

**TULSA METROPOLITAN AREA PLANNING COMMISSION**  
**Minutes of Meeting No. 2508**

Wednesday, March 19, 2008, 1:30 p.m.

Francis Campbell City Council Room

Plaza Level, Tulsa Civic Center

<b>Members Present</b>	<b>Members Absent</b>	<b>Staff Present</b>	<b>Others Present</b>
Cantrell	Ard	Alberty	Boulden, Legal
Carnes	Sparks	Fernandez	
Harmon		Huntsinger	
Marshall		Matthews	
McArtor		Parker	
Midget		Sansone	
Perry			
Shivel			
Walker			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, March 13, 2008 at 3:15 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, 1<sup>st</sup> Vice Chairman Harmon called the meeting to order at 1:30 p.m.

Mr. Harmon read the opening statement and rules of conduct for the TMAPC meeting.

**REPORTS:**

**Director's Report:**

Mr. Alberty reported on the BOCC and City Council agendas.

Mr. Alberty reported on the TMAPC receipts for the month of February 2008.

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Mr. Harmon announced that Item 17, Z-7092 has been withdrawn.

## CONSENT AGENDA

All matters under "Consent" are considered by the Planning Commission to be routine and will be enacted by one motion. Any Planning Commission member may, however, remove an item by request.

1. **L-20186** – Jack Ramsey, (9230)/Lot-Split (County)  
Northwest corner of South 65<sup>th</sup> Avenue and West 46th Street
2. **L-20187** – Jacobs Carter Burgess, (8211)/Lot-Split (PD 8) (CD 2)  
Southwest corner of West 81<sup>st</sup> Street and South Olympia Avenue
4. **PUD-555-A – PSA-Dewberry, Inc.** (PD-18c) (CD-8)  
8860 East 91<sup>st</sup> Street South, Lot 1 and Reserve A (Detail Site Plan for the construction of two 2,080 square foot missionary living quarters.)

### **STAFF RECOMMENDATION:**

The applicant is requesting approval of detail site plan for the construction of two-2,080 square foot missionary living quarters, totaling 4,160 square feet of residential floor area.

The proposed site plan is within the 6,500 square feet of permitted residential floor area, as well as building height and setback requirements. No additional site landscaping is required. While no additional parking is required, a separate parking area is provided for the missionary quarters separate from the main church facility.

Staff recommends **APPROVAL** of the detail site plan for World Outreach Ministries, PUD-555-A; Lot 1 and Reserve A, Block 1 – Living Word Missions.

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

5. **PUD-555-A-1 – PSA-Dewberry, Inc.** (PD-18c) (CD-8)  
8860 East 91<sup>st</sup> Street South, Lot 1 and Reserve A (Detail Site Plan for reducing the required setback for light standards along R district boundary from 75 feet to 35 feet.)

### **STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to PUD-555-A for the purpose of reducing the required setback for light standards along an R district boundary. Specifically, PUD-555-A development standards state, that lighting elements be set back no less than 75 feet from the abutting R district to the east. The applicant is requesting a reduction of that requirement to 35 feet.

The R-zoned property immediately adjacent to the east is a Reserve Area for PUD-298, and is owned by the City of Tulsa. This property is further separated

from the residentially-developed neighborhood to the east and northeast by the Little Haikey Creek Floodway and the 100-year floodplain, meaning it is unlikely the property will be developed for residential purposes (see Exhibit A).

All light standards, including building mounted, shall remain no less than 35 feet from the east PUD boundary. Light shall be directed down and away from the aforementioned R property to the east. Application of this standard will be verified by application of the Kennebunkport formula. No light standards shall be permitted north of the 20' proposed Haikey Creek Trail easement per the plan submitted.

Staff has reviewed the applicant's plans and views the above referenced request as minor in nature, therefore staff recommends **APPROVAL** of minor amendment PUD-555-A-1.

(note: approval of a minor amendment does not constitute detail site plan approval).

6. **Z-7008-SP-1e – Jacob Carter Burgess/Tulsa Hills** (PD-8) (CD-2)

South of the southeast corner of West 71<sup>st</sup> Street and U.S. Highway 75, Lot 11, Block 1 (Corridor Plan Minor Amendment to allow a lot-split creating new Tracts A, B and C and reallocating existing floor area to the new development tracts.)

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to Z-7008-SP-1 for the purpose of allowing a lot-split creating new Tracts A, B and C from existing lot 11, Block 1, and reallocating existing floor area to the new development tracts (see Exhibit A). There is no request for an increase in over-all permitted floor area.

Staff has reviewed the proposed reallocation of floor area and finds the new distribution of floor area to be constant with the approved development standards of Z-7008-SP-1 and the Corridor District chapter of the Zoning Code. The allocated floor area is represented on the attached exhibit and is described as follows:

**EXISTING**

	<b>Square Footage per Plat</b>	<b>Permitted Floor Area per Plat</b>	<b>FAR</b>
Lot 11	317,853 SF	88,395 SF	.28

**PROPOSED**

	<b>Square Footage</b>	<b>Requested Floor Area</b>	<b>FAR</b>
Lot 11 - Tract A	56,932	7,000 SF	.12
Lot 11 - Tract B	145,271	14,895 SF	.10
Lot 11 - Tract C	115,650	66,500 SF	.58
Total Floor Area	317,853	88,395 SF	.28

Permitted

While the intensity of development will most concentrated on Tract C, the proposed .58 FAR is well within the permitted 1.25 FAR permitted in CO zoning. There is also no increase of permissible floor area being requested for the over-all development area. Therefore, staff recommends **APPROVAL** of minor amendment Z-7008-SP-1e.

(Note: approval of a minor amendment does not constitute approval of a lot split or detail site plan)

7. **Z-7008-SP-1f – Sack & Associates/Tulsa Hills** (PD-8) (CD-2)

East of the southeast corner of West 71<sup>st</sup> Street and South Olympia Avenue, Lots 5, 14 through 19, Block 2 (Corridor Plan Minor Amendment to reallocate existing floor area.)

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to Z-7008-SP-1 for the purpose of reallocating existing floor area to the above-referenced lots (see Exhibit A). There is no request for an increase in overall permitted floor area for Development Area B.

Staff has reviewed the proposed reallocation of floor area and finds the new distribution of floor area to be consistent with the approved development standards of Z-7008-SP-1, Development Area B and the Corridor District chapter of the Zoning Code. The allocated floor area is represented on the attached exhibit and is described as follows:

	<b>Lot Square Footage</b>	<b>Permitted Floor Area per Plat</b>	<b>Requested Floor Area Allocation</b>	<b>New FAR based on Re-allocation</b>
Lot 5	51,513	11,000 SF	9,500 SF	.18
Lot 14	38,810	2,500 SF	4,000 SF	.10
Lot 15	45,331	7,313 SF	4,000 SF	.08
Lot 16	45,133	7,317 SF	4,000 SF	.08
Lot 17	54,577	7,317 SF	15,000 SF	.27
Lot 18	58,380	7,317 SF	8,500 SF	.14
Lot 19	56,633	7,317 SF	5,073 SF	.08
Total	350,377	50,073 SF	50,073 SF	.14

While the intensity of development will shift most significantly on lot 17, the intensity after the re-allocation of floor area on Lot 17 is only .02 over the originally approved FAR of .25 for Development Area B, and is well within the permitted 1.25 FAR permitted by CO zoning. There is also no increase of permissible floor area being requested for the over-all development area. Therefore, staff recommends **APPROVAL** of minor amendment Z-7008-SP-1f.

(Note: approval of a minor amendment does not constitute approval of a lot split or detail site plan)

8. **Z-7008-SP-1 – Sack & Associates/Tulsa Hills** (PD-8) (CD-2)

East of the southeast corner of West 71<sup>st</sup> Street South and Olympia Avenue, Lot 18, Block 2 (Detail Site Plan for an 8,400 square foot building.)

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan for an 8,400 square foot building at the above location. The proposed Use Units; 12 – Eating Establishments Other Than Drive-ins and Use Unit 14 – Shopping Goods and Services are in conformance with permitted Uses approved as part of the corridor development plan.

The proposed structure meets all building floor area, setback and height limitations. Access to the site is provided via mutual access easement connecting the site to 71<sup>st</sup> Street immediately along the western boarder of the tract, and to Olympia Avenue further to the west. Pedestrian circulation is encouraged with sidewalks along 71<sup>st</sup> Street and along the mutual access easements. A pedestrian walkway will be installed to connect the southern portion of the parking lot to the northern portion providing further pedestrian safety.

Site landscaping requirements have been exceeded, and site lighting will be installed according to approved development standards. Residential areas to the east will be buffered from spillover lighting via application of the Kennebunkport formula. All trash enclosures will be screened from public view.

Staff recommends **APPROVAL** of the detail site plan for Lot 18, Block 2 – Tulsa Hills, corridor development plan approval number Z-7008-SP-1.

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

10. **PUD-709-2 – Julius Puma** (PD-26) (CD-8)

11520 South Oswego (Minor Amendment to reduce the required front setback on Lot 5, Block 3 from 30 feet to 25 feet to allow for a minor encroachment of a covered front porch only.)

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to reduce the required front setback on Lot 5, Block 3 - Sequoyah Hill II from 30' to 25' to allow for a minor encroachment of a covered front porch only, on a corner lot with 237.2 lineal feet of frontage.

Specifically, the request is to allow an approximately 39 square foot encroachment over the front setback line. The rest of the structure will meet the required front setback requirement, all other setback requirements, building height and livability space requirements.

Therefore, staff recommends **APPROVAL** of minor amendment PUD-709-2 for Lot 5, Block 3 – Sequoyah Hill II.

**The Planning Commission considered the consent agenda.**

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

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted **8-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Midget, Sparks "absent") to **APPROVE** the consent agenda Items 1, 2, 4, 5, 6, 7, 8 and 10 per staff recommendation.

