screening wall for the roof equipment, but it

is not the case. The subject area is vehicle-oriented and he doesn't see the need to screen with the 12 feet wall.

Mr. Carnes stated that he agrees with Mr. Moody with regard to the screening on the roof because of the south winds, which could cause a safety factor.

Mr. Harmon stated that a screening fence does require some investment, but it is not an onerous burden. He asked Mr. Moody why his client has resisted this for a long period of time. In response, Mr. Moody stated that he doesn't know. Mr. Moody indicated that he informed his client that he had a screening fence requirement and his client indicated that the business that installed the screening fence informed him that the existing slats would be all right. Mr. Moody stated that he informed his client that he has to install a solid surface screening fence and remove the slats. He is not requesting a waiver of the solid screening fence, but merely a modification to apply the screening fence to only where the damaged vehicles will be stored. The area he is requesting a waiver of the screening is where one can see over 2,000 cars parked on lots that are not screened because they are car dealerships.

Ms. Hill asked if a professional company will be installing the proposed fence. In response, Mr. Moody stated that he will inform his client that the screening fence has to be installed by a professional fencing company.

Ms. Hill commented that two wrongs do not make a right and the excuse that another body shop hasn't screened their roof equipment doesn't give the applicant the right to ignore a PUD requirement for screening. The Planning Commission is addressing Mr. Myer's situation today and not the other surrounding properties. She expressed fears of Mr. Myer installing his own fence with pieces of metal stuck against the existing fence.

Mr. Boulden asked Mr. Moody if there are any criminal citations pending for this applicant. In response, Mr. Moody stated that his client was given his warning and was requested to obtain a temporary certificate of occupancy (which over a year ago his client was told that he wouldn't be approved for CO because of the screening issues). Mr. Moody indicated that he filed an application for the temporary CO and was told today that it has been approved. There are no citations at this point.

Mr. Carnes stated that the adjacent car lot could sell their vacant property and then the screening fence would be necessary. Mr. Moody stated that if his client was parking damaged vehicles on that side he would agree, but only normal car parking would be allowed on that side.

Mr. Moody summarized that his client doesn't want to have to build a solid screening fence in areas where it serves no purpose. He believes that the areas that should be screened are the areas that there might be damage vehicles. The

condition of this request is that all damaged vehicles have to be inside the building or behind a solid screening fence.

Mr. Harmon stated that there is no way of knowing that the adjacent vacant property will always have automobiles proposed to be on it. He commented that he is inclined to think that a screening fence should be put everywhere the original PUD required it.

Ms. Hill agreed with Mr. Harmon's comments.

Mr. Harmon stated that he can agree with Mr. Carnes regarding the screening wall on the roof. If the applicant would paint the smoke stacks and make them disappear as much as possible, then he would be relieved of that, but he does believe that the original PUD requirements for the ground screening fence should be enforced.

Mr. Moody stated that the vacant lot next door is a part of the PUD and all of the properties across the street have been approved for uses that are non-residential. It is possible that some other type of use could go on the vacant property, but he doesn't believe anything other than automobile use will be located there. As a practical matter, if South Pointe does choose to sell the vacant property, any likely purchaser would be dealing with automobile-related businesses all around them and the reality of protecting someone is not there and doesn't exist. Anyone purchasing the vacant land would see the body shop that is present and it wouldn't be as if they are not protected. They would be purchasing a vacant lot in an automobile and automobile accessory area. He would question that anyone would do anything on the vacant property unrelated to some type of automobile accessory use.

Ms. Bayles stated that there is no doubt that Mr. Myers has a quality facility, but the fact remains that he agreed to the conditions that were provided on March 29, 2001 with regard to the six-foot or higher screening fence or wall as provided on the site plan. She is of the opinion that she would support the denial based on that fact. She is in agreement with Mr. Carnes regarding the roof screening for the vents and stacks.

In response to Mr. Moody, Ms. Bayles stated that her concern regarding the required screening fence is not what is now, but will or may occur on the vacant property in the future. The Planning Commission has seen various changes and she is not a prophet. She would have to support the original Planning Commissions' decision that occurred before she became on this commission.

Mr. Ard stated that the applicant seems to have broken the rules from the beginning and now wants validation to continue to break the rules. As a father of two small children, he can tell you this method doesn't work very well in his house. He would agree with Ms. Bayles regarding the ground screening fence

and he understands the concerns regarding the rooftop screening being at 12 feet. He believes that having the roof screened on two sides would be adequate and he agrees that the south side of the subject property should be screened with a solid screening fence on the ground.

