

# TULSA METROPOLITAN AREA PLANNING COMMISSION

## Minutes of Meeting No. 2423

Wednesday, September 7, 2005, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

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

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, September 1, 2005 at 1:44 p.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

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

### Minutes:

#### **Approval of the minutes of August 24, 2005, Meeting No. 2422**

On **MOTION** of **CARNES** the TMAPC voted 6-0-0 (Ard, Cantees, Carnes, Hill, Horner, Jackson "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon, Midget "absent") to **APPROVE** the minutes of the meeting of August 24, 2005, Meeting No. 2422.

### **REPORTS:**

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

Ms. Matthews reported that there are some TMAPC cases on the City Council agenda for Thursday.

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Ms. Hill stated that there is one housekeeping item for a continuance:

**PRELIMINARY PLAT:**

**Riverview Park Estates** – (8329)

(PD-26) (CD-8)

South of the southeast corner of East 101<sup>st</sup> Street South and Delaware Avenue (continuance to 9/21/05 requested for further TAC review)

**STAFF RECOMMENDATION:**

Staff recommends a continuance to September 21, 2005 in order to have further TAC review.

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

**TMAPC Action; 6 members present:**

On **MOTION** of **CARNES**, TMAPC voted **6-0-0** (Ard, Cantees, Carnes, Hill, Horner, Jackson "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon, Midget "absent") to **CONTINUE** the preliminary plat for Riverview Park Estates to September 21, 2005.

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Mr. Harmon in at 1:32 p.m.

**SUBDIVISIONS:**

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

**L-19872 – Mike Marrara** (0328)

(County)

1502 North Yale

**STAFF RECOMMENDATION:**

The proposal is to split a 350' X 462' parcel into two tracts. According to the Major Street and Highway Plan (MSHP), both Pine Street and Yale Avenue are secondary arterials requiring 50' of right-of-way be given from the centerline of the street. Also, when both streets are arterials, the MSHP requires an additional eight feet of right-of-way for a distance of 388' from the intersection to be given to the public for a right-turn lane, and have a 30' radius on the corner.

The owner has agreed to deed the required 50' of right-of-way to the public; however, the owner is requesting a waiver of the Subdivision Regulations requiring an additional eight feet of right-of-way to facilitate a right-turn lane off Yale onto Pine and of the 30' radius on the corner.

Due to future intersection improvements, the Tulsa Traffic Engineering staff is not in favor of waiving the MSHP requirements.

The Technical Advisory Committee recommended denial of the waiver at their August 15, 2005, meeting. Staff would recommend **DENIAL** of the waiver of Subdivision Regulations for the eight feet of additional right-of-way and 30' radius on the corner, but would recommend **APPROVAL** of the lot-split, with the condition that all required right-of-way along Pine and Yale, according to the MSHP, be deeded to the public.

**Applicant's Comments:**

**Kevin Coutant**, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103, stated that this lot-split is regular in every other respect and is only before the Planning Commission due to the request for a waiver of the Subdivision Regulations.

Mr. Coutant described the subject property and the surrounding streets. He indicated that the dedication of the 50-foot right-of-way is no problem. The reason the waiver for the additional eight feet is critical is because the subject property is an existing improved service station and the additional eight feet has the effect of not getting into the canopy, but getting within six feet and there would not be a full driving lane on the premises for circulating around the canopy. This would also get into the corner where the existing sign is located. After checking with Traffic Engineering it was determined that this is an intersection that is not scheduled for improvements and there are no monies available for improvement or widening.

Mr. Coutant indicated that the subject intersection is four lanes in all directions currently, but several hundred yards further north it becomes a two-lane road. He believes that the additional eight feet is more than is necessary. The Subdivision Regulations do contemplate a total of 108 feet and half would be 54 feet, not 58 feet. He asked why the entire eight feet is being requested on the subject property and not from the other side, which is not developed in order to get the width necessary for the full-scale secondary to secondary type of intersection. He indicated that Traffic Engineering indicated that the full eight feet is needed from the subject property side in order to accommodate a right-turn lane. He believes that it would be reasonable and fair that the eight feet be obtained from the undeveloped side and his client is willing to dedicate the full 50 feet.

**TMAPC COMMENTS:**

Mr. Jackson asked staff to explain the eight feet of dedication and which property owner is responsible for dedicating the eight feet. In response, Ms. Chronister stated that when property is developed, either through a lot-split or through the platting process, then the applicant or owner is required to dedicate that property to the City. She commented that she believes that the remainder of the property

surrounding the subject property is platted and the right-of-way should already be dedicated.

Mr. Jackson asked if the canopy was taken into consideration as being a hardship placed upon the current property owner. In response, Ms. Chronister stated that she believes that the Technical Advisory Committee looked at the requirements on the Major Street and Highway Plan, which does require the additional eight feet for the right-turn lane.

Mr. Jackson asked if it is typically solely placed on one property owner rather than four feet from one side and four feet from the other side of the street. In response, Ms. Chronister suggested that Mr. French from Traffic Engineering should address this question.

**Darryl French**, Traffic Engineering, representing the Technical Advisory Committee, stated that the Subdivision Regulations were developed to clearly create the additional eight-foot for right turn bays in all four different quadrants, but it does not apply to both sides. There will only be two through-lanes in the opposite side, which would be the east curb of the north leg and the south-bound lane would be the right-turn bay where the additional right-of-way is required. It would be nice to be perfectly equal to every land owner, but the only purpose of the right-turn bay has to be on the right side of the through-lane. Subdivision Regulations clearly show it as not on all eight sections, but on four sections. He reiterated that the Subdivision Regulations are quite clear: 58-foot on one side for a limited distance (upstream from an intersection) and 50-foot on the opposing side for the through-lanes going away from the intersection.

Mr. Jackson asked Mr. French if TAC looked at the ingress/egress and vehicular circulation of the site in question. In response, Mr. French stated that he requested a site plan and he has never seen one, which was discussed at TAC with their representative and they did not have one available that would show their physical infrastructure on their private property.

Mr. Jackson asked Mr. French whether, if he had had the type of information requested, that criteria would have been taken into consideration. Mr. French stated that there are other ways in which they can take this into consideration. He suggested that the City can obtain the dedication and for a limited period of time in the future, it could be utilized under a licensed agreement, but the City would obtain full ownership of the right-of-way for future construction projects.

Mr. Jackson asked Mr. Coutant if he would be agreeable to a license agreement. In response, Mr. Coutant stated that a license agreement would be the only choice he would have at this point because there would be private improvements in the public right-of-way. However, license agreements are terminal at will by the City of Tulsa and the license agreement makes the property owner not a trespasser.

Mr. Jackson asked Mr. Coutant if the City of Tulsa gave him any timeframe of when the improvements may take place. In response, Mr. Coutant stated that he spoke with Mr. French and he indicated that nothing is planned in the budget currently, but there may be some planning money that is in the budget. Speculation is possibly in ten years there may be improvements for the subject intersection. Mr. Coutant commented that there is improvement needed north of the subject property before building a right-turn lane.

In response to Mr. Carnes's suggestion that Mr. Coutant and Traffic Engineering meet to discuss this issue again, Mr. Coutant stated that this has been discussed and Traffic Engineering is ambiguous and have to follow the Subdivision Regulations requirements. Mr. French stated that half of a turning lane would not serve the City of Tulsa and it is necessary to have the full traffic lane with a right-turn bay and a sidewalk on the outside. The City is very limited to additional right-of-way.

Mr. Carnes asked that the two sides meet and work out something legally that would work without the Planning Commission having to be the people making the decision. In response, Mr. French stated that he doesn't have the authority to waive the Subdivision Regulations and the Planning Commission is the only entity who does have the authority.

Mr. Boulden asked if this subject property is in the County. In response, Mr. French stated that half of the subject property is in the County and half is in the City limits. Mr. French indicated that Tom Raines, County Engineer, will dedicate the right-of-way to the public. The additional eight feet that has been requested would be in the County. Mr. Boulden stated that a license agreement wouldn't work with the City of Tulsa if the additional eight feet is in the County. Mr. French stated that the County will dedicate the right-of-way to the public and that will cover for everyone involved. Mr. Boulden stated that he believes that it would not be a license agreement with the City at this point unless it was annexed. Mr. Boulden further stated that this is an odd intersection because it is in the County, but it is a City road.

**Mr. Midget in at 1:50 p.m.**

Ms. Chronister stated that the license agreement would be with the County due to the additional eight feet being located in the County.