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**Mr. Midget in at 1:40 p.m.**

**CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA:**

9. **PUD-595-B – Sisemore Weisz & Associates** (PD-18c) (CD-8)

Approximately 1/3 mile east of South Mingo Road and 1/3 mile north of 71<sup>st</sup> Street South, Lot 4, Block 1 (Detail Site Plan for a 136 room hotel.)

**STAFF RECOMMENDATION:**

The applicant is requesting approval of a detail site plan for a 136 room hotel. The proposed use, Use Unit 19 - Hotel, Motel and Recreation Facilities is in conformance with Development Standards of PUD-595-B.

The proposed site plan meets all applicable building floor space, setback, and height requirements. Access to the site is provided from two (2) access points from private roadway 104<sup>th</sup> East Avenue. Sidewalks are provided along 104<sup>th</sup> East Avenue and 68<sup>th</sup> Street South per development standards. Pedestrian access from the sidewalks to the entrance of the building is provided through the "arrival court" per attached exhibit SP-1 as required per PUD development standards. Parking requirements have been met per the Zoning Code; site lighting meets all applicable standards and is directed down and away from adjoining properties by application of the Kennebunkport formula. An enclosure is provided to screen trash from view at ground level per development standards.

Therefore, staff recommends **APPROVAL** of the detail site plan for Lot 4, Block 1 – Home Center Amended.

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

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

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the detail site plan for PUD-595-B for Lot 4, Block 1 – Home Center Amended per staff recommendation.

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**PUBLIC HEARING**

12. **South Town Market** – (8324) Preliminary Plat (PD 26) (CD 8)  
Northeast corner of East 101<sup>st</sup> Street South and Memorial Drive  
(continued from 2/20/2008 and 3/5/2008)

**STAFF RECOMMENDATION:**

This plat consists of seven lots, one block, on 21 acres.

The following issues were discussed February 7, 2008 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned PUD-411C with a Minor Amendment (PUD-411-C-12) pending. Once the PUD standards are approved per the proposed Minor Amendment, the standards must be shown in the restrictive covenants and all requirements must be met.
2. **Streets:** Dedicate an additional ten feet of right-of-way along 101<sup>st</sup> Street adjacent to Lots 3 and 4 for a future right-turn bay per Subdivision Regulations. (Total of 70 feet for a Primary Arterial approach.) Document both Arterial right-of-ways. In order to discourage through traffic into the residential area, the Traffic Engineer recommends a right-in/right-out diversion island be constructed in the middle of the north drive onto 84<sup>th</sup> East Avenue if approved per the PUD. Relocate the drive from Lot 1 to the major entryway at least 100 feet east of the Memorial curb line due to the proposed signalization. How is the triangular shaped mutual access easement located immediately north of the north property line going to be dedicated if it is part

of the Jim Norton Center II plat? Provide standard covenant language for sidewalks. Sidewalks are not shown along arterials. A mutual access easement from Jim Norton by separate instrument is needed.

3. **Sewer:** Beginning at the southeast corner of Lot 6, continue the 17.5-foot perimeter utility easement all the way south, to match the existing 17.5-foot utility easement along the south boundary line. Lot 1 appears in two different locations on the face of the plat.
4. **Water:** Lots 5 and 6 – increase the 15 feet easement to 20. The proposed 12-inch waterline along 101<sup>st</sup> Street South cannot be installed in the existing ONG easement.
5. **Storm Drainage:** Show and label the location of the stormwater detention facility and its easement. Be sure to label as existing and its name. Place a note on the face of plat stating where stormwater detention for the proposed area being platted is located. Add the standard language for stormwater detention facility maintenance in a Reserve, and state what prorated responsibilities the owners of these six lots will have for the maintenance of the existing facility. Show the location for the existing stormwater detention facility and label it.
6. **Utilities: Telephone, Electric, Gas, Cable, Pipeline, Others:** Add appropriate wording to Covenants for underground utilities.
7. **Other: Fire:** No comment.

**GIS:** “9700 Memorial” on location map is actually two different subdivisions, and should be drawn as such. North arrow needed for location map. “East 98<sup>th</sup> Place South” should be “East 98<sup>th</sup> Street South” on face of plat. Point of Commencement and Point of Beginning should be placed and labeled on face of plat, with bearing and distance to each other, and should match covenants. Distance 1114.23 feet from covenant should be labeled on face of plat. Use different line styles for section line and centerline (Memorial Drive). There are two “Lot 1” labels, one mistakenly placed north of Lot 7. Point of Commencement and Point of Beginning should be mentioned in the covenants, and should match the plat. Verify the name of the existing street near the northeast corner or change to “East 98<sup>th</sup> Street”. Dimension the south lot line of Lot 5. Flows across and under 101<sup>st</sup> Street cannot be increased from present conditions. Where is the boundary line between the “Lot 1”, located north of Lot 7, and Lot 6?

This plat was continued from the 2/20/08 TMAPC meeting so that PUD standards for the site could be approved. It was continued from the 3/5/08 meeting so that PUD standards could be approved as the PUD amendment approval has been appealed to the City Council. If the TMAPC approves the Preliminary Plat staff recommends that the PUD standards as approved by City Council be followed

and included in the restrictive covenants/deed of dedication, and approval be per the TAC comments and the special and standard conditions as listed below.

**Waivers of Subdivision Regulations:**

1. None requested.

**Special Conditions:**

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

**Standard Conditions:**

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

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

24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

**TMAPC COMMENTS:**

Ms. Cantrell asked if this were approved would it set a precedent. In response, Mr. Alberty stated that a precedent is always a possibility if it meets the same conditions. Each of these would be considered on its own merits. This is more of an accommodation to the applicant and the proposed tenant due to the delays to this point. There is nothing that could be harmed, other than the process and will probably increase the engineer's time to redo the preliminary plat. The applicant is willing to move ahead at his own risk. This can't be finally approved until it has met all of the conditions.

Mr. Carnes stated that the Planning Commission has done this in the past and it would not be setting a precedent.

In response to Mr. Perry, Mr. Alberty stated that by approving the preliminary plat it would allow the applicant to proceed with his engineering work. Whatever the City's requirements are is what the applicant will have to meet. Mr. Alberty informed the Planning Commission that staff has transmitted the entire file to the City Council today for the appeal issue regarding the subject property.

**Applicant's Comments:**

**Ted Sack**, 111 South Elgin, 74120, stated that he is willing to take the risk to move forward at this point. He realizes that this has been appealed to the City Council and whatever development is done is subject to the conditions that are finally adhered to by the City Council. If some things have to be changed pending the results from City Council, he is willing to do that. Mr. Sack indicated that he is in complete agreement with the staff recommendation.

**Interested Parties:**

**Joseph Wallis**, 8618 East 100<sup>th</sup> Place, 74133; **Jan Henry**, 8628 East 48<sup>th</sup> Street, 74133; **Matt Hudspeth**, 9536 South 85<sup>th</sup> East Avenue, 74133.

**Interested Parties Comments:**

Concerned that this will set a precedent by approving this preliminary plat before the appeal has been heard by the City Council; still opposed to the Super Target and do not want to waste the Planning Commission's time and having to come back to more meetings on this issue; it is premature to hear this issue until the appeal is resolved.

**TMAPC COMMENTS:**

Ms. Cantrell asked Ms. Henry if she realizes that there is no real risk to her neighborhood by approving the preliminary plat today. In response, Ms. Henry answered affirmatively.

Mr. McArtor asked Mr. Hudspeth if he plans to take the appeal to the District Court if it fails at the City Council. In response, Mr. Hudspeth stated that he doesn't know at this point. He will have to wait to see what happens.

**Applicant's Rebuttal:**

Mr. Sack stated that he is willing to take the risk and move forward. He indicated that he would have to meet whatever conditions the City Council requires. This has been done numerous times before and wouldn't be setting a precedent. The Planning Commission will have a chance to approve the draft final as it comes forward and a detail site plan will also be submitted for the Planning Commissions' review.

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the preliminary plat for South Town Market per staff recommendation, subject to the special conditions and standard conditions, subject to the following: If the TMAPC approves the Preliminary Plat staff recommends that the PUD standards as approved by City Council be followed and included in the restrictive covenants/deed of dedication, and approval be per the TAC comments and the special and standard conditions as listed below.

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13. **Tulsa Hills South** – (8214) Preliminary Plat (PD 8) (CD 2)  
Northeast corner of Highway 75 and West 91<sup>st</sup> Street South

**STAFF RECOMMENDATION:**

This plat consists of five lots, two blocks, on 12.78 acres.

The following issues were discussed March 6, 2008 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned CO-Z-7083-SP-1. The plat must conform to the CO site plan standards. An FAA study may be needed as required by the Tulsa Airport Authority.
2. **Streets:** Label Olympia as Public or Private. If private, provide a five-foot wide sidewalk easement. On Section B.7 Pedestrian Circulation delete the wording "where practical". On B.7.A add sidewalk along Olympia. Show five-foot wide sidewalks along 91<sup>st</sup> Street South and South Olympia. Include

typical striping in the area of the major entry.

3. **Sewer:** The City of Tulsa plans to serve the area along the north side of West 91<sup>st</sup> Street, between Highway 75 and South Elwood Avenue with a regional lift station located in the vicinity of West 91<sup>st</sup> Street and South Elwood. Engineering for the project has been funded by the 2006 sales tax. Construction funding has not yet been committed. Any new development within this area must choose between the two options below:

1. Seek approval from the City of Jenks to temporarily gravity flow sanitary sewer to the Jenks system to the south. The onsite collection system would be designed to facilitate an extension to the planned regional facility near 91<sup>st</sup> and Elwood. After the City of Tulsa system goes on line, you will be required to disconnect from the Jenks system and connect to the City of Tulsa facility.
2. Fund the construction of the regional lift station and gravity flow to that location. This would be built with enough capacity to serve the entire basin, and a payback system would be established to recover some of the cost when other areas develop. Please contact Bob Shelton (596-9572) City of Tulsa, Public Works, Engineering Design to access information on the proposed lift station. There does not appear to be adequate clearance between your proposed force main and the east boundary line of the proposed plat to allow for proper maintenance of the line. In addition, the proposed force main does not have adequate separation between it and the proposed waterline.