Mr. Alberty stated that due to the hard-nosed stand that staff has to take on this, it is had put Mr. Moody in a difficult position to represent this client; therefore, he would like to give the Planning Commission some history regarding this case. This is a real lesson of what happens when the Planning Commission starts compromising. The original PUD prohibited any body shops in all of those automobile dealerships and restricted to only sales. This is one of the first automotive developments that is outside of the core Tulsa area. The Planning Commission was very concerned about how this automobile dealership would appear and this was a modification and a major amendment to allow a stand-alone body shop outside of the automobile dealers. In so doing, the Planning Commission went against the staff recommendation and provided some alternatives, which they felt would make this more acceptable. These are the things that staff feels very strongly about and he has personally dealt with Mr. Myers for almost two years. He is a very difficult person to deal with because he feels that he is right. He indicated that he explained to Mr. Myers that he agreed to certain things and he has resisted it. He has tried everything possible to get around it. Probably, if it wasn't this set of circumstances, staff wouldn't be so hard-nosed. Mr. Myers was informed from the very beginning that he submitted a solid surface screening fence and it was on the plans that the Planning Commission approved. The elevations that he submitted didn't show the stacks and now staff is requiring him to come back and try to mitigate it. This has been a very long, laborious and exasperating process.

Ms. Hill made a motion to deny the minor amendment for PUD-405-I-3.

Mr. Carnes asked if the motion could be amended to allow the screening on the rooftop to be six feet in height.

Mr. Harmon asked how tall the stacks on the rooftop are.

Mr. Alberty stated that the way the screening fence was proposed, six feet on the east and south and the west side is screened by the building and staff can go along with this for the rooftop screening. Staff is reluctant to remove the solid screening fence (ground) on the south side of the subject property. If the applicant places a solid screening wall (ground) on the south and the north, then he would be in compliance. Rather than denying this request entirely, he believes that with the modifications the Planning Commission might reconsider. Nothing less than the original site plan called for it because it has already been modified on the west side.

**TMAPC Action; 8 members present:**

On amended **MOTION** of **HILL**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **DENY** the minor amendment for PUD-405-I-3 as requested and to **APPROVE** the minor amendment for PUD-405-I-3 with the following modifications: Rooftop screening of stacks and vents shall have a six-foot solid screening surface on the east and south sides and the vents and stacks are to be painted the same color as the building; the solid screening surface/wall on the ground shall comply with the original PUD requirements, which includes solid surface screening on the north and south sides of the subject property.

Mr. Moody stated that he will make sure that his client understands the approval.

\* \* \* \* \*

**OTHER BUSINESS:**

**Application No.: PUD-370-B**

**DETAIL SITE PLAN**

**Applicant:** Keith Jones

(PD-26) (CD-8)

**Location:** East 106<sup>th</sup> Street South and South Memorial Drive

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan of an emergency crash gate, screening, landscaping and traffic and pedestrian circulation for a new office park. No buildings are proposed at this time.

**Screening:**

An 8' cedar screening fence is proposed along the west boundary in compliance with Development Standards. Development Standards also require that a six-foot high or higher screening wall or fence be erected and maintained along the south and north boundaries of the PUD that abut a residential district or development, but allow TMAPC to waive this requirement if the abutting R district is developed for office or commercial use. The property to the north remains AG and contains a rural residence. The property to the south is zoned RS-3 and OL. The residential zoned district is vacant; a bank is located in the OL district.

Emergency Access:

Because of the length of the cul-de-sac street, TMAPC required a crash gate for emergency access. This crash gate is proposed at the northwest property line, but is separated from nearby South 106<sup>th</sup> Street (in Bridle Trails) by 50' of private property. Staff recommends that an access easement be provided joining South 106<sup>th</sup> Street to the emergency access/ crash gate and that the gate design and access be approved by Traffic Engineering and the Fire Marshall in accordance with Development Standards.

Pedestrian Access and Circulation:

To accommodate pedestrian circulation per Development Standards, sidewalks must be provided on both sides of 106<sup>th</sup> Street South. These sidewalks must be noted on the office park site plan (and on subsequent individual lot site plans), but their installation will be the responsibility of individual lot owners.

Landscaping:

Proposed landscaping is in compliance with Development Standards and the Zoning Code.

Staff recommends **APPROVAL** of PUD 370-B detail site plan contingent upon (1) TMAPC approval of waiving screening requirements on the north and south boundaries of the PUD; (2) filing of an access easement joining 106<sup>th</sup> Street South (in Bridle Trails) to the emergency access/ crash gate; (3) approval of Traffic Engineering and the Fire Marshall of the proposed emergency access and crash gate design; (4) provision of sidewalks on both sides of South 106<sup>th</sup> Street with the understanding that installation of the sidewalks will be the responsibility of individual lot owners.

(Note: Detail site plan approval does not constitute detail site, landscape or sign plan approval for individual lots.)

**TMAPC COMMENTS:**

Mr. Carnes asked what the length of the cul-de-sac on the Subdivision Regulations. In response, Mr. Alberty stated that at the time of this application was processed it was 500 feet, but the Subdivision Regulations has been revised to 750 feet.