Mr. Harmon asked Mr. Coutant why the eight feet would be an impediment to the subject property, because it is necessary to plan for the future and rights-of-way are important to obtain for the future development of streets. Mr. Coutant agreed that planning ahead is important; however, the additional eight feet cause a problem with the existing improvements on the subject property. The site plan does indicate the existing improvements and facility. If the additional eight feet

are dedicated, it would be into the circulation around the existing improvements and taking the existing sign that is on the corner. It is an operating problem and a practical one.

Mr. Harmon asked what has changed that brought this application to the Planning Commission. In response, Mr. Coutant stated that there are no plans for any changes and the service station will remain operating as it is today. Mr. Harmon asked why he was requesting a lot-split. In response, Mr. Coutant stated that the lot-split is to split off the improved part of this larger parcel, which is the corner, from the unimproved portion of the property that L's around it to the north, northwest and west. Mr. Coutant stated that any development would be on the larger portion and would not affect the corner property.

Mr. Harmon stated that some type of development is obviously planned for the unimproved portion and if the extra eight feet will improve traffic flow, it would seem to be a benefit to the subject property rather than an impediment.

Mr. Coutant stated that the current undeveloped portion doesn't have a problem with the additional eight feet. The issue is at the currently developed corner and the additional eight feet would be in the improved portion of the property.

Mr. Carnes stated that there doesn't seem to be any planned improvements in the subject intersection anytime soon and he would be willing to go along with the applicant's request.

Mr. Midget asked whether in the event, in the future, this service station was removed then public would get the right-of-way back. Mr. Coutant stated that it is not contemplated that the service station is coming down. The fair answer to this is that the decision today is final and the property owner will work with the City of Tulsa.

Mr. Harmon stated that he believes in encouraging development, but also there has to be planning for the future and he is reluctant to not require the eight-foot right-of-way. Good planning looks farther than five or ten years down the road.

Mr. Midget stated that there is a new development on Pine and Cincinnati, and unfortunately the City didn't obtain the right-of-way to make a right-hand turn off of Cincinnati to get to the Tisdale Expressway. If the City wanted to obtain that right-of-way now, it would require purchasing the whole store. If the necessary precautions had been taken to guard the public interest in the right-hand turn, then the City wouldn't be faced with the costs that the public will have to incur. There is a need for protecting the public right-of-way for the future.

**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted 8-0-0 (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **DENY** the waiver of Subdivision Regulations for the eight feet of additional right-of-way and 30' radius on the corner, but recommend **APPROVAL** of the lot-split for L-19872, with the condition that all required right-of-way along Pine and Yale, according to the MSHP, be deeded to the public per staff recommendation.

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

**L-19881 – Mike Marrara** (9329)

(PD 18) (CD 9)

3131 East 51<sup>st</sup> Street

**STAFF RECOMMENDATION:**

The request is to split the existing tract into the west 347.95' (Tract A) and the east 442.50' (Tract B). The proposed tracts meet all the CS zoning requirements.

Although only 35' of right-of-way has been deeded to the city, East 51<sup>st</sup> Street is reflected as a secondary arterial on the Major Street and Highway Plan and is built as a four-lane facility along this area. An existing motel is located approximately 50' from the centerline of East 51<sup>st</sup> Street, which met the building setback requirements at the time of construction.

On December 19, 1990, the Planning Commission approved L-17372 to split off the easternmost part of Lot 17, Block 2, Villa Grove and approved a waiver of the Subdivision Regulations requiring the full (50') of right-of-way be given to the City along East 51<sup>st</sup> Street, but required the full 58' of right-of-way on Harvard. The approval was subject to the remainder part of Lot 17 being tied to a part of Lot 16, Block 2, Villa Grove (the existing subject tract).

The owner is now asking the Planning Commission to rescind that tie agreement to allow the splitting of this tract into two separate tracts. The proposed split is 3.54' west of the originally platted common boundary line. The split would allow the two existing motels to be located on separate tracts.

Public Works has indicated that the main sanitary sewer line must be converted from a private to a public line, and that water service for Tract A will have to be accessed from the south side of East 51<sup>st</sup> Street if it is not currently on its own service line.

With the Oklahoma Department of Transportation's plans to acquire these properties to expand I-44, staff believes this lot-split would not have an adverse effect on the surrounding properties and recommends **APPROVAL** to rescind the tie language of L-17372 and of the current lot-split request, L-19881, subject to Public Works requirements for water and sanitary sewer services being met and subject to the East 3.54' of Lot 16 (Tract C) being tied to Tract B.

**TMAPC COMMENTS:**

Mr. Harmon asked staff if they are satisfied with the right-of-way requirements for the subject property. In response, Ms. Chronister stated that staff is satisfied for two reasons: 1) the street is already four lanes and there will not be any additional eight-foot required for a right-turn lane and, 2) the Oklahoma Department of Transportation will be acquiring the property for the widening of I-44.

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

**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted 8-0-0 (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **APPROVE** to rescind the tie language of L-17372 and of the current lot-split request, L-19881, subject to Public Works requirements for water and sanitary sewer services being met and subject to the East 3.54' of Lot 16 (Tract C) being tied to Tract B.

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

**L-19883 – LeRoy W. Farley** (8306)

(PD 18) (CD 9)

2087 East 71<sup>st</sup> Street

**STAFF RECOMMENDATION:**

The request is to split off the north 194' of Lot 1, Block 1, Yorktown 71. The proposed tracts meet all the OM zoning requirements.

In 1985, L-16416 was approved that created three tracts (Exhibit A). The south 309.94' of Lot 1, Block 1 and Lot 1, Block 2 were tied together (Tract C).

In 2004, L-19745 was approved to rescind the tie agreement between the south 309.94' of Lot 1, Block 1 (Tract C) and Lot 1, Block 2 (Tract D), making Tract D a separate tract. However, Tract C could not meet the parking requirements as a stand alone tract and was required to be tied to Tract A. (See Exhibit B)



In Exhibit C, L-19883 is seeking to split off the north 194' of Lot 1, Block 1 (Tract A). Because of the tie agreement requirement of L-19745, the applicant is asking the Planning Commission to rescind the tie agreement for Tracts A and C. In order to stay in compliance with the parking requirements, Tract C would be required to be tied to proposed Tract E.

With all OM zoning requirements being met, staff believes this lot-split would not have an adverse effect on the surrounding properties and recommends **APPROVAL** to rescind the tie language of L-19745 and of the current lot-split request, L-19883, subject to Tract C being tied to Tract E.

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

**TMAPC Action; 8 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 8-0-0 (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **APPROVE** rescinding the tie language of L-19745 and of the current lot-split request, L-19883, subject to Tract C being tied to Tract E per staff recommendation.

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**LOT COMBINATIONS FOR RATIFICATION OF PRIOR APPROVAL:**

**LC-3 – Cyntergy AEC** (9307) (PD 6) (CD 4)

1519 South Quincy

**LC-4 – City of Tulsa** (9313) (PD 5) (CD 5)

South of southeast corner East 21<sup>st</sup> Street and 87<sup>th</sup> East Avenue

**LC-5 – Peter Cruz** (9224) (PD 6) (CD 9)

3920 South Peoria

**STAFF RECOMMENDATION:**

Ms. Chronister stated that all these lot-combinations are in order and staff recommends **APPROVAL**.

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

**TMAPC Action; 8 members present:**

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

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

**L-19825 – Roy Johnsen** (0213) (PD 25) (CD 1)

541 East 36<sup>th</sup> Street North

**L-19859 – Michael DeCarlo** (8310) (PD 18) (CD 8)

7640 South Kingston Place

**L-19860 – Michael DeCarlo** (8310) (PD 18) (CD 8)

7628 South Kingston Place

**L-19865 – Eric Pfanstiel** (8328) (PD 26) (CD 8)

10901 South Louisville

**L-19874 – Tom Haynes** (9209) (County)

4333 West 21<sup>st</sup> Street

**L-19875 – Dennis Kelly** (7427) (County)

15600 East 161<sup>st</sup> Street

**L-19876 – Sack & Associates, Inc.** (8334) (PD 26) (CD 8)

6020 East 116<sup>th</sup> Street South

**L-19878 – Sisemore Weisz & Associates** (9430) (PD 18) (CD 5)

Northwest corner of East 48<sup>th</sup> Street South and 109<sup>th</sup> East Avenue

**L-19879 – Sisemore Weisz & Associates** (9405) (PD 5) (CD 5)

Northwest corner of East Admiral Place and 129<sup>th</sup> East Avenue

**L-19885 – Robert Record** (9220) (County)

4915 West 41<sup>st</sup> Street South

**L-19886 – John Hubbard** (9301)

221 South 85<sup>th</sup> East Avenue

**STAFF RECOMMENDATION:**

Ms. Chronister stated that all these lot-splits are in order and staff recommends **APPROVAL**.