4. **Water:** The proposed water main along West 91<sup>st</sup> Street South will be required to be extended to the south east property corner. If the 10 foot horizontal separation between the water main line and sanitary sewer force main is not maintained, then the water main line will be required to be ductile iron pipe.

5. **Storm Drainage:** Section 1G is for storm sewer easement but none are shown on the face of plat. Show the easements or remove this section. Section II.C.4. next to last sentence states "...shall not exceed 1/16<sup>th</sup> of the cost." It should say 1/5<sup>th</sup>.

6. **Utilities: Telephone, Electric, Gas, Cable, Pipeline, Others:** No comment.

7. **Other: Fire:** Relocate two fire hydrants: the hydrant on the south side of Block 1, Lot 1, shall be moved adjacent to the access drive; the hydrant at the back of Block 1, Lot 2, shall be moved adjacent to the parking lot with the easement extended to that point.

**GIS:** Show the "Tulsa City Limits" boundary on the face of the plat. Label the point of commencement and the point of beginning. Correct the inconsistencies in the metes and bounds description in the covenants and

the bearings and distances labeled on the face of the plat. Create a legend, or do not use "U/E" abbreviations. Change "Limits of NA Access" to "Limits of No Access". Label the east right-of-way line of U.S. Highway 75. Correct the inconsistencies in the metes and bounds description in the covenants and the bearings and distances labeled on the face of the plat. Traverse should run clockwise to match the bearings on the plat. Use correct addresses.

Staff recommends **APPROVAL** of the Preliminary Subdivision plat subject to the TAC comments and the special and standard conditions below.

**Waivers of Subdivision Regulations:**

1. None requested.

**Special Conditions:**

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

**Standard Conditions:**

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

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

21. Applicant is advised of his responsibility to contact the U.S. Army Corps of Engineers regarding Section 404 of the Clean Waters Act.
22. All other Subdivision Regulations shall be met prior to release of final plat.
23. All PUD standards and conditions shall be included in the covenants of the plat and adequate mechanisms established to assure initial and continued compliance with the standards and conditions.
24. Private streets shall be built to City or County standards (depending upon the jurisdiction in which the plat is located) and inspected and accepted by same prior to issuance of any building permits in the subdivision.

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

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

**TMAPC Action; 9 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the preliminary plat for Tulsa Hills South, subject to special conditions and standard conditions per staff recommendation.

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14. **Go-Fit** – (0421) Authorization for Accelerated Release (PD 16) (CD 6) of Building Permit  
Northeast corner of East Apache Street and North 129<sup>th</sup> East Avenue

**STAFF RECOMMENDATION:**

The properties are zoned IM. Full permits are requested. A preliminary plat was approved on 1/23/08 by TMAPC.

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 plats per Section 2.5 of the Subdivision Regulations.

The applicant offers the following explanation of the extraordinary and exceptional circumstances that serve as the basis for this request: 1. Lease expiration at present business location in August 2008 (Accelerated building permit necessary for commencement and completion of building on new site by

August, 2008). 2. Building construction is limited to only one building upon one lot of the Go-Fit subdivision.

**The following information was provided by the Technical Advisory Committee in its meeting March 6, 2008.**

**ZONING:**

TMAPC Staff: Full permits are requested.

**STREETS:**

Public Works, Transportation: five-foot wide sidewalks required along North 129<sup>th</sup> East Avenue and East Apache Street.

Public Works, Traffic: No objection.

**SEWER:**

Public Works, Waste Water: No objection to the building permit, however, no water or sewer taps will be issued until the required sanitary sewer main has been constructed and accepted by the City of Tulsa.

**WATER:**

Public Works, Water: No comment.

**STORM DRAIN:**

Public Works, Storm Water: As required at the 1/10/08 TAC, the detention easement cannot include the perimeter easement. Also required by TAC was the conveyance of off-site water from the north and east in overland drainage easements and/or storm sewer easements.

**FIRE:**

Public Works, Fire: No objection if new conceptual drawing is submitted indicating the 1/10/08 TAC fire comments are complied with.

**UTILITIES:**

Franchise Utilities: No comments.

The accelerated building permits were originally designed to accommodate large campus style type of developments and should concentrate upon "the benefits and protections to the City that may be forfeited by releasing the building permit prior to the filing of the plat". Staff does not object to the authorization to release the accelerated permits with the conditions as commented by the Technical Advisory Committee. The subdivision plat for this property is progressing through the platting process.

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

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

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the authorization for accelerated release of building permit for Go-Fit per staff recommendation.

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15. **Webster** – (1331) Plat Waiver (County)  
Northeast corner of North Victor Avenue and East 73<sup>rd</sup> Street North  
(Related to Item 3.)

**STAFF RECOMMENDATION:**

The platting requirement is being triggered by a previous rezoning and a request for a lot split.

**Staff provides the following information from TAC at their March 6, 2008 meeting:**

**ZONING:**

TMAPC Staff: The property is zoned RS in Tulsa County and the lot split ( LS 20189) requested is the last allowed before a subdivision plat will be required.

**STREETS:**

Sidewalks are required along Victor and 73<sup>rd</sup> Street North. Increased right-of-way may be needed. Surrounding properties are not adequately described. Both Victor and 73<sup>rd</sup> street North may not meet minimum right-of-way per the Street Plan. **County Engineer:** Right-of-way easement needed is 25 feet on the south and 30 feet on the west.

**SEWER:**

No comment.

**WATER:**

Turley serves water.

**STORM DRAIN:**

No comment. This is out of City Limits.

**FIRE:**

This is out of the City of Tulsa, but fire hydrants are recommended and getting with the local fire department for their comment is recommended.

**UTILITIES:**

No comment.

Staff recommends **APPROVAL** of the plat waiver. Right-of-way must be dedicated per Lot Split # 20189 and there can be no further lot splits without a subdivision plat.

**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		X
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 necessary right-of-way will be required for the lot split # 20189 on the same TMAPC consent agenda.

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

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

**TMAPC Action; 9 members present:**

On **MOTION** of **MIDGET**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the plat waiver for Webster per staff recommendation.

\*\*\*\*\*

- 3. **L-20189** – Bobby Webster, (1331)/Lot-Split (County)  
Northeast corner of North Victor Avenue and East 73<sup>rd</sup> Street North  
(Related to Item 15.)

**STAFF RECOMMENDATION:**

Mrs. Fernandez stated that the lot-split meets all requirements and staff can recommend **APPROVAL**.

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

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

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **RATIFY** the lot-split for L-20189 per staff recommendation.

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**Commissioner Perry out at 2:00 p.m.**

Mr. Harmon announced that he has known Mr. Goodwin for a long time and visited with him shortly before the meeting, but it does not bias his opinion one way or the other and he will be participating in the discussion and voting.

16. **Z-7091 – Casey Goodwin**

**AG to IL**

8602 & 8614 South Peoria Avenue

(PD-8) (CD-2)

**STAFF RECOMMENDATION:**

**ZONING ORDINANCE:** Ordinance number 11827 dated June 26, 1970, established zoning for the subject property.

**PROPOSED ZONING:** IL

**PROPOSED USE:** Office/retail

**RELEVANT ZONING HISTORY:**

**Z-6709 August 1999:** All concurred in approval of a request for rezoning a 6.97± acre tract of land from AG to IL on property located south of the southwest corner of West 81<sup>st</sup> Street South and South Peoria Avenue and north of subject property.

**Z-6620 March 1998:** All concurred in approval of a request to rezone a 5.8 acre tract 400' south of the subject tract, on the west side of South Peoria, from AG to IL for a landscape service.

**Z-6406 August 1993:** All concurred in approval of a request to rezone the 7.5 acre tract abutting the subject tract on the south from AG to IL.

**AREA DESCRIPTION:**

**SITE ANALYSIS:** The subject property is approximately 1± acres in size and is located at 8602 and 8614 South Peoria Avenue. The property is zoned AG. It appears to be an out-parcel from a previous zoning case (to IL) involving the property surrounding it on the south and west.

**STREETS:**

<b>Exist. Access</b>	<b>MSHP Design</b>	<b>MSHP R/W</b>	<b>Exist. # Lanes</b>
South Peoria Avenue	N/A	N/A	2

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

**SURROUNDING AREA:** The subject tract is surrounded by industrial and related uses, zoned IL. Jones Riverside Airport lies a short distance to the west, also zoned IL.

**RELATIONSHIP TO THE COMPREHENSIVE PLAN:**

The District 8 Plan, a part of the adopted Comprehensive Plan for the Tulsa Metropolitan Area, designates this area as being Medium Intensity – Industrial land use. According to the Zoning Matrix, the requested IL zoning is in accord with the Plan.

**STAFF RECOMMENDATION:**

Based on the Comprehensive Plan, existing surrounding and nearby uses and trends in the area, staff can support the requested rezoning. This is clearly an area in transition to industrial uses and the property is the last remaining AG-zoned parcel. Staff therefore recommends **APPROVAL** of IL zoning for Z-7091.

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

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

**TMAPC Action; 8 members present:**

On **MOTION** of **CARNES**, TMAPC voted **8-0-0** (Ard, Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Shivel, Sparks "aye"; no "nays"; none "abstaining"; Cantees, Perry "absent") to recommend **APPROVAL** of the IL zoning for Z-7091 per staff recommendation.