Mr. Alberty stated that the PUD was approved and under the PUD the cul-de-sac was approved. When the applicant submitted his preliminary plat the cul-de-sac length was questioned because it didn't have a second point. At that time the Planning Commission made a modification to the PUD via the plat that they would not approve the plat unless the applicant provided the second point of access through a crash gate. The problem this presents is that this cul-de-sac doesn't abut public property and only abuts private property. In order for the

crash gate to have any meaning, then the applicant will have to secure access to the public street via an access easement. Staff is stating that this is a requirement for this approval.

Mr. Carnes stated that previously the Planning Commission was concerned about neighborhoods not tying together. Now the Planning Commission has forced someone to put a street at 106<sup>th</sup> and someone does not even abut the street. The Planning Commission should remember this in the future and not let it happen again.

Mr. Alberty stated the reason this was done was because the neighborhood showed up at the meeting and didn't want the streets connected.

Mr. Carnes stated that he remembers that the neighbors didn't want the streets to connect, but that doesn't mean that the neighbors were right according to planning.

Mr. Ard asked if the cul-de-sac goes into the private area to the west of the subdivision. In response, Mr. Alberty stated that there is private property to the north and to the west. Where 106<sup>th</sup> Street stubs is to the north of the cul-de-sac and the only way the staff can interpret that the meaningful crash gate can ever be utilized is that there be some form of access easement through the private property, which is owned by Mr. Solow.

Mr. Ard asked the condition of the approval is that the applicant obtains the access easement. In response, Mr. Alberty answered affirmatively.

**Applicant's Comments:**

**John W. Moody**, 1800 South Baltimore, Suite 900, Tulsa, Oklahoma 74119, stated that Mr. Solow sold the land to the Eastern Presbyterian Church of the USA. When Mr. Solow sold this property he reserved a 50-foot handle, perhaps thinking that he would like to someday connect 106<sup>th</sup> Street. The owners of the single-family housing in Bridle Trails stated that they didn't want the streets to connect. Mr. Johnsen appeared before the Planning Commission representing Mr. Solow and stated that his client didn't want the connection. Through his attorney, Mr. Solow has publicly stated that he doesn't want a public street going through to Bridle Trails.

Mr. Moody explained that his client had no place to go and the best compromise he could do with Mr. Solow's attorney was to create a cul-de-sac with an emergency crash gate. This was done during a hearing without forethought that it would create a problem because it touches the corner of the dedicated right-of-way, but not enough for real use. He explained that he has attempted twice to contact Mr. Johnsen about granting and giving the mutual access easement; however, he has never received a returned call. He indicated that he will continue to attempt to get the mutual access easement from Mr. Solow.

However, he may have to come back to the Planning Commission if he is unable to get the mutual access easement. He commented that his client has tried to purchase the 50 feet to no avail.

Mr. Moody was hesitant to agree to a condition that is in the hands of a private property owner. The Planning Commission can't give a private individual their legislative delegated authority to withhold or approve a site plan. His client is not unwilling to try to obtain the mutual access easement, but if it is not possible, then he will have to return to the Planning Commission.

Mr. Moody stated that he is in agreement with the conditions of the staff recommendation, but there is one thing he would like to point out. All of these lots will be sold individually for offices and the individual owner will determine how the site plans will be done regarding to the building, parking and sidewalks. He agrees that there will be sidewalks and at the time a detail site plan has to be submitted for each lot by that owner the actual detail of the layout of the sidewalks will be there and they all have to connect. He wanted to make it clear that his client would not be designing the sidewalk and constructing it would be done by each individual owner.

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted 8-0-0 (Ard, Bayles, Bernard, Cantees, Carnes, Harmon, Hill, Horner "aye"; no "nays"; none "abstaining"; Dick, Jackson, Midget "absent") to **APPROVE** the detail site plan for PUD-370-B, subject to TMAPC approval of waiving screening requirements on the north and south boundaries of the PUD; (2) filing of an access easement joining 106<sup>th</sup> Street South (in Bridle Trails) to the emergency access/ crash gate; (3) approval of Traffic Engineering and the Fire Marshall of the proposed emergency access and crash gate design; (4) provision of sidewalks on both sides of South 106<sup>th</sup> Street with the understanding that installation of the sidewalks will be the responsibility of individual lot owners per staff recommendation.

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**Commissioners' Comments:**

Ms. Bayles stated that the Planning Commissioners wish Mr. Jackson a speedy recovery after this last surgery.

Ms. Bayles thanked Mr. Carnes for his comments because she believes that the Planning Commission were looking at accommodating development growth and residential concerns and not giving the weight that is sound in well-established planning principles deserve.

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There being no further business, the Chair declared the meeting adjourned at 3:39 p.m.

Date Approved:

8/17/05

James M. Byrles

Chairman

ATTEST:

Wanda M. Deane

Secretary