There were no interested parties wishing to speak.

**TMAPC Action; 8 members present:**

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

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**FINAL PLAT:**

**Ravens Crossing –** (8326)

(PD-26) (CD-8)

West of northwest corner of East 111<sup>th</sup> Street and Memorial Drive

**STAFF RECOMMENDATION:**

This plat consists of 79 lots in ten blocks on 37.2 acres.

All of the release letters have been received and staff recommends **APPROVAL**.

There were no interested parties wishing to speak.

**TMAPC Action; 8 members present:**

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

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West of northwest corner of East 111<sup>th</sup> Street and Memorial Drive

**STAFF RECOMMENDATION:**

This plat consists of two lots in one block on 28 acres.

All of the release letters have now been received for this final plat and staff recommends **APPROVAL**.

**TMAPC COMMENTS:**

Mr. Harmon stated that he thought there was a property owner that kept Wal-Mart from having all of the access points that they need.

Mrs. Fernandez stated that was not to her knowledge and she believes that everything is in order and Traffic Engineering and all of the Development Services have signed off on it.

**Applicant's Comments:**

**Charles Norman**, 401 South Boston, Suite 2900, Tulsa, OK 74103-4065, representing Wal-Mart SuperCenter, stated that there is no problem with access to the property from the two points on Memorial and a point of access on 111<sup>th</sup> Street. There is a gap between the property included in the Wal-Mart plat and approximately 17 feet that is not owned by Wal-Mart that show two access points and if, in the future, legal access is obtained to cross that 17-foot strip, then the City will have approved these access points. The owner of the 17 feet has maintained that Wal-Mart has no legal right to cross the right-of-way. Wal-Mart is able to operate without the right to cross the 17 feet and intends to do so.

**TMAPC COMMENTS:**

Mr. Harmon asked where the access would be located onto 111<sup>th</sup> Street. In response, Mr. Norman pointed out the access points. He commented that as far as the processing of the plat and conformity to the Subdivision Regulations, he has the approval of those two points of access. Mr. Harmon stated that there may be approval of the access points, but Wal-Mart is not able to utilize them. Mr. Norman stated that this is a problem, but it has been analyzed and they are of the opinion that the store can operate without that access point, or with the access points that are available, which is one on 111<sup>th</sup> and two plus a third one on Memorial. He admits this will not be as convenient for the customers and there are other issues involved, but the owner of the 17 feet wide gap has proposed a price that is approximately ten times the price of what was paid per square foot of the remainder of the tract.

Mr. Harmon asked Mr. Norman if the plat meets all of the City requirements without the two points of access being available. In response, Mr. Norman stated that it could because the other two access points are for convenience of the trucks and customers, and Wal-Mart has determined that they can operate without those. There are no minimum points of access required by the Subdivision Regulations. There are only requirements about how far they are to be separated and how many under the PUD are allowed, which is not a minimum requirement, but rather a maximum. He indicated that there is one access point on 111<sup>th</sup> and intends to operate on that basis.

Mr. Norman stated that he encountered another issue that he has solved to the satisfaction of the Public Works Department. In order to have the water main loop, it will have to skip over the 17 feet and connect to the southeast corner of Raven's Crossing. There is an easement located at Raven's Crossing that will allow him to do this. After many weeks of delay, he has now been released by the Department of Public Works and the City under these revised plans. He indicated that he dedicated another mutual access easement to the City for access to the regional detention facility that cannot use that access point at the southwest corner either.

Mr. Norman requested that the Planning Commission approve the final plat.

Mr. Boulden stated that this item doesn't appear on his agenda and he assumes that an addendum was posted. In response, Mrs. Fernandez stated that the addendum was posted on Friday, September 2, 2005.

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

**TMAPC Action; 8 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 7-1-0 (Ard, Cantees, Carnes, Hill, Horner, Jackson, Midget "aye"; Harmon "nay"; none "abstaining"; Bayles, Bernard, Dick "absent") to **APPROVE** the final plat for Wal-Mart SuperCenter #15907-03 per staff recommendation.

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**PLAT WAIVER:**

**BOA-20080** – (9326)

(PD-18) (CD-5)

6650 East 44<sup>th</sup> Street

**STAFF RECOMMENDATION:**

The platting requirement was triggered by City Board of Adjustment Case number 20080. This case approved the Church use and accessory church uses in an IL zoning district.

**Staff provides the following information from TAC.**

**STREETS:**

Traffic: No comment.

Streets: No comment.

**SEWER:**

PW: No comment.

**WATER:**

PW: No comment.

**STORM DRAIN:**

PW: No comment.

**FIRE:**

Fire: No comment.

**UTILITIES:**

No comment.

Based on discussion with the individuals who will review and approve the changes and the following checklist which reflects the policies of TMAPC. Staff recommends **APPROVAL** of the request for plat waiver with the following conditions:

It shall be the policy of the Tulsa Metropolitan Area Planning Commission that all requests for plat waivers shall be evaluated by the staff and by the Technical Advisory Committee based on the following list. After such evaluation, TMAPC Staff shall make a recommendation to the TMAPC as to the merits of the plat waiver request accompanied by the answers to these questions:

**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:**

- |  |   |
|--|---|
| 4. Is right-of-way dedication required to comply with Major Street and Highway Plan? | X |
| 5. Will restrictive covenants be filed by separate instrument?                       | 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

If, after consideration of the above criteria, a plat waiver is granted on *unplatted* properties, a current ALTA/ACSM/NSPS Land Title Survey (and as subsequently revised) shall be required. Said survey shall be prepared in a recordable format and filed at the County Clerk's office.

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

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted 8-0-0 (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **APPROVE** the plat waiver for BOA-20080 per staff recommendation.

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**CHANGE OF ACCESS ON RECORDED PLAT:**

**Lot 1, Block 1, House of Prayer Addition**

(PD-17) (CD-6)

North of the northwest corner of East 11<sup>th</sup> Street and South 177<sup>th</sup> Avenue East

**STAFF RECOMMENDATION:**

This application is made to allow a change of access along South 177<sup>th</sup> East Avenue. The proposal is to add one 40-foot limited access and delete two other access points. The property is zoned AG.

Staff recommends approval of the change of access. The Traffic Engineer has reviewed and approved the request. Staff recommends **APPROVAL** of the change of access as submitted.

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



**TMAPC Action; 8 members present:**

On **MOTION** of **HARMON**, TMAPC voted 8-0-0 (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **APPROVE** the change of access on recorded plat for Lot 1, Block 1, House of Prayer Addition per staff recommendation.

\* \* \* \* \*

### **AUTHORIZATION FOR ACCELERATED RELEASE OF BUILDING PERMIT**

**M&M Addition – (9405)**

(PD-5) (CD-6)

Northwest corner of Admiral and South 129<sup>th</sup> East Avenue

### **STAFF RECOMMENDATION:**

This request is for an accelerated building permit in the M&M Addition. This is requested for a full building permit because of "lease expiration at present business location at end of 2005 calendar year. The accelerated building permit is necessary for commencement and completion of building on new property site by December 2005 and financial obligations with lender for building construction completion efforts."

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 updated Subdivision Regulations.

The preliminary plat was approved on May 18, 2005 by TMAPC. The accelerated permit can be considered if the preliminary plat has been approved.

The Technical Advisory Committee reviewed this request at their August 4, 2005 meeting and continued the item until the August 18, 2005 meeting because the Preliminary Plat did not match the accelerated building permit site plan submittal. The building permit plans had been submitted, but not in time for them to be reviewed in relation to the request. At the August 18, 2005 meeting the revised draft final plat conformed with the site plan for the accelerated building permit and there were no problems or concerns expressed by the TAC members.

Previously, the Planning Commission has approved several accelerated building permits to facilitate the scheduling of proposed projects. Staff is not favorable to the granting of these types of releases unless the exceptional circumstances (not self created) are explained and "associated benefits and protections to the City that may be forfeited by releasing the Building Permit prior to filing of the final plat" (per Subdivision Regulations 2.5.1) are shown to pose little risk to the City in

this particular case. Based on the absence of the required information to support the accelerated release the staff must recommend **Denial**.

**TMAPC COMMENTS:**

Mr. Harmon stated that he understands how the staff does not want these types of exceptions to be routine or treated lightly, but asked if there is any identifiable risk associated with this to allow it to proceed. This is development within the City and it appears to be positive to him. Unless there is a risk that could be pointed out, he would be inclined to approve the permit.