**Legal Description for Z-7091:**

THE EAST 210' OF THE NORTH 210' OF THE NE/4 OF THE SE/4 OF SECTION 13, T-18-N, R-12-E OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA, LESS THE SOUTH 70' THEREOF; AND THE SOUTH 70' OF THE NORTH 210' OF THE EAST 210' OF THE NE/4 OF THE SE/4 OF SECTION 13, T-18-N, R-12-E OF THE INDIAN BASE AND MERIDIAN, TULSA COUNTY, STATE OF OKLAHOMA; **From AG (Agriculture District) To IL (Industrial Light District).**

\*\*\*\*\*

Commissioner Perry in at 2:04 p.m.

18. **PUD-411-C-13 – Sack & Associates/Jim Norton** (PD-26) (CD-8)  
**Center III**

Northeast corner, of the northeast corner of Memorial Drive and 101<sup>st</sup> Street South, Lot 1, Block 1 (Minor Amendment to waive the screening requirement along the east boundary.)

**STAFF RECOMMENDATION:**

The applicant is requesting a minor amendment to PUD-411-C, Development Area 5-A (see Exhibit A) for the purpose of waiving the screening requirement at this time along the east boundary of the subject tract (see attached "minor amendment exhibit").

Development standards for Area 5-A regarding screening and landscaping are as follows:

**Minimum Landscaped Open Space:** 10% of net lot area.

**Minimum width of landscaped buffer strip on east boundary of development area:** 15'

**Screening Wall or Fence:** Within the east 15' of development area.

There is currently a 7+-foot high, solid screening wall on the west boundary of Development Area 7-A (Ridge Pointe and Ridge Pointe II), the single-family development immediately adjacent to the subject tract to the east (see attached Exhibit D). Also along the subject boundary line, is a 15-foot wide pedestrian access easement in anticipation of development of a trail connecting to the future Haikey Creek Trail to the north.

The applicant wishes to consider the existing wall along the Ridge Pointe properties as providing adequate screening and proposes a chain link fence offset from the east boundary to secure his property when the trail access is built. In September of 2007, this same request was approved for Development Area 4-A to the north for Trinity Restoration.

Section 1217.C.1 of the Code and development standards imposes screening requirements on commercial uses which abut residential uses. The existing 7+-foot wall on the residential property does provide screening. However, this does not relieve the subject tract from meeting this requirement. In accordance with these requirements, staff recommends landscaping in the form of evergreen trees or similar vegetation be planted along the proposed chain link fence in sufficient density and height as to provide adequate screening of light and noise generated by operation of the commercial use. Should the screening wall along

the west boundary be eliminated and not reconstructed by Ridge Pointe or Ridge Pointe II on the adjoining property, the applicant would be required to erect a solid screening wall or fence to provide adequate screening of light and noise generated by operation of the commercial use.

Based on the aforementioned, staff recommends **APPROVAL** of PUD-411-C-13 subject to provision of landscaping in the form of evergreen trees or similar vegetation along the proposed chain link or wrought iron-like fence, along the west boundary of the 15' pedestrian access easement and increased landscaping in sufficient density and height as to provide adequate screening of light and noise generated by operation of the commercial use. If the residential masonry wall is removed and not replaced for any reason, owner of Lot 1 Block 1, Jim Norton Center III would be subject to an eight-foot solid screening wall or fence requirement along the lot line or lines in common with the residential district subject to detail site plan review.

Note: Approval of a minor amendment does not constitute detail site or landscape plan approval).

**TMAPC COMMENTS:**

Mr. Marshall asked if there is a full 30 feet of easement along the back property line of the subject property. In response, Mr. Sansone stated that it is his understanding that this is a 15-foot wide easement. In response, Mr. Marshall stated that the minutes of 2007 indicate that there is a 30-foot easement. Mr. Sansone stated that Mr. Sack will address this issue.

Mr. Marshall asked if there are any screening requirements along 98<sup>th</sup> Street. In response, Mr. Sansone stated that there is a six-foot screening requirement, which should be solid. Mr. Marshall stated that the property owner has extended the chain-link fence along 98<sup>th</sup> Street and he doesn't believe that should be included. Mr. Sansone stated that he visited the property and it wasn't there. Mr. Marshall stated that it is indicated on the plat. Mr. Sansone stated that he believes the Planning Commission can ask the applicant if the chain-linked fence only be for along the pedestrian access easement, which was his understanding. Mr. Marshall stated that along 98<sup>th</sup> Street it should be a wood or masonry fence for esthetic reasons.

**Applicant's Comments:**

**Ted Sack**, Sack and Associates, 111 South Elgin, 74120, stated that the existing access easement along the common boundary line between Jim Norton III Addition and Ridge Pointe is a 15-foot access easement; however, the parking lot is set back 30 feet from the residential area. There is a landscaping area of 30 feet between the boundary line of Ridge Pointe and the parking lot.

Mr. Sack explained that there is an existing seven-foot concrete wall that acts as very good screening and there is no need to build another screening fence one

foot away from it and have a maintenance issue. He requested a waiver of the required screening wall with the condition that if something were to happen to the existing screening wall his client would be responsible for installing a screening wall on his side. He further explained that his client would like to have the right to build a chain-link fence somewhere within that 30 feet and possibly 25 feet to 28 feet away from the property line as opposed to 15 feet. This would allow room for landscaping and the chain link would allow his client to secure his site. The chain link would be a vinyl black chain link.

**TMAPC COMMENTS:**

Mr. Marshall stated that he wanted to make sure that the chain link wasn't coming around onto 98<sup>th</sup> Street. In response, Mr. Sack stated that he had not been made aware that there was a screening requirement on that side. The detail site plan and the detail landscape plan that had been approved simply shows a chain-link vinyl fence in order to secure the site, which would completely wrap around the entire site to protect new cars. The subject site is a storage lot. In response, Mr. Marshall stated that he can see having the chain-linked fence around the back, but along 98<sup>th</sup> Street he can't believe the Planning Commission approved a chain-linked fence. In response, Mr. Sack stated that it was approved that way. He explained that his client met with the neighborhood and increased the landscape along 98<sup>th</sup> Street and allow the chain-link fence for security.

Mr. Alberty stated that if this were straight zoning, it would require a screening fence; however, the property to the south is also corridor-zoned, which does not require a screening fence and it is up to the discretion of the Planning Commission if they want to impose the six-foot solid screening fence.

Mr. Sansone stated that there is an existing screening wall along the residential side of 98<sup>th</sup> Street.

**Interested Parties Comments:**

**Joseph Wallis**, 8618 East 100<sup>th</sup> Place, 74133, requested that there be some consistency with the security fencing and that the subject site have the same type of fence that Trinity Restoration installed, which is a wrought-iron type of fencing.

**Matt Hudspeth**, 9536 South 85<sup>th</sup> East Avenue, 74133, stated that he, too, would like some consistency with the materials for the security fencing. He requested that the landscaping be with more mature trees than in the past. Mr. Hudspeth requested that there be some continuity.

**TMAPC COMMENTS:**

Mr. Marshall encouraged the interested parties to speak with the owner of the subject site regarding fencing materials and landscaping.

**Applicant's Rebuttal:**

Mr. Sack stated that the landscape plan has been approved for the subject site and a majority of the trees that are being planted are evergreen trees that exceed the height of what the Code requires. All of the new trees are being planted outside of the 15-foot landscaped area. There are some existing trees that are in the 15-foot landscaped area and will be left in place until the trail is developed.

Mr. Sack stated that when Trinity Restoration was developed, there was a waiver for the screening fence and the landscaping was increased to one tree for every 26-foot. On the subject site he anticipated that to be a requirement and there will be one tree for every 22 feet and exceeds what was finally done on the Trinity Restoration site.

**TMAPC COMMENTS:**

Mr. Perry stated that he does concur with the previous speaker's comments about harmony and continuity with regard to having the security fences consistent. Mr. Perry questioned if this is the time to require the continuity or by approving this plan today, that would preclude it. In response, Mr. Alberty stated that the Planning Commission can modify any recommendation that is coming forward. What is on this site plan has been recommended as a six-foot chain-link fence with black vinyl coating. The Planning Commission could make this more restrictive or change it, which is consistent with the approval. The property owner to the north chose to do something different but he was not under obligation to do so. There may be a considerable cost difference between the two types of fences, but the Planning Commission could impose something more restricted if they choose.

Ms. Cantrell asked Mr. Sack if his client would be inclined to install a fence similar that to the north of the subject property. In response, Mr. Sack stated that the plan is to install black vinyl chain-link fencing, which is a security fence for the vehicles. He explained that his client didn't want to put up anything solid because it would create an alleyway and could be a hindrance to security for the walking trail when it is developed.

Mr. Carnes stated that the fence has been approved previously, but he believes the neighbors would be much more satisfied with more landscaping.

Mr. Harmon stated that he believes the fence along 98<sup>th</sup> was previously approved and can't be changed at this point.

Mr. Sack stated that the proposed landscaping is considerable greater than what Code requires along 98<sup>th</sup> Street and the 30-foot area where the trail will be located. It is considerably more than what Trinity Restoration planted. In response, Mr. Carnes stated that he is not talking about the Code. Mr. Carnes explained that since the solid wall is being waived, the landscaping should be increased because landscaping grows and fences deteriorate.

Mr. Sack stated that the evergreens that are planned to be planted are loblolly evergreens and would have a higher canopy, which is good because it doesn't leave a place for people to hide around the trail. They are also very rapid-growing.

Mr. Alberty stated that he would like to clarify that what the Planning Commission is considering today is the minor amendment substituting the required solid surface screening fence for landscaping and a chain-linked fence. The applicant will have to return with a landscape plan and detail site plan. He encouraged the Planning Commission to be very specific so that the landscape plan and detail site plan is consistent with the approval. The landscape ordinance spells out the landscaping.

Mr. Perry asked Mr. Sack what the comparison in costs is between vinyl chain link and wrought iron. In response, Mr. Sack stated that he assumes the Planning Commission doesn't really mean a true wrought iron, but something like Ameristar. He indicated that he is not sure what the comparison in costs would be between the two. Mr. Sack stated that he would assume that the Ameristar fencing would be double the price of the black vinyl fence. Mr. Perry asked if the Ameristar fencing would provide the same security necessary. In response, Mr. Sack stated that he believes the security would be the same in either case. However, due to the expense, his client may not want to use the Ameristar or wrought-iron-type fencing.

Mr. Carnes stated that if the proper landscaping is planted the fence wouldn't be seen. It would be waste of money for a decorative fence if the landscaping was improved. He would feel comfortable with Mr. Sack bringing a landscape plan to the Planning Commission with improved landscaping to hide the fence. In response, Mr. Sack indicated that he would be willing to do so.

Ms. Cantrell suggested that the approval could be for either chain link or wrought iron like fencing and then when he meets with the neighborhood, they can work something out. In response, Mr. Harmon stated that he doesn't believe the applicant should be held to put the same type of fence just because the neighbor to the north chose a different type of fence. Ms. Cantrell stated that if it was approved with both options, the applicant wouldn't have to come back again.

Mr. Marshall suggested that he install a chain-link fence along the back and along 98<sup>th</sup> Street install a decorative wrought-iron fence and up the landscaping with a two-inch trunk. In response, Mr. Sack stated that the height is probably more important than the size of the trunk. Mr. Marshall stated that the size of the trunk was just a suggestion.

Mr. Midget recognized Mr. Wallis.

Mr. Wallis expressed concerns about razor wire being installed. He indicated his agreement with the landscaping comments of the Planning Commission.

**TMAPC Action; 9 members present:**

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Harmon, Marshall, McArtor, Midget, Perry, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Sparks "absent") to **APPROVE** the minor amendment for PUD-411-C-13 per staff recommendation, subject to provision of landscaping in the form of evergreen trees or similar vegetation along the proposed chain link or wrought iron-like fence, along the west boundary of the 15' pedestrian access easement and increased landscaping in sufficient density and height as to provide adequate screening of light and noise generated by operation of the commercial use. If the residential masonry wall is removed and not replaced for any reason, owner of Lot 1 Block 1, Jim Norton Center III would be subject to an eight-foot solid screening wall or fence requirement along the lot line or lines in common with the residential district subject to detail site plan review as modified by the Planning Commission. (Language with a strike-through has been deleted and language with an underline has been added.)

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Mr. Carnes out at 2:55 p.m.

**CONT'D ZONING CODE PUBLIC HEARING**

**Public Hearing to Consider an Ordinance Amending Chapter 42 of the Zoning Code of the City of Tulsa (continued from 3/5/08 TMAPC meeting.)**

Consider proposed amendments of the Zoning Code, City of Tulsa, Oklahoma by adding a new Section for "Off-Premise Digital Signs", a new definition for "digital signs" and providing for penalties and publication.

**STAFF RECOMMENDATION:**

Mr. Albery stated that this was presented at the last TMAPC meeting and was continued in order to allow comments from interested parties who wish to speak. The Legal Department has prepared an ordinance in draft form and could make some comments regarding that today.

Mr. Boulden stated that the draft before the Planning Commission has changed and he would like to address the changes.

Mr. Boulden stated that he emailed the Planning Commission, Mr. Joyce, Mr. Hickman, and Mr. Jennings a draft of the ordinance. The draft should have PTB/3/10/08.

Mr. Boulden read through the draft ordinance and the changes he has proposed to the language. The Planning Commission asked for clarifications and suggested possible changes.

Mr. Harmon stated that there are several interested parties wishing to speak. Two weeks ago the Planning Commission had a lengthy presentation from Mr. Michael Joyce and Bill Hickman, which are signed up today to speak again. In fairness to the interested parties that did not have the opportunity to speak two weeks ago he will hold Mr. Joyce and Mr. Hickman to the end of the session. Mr. Harmon stated that each speak will have five minutes to present their comments.

**Interested Parties Comments:**

**Eric James**, Whistler Advertising, 8988-L South Sheridan Road, 74133, stated that he would prefer the 1,200 feet of spacing between the LED/Digital signs. The 2,400 feet of spacing would hurt the small business owner getting his business advertised by cutting 50% of the opportunity out. LED signage is more attractive and less expensive to produce the message electronically. Many small businesses depend on this outdoor advertising to increase their sales and in turn that would increase the tax base for Tulsa.

**TMAPC COMMENTS:**

Mr. McArtor asked Mr. James how the 2,400-foot spacing hurt small businesses. In response, Mr. James stated that it would be a mathematical issue. The 2,400-foot spacing could cause a full mile that would be carved out and creating only one opportunity every mile for a small business to advertise rather than every 1,200 feet it would limit their opportunity. Mr. Shivel asked if it would be a matter of supply and demand and the cost. Mr. James stated that in an eleven county area there are 45 thousand small businesses and if you take that number and split up the potential sites it becomes very slim. Mr. Shivel asked if Mr. James is assuming that the small business would advertise close to their vicinity. In response, Mr. James stated that they could advertise anywhere and still get their message to the public. In response, Mr. Shivel stated that he would have the same question that Mr. McArtor asked then, how does this hurt the small business owner. Mr. Shivel stated that he can see where there would potentially be fewer signs with the 2,400-foot spacing, but how does that hurt smaller businesses. In response, Mr. James stated that there are small businesses currently, that can't afford the billboard term and production costs. With LEDs the small business owner could have a one-day message, one-week message or have them in multiple locations and he would like to provide the small businesses the opportunity to do so.

Mr. Harmon stated that he believes what Mr. James is leading up to is that if a major sign company has penetrated the market had signs every 2,400 feet than the other sign companies would be blocked out. In response, Mr. James stated that this is a great point.

**Interested Parties Comments:**

**Andrea Cutter**, Attorney with Joyce & Paul, representing Whistler Outdoor Advertising, 1717 South Boulder, 74119; stated that she has concerns with the 2,400-foot spacing and there are some constitutional concerns with the spacing requirement. She stated that the City of Tulsa is treating off-premise billboards differently than traditional billboards and the treatment of on-premise business signs. She believes this raises both due process and equal protection concerns. Both of these constitutional provisions require that when such a distinction is drawn there must be some rational basis for drawing that distinction. Ms. Cutter asked what the rational basis is for treating digital billboards differently than traditional billboards. Comparing the Sign Advisory Board (SAB) proposed regulations of traditional billboards versus the digital billboards. By regulating the digital billboards with the 2,400 feet facing the same traveled way creates an effect of the 2,400 feet to a broader radius. Ms. Cutter compared spacing and dwell time for digital billboards versus on-premise business signs. She asked what would be the rational basis for treating the off-premise digital billboard signs differently than the on-premise business signs and the traditional billboard signs. Ms. Cutter indicated that she has made several open record requests from the SAB and she is unable to find any indication of discussion of the 2,400-foot requirement. The SAB was given the task of considering the digital technology, specifically with considerations of public safety, community esthetics and economic value. She didn't hear anything from the SAB that there were any concerns raised concerning safety. She commented that since there is little or no regulation of the on-premise business signs that are allowed to flash, etc. would indicate that they do not have any safety concerns and the same with esthetics. The only distinction she has heard is that the SAB would like to take a conservative approach to digital signs. Ms. Cutter indicated that she has done some research and she hasn't found any case law that supports that a conservative approach alone would provide a rational basis for this sort of ordinance. A review in court has the ability to look behind any rational basis that is put forward to figure out if that does provide a rational basis for an ordinance. The proposed ordinance before the Planning Commission today, in total, has almost a complete lack of regulation with regard to on-premise signs with the exception of brightness. Because it allows flashing, scrolling, and animation on arterial streets and very close together it indicates that the SAB is not taking a conservative approach with digital signs. Ms. Cutter requested that the spacing be at 1,200 feet rather than the proposed 2,400 feet.

**TMAPC COMMENTS:**

Ms. Cantrell asked Ms. Cutter if she stated that a digital billboard provides a clearer and crisper image than the traditional billboards. In response, Ms. Cutter answered affirmatively. Ms. Cantrell asked Ms. Cutter if she would agree that probably more people would be looking at it than the traditional billboards and isn't that the whole point because it is much more esthetically pleasing to the eye and get more people to look at it. In response, Ms. Cutter answered

affirmatively. Ms. Cantrell stated that her point would be that if more people are looking at the sign, then they are not looking at the road while driving and that in itself shows one what the issue is, which would give the rationale for spacing the signs farther apart than a regular billboard. In response, Ms. Cutter stated that if that were true then she would agree, but as far as she knows the SAB hasn't stated that or shows that digital billboards are less safe than a traditional billboard. Ms. Cutter further stated that as far as she knows there are no studies that show digital billboards being unsafe to the public. Ms. Cantrell stated that on-premise business signs are not on highways and presumably people wouldn't be driving 65 miles per hour on the streets. In response, Ms. Cutter stated that on-premise business signs are located on arterial streets and are competing with traffic signals and on a highway traffic is merging into other lanes, but not intersections. Ms. Cantrell stated that she is still trying to make a decision about the spacing, but she doesn't think there is any basis for treating them separately because they are very different signs and the point is to attract more attention to them. In response, Ms. Cutter stated that she would agree, but she views at the exact opposite. Ms. Cutter commented that the safety issues to her would apply more to the on-premise business signs where they are located on an arterial street where people can be coming at you from virtually any direction and competing with a signaled intersection.

Mr. McArtor asked Ms. Cutter if she would agree that the rational basis test is the lowest bar that the Court has to jump over or the governmental entities have to jump over. In response, Ms. Cutter stated that for the constitutional analysis the rational basis is the lowest bar.