Mrs. Fernandez stated that the Planning Commission's decisions, based on the past, were for larger projects for the most part. The Planning Commission has approved approximately 15 accelerated permits over the last two years. This is a single business and the question would be whether this is more of a risk than a campus-type development for the City of Tulsa. In the past the Planning Commission has approved types of development for the Riverfield Country Day School, Montereau Assisted Living Center, Camp Shalom housing complex and a retail center, Holiday Inn, which comes close to this application. It is staff's job to flag for the Planning Commission that this is a little different than the previous approved accelerated permits, and in this case the burden is on the applicant to prove that there is no risk and that there are extraordinary circumstances.

**Applicant's Comments:**

**Kevin Coutant**, 320 South Boston, Suite 500, Tulsa, Oklahoma 74103, stated that he is withdrawing this request.

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**ZONING PUBLIC HEARING**

**Application No.:** PUD-650-A

**MAJOR AMENDMENT**

**Applicant:** Stephen Schuller

(PD-18) (CD-7)

**Location:** Northeast corner of East Skelly Drive and South Fulton Avenue

**STAFF RECOMMENDATION:**

**Z-6814/PUD-650 October 2001:** Staff recommended denial of a request to rezone the adjacent Midtown Village property from OM, OL and SR to CS; staff also recommended denial of the accompanying PUD that proposed a retail development on the property. TMAPC and City Council approved the request for the rezoning for CS zoning on the northwest 300' that fronts the Skelly By-pass frontal road. The OM and OL remained unchanged. TMAPC and City Council

approved the Planned Unit Development subject to conditions as recommended by staff.

**Z-6382 December 1992:** All concurred in approval of a request to rezone a one-acre tract located west of the southwest corner of East 46<sup>th</sup> Street South and South Fulton Avenue and south of the Midtown Village (PUD 650) tract, from RM-1 to OM.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject street, East 46<sup>th</sup> Street South, abuts the south and west boundaries of the approximately 25.5 ± acre Midtown Village, PUD 650, and connects with Skelly Drive at the commercial property's southwest corner. Per City Council approval of PUD 650, East 46<sup>th</sup> Street terminates from the west in a cul-de-sac just west of South Fulton Avenue. The east half of East 46<sup>th</sup> Street can be accessed from the north by South Hudson Place and from the south by Fulton Avenue.

**STREETS:**

Exist. Access	MSHP Design	MSHP R/W	Exist. # Lanes
Skelly Drive	Freeway	Varies	4 lanes
East 46 <sup>th</sup> Street South	N/A	60'	2 lanes

**UTILITIES:** N/A

**SURROUNDING AREA:** The Midtown Village Shopping Center, PUD 650; and two churches and two office buildings front the west half of East 46<sup>th</sup> Street South. The Midtown Village Shopping Center, residential condominiums and the Islamic Society of Tulsa front the east half of East 46<sup>th</sup> Street South.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

N/A.

**STAFF RECOMMENDATION:**

Access between the east and west halves of East 46<sup>th</sup> Street South, between South Darlington Avenue and South Fulton Avenue, is achieved by using East 47<sup>th</sup> Place three blocks to the south. Offices at the southwest corner of East 46<sup>th</sup> Street South and South Fulton Avenue can be accessed from the west from Skelly Drive, Darlington and East 46<sup>th</sup> Street South; and from the east from South Hudson Avenue, East 46<sup>th</sup> Street South, and South Fulton Avenue. At this time, staff finds no

compelling reason to reopen East 46<sup>th</sup> Street South and, therefore, recommends **DENIAL** of PUD 650-A.

Ms. Matthews stated that this case is somewhat unusual because the applicant is not the property owner and the condition was not put on the PUD as a result of Planning Commission action. The condition was required by the City Council and the City Council left this up to the Public Works Department to determine the best way to either calm traffic or stop traffic and the result was that 46<sup>th</sup> Street was closed. The neighborhood seems fairly divided on this issue and both sides appear to be present today. She cited the following comments from TAC:

**TECHNICAL ADVISORY COMMITTEE COMMENTS:**

- |                                 |  |
|---------------------------------|--|
| <b><u>General</u></b> -         | Construction for reopening would require a PFPI with all associate costs being the responsibility of the applicant.                                  |
| <b><u>Water</u></b> -           | No comment   |
| <b><u>Fire</u></b> -            | No comment   |
| <b><u>Stormwater</u></b> -      | No comment   |
| <b><u>Wastewater</u></b> -      | No comment   |
| <b><u>Transportation</u></b> -  | Transportation has no new data to support the reopening of East 46 <sup>th</sup> Street.   |
| <b><u>Traffic</u></b> -         | Traffic Engineering objects to the reopening of East 46 <sup>th</sup> Street <i>(unless substantial groundswell from Neighborhood Association)</i> . |
| <b><u>GIS</u></b> -             | No comment   |
| <b><u>County Engineer</u></b> - | No comment   |

**Applicant's Comments:**

**Steve Schuller**, 100 West 5<sup>th</sup> Street, Suite 500, Tulsa, Oklahoma 74103, stated that he is representing Ken and Pat Oglesby and Thousands Oaks Investment Corporation, who own an office building adjacent to or across the street from the commercial development represented by PUD-650.

Mr. Schuller stated that staff gave some details, but he would like to go a little further to clarify what did occur several years ago. The Planning Commission approved the PUD in July 20, 2001. His client owns an office building at the southwest corner of 46<sup>th</sup> and Fulton and he did not receive any notice of the PUD proceedings. He indicated that he did check the INCOG file and it reflects that they did mail notice to everyone who owns property within 300 feet of the PUD. He doesn't doubt that INCOG mailed the notice, but for some reason the mail didn't get through and his client was not notified. The signs were posted and he would assume his client may have seen the signs, but he is not sure that his clients knew the importance of the signs.

Mr. Schuller stated that the outline development plan and the materials for the PUD did not provide for any closure of 46<sup>th</sup> Street or reconfiguration of this intersection. He indicated that he read the minutes of the meeting and it didn't look like this closure of the street and the reconfiguration of the intersection was considered at that time. The City Council meeting was held and his client wasn't notified because he wasn't at the Planning Commission meeting as an interested party. Mr. Schuller explained that the City Council notifies interested parties that attended the Planning Commission meetings.

Mr. Schuller indicated that he has confirmed with the developer's representatives that the closure of 46<sup>th</sup> Street and the reconfiguration of 46<sup>th</sup> and Fulton intersection were negotiated and discussed in the days and hours leading up to the City Council's consideration of the PUD. No notification was given to his clients to allow them to participate in the process. After the City Council approved the PUD and included the closure of 46<sup>th</sup> Street and the reconfiguration of the intersection there was one report of that in the newspaper. After researching the archives of the Tulsa World he found that there were two newspaper stories and only one mentioned the 46<sup>th</sup> Street and Fulton intersection. His clients didn't see the single article in the newspaper and were unaware of the closure. The first time his clients found out about the closure and reconfiguration was approximately three years after the fact, when they were notified of the site plan before the TMAPC. After attending the Planning Commission meeting they are informed that the street closure and the intersection reconfiguration has already been approved by the City Council and they would have to go before the City Council to see what could be done there. It is not something that the Planning Commission could consider at the site plan approval stage. His client contacted the City Council office and one City office after another without obtaining any answers. After this his clients came to him to see if there is anything that can be done to get this off of the PUD.

Mr. Schuller stated that he has met with the City of Tulsa and the representatives of the neighborhood associations around the subject area and have not been able to come up with an agreement for some type of reopening of the 46<sup>th</sup> Street. Mr. Schuller described the closure and the reconfiguration of the intersection which has cut his client off from his overflow parking located in the rear of his

office building. There will be a cul-de-sac in front of his client's building and north-bound traffic on Fulton must turn right on 46<sup>th</sup> Street and west bound traffic on 46<sup>th</sup> Street must turn left onto Fulton. This is not a good situation for the neighborhood nor for his clients.