Mr. McArtor stated that he believes the reason for today's meeting and the draft ordinance is because of safety concerns. The Planning Commission has a safety concern with regard to the digital signs and that is why we are considering these types of restrictions and changes to the ordinance. There are concerns about the brightness, particularly at night, and there are two dimensions to this, which has to do with safety, esthetic and personally he is not interested in turning Tulsa into Las Vegas. The Planning Commission feels the need to tweak these ordinances to make sure that this issue of esthetics and the issue of safety with this new technology are taken into consideration. He is not sure how that doesn't provide the rational basis for what is being done today. In response, Ms. Cutter stated that she is not suggesting that there is no rational basis for what the Planning Commission is doing period, but the analysis is drawing a distinction between digital billboards versus the on-premise business signs. The SAB, in the ordinance that they have provided to the Planning Commission, suggested the only regulation of these digital on-premise business signs is in fact the illumination level (300 NITS) and that is it. In her mind, in the ordinance the SAB has provided to the Planning Commission, that this digital technology is safe if the only regulation for the on-premise signs is the illumination of NITS. In response, Mr. McArtor stated that the illumination requires enough of a distinction with regard to safety and beautification that would justify the additional spacing

requirement. Mr. McArtor clarified that he hasn't made his mind up regarding the spacing. Ms. Cutter stated that there is no difference in technology between the on-premise business sign and the off-premise outdoor advertising signs.

**Interested Parties Comments:**

**Greg Jennings**, 2260 South Troost Avenue, 74114, asked the Planning Commission if the public really wants these types of signs in their city, which has never really been addressed. It seems that everyone is pushing this because it is new technology, but one needs to stop and think of what this means for the City of Tulsa and whether it is wanted.

Mr. Jennings stated that this issue is happening in every major city across the country. Mr. Jennings read from the American Planning Association's article "The Sign Code Shack Down". There are currently seven lawsuits associated with billboards, which is similar to what this article is speaking about. Mr. Jennings cited the recent Board of Adjustment applications for digital billboard signs and the outcome of those meetings.

Mr. Jennings commented that the industry claims that there is nothing that states that billboards in general or digital billboards are unsafe. Most of the studies that have been conducted were either paid for by the outdoor advertising industry or so methodically flawed that several courts have thrown them out as unreliable. In 1985 the Judge for Eastern District of North Carolina stated that "...no empirical studies are necessary for reasonable people to conclude that billboards pose a traffic hazard since, by their very nature, they are designed to distract drivers and their passengers from maintaining the view of the road." By adding digital billboards this distraction would be multiplied by five because of the multiple users. The billboard industry has found that once people get familiar with an area they tend to block out the things that see on a regular basis. With a changing message center that unfamiliarity is always there and always changing. This creates an enormous hazard to the driver and to the public. Mr. Jennings indicated that he has many studies that stated the same thing. Mr. Jennings read from several studies indicating that digital billboards create distractions for drivers.

Mr. Harmon announced that Mr. Jennings's five minutes are up. In response, Mr. Jennings indicated that he has been sitting through this meeting for over four hours and listened to three sign companies to present their point of view and he believes he is entitled to more time.

Mr. Harmon stated that he can appreciate Mr. Jennings's concern, but five minutes was announced at the front end and it applies to him as everyone else. In response, Mr. Jennings stated that the five minute rule didn't seem to apply to the interested parties two weeks ago. In response, Mr. Harmon stated that he is not talking about the last meeting, he is talking about today. Mr. Harmon reminded Mr. Jennings that he can take questions from the Planning

Commission at this point, but he needs to stop his presentation. Mr. Jennings asked if he could assert his First Amendment Rights and his rights to equal protection. People were afforded much more time to get their points across. In response, Mr. Harmon stated that the five minute limit was announced at the beginning of the meeting. Mr. Harmon informed Mr. Jennings he actually was allowed more than five minutes and he doesn't believe he has been infringed on because he has had the same opportunity as everyone else.

**TMAPC COMMENTS:**

Ms. Cantrell asked Mr. Jennings if he is aware of any cities or jurisdictions completely banning the digital billboards. In response, Mr. Jennings stated that Kentucky has banned Tri-vision and LED signs and there are several states that ban billboards. San Antonio prohibits digital billboards within the city limits with the exception of 15 billboards that were given for a pilot study. Knoxville banned billboards in 2001. Knoxville and San Antonio allowed digital billboards if existing billboards were removed in order to reduce the amount of billboards. If the distance of 1,200 feet is used between digital billboards there is a possibility to see five images rather than one image and it greatly increases the possibility for accidents. The real truth is there will not be a safety answer until after 2009 because the technology is so new.

Ms. Cantrell asked Mr. Jennings if he knew of any cities that allow regular outdoor advertising billboards but ban the digital signs. In response, Mr. Jennings stated that there are enormous amounts of moratoriums going on. Mr. Jennings questioned why the City of Tulsa is in a hurry to allow these without the data to prove whether they are safe or not. Once these signs are installed it will be impossible to remove them if they are found to be unsafe.

Mr. McArtor asked if there are existing digital signs in the City of Tulsa. In response, Mr. Boulden stated that there are digital message centers, which is applied different, but is the same technology.

Mr. McArtor asked Mr. Jennings if he is suggesting continuing the moratorium and if so how long. Mr. Jennings stated that the moratorium should be continued until 2009 National Highway Association report is completed. Mr. Jennings explained that originally everyone was told that cell phones were safe while in cars, but they are not and after subpoenas were sought for phone records it was discovered that many accidents occurred while the driver of the vehicle was on their cell phone. People do not admit to looking at digital signs when they are in accidents. Mr. Jennings indicated that in 2006 the Federal Government stated that these signs were not allowed, but in 2007 they came back and stated that they are fine.

Mr. Marshall asked Mr. Jennings if he sent emails to INCOG to have sent to the Planning Commissioners. In response, Mr. Jennings stated that he sent links to Scenic America and a link to Knoxville, which recently addressed these same

issues at their City Council meeting and the research was over 200 pages long. Mr. Marshall stated that in the document there was a study submitted by SRF Consulting Group, June 7, 2007 and he recommended that the Planning Commissioners to read that report. Mr. Jennings stated that there is a potential to have these digital signs telling a story and people have the tendency to keep watching until that story is finished and the potential of having a sign every 1,200 feet, that story happens while driving down the road and could cover an entire mile without paying attention to ones driving.

Mr. McArtor asked Mr. Jennings if there was anything else he wanted the Planning Commission to know that he hasn't already covered. In response, Mr. Jennings stated that he has spent over one year researching this and it is an issue that he doesn't see how it could be possibly answered today or next week. There are safety ramifications and business ramifications. There are 7200 opportunities on one digital billboard for a new message every 12 seconds and so how does that disenfranchise anyone. That multiplies the amount of advertisers by 7200 times. He questioned the argument of the spacing because what is the difference between someone that is 600 feet away and there is a property owner that is 600 feet away from an existing sign and can't because the spacing is 1,200 feet. The one issue that keeps coming up is the fact that on-premise and off-premise signs are treated differently. He believes that a serious look needs to be done with the on-premise signs too because they are just as distracting as a digital billboard will be. Mr. Jennings expressed his concerns with the possibility of any billboard being allowed to be a digital billboard.

#### **INTERESTED PARTIES:**

**Bill Stokely**, Stokely Outdoor Advertising, 3605 Orange Circle, Broken Arrow, Oklahoma 74012; stated that a billboard is wider than this meeting room. He commented that the outdoor advertising business will self-destruct if there are no regulations and regulations are good for the industry and the City of Tulsa. Mr. Stokely stated that he recently visited Oklahoma City and it looks awful with all of the sign clutter. He indicated that he will go along with the LED signs, but he will not have them every 1,200 feet because they are large signs and he doesn't want the City of Tulsa to look like Las Vegas. There is no need for tons of billboards if one does a good job with what they have and make it look good. Mr. Stokely concluded that these signs should be done in moderation and make Tulsa continually look and be the quality City it is.

#### **TMAPC COMMENTS:**

Mr. Harmon asked Mr. Stokely what the spacing is for his signs along the Creek Turnpike. In response, Mr. Stokely stated that his signs are ½ mile away from each other.

Ms. Cantrell asked Mr. Stokely if he had anything specifically that he is objecting to with regard to the ordinance as it is presented today. In response, Mr. Stokely stated that he doesn't have a problem with spacing or the NITS. He indicated

that May 28, 2008 he will have a LED sign in the Broken Arrow area (14' x 48' standard size).

Mr. Stokely stated that one suggestion he has is to measure from the structure when near a residence rather than the center pole. The center post can hold a sign that runs out 70 to 100 feet and this is done on numerous locations.

Mr. McArtor asked Mr. Stokely if he has any concern with the safety of drivers on the road with regard to these signs. In response, Mr. Stokely stated that he doesn't have any concerns if it is done right.

Mr. Perry asked if being "done right" would include how often the images are allowed to change. Mr. Stokely stated that 12 seconds would be good. Mr. Stokely stated that a sign could be made to look like a flash by changing the color too quick.

#### **INTERESTED PARTIES:**

**Michael Tantala**, for Lamar Outdoor Advertising, Bachelor's Degree from University of Pennsylvania, Engineer, two Masters from Princeton University, 4903 Frankfort Avenue, Philadelphia, Pennsylvania; submitted a study (Exhibit B-2) and stated that in July 2007 he completed a study examining a statistical relationship between digital billboards and traffic safety in Ohio in the county that encompasses Cleveland. Virginia Tech Transportation completed a human factor study at the same time. Mr. Tantala indicated that both studies found the digital signs to be safety-neutral.

Mr. Tantala explained how his study was performed for seven existing digital billboards. His analysis included before and after vehicle crash rates near the signs and a spacing study on where the accidents were occurring in relation to the signs. The data demonstrated that the occurrence of traffic accidents near the digital billboards had no increase and in six of the seven signs the accidents decreased and one sign had a slight increase in accident rates. Accidents near the signs were extremely low and demonstrate no association.

Mr. Tantala stated that his study and the Virginia Tech study are the only studies that address digital billboard more specifically. Some of the studies that Mr. Jennings referenced are not comparable to the types of digital billboards that are out there now or were a part of his study. Mr. Tantala named a few studies that have been done in-house by several Departments of Transportation in various cities that have found the same conclusion as his study.