Mr. Schuller commented that he felt that the staff recommendation for today's application is peculiar. He explained that it recommends denial of reopening 46<sup>th</sup> Street because there is sufficient access to his client's property through the surrounding residential streets, which is contrary to the provisions in the Zoning Code that the use of RS and RM districts for access to O district is prohibited unless that access is permitted through a PUD. After driving through the subject area several times, he has carefully negotiated his way through due to pedestrians in the street and usually children. This is not a satisfactory solution for access to the office building and parking. This situation has created a hardship for his clients and they would have preferred to discuss this with the City Council prior to the decision to close the street. Mr. Schuller pointed out that prior to closing 46<sup>th</sup> Street, his client's could access their parking lot by turning off of 46<sup>th</sup> Street onto Fulton and then to the overflow parking area. With the closure of 46<sup>th</sup> Street there is no access to the back parking lot from the front of the building unless vehicles use 46<sup>th</sup> Street to Darlington Avenue and then onto 47<sup>th</sup> Street to Fulton. Mr. Schuller maintains that the closing of 46<sup>th</sup> Street has cut his client's back parking lot off from the front of the parking lot (his clients used 46<sup>th</sup> Street to reach Fulton and then to the back parking lot before the closure). He indicated that since his clients are unable to use 46<sup>th</sup> Street to reach Fulton, they are driving over the grass to reach Fulton to access the back parking lot and indicated that residents are doing the same thing. He commented that his client is unable to build a driveway on either side of the building because there is not enough room due to the orientation of the building. The orientation of the building is towards 46<sup>th</sup> Street and Skelly Drive and people expect to reach the office off of 46<sup>th</sup> Street. He stated that staff also demonstrates that the parking lot could be accessed from Hudson, which is a residential street through a single-family neighborhood and it appears that staff is advocating that commercial traffic should go through the residential neighborhood and turn onto Fulton to reach the parking lot.

Mr. Schuller stated that his client has lost six tenants and has had no success in attracting replacement tenants or any new tenants. Mr. Schuller submitted a petition supporting the reopening of 46<sup>th</sup> Street (Exhibit A-1), which is signed by people who come to the office building to do business with his client's tenants, and one page is signed by the members of the Islamic Center two blocks to the east. There was no notification given to his clients that this intersection would be closed and that the intersection would be reconfigured. There was no opportunity for his clients to participate in the process due to the lack of notice. It is not safe for the traffic for the subject office building to be traveling through the neighborhood to reach the parking lot.

**TMAPC COMMENTS:**

Mr. Jackson asked if it would be possible to come up with a diagram on the cul-de-sac which would allow one-way egress to Fulton to allow traffic to access the back parking lot. Mr. Schuller stated that this has been discussed and it was proposed that a right-turn be permitted from 46<sup>th</sup> Street onto Fulton. It requires significant intersection improvements and a center median to prevent traffic from the west from going around it and keep going. The problem with this proposal is that his clients using the back parking lot would still have to go back through the residential neighborhoods in order find their way back out of the subject area. He concluded that 46<sup>th</sup> Street should be reopened because it would be safer for everyone.

Mr. Boulden stated that public streets are opened and closed by City ordinance and the Planning Commission doesn't have any authority over this issue. He asked Mr. Schuller what the amendment to the PUD would be that he is asking for. Mr. Schuller stated that the PUD provided for that small portion of 46<sup>th</sup> Street to be closed and the intersection to be reconfigured. Mr. Schuller further stated that he could not find proper proceedings in the Public Works Department for the closure of 46<sup>th</sup> Street. He has filed an application with Public Works Department to reopen the closed street and it is going through administrative channels now. He doesn't believe it was properly closed, but it was a component of the PUD and he believes that he has to ask for relief in both forms.

Mr. Boulden asked Mr. Schuller what the exact development standard in the PUD is. In response, Mr. Schuller stated that this street was not in the PUD and the Planning Commission had nothing to do with the closure of the street. The City Council approved the PUD and added as a component the closure of 46<sup>th</sup> Street, which is adjacent to the PUD but is an existing dedicated street and not within the boundaries of the PUD.

Mr. Boulden asked if the closure of the street was mentioned in the ordinance that adopted the PUD or how did they memorialize that requirement. In response, Mr. Schuller stated that he found it in the minutes of the City Council proceedings. Mr. Boulden stated that he doesn't see how the Planning Commission would have any authority over this area and he understands it if it were somehow incorporated in the PUD that it would need to be amended. Mr. Schuller stated that it is in the PUD, and therefore, he has to go to the Planning Commission, who shouldn't have the authority but it is in the PUD. When one amends the PUD to undo this, the avenue is through the Planning Commission.

Mr. Jackson asked Mr. Schuller if the only remedy he sees is the full reopening of the intersection. In response, Mr. Schuller stated that his application is to remove as a component as a PUD the closure of 46<sup>th</sup> Street and the reconfiguration of 46<sup>th</sup> Street and Fulton intersection. Mr. Schuller stated that this is a part of the PUD.

Mr. Jackson asked Mr. Schuller if he has discussed this with Traffic Engineering. In response, Mr. Schuller stated that he discussed this with Mark Brown and Mr. Brown and Mr. French participated in the meetings with the representatives of the homeowners associations.

Mr. Boulden asked Mr. Schuller if he found an ordinance that closed 46<sup>th</sup> Street. In response Mr. Schuller answered negatively.

Ms. Hill asked Mr. Boulden if the Planning Commission should proceed with this hearing. In response, Mr. Boulden stated that he believes the Planning Commission should proceed. He would like to hear if Mr. French could add anything to or supply the language that was adopted in the PUD.

Mr. French stated that he can recall spending many hours on the plat for the PUD. In the development standards on the face of the plat, the closure of 46<sup>th</sup> Street was included as a PUD condition (development standard) and he believes that Mr. Ted Sack could confirm that.

Mr. Boulden asked Mr. French if a closing ordinance was enacted for the closing of 46<sup>th</sup> Street. Mr. French stated that he has not researched that.

Mr. French stated that he believes that in order for the City to consider closure, from an administrative standpoint, the City could not consider that until a PUD requirement was amended. The City would be looking at that development standard for that project. The City would not entertain the thought of reopening less and until the Planning Commission and the City Council amend those development standards.

Mr. Boulden stated that the street cannot be officially closed unless an ordinance was past. Mr. French stated that he doesn't recall reviewing an ordinance, but knew it would be coming and thought it was there. He explained that other departments in Public Works Department would initiate the ordinance. The interesting fact about this application is that this is an outside applicant and not the original developer. There is an existing PFPI engineering contract between the developer and a construction contractor. It would be the City's recommendation that the Planning Commission has to have assurance that there is someone willing to pay for the additional construction costs because it would have to be reengineered and reconstructed because the PFPI is already ongoing. As a courtesy, he believes that developer has been putting the paving of the cul-de-sac on hold, but he has already gone to considerable effort (halfway through) and from a technical standpoint, he is very concerned about wanting the applicant of this request to identify who would pay for the additional costs of engineering and construction.

Mr. Jackson asked what the physical characteristics of the cul-de-sac are today: is it curbed, guttered and graveled. In response, Mr. French stated that the



demolition has been done and the base has been created. It is well on its way to being completed as approved by the Public Works Director as a PFPI.

Mr. Jackson asked if, rather than wiping out what has already been created, there is a possibility for an egress point out of that cul-de-sac onto Fulton (one-way). In response, Mr. French stated that he is not going to attempt to design in a committee forum. There are several different potential designs that might be discussed and there have been meetings with this property owner and conceptual designs were rejected. He suggested that the Planning Commission hear from the neighborhood associations regarding this issue. The only request officially in front of Traffic Engineering was the complete reopening.

Mr. Jackson asked Mr. French if he thought a two-week continuance would be in the best interest of all parties concerned. Mr. French stated that he doesn't have any objection to a continuance and would be willing to meet with everyone.

Mr. Harmon asked who actually authorized the closing of 46<sup>th</sup> Street and he understands that the Planning Commission doesn't have the jurisdiction to close a street. He asked if this street was illegally closed. In response, Mr. French stated that since it was a specific line item on the PUD that the City Council approved, those engineers reviewing the PFPI would have no reason to double check with the Legal Department.

Mr. Harmon asked if it requires a public hearing in order to close a public street. In response, Mr. Boulden stated that in this circumstance, he believes it would require a public hearing and notice to people within 300 feet.

Mr. French stated that the developer didn't necessarily want to close the street, but rather he was being required by the City Council to close the street.

Mr. Harmon stated that the City Council made the closing of the street a requirement, but that doesn't make it legal. It would still require going through the right steps of having a public hearing and giving people an opportunity to address the situation.

Mr. Boulden stated that from his concept of what has happened, the PUD may have required that the street be closed at that intersection to create a cul-de-sac, but the steps were not completed in that no one ever processed an application to close that portion of the street. The bottom line is that this closure blocked the passage on either side of 46<sup>th</sup> Street. The applicant would have probably been the person doing the development and that person or business never applied for the closure of the street to allow the cul-de-sac to be made. He commented that he hopes that he finds an ordinance that went through and it was done properly.

Mr. Midget stated that the requirement was placed by the City Council to close the street. Mr. Midget asked if the applicant was the one to take the next step to close the street. In response, Mr. Boulden stated that the developer should have made an application to close the street, and by that process, Public Works Department would have gone through their steps of notifying utilities and giving notice to property owners within 300 feet, which then the Council would have held a hearing.