Mr. Tantala stated that in Ohio the lighting seem to run 300 to 500 NITS range over ambient light. He found no statistically significant changes with the introduction of the digital signs with regard to accidents in the day or evening.

### **TMAPC COMMENTS:**

Mr. Harmon asked Mr. Tantala if his study was performed on a rural interstate or inner city interchanges. In response, Mr. Tantala stated that his study was done strictly on interstate locations. He didn't study any secondary roads. Mr. Harmon stated that there wouldn't be as many people coming on and off the road as it would be in the inner city. In response, Mr. Tantala agreed. Mr. Harmon stated that he would think there wouldn't be as many accidents on the interstate unless there is a lot interchanges. Mr. Tantala stated that he studied the location of the accidents along the interstate and some of the boards are near interchanges (three out of seven were near interchanges). Mr. Tantala explained the way the study examined various ranges to the billboard.

Mr. Perry stated that Mr. Tantala's study was in a rural setting and what the Planning Commission is considering is for main arteries with traffic closer together and streets coming to those major arteries and he would think that would be an apples and oranges comparison with Mr. Tantala's study and data. In response, Mr. Tantala stated that he has not studied Oklahoma and he can't make definitive extensions of his own work in Ohio, but he can merely represent what the relationship is in Ohio in their infrastructure. It is difficult to extend one's study beyond. There is a variety of signs and it wasn't a single-sign study with a large volume of traffic associated with it.

Mr. Shivel asked Mr. Tantala what the spacing was for the signs he studied. In response, Mr. Tantala stated that Ohio has a statewide regulation of 1,000 feet between digital billboards. The seven signs studied are spaced sparsely and one can't see one from another sign. The closest sign to another would be a few miles.

In response to Mr. Marshall, Mr. Tantala stated that his study is online and he will make it available to the Planning Commission.

Mr. Boulden asked Mr. Tantala who paid for his study. In response, Mr. Tantala stated that his study was funded by the Foundation for Outdoor Advertising Research and Education. He explained that they are a sign advocacy group, but they had no insight in his conclusions. His methods had a peer review with the Transportation Research Board and used the State's own data that they had compiled and collected and recorded. He further stated that statistics are relative to some of the other fields, less qualitative.

Mr. Boulden asked Mr. Tantala if he typically speaks for sign companies. In response, Mr. Tantala stated that he doesn't, he is a practicing engineer and he has spoken in the past for a few sign companies in light of this study. Mr. Tantala cited his background and his primary job. Mr. Boulden asked Mr. Tantala if Lamar Outdoor Advertising paid for him to come to Tulsa today. In response, Mr. Tantala answered affirmatively.

Mr. McArtor asked Mr. Tantala what “statistically insignificant” means. In response, Mr. Tantala stated that of the seven signs there were six that had a number of decreased accidents. There was one sign that the number of accidents increased. Mr. McArtor asked Mr. Tantala what the difference was for the one sign that had an increase in accidents. In response, Mr. Tantala stated that the one sign had an increase of seven accidents when compared before conversion to after conversion of the sign to digital. Mr. McArtor asked Mr. Tantala if he remembers what was different about this one sign from the other signs that may have accounted for that increase. In response, Mr. Tantala stated that page 11 (of his report) gives a comparison of the routes and the billboards themselves and this particular billboard is the highest billboard (180 feet). He can’t say that this is the factor that caused the increase in accidents. Page 16 also shows that this particular sign advertises to a bridge and that is why it is 180 feet in height.

In response to Mr. McArtor, Mr. Tantala stated that the national study that is supposed to be done in 2009 has been delayed once already and it will have multiple parts. The first part of the study is a literature search and not a qualitative or quantitative approach. Later parts of the study will be much later and it could be possibly postponed again. The Federal Highway Administration has issued a memorandum stating that essentially that the DOT has no problem with interpreting these types of digital billboards with their restrictions of dwell time.

Ms. Cantrell asked Mr. Tantala if he considered any factors where there was a decrease in accidents and did he compare how much it decreased on another street or area where there was no changes. In response, Mr. Tantala stated that he took into consideration many factors, seasonality, counts, rates, traffic flow, weather records, and DOT service records for the roads.

Mr. Shivel asked Mr. Tantala who invited him to come to Tulsa to speak today. In response, Mr. Tantala stated that he was invited by Lamar.

Mr. Tantala stated that he needed to clarify that the signs he studied were not in farmland areas, but were in the Cleveland Ohio area. These routes were heavily traveled.

Mr. Perry stated that he is late for another meeting and he hopes that this item is continued. He explained that he is simply entering this as an opinion and not asking for a response.

Mr. McArtor agreed with Mr. Perry.

**INTERESTED PARTIES:**

**Joe Jones**, 8578 East 94<sup>th</sup>, 74133, stated that he is pro digital boards and pro Tulsa. He commented that people use the billboards to find their way around town to find food, lodging and entertainment. Digital boards give a good impression to visitors of our town.

**John Allred**, 7741 South 69<sup>th</sup> Street, 74133; retired from the sign company, stated that he has been working with LED signs for a long time and put his first LED up 15 years ago in Las Vegas. All kinds of studies have been done on LED boards. He indicated that one can't tell an LED board from the typical billboard unless one knows it. One can't see them change unless they are staring at it because they change so quickly. The cost of an LED board will limit how many are installed around the City. There are only a handful of locations in Tulsa that would warrant an LED sign due to the cost and locations. If the spacing is changed to 2,400 feet, then one company is going to have all of the digital billboards and that would be Lamar Outdoor Advertising. They have 90% of the existing boards. Keep the spacing at 1,200 feet.

**TMAPC COMMENTS:**

Mr. Harmon asked Mr. Allred how many sites he believes would warrant an LED sign. In response, Mr. Allred stated that he only knows of ten locations that have been discussed and possibly 12 locations. It would cost half a million dollars to have a good digital sign.

**INTERESTED PARTIES:**

**Shawn Whistler**, President of Whistler Outdoor Advertising, 8988-L South Sheridan, 74133, stated that digital signs would give the businesses in Tulsa that do not have interstate frontage pad sites the ability to direct people to their businesses. Tulsa is a fully saturated billboard market and essentially every legal site is developed in the heart of Tulsa, with the exclusion of the Highway 75 corridor that is newly developing. The only way to put a billboard in the City of Tulsa is through redevelopment, which has primarily occurred for his company through acquisition of older signs from individual owners and then structurally enhancing the engineering and cosmetic overhaul. Fair market competition ensures quality, fair pricing and options to business advertisers and ensures beautification to Tulsa. This competition drives the quality in the market. It is essential that his company has the ability to compete in order to survive as a small business. He requested the Planning Commission to adopt the LED sign ordinance that is fair and provides equal protection to all citizens, landowners, sign companies and business advertisers. He requested that if the Planning Commission determines that LED billboards are safe and esthetically attractive that you allow this for all.

Mr. Whistler compared a typical billboard versus a digital billboard. He stated that with an LED sign the walk-around and catwalk and extra embellishments are eliminated and makes a clean billboard.

Mr. Whistler stated that he appreciates the Sign Advisory Board and all of their work. He has found some problems with the proposal and could be simply resolved. The first problem is the current spacing of 2,400 feet same facing of traffic, which could cause a monopoly. There are eight monochrome existing message boards in the metro area and he has knowledge of five other variances pending in lawsuits. These variances were applied for by a real estate location and didn't specify the direction of traffic and the overall impact of the way the ordinance is written is a 4,800-foot impact. With today's existing signs and pending signs there could essentially be a thirteen mile impact of spacing already eaten up. I-44, Broken Arrow Expressway, and U.S. 169 already has this technology existing by definition of LED through the monochrome boards or through pending lawsuits.

Mr. Whistler stated that the LEDs will allow small businesses to display their message short term on a cost affective method to help their small business capture customer base.

Mr. Harmon announced that Mr. Whistler's five minutes are up. In response, Mr. Whistler asked if he could have some time from his other speakers because his points are very essential. Mr. Harmon stated that the presentation should end and if the Planning Commission has any questions for him he could answer them.

**TMAPC COMMENTS:**

Ms. Cantrell asked Mr. Boulden how the monochrome message boards would affect the business in this ordinance. In response, Mr. Boulden stated that the ordinance is not intended to affect it, but it is intended to do the opposite. It would not be considered a digital billboard until it is permitted as one. Mr. Whistler stated that it would likely be disputed because if the ordinance doesn't prohibit that technology under the current ordinance, then they would have an illegal LED sign. In response, Mr. Boulden stated that it is legal but under the proposed provision couldn't be enlarged or converted into a full billboard in his opinion. In response, Mr. Whistler asked if it would be used to space out other billboards 2,400 feet same direction of traffic. In response, Mr. Boulden stated that he could probably tweak the language more to make sure that it is not interpreted as a billboard. Mr. Boulden stated that this is a question that needs to be thought out.

Mr. Harmon asked Mr. Whistler how eight seconds dwell time and a brightness of 500 NITs would be safer. In response, Mr. Whistler stated that he is not stating that it is safer, but he is stating that under the Federal Highway Administration their recommendation for dwell time for billboards along highways is eight seconds. The State of Oklahoma has passed law allowing LED billboards/multiple message signs to change not more frequently than eight seconds dwell time. Oklahoma City had a moratorium and has resolved the

billboard portion of their sign ordinance and they allow eight second dwell time. He has traveled and looked at different LED signs in different cities and visit the manufacturing plants of the LED units and they shouldn't be any brighter than conventional illumination and the manufacturers is stating that 300 NITS would be inferior illumination to the 70 candle foots that are currently used to measure conventional illumination.