Mr. Midget stated that it seems that the City did everything but the notification process. Apparently all of the utilities were contacted and would have to have been, since some demolition has been done. He expressed concerns that the developer has now incurred the costs due to the City Council condition. This creates a real dilemma because the developer has incurred the costs and expectations have been raised as far as the neighborhood is concerned about what would happen. For the Planning Commission to all of a sudden to declare it illegal puts the Planning Commission and the City in a peculiar position. He recommended that the Planning Commission take Commissioner Jackson's suggestion to continue this two weeks to see if there is a reasonable design to satisfy both concerns and then take the necessary legal steps to consummate that. He suggested that the Planning Commission hear from the interested parties today, but it should be continued two weeks.

Mr. Carnes stated that there are numerous people present today and they should be heard today.

Ms. Hill recognized that there were two City Councilors in the audience and asked if they would like to speak first. The City Councilors declined.

#### **INTERESTED PARTIES:**

**Collette Lemons**, 5350 East 46<sup>th</sup> Street, Suite 130, 74135; stated that everyone in the neighborhood was concerned, and when they learned it would be a shopping center they panicked. There were a lot of measures proposed to keep traffic out of the subject area and the best thing that has worked is the privacy fence, which covers from the west, south and east. It keeps traffic from accessing 46<sup>th</sup> Street and that took care of the problem. There is no need to cut off 46<sup>th</sup> Street because it is not an issue. The vehicles that are turning off into the residential area are doing so because they have no choice. They would prefer to turn left and access Skelly Drive, but with 46<sup>th</sup> Street shut off, that is not possible.

**Mike McCollam**, 8624 South 71<sup>st</sup> East Avenue, 74133, stated that he holds the mortgage to the building in question. He explained that the closure of 46<sup>th</sup> Street is damaging his client's businesses. After calling the City and Traffic Engineering, he found out that the stated reason for closing 46<sup>th</sup> Street was to prevent access to the shopping center. The privacy fence prevents access to the shopping center. The vehicles are going around the barricades, and once the permanent change is done, the vehicles will continue to cut through the parking

lot across the property and cut up the grass and yards. A street should only be closed for traffic flow or safety reasons and neither one is the case in this situation.

Mr. McCollam stated that the developer has not installed cement curbs to block 46<sup>th</sup> Street. He has curbed the cul-de-sac and cut out the pavement, but no curbs on 46<sup>th</sup> Street. All that is left to be done is to replace the pavement and open the street back up.

**Clay Bird**, Mayor's Office, stated that he was on the City Council when this was passed, and he could provide any information if needed.

**Ken and Pat Oglesby**, 5350 East 46<sup>th</sup> Street, 74135, stated that he is one of the owners of the building. He indicated that he was in favor of the commercial development and thought it would be a good thing. He was not aware of a street closure until the last minute. Mr. Oglesby commented that the street closure was rushed through so that no one could oppose it. There would be no extra cost to put the street back like it was before. He indicated that he tried to stop this before the developer started spending money.

Mr. Oglesby stated that there are several groups that are hindered by the street closure, which are the office building, housing districts, and churches in the subject area because all of the traffic is being diverted to Hudson and through the residential area to reach I-44.

Mrs. Oglesby stated that the closure of 46<sup>th</sup> Street has created more traffic going through the neighborhood in order to reach the office building parking area and she doesn't believe that is what the resident's want.

**Carolyn Chaffin**, President of the Plaza Hill Condominiums Association, 5540 East 46<sup>th</sup> Street, 74135, stated that the association is in favor of closing the street. She indicated that the association never heard from the applicant regarding reopening the street or an alternative. The traffic has significantly been reduced since the closing of 46<sup>th</sup> Street. She indicated that the cars are able to get to the parking lot of the subject property off of 47th Street and turning onto Fulton or park in front of their building off of 46<sup>th</sup> Street. She commented that she has never seen more than 20 cars on either one of the parking lots for the subject property.

**Ruth Jones**, 4620 South Granite Avenue, 74135, stated that she agrees with Ms. Chaffin's comments. She explained that in 2001 she spent several months working on the PUD and traffic problems. The reason for asking 46<sup>th</sup> Street to be closed is that people think it is their right to come from Sheridan down 46<sup>th</sup> Street into the shopping center. She commented that she has lived in the subject area for 20 years and the office complex has minimal cars parked in their parking lots.

She requested that the PUD be left as it is and 46<sup>th</sup> Street not be reopened or allowed egress onto Fulton.

**Gary Kruse**, President of the Midtown Village Neighborhood Association, 4501 South Kingston, 74135, stated that he was part of the negotiations of PUD-650 in 2001. The topic of traffic was the number one subject at the meetings, both present traffic conditions and future projections of increased traffic with the shopping center. Traffic counts indicated that Hudson was in excess for a residential street. The traffic count indicated that 46<sup>th</sup> Street was being utilized as a cut-through street from Skelly to Sheridan. Mr. Kruse explained three types of changes to calm the traffic. He indicated that the temporary Hudson diverter was removed and a temporary diverter has been installed in Darlington, and then the third change is the closure of 46<sup>th</sup> Street. He explained that the Hudson diverter is supposed to be installed again as part of the PUD conditions. He explained that when the Hudson diverter was originally installed, he received many phone calls with complaints, but he has only received one phone call regarding the closing of 46<sup>th</sup> Street. He realizes that diverters and closing of streets is a convenience for everyone but there are sacrifices that have to be made for the good of the community. There are 540 single-family residences to the north and south on 46<sup>th</sup> Street. A poll of the Board of Directors indicated that six wanted 46<sup>th</sup> Street to remain closed, six didn't care and two wanted it reopened. People living on 46<sup>th</sup> Street prefer that it be closed and people living farther away are inconvenienced.

Mr. Kruse requested that the Planning Commission leave the PUD as it is in order to control the traffic.

#### **TMAPC COMMENTS:**

Mr. Ard asked Mr. Kruse if he recalled if the three traffic calming issues were discussed during the Planning Commission hearings or only at the City Council. In response, Mr. Kruse stated that he recalls that all three closures were considered integral parts of PUD-650. The closure of 46<sup>th</sup> Street and the diverter on Hudson was to be permanent and the diverter on Darlington would be temporary until two of three traffic factors were changed. He thought that all of this was a part of the approval of PUD-650.

#### **INTERESTED PARTIES:**

Clay Bird, Mayor's Office, stated that when the PUD was approved by the Planning Commission it didn't have any of the traffic calming included. He indicated that he was opposed to the PUD as recommended by the Planning Commission and at that point in time, the City Council started discussions regarding the traffic issues. After many meetings and discussions, there were decisions made to help alleviate the traffic until there were more traffic improvements in the future, which included the closing of 46<sup>th</sup> Street and installing the diverters on Hudson and Delaware.

Mr. Jackson asked Mr. Bird where the three owners of the subject office building were during these discussions. In response Mr. Bird stated that he has no idea and he couldn't tell whether they were contacted or not.

Mr. Boulden stated that Public Works usually notifies the 300' radius regarding closings and the owner or applicant supplies an abstract or certificate identifying the 300' radius property owners.

Mr. Bird stated that there were a lot of people who did receive the notices because they attended the meetings. He recalled that there were businesses in attendance during the discussions but he can't recall all of them.

**Tom Padalino**, representing The Max Campbell HOA, 4242 South Darlington Place, 74135, requested that the Planning Commission continue to support the PUD and that all three traffic diverters remain in place. He explained that at first the HOA was opposed to the rezoning of the Children's Medical Center, but after several meetings and compromises, there was an agreement made to have three traffic diverters in place. There is a plan to have another compromise for the office owner to prevent from causing a hardship on his business, but after that meeting he was surprised to learn that the compromise was rejected.

Mr. Padalino reminded the Planning Commission that the residents were promised that the majority of traffic coming into and out of the development would come from the highway, but that is not the case. The City Council also promised the residents that they would help protect the integrity of the neighborhoods by installing the three traffic diverting additions. It is not being rushed to be done and it has been many years in coming. The residents feel that this has taken too long. There was a compromise made and promises made during the rezoning and now that it has been rezoned it is not the time to go back on those promises and compromises.

Mr. Midget asked if the neighborhood was still experiencing traffic from the development. In response, Mr. Padalino stated that there is still some traffic coming through. The south-bound traffic from Darlington is still accessible and cars are able to go into the development from Darlington. The diverter was put in place to help the Max Campbell HOA prevent traffic from using the Darlington underpass. The diverter is temporary and once the improvements on 41<sup>st</sup> and Yale are made, then the diverter is to be removed.

In response to Mr. Midget, Mr. Padalino stated that the neighborhood was willing to compromise to allow a one-way turn lane off of 46<sup>th</sup> Street to the back parking lot for the subject office building, but he understands that the office building owner rejected that compromise.

**Leonard and Martina Mannas**, 5917 East 46<sup>th</sup> Street, 74135, stated that since the cul-de-sac has been partially done, the traffic in the morning and evening has been reduced dramatically. Mr. Mannas indicated that 46<sup>th</sup> Street is a long street from Sheridan and the speed limit is not always obeyed. He indicated that he is in favor of the closing of 46<sup>th</sup> Street.

Mrs. Mannas stated that the 46<sup>th</sup> Street cul-de-sac has helped with the traffic, but cut-through traffic is still a problem in their neighborhood.

**Dee Blackwelder**, 4612 South Granite, 74135, Kendall Wood Townhomes, supports that 46<sup>th</sup> Street remain closed. If this barrier is removed the traffic will be difficult around Christmas and the neighbors will not be able to get out of their complex. He commented that he is willing to deal with the inconvenience in order to divert the cut-through traffic.

**Charles Moore**, 5334 East 46<sup>th</sup> Street, 74135, stated that he is in the office building next to the applicant. He indicated that he would prefer that 46<sup>th</sup> Street be left open for the convenience of his clients. He explained that now vehicles are cutting behind the neighborhood and going around the block and there is the same amount of traffic going through the neighborhood.

**Councilor Randy Sullivan**, District 7, stated that this is the biggest conflict in his district. He explained that the diverter was first placed on Hudson but no one wanted it, since there was no development. The neighborhood was right because the diverter was originally approved when Costco was to develop. He cited how the neighborhood was inconvenienced with the diverter being placed on Hudson. The neighborhood requests that they be protected from the traffic created by this development and existing cut-through traffic.

Councilor Sullivan stated that he believes that there is a deal that could be made to balance the neighborhood, the subject office building, and the development in PUD-650.

**Applicant's Rebuttal:**

Mr. Schuller stated that there is no entrance onto Fulton from the front parking lot of his client's property and possibly that could be a solution. This solution was not considered by his client because it would allow traffic to cut through the parking lot in order to avoid the barrier on 46<sup>th</sup> Street.

Mr. Schuller stated that he understands that it is important for the City to protect the neighborhoods, but he urged to TMAPC to not lose sight of the fact that 46<sup>th</sup> Street was opened and was used as a street for a long time before this commercial development was considered. When this development came in, the neighbors used an existing problem and use as their solution they imposed on his client to solve a problem that has nothing to do with this commercial

neighborhood. The solution for this long-time existing traffic problem is at this client's expense.

Mr. Schuller commented that the minutes of the Planning Commission do not mention the closing of 46<sup>th</sup> Street and he believes that this came up during the City Council's consideration.

Mr. Schuller stated that the only compromise between his client and the HOA that merits some type of serious consideration is that right turn that is permitted from 46<sup>th</sup> Street onto Fulton. His clients have not consented to that and have resisted consenting to this proposal because it doesn't allow people leaving the lot to go back to Skelly Drive and the frontage road. He indicated that his clients are willing to negotiate. He proposed flipping the cul-de-sac to direct traffic back to Skelly Drive and the residential to the east would be protected from the cut-through traffic on 46<sup>th</sup> Street, which was rejected by the Traffic Engineering Department. Perhaps speed humps should be installed to make 46<sup>th</sup> Street less attractive to the traffic going through.

Mr. Schuller stated that he agrees with Councilor Sullivan that a deal is a deal, but only if it is not done in secret. The deal that was made was not done with any involvement or notice to his clients. It is a deal that takes away some of their property rights and the rights to access these streets. This is not a deal that can be fairly imposed upon his clients. It is not balanced to drive his clients out of business for the benefit of the homeowners and to create a hazardous situation for the residents of these apartment complexes. He doesn't believe it is fair for his client to have to pay the costs of redoing this intersection since they did not have anything to do with it in the first place.

**TMAPC COMMENTS:**

Mr. Carnes stated that he would like to make a motion that this case be continued for two weeks in order to allow Legal to review the street closing and meet with the neighborhood.

Mr. Jackson stated that it was indicated that the engineering details were drawn, demolition has occurred at the intersection and some curb has been installed. He asked Mr. Schuller if the PFPI contractors are working on this today. In response, Mr. Schuller stated that Mr. Oglesby reported that they started working on the intersection and then stopped.

Mr. Jackson stated that Mr. Schuller's clients have more than one option. He requested that Mr. Schuller and his clients come up with a plan that is amenable to all parties involved for a decision to be made in two weeks.

Mr. Midget stated that he agrees with the continuance and with Mr. Jackson's comments.

Mr. Ard asked Legal to review and see if the proper procedures were followed.

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted **8-0-0** (Ard, Cantees, Carnes, Harmon, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick "absent") to **CONTINUE** the major amendment for PUD-650-A to September 21, 2005.

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**Mr. Harmon out at 3:55 p.m.**

**Application No.: Z-7000**

**RS-3 TO IL**

**Applicant:** Carroll Borthick

(PD-16) (CD-6)

**Location:** 1147 & 1205 North Garnett

**STAFF RECOMMENDATION:**

**Z-6996 July 2005:** A request to rezone a 14.7-acre tract located in the southwest corner of East Independence Street and North Garnett Road from RS-3 to IL was recommended for approval by staff and TMAPC and awaits final hearing from the City Council.

**Z-6918 February 2004:** Approval was granted on a request to rezone a 2.2-acre tract located north of the northwest corner East Newton Street and North Garnett Road from RS-3 to IL for light industrial use.

**Z-6917 January 2004:** All concurred in approval of a request to rezone a 2.2-acre tract located east of the southeast corner East Pine Street and North Garnett Road from RS-3 to IL.

**Z-6808 March 2001:** All concurred in approval of a request to rezone a 7.3-acre tract located in the northeast corner of East Independence and North Garnett Road extending from North Garnett Road to North 177<sup>th</sup> East Avenue, from RS-3 to IL.

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

**Z-6651 October 1998:** Approval was granted for a request to rezone a 4.5-acre tract located north of the northwest corner of East Newton Street and North Garnett Road, from RS-3 to IL.



**Z-6288 August 1990:** A request to rezone a 1.25-acre tract located south of the southwest corner of East Independence and North Garnett Road and abutting the subject property, from RS-3 to CG. Staff and TMAPC denied CG zoning and recommended approval of CS zoning in the alternative. City Council concurred with TMAPC for CS zoning.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately nine acres in size. It is located on the east side of North Garnett Road between East Marshall Street and East Newton Street. The property is gently sloping, partially-wooded, contains what appears to be a vacant home and some accessory uses. An access road to some residential uses to the east (outside of the proposed rezoning) borders the subject property on the south and crosses to the midpoint farther east.

**STREETS:**

Exist. Access	MSHP Design.	MSHP R/W	Exist. # Lanes
North Garnett Road	Secondary arterial	100'	2 lanes

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

**SURROUNDING AREA:** Industrial/office uses and vacant land, zoned IL, abut the property on the north, south and west. To the east are single-family residential uses, zoned RS-3.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:** The District 16 Detail Plan designates this property Special District 2 – primarily planned for industrial usage. Plan policies (Section 3.2) encourage future industrial development to locate here and the need to adequately screen industrial uses from non-industrial uses.

**STAFF RECOMMENDATION:**

Based on the Comprehensive Plan and surrounding uses, staff can support the requested IL zoning. However, staff is concerned about the possibility of the residential properties to the east losing access to an arterial as a result. This issue must be resolved by the applicant and the residential property owners, perhaps in the platting process. Staff recommends **APPROVAL** of IL zoning for Z-7000.

**Applicant's Comments:**

**Carroll Borthick**, 1145 North Garnett Road, Tulsa, Oklahoma 74116, stated that the road staff is referring to is his private drive to his residence. The property to the west is being rezoned for future development in the northwest section. At the time of future development something would be resolved regarding the road.

There were no interested parties wishing to speak.

**TMAPC Action; 7 members present:**

On **MOTION** of **CARNES**, TMAPC voted **7-0-0** (Ard, Cantees, Carnes, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon "absent") to recommend **APPROVAL** the IL zoning for Z-7000 per staff recommendation.

**Legal Description for Z-7000:**

A part of Lot 2 and 3, Cooley's Subdivision, located in the NW/4 of Section 32, T-20-N, R-14-E, Tulsa County, State of Oklahoma, now an addition to the City of Tulsa, Oklahoma, being more particularly described as follows: All of Lot 3, less and except the East 277.25' thereof, also the South 264' of Lot 2, less and except the East 277.25' thereof, all being in said Cooley's Subdivision, an addition to the City of Tulsa, Tulsa, Oklahoma, and a parcel of land located in the NW/4, SW/4, NW/4 of Section 32, T-20-N, R-14-E of the IBM, Tulsa County, State of Oklahoma, being more particularly described as follows: the South 264' of said NW/4, SW/4, NW/4 of Section 32, T-20-N, R-14-E, Tulsa County, State of Oklahoma, and located at 1147 and 1205 North Garnett Road, Tulsa, Oklahoma, **From RS-3 (Residential Single-family High Density District) To IL (Industrial Light District).**

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**Application No.: PUD-390-B-2**

**MINOR AMENDMENT**

**Applicant:** Dennis Wright

(PD-18) (CD-7)

**Location:** 8925 East 61<sup>st</sup> Street South

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to allow a second-story emergency access door and stairway on the north elevation. The property is zoned OL, and PUD development standards prohibit north facing windows and signs. Staff has inferred that north facing doorways and stairs would likewise be prohibited.

The doorway and stairs are a requirement of Public Works for emergency access/ exit. Staff finds that the request does not substantially alter the character of the development as long as this access/ exit is strictly limited to emergency use. Therefore, staff recommends **APPROVAL** of **PUD-390-B-2** *subject to* limitation of the stairs and doorway to emergency use, only.

The applicant indicated his agreement with staff's recommendation.

There were no interested parties wishing to speak.

**TMAPC Action; 7 members present:**

On **MOTION** of **MIDGET**, TMAPC voted 7-0-0 (Ard, Cantees, Carnes, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon "absent") to **APPROVE** the minor amendment for PUD-390-B-2 subject to limitation of the stairs and doorway to emergency use, only per staff recommendation.

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**Application No.: PUD-405-19**

**MINOR AMENDMENT**

**Applicant:** Matthew Cooper

(PD-18) (CD-8)

**Location:** 7322 East 91<sup>st</sup> Street

**STAFF RECOMMENDATION:**

This request is for a minor amendment to increase the allowable signage from one to two signs, on Lot 2, Block 1, South Springs Office Park. Current Development Standards permit 'One monument sign per street entry not to exceed 4 feet in height and 32 square feet of display surface area.'

Surgical Arts medical office building was originally approved and built on Lot 1, Block 1, South Springs Office Park and a ground sign was permitted at its west entry from East 91<sup>st</sup> Street South. The office recently expanded across and into Lot 2. A second access, shared with Celebrity Attractions to the east, was added at the east property line. Celebrity Attractions has a ground sign at this entry. The applicant proposes adding a sign, centered between the existing Surgical Arts and Celebrity Attractions signs in accordance with the 100' separation requirement for ground signs per Section 1103.B.2.b.3 of the Tulsa Zoning Code.

Each office building within this development area has one sign, located at its entry to East 91<sup>st</sup> Street South. Staff believes that the existing ground sign for Surgical Arts on East 91<sup>st</sup> Street South is sufficient, and therefore, recommends **DENIAL** of PUD-405-19.

**Applicant's Comments:**

**Matthew Cooper**, 7100 North Classen, Oklahoma City, Oklahoma 73116, stated that the subject building has been built as a duplex and there are two separate practices that will be in the duplexes. He explained that the new signage would be greater than 100 feet from the existing two signs and will run parallel with the

street. The two practices will have separate addresses and they are two separate businesses. There is a need for a separate identity so that the public will know the correct location for the separate practices. He assumes that if a new business moved in they would be allowed a sign.

**TMAPC COMMENTS:**

Mr. Jackson asked staff if the Celebrity Attractions is part of the same PUD. In response, Ms. Matthews stated that it is and the terms of the PUD allow one sign per building.

Mr. Cooper stated that the PUD states one sign per entry. There are two entries, which were required; however, they were made to share an entry with Celebrity Attractions.

Mr. Midget asked Mr. Cooper if the existing signage for the Surgical Arts is to be removed. In response, Mr. Cooper stated that the existing sign will change to identify the new function of the existing building.

Mr. Jackson asked if there would be two or three signs. In response, Mr. Cooper stated that there would be two signs.

Mr. Ard stated that he thought that there would be three signs within the PUD. One sign would be located at each entry and one between the two existing signs, which would be in the middle in order to meet the spacing.

Mr. Horner stated that there are three entities sharing a building and he doesn't see how a business entity can get along without a sign.

**INTERESTED PARTIES:**

**Bart James**, Representing the property owner, 7910 S. 101<sup>st</sup> East Avenue, Tulsa, Oklahoma 74137, stated that this PUD's boundaries are from the car lots at the east end and then to the subject building. His client originally built his building on Lot 1, but in order to expand his practice, he purchased Lot 2. He explained that there will be one sign for Celebrity Attractions and a proposed sign for Lot 2 and the existing sign for Lot 1. It would seem that each business would be entitled to a sign and it shouldn't be a first-come-first-served basis.

**TMAPC COMMENTS:**

Mr. Ard asked staff if the proposed third sign would have adequate spacing as far as the standards required.

**TMAPC Action; 7 members present:**

On **MOTION** of **CARNES**, TMAPC voted 6-1-0 (Ard, Cantees, Carnes, Horner, Jackson, Midget "aye"; Hill "nay"; none "abstaining"; Bayles, Bernard, Dick, Harmon "absent") to **APPROVE** the minor amendment for a third sign as proposed by the applicant.

Application No.: PUD-582-5

MINOR AMENDMENT

Applicant: Roy D. Johnsen

(PD-18) (CD-9)

Location: North of northwest corner East 67<sup>th</sup> Street and South Birmingham

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to reduce the minimum required rear yard from 20' to 17.5' and to reduce the required front yard garage setback from 25' to 20' for eight lots within the Balmoral Addition. The residential development is zoned RS-3/ PUD and is bounded on three sides by existing residential development and on the north by Southern Hills Country Club golf course.

An eight foot masonry screening wall is located long the east, south and west boundaries of the subdivision. Of the four previous minor amendments, two reduced setbacks; PUD 582-2 created a new side setback after a portion of a private street was eliminated; and PUD 582-4 reduced the rear setback from 20' to 13'. The proposed amendment does not conflict with platted easements. Staff finds that the request is minor in nature and does not substantially alter the character of the development as long as development of each lot complies with the 3,000 square foot minimum livability space requirement. Therefore, staff recommends **APPROVAL** of PUD 582-5.

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

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

**TMAPC Action; 7 members present:**

On **MOTION** of **CARNES**, TMAPC voted 7-0-0 (Ard, Cantees, Carnes, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon "absent") to **APPROVE** the minor amendment for PUD-582-5 per staff recommendation.

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**OTHER BUSINESS:**

Application No.: PUD-710

DETAIL SITE PLAN

**Applicant:** Richard Conrad

(PD-18) (CD-2)

**Location:** South of southwest corner of East 61<sup>st</sup> Street and South Harvard

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site and landscape plan for a gated entry and perimeter screening, and approval of modifications to paving of the private street (East 62<sup>nd</sup> Street South).

The gated entry has been approved by Traffic Engineering and the Fire Marshal, as have the proposed modifications to paving, which combine a roll curb and gutter within the required 24' paving width. Perimeter screening includes an 84" masonry wall along the north boundary, with exception of that portion abutting the lake. An 83" wrought iron fence is proposed in compliance with requirements to retain visibility of the lake from adjoining properties. Perimeter screening of the remaining boundaries is a combination of wrought iron and masonry walls, none of which exceed eight feet. Proposed landscaping will be watered by an underground irrigation system.

Staff recommends **APPROVAL** of PUD-710 detail site and landscape plan, perimeter screening and modifications to paving as proposed.

**Applicant was not present.**

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

**TMAPC Action; 7 members present:**

On **MOTION** of **CARNES**, TMAPC voted 7-0-0 (Ard, Cantees, Carnes, Hill, Horner, Jackson, Midget "aye"; no "nays"; none "abstaining"; Bayles, Bernard, Dick, Harmon "absent") to **APPROVE** the detail site plan and landscape plan for PUD-710 as recommended by staff.

\* \* \* \* \*

**STAFF COMMENTS:**

Ms. Matthews stated that she wanted to make clear that PUD-582-5 is recommended for approval by staff contingent upon their continuing to comply with the required livability space.

Mr. Carnes stated that the motion intended staff's contingency.

There being no further business, the Chair declared the meeting adjourned at 4:11 p.m.

Date Approved:

7-28-05

Stacy M. Bayles

Chairman

ATTEST:

William M. Quinn

Secretary