Mr. Whistler stated that looking from a windshield survey looking at Lamar's inventory in Oklahoma City he can concur with two statements: 1) if one is driving at night he can't tell from a conventional illuminated billboard and an LED illuminated billboard because they have their brightness about the same as the conventional illuminated boards. The dwell time is what stops the animation and one of the methods he has used to justify the cosmetic improvements in Tulsa, by acquiring existing old and dilapidated billboards, is to use the tri-vision billboards and in his opinion the LED is much less intrusive and more seamless transition between messages because it literally occurs instantaneously. A tri-vision has 96 mechanical prisms that mechanically change three times every eight seconds.

Mr. Harmon asked Mr. Whistler if he believes the length of dwell time eight seconds is safer than 12 seconds. In response, Mr. Whistler stated that his average sign in town is five and nine seconds viewing time. If one is driving 60 to 70 miles per hour down the interstate or freeway then one would only have time to see one image. The power of the LED is the ability to help these small businesses to put time sensitive images up without the great time and expense to send out a crane and a crew of installers to manually change the image. The Federal Highway Administration and the State of Oklahoma and Oklahoma City have already proven that eight seconds is the recommended and safe timeframe, which is the same time regulated by the State for tri-visions. Mr. Whistler indicated that his company has about 25 structures within Tulsa, which is less than 3.5 percent of the market share in the city limits of Tulsa.

In response to Ms. Cantrell, Mr. Whistler stated that years ago Tulsa allowed billboards on arterial streets and then passed a moratorium disallowing any new development of the billboards on arterial streets. Tulsa is a fully saturated market with every 1,200 feet that is properly zoned is developed. He believes that advertisers will spend their money on the LED signage and no longer spend advertising money on the traditional billboards. He suggests that the fair market will control the billboards and the City can control dwell time and brightness. If there is good Code enforcement, which he understands that the City recently hired three new sign inspectors and intend to hire seven in total, then the fair market and enforcement will keep the cosmetics and signage under control. People vote with their dollars and the dollars will gravitate to the new technology and if companies are not turning revenue on their older signs then it will become dilapidated.

Ms. Cantrell stated that to say that Tulsa is saturated is because quite possibly Tulsa decided this is all it wants by creating the spacing requirements. Tulsa passed an ordinance to prohibit signs like the one along Peoria to avoid that look in Tulsa. The market is saturated based on a decision that this is all we want in the City. Mr. Whistler stated that it was caused because the City passed a spacing requirement of 1,200 feet and the outdoor companies came in and developed every 1,200 feet. He commented that the point he is trying to make is simply that there is a superior technology, if properly controlled it is safe and more attractive, why risk older dilapidated signs if the newer technology is safe, then let it be safe for all and if it is not safe then don't let it be safe for any. Mr. Whistler explained that an LED sign, which costs approximately half a million dollars will be placed only on a Class A corridor and that alone will dictate how few there will be. Lamar currently has seven LEDs in Oklahoma City that he counted. Oklahoma City is larger than Tulsa by population and land mass.

Mr. Boulden asked Mr. Whistler if the paragraph in the ordinance regarding non-conforming as to spacing or setback affect his existing signs. In response, Mr. Whistler answered affirmatively. He questioned how the City would resolve the great permit run when the first company walks into the permit office drops a big catalog of permits and it covers every 2,400 feet because whoever is first in line it is game over. In response, Mr. Boulden stated that his question is not about the 2,400 feet but whether this ordinance would prevent him from converting some of his signs to digital, which means he would have to be 1,200 feet from other advertising signs and more than 200 feet from a residential area. In response, Mr. Whistler stated that if the 2,400 feet, same direction of traffic is lifted he could operate under that provision.

Mr. Marshall asked Mr. Whistler if the Planning Commission kept the 2,400-foot spacing would he be out of business. In response, Mr. Whistler stated that he would gravely suffer on advertising revenue immediately. His average advertiser contracts for display area for one year at a time. If the other group is armed with monopolistic spacing at 2,400 feet with a space shuttle technology then it kicks him back to horse and buggy. People will spend their dollars on space shuttle technology and not horse and buggy. He prefers the 1,200-foot of spacing.

Mr. Marshall asked Mr. Whistler how much he charges the average client to advertise. In response, Mr. Whistler stated that on the average billboard face on freeways in Tulsa \$1,500 per month. If it is an LED face it could be rented by the day, week, hour, etc.

In response to Mr. Marshall's calculations for advertiser per minute with the new technology, Mr. Whistler stated that minutes wouldn't matter because there are some who will want to be advertised all day long and many others who want to be up on the billboard by the hour, half-day, five minutes, etc. There is the opportunity to meet small company's needs for advertising and their sales, promotions and capturing their target customer base.

Mr. McArtor asked Mr. Boulden if he feels that Mr. Whistler's presentation of the impact from 2,400 feet same direction of traffic is an accurate representation with regard to the lawsuits that are pending. In response, Mr. Boulden stated that he agrees with Mr. Whistler's presentation.

Mr. Harmon informed Mr. Joyce that he has five minutes to state anything that hasn't already been heard.

**Interested Parties Comments:**

**Michael Joyce**, Joyce and Paul Law Firm, 1717 South Boulder, 74133, representing Whistler Outdoor Advertising Company, submitted spacing proposals comparison (Exhibit B-1) stated that there is one change that needs to be made in the proposed ordinance and that is the reduction of the spacing between digital billboards to 1,200 feet. With that one change he believes this ordinance will be a fantastic ordinance for Tulsa. The billboards are already in place and there will not be a big rush for new billboards because the City of Tulsa is already saturated. This would be only on the freeway corridors under the existing law and not on the arterial streets.

Mr. Joyce stated that the City Council asked the Sign Advisory Board (SAB) to look at the on- and off-premise signs. He believes the primary source of complaints come from the arterial on-premise signs and it is essentially the only LED experience Tulsa has except for the monochrome signs. The on-premise signs pose the greatest potential for safety risk with the proximity to traffic controls and intersecting traffic. The SAB found that these on-premise signs are safe because they are allowing them at minimum of 30-foot spacing all over the city with flashing, scrolling and blinking messages. Mr. Joyce cited the signage that is on the Mathis Brothers location, which is considered an on-premise sign, but is the same size as an outdoor advertising billboard. The new board will have the ability to blink and scroll and will be unregulated except for brightness. The Mathis Brother's sign will not be regulated so how can the City draw the distinction between off-premise and on-premises signs when one sees this sign.

Mr. Joyce stated that if the 1,200 feet spacing is recommended then the lawsuits will go away because they will not have to worry about spacing anymore.

Mr. Joyce cited the State and Federal regulations regarding LED signs. Mr. Joyce requested that the 1,200-foot spacing be the required spacing for LED signs. Mr. Joyce indicated that he represents several small sign businesses and landowners.

Mr. Boulden stated that he recognizes the Mathis Brother's sign, which the Planning Commission approved as a business sign so that multiple businesses on the subject site could display their images. When it came through the Planning Commission there was no decision yet on LED signs and it does look

like a billboard, but it will be regulated as a business sign. It would seem that this particular sign could cause a dilemma in the regulations of signs.

Mr. Harmon informed Mr. Hickman that he has five minutes to state anything that the Planning Commission hasn't already heard.

**Bill Hickman**, Lamar Outdoor Advertising, 7717 East 38<sup>th</sup> Street, 74133, stated that he takes offense to the word monopoly thrown around with regard to Lamar. Lamar is not asking for any monopoly spacing or affect. He commented that his company didn't try to dupe the City by requesting the variances for the LED signs. Currently the City of Tulsa's ordinance does not address LED signs. Lamar has five applications in the pipeline because it was working through the free market competitive process trying to put these billboards up in August 2006. Mr. Hickman feels that the monopoly and 13 miles being impacted is an overstatement.

Mr. Hickman stated that there was a public opinion survey done by Arbitron, which is an independent study shows that 81 percent of people poled stated that digital signs were helpful and beneficial to the community. Fifty-three percent stated that digital billboards are attractive and 64 percent stated that digital billboards are a cool way to advertise. Mr. Hickman stated that 75 percent of all states allow digital billboards and every state that borders Oklahoma allows digital billboards. Most major cities neighboring Tulsa allow digital billboards. Digital billboards have no statistical relationship with the occurrence of vehicle accidents. Mr. Hickman cited the Federal and State requirements for digital billboards and that they recommend an eight second dwell time. The Sign Advisory Board is recommending a 12 second dwell time, which will make the digital signs even safer.

Mr. Hickman read quotes from other communities that allow digital signs and how they benefit from these types of signs when an Amber Alert or other emergency information is issued.

Mr. Harmon informed Mr. Hickman that his five minutes are up.

**TMAPC COMMENTS:**

Mr. Harmon stated that the Planning Commission has heard the safety issue time and time again. Mr. Harmon further stated that the Planning Commission can't certify that the digital signs are safe because someone might be distracted by one of them and run off the road.

Ms. Cantrell asked Mr. Hickman if he is aware of any cities that have looked at the issue of a possible story being told from digital sign to digital sign or tried to regulate it. In response, Mr. Hickman stated that these digital billboards do not operate that way. One wouldn't have one advertiser who has five or six spots on the one digital billboard so that a story is being told as it changes every eight to

twelve seconds. An advertiser has one spot on that one sign. They may have a similar spot on other signs around town. Mr. Hickman stated that there have been many studies done since digital billboards have come about and none of the studies have found them to be a safety issue.

Mr. Shivel stated that Ms. Cantrell was referencing to what use to be the "Berma Shave" commercials. Not multiple ads on one board, but as one progresses down the freeway they could be sequenced for 65 mile an hour traffic that would allow that story to be told as one drives down the interstate. In response, Mr. Hickman stated that the same thing could happen on a traditional billboard today and the same thing could be done on tri-vision. Mr. Shivel stated that he would think the tri-vision or billboard would be overly expensive to be sequenced in that way.

Mr. McArtor asked Mr. Hickman if he is against the 2,400 feet of spacing. In response, Mr. Hickman stated that he is not for either the 2,400 feet or 1,200 feet. His company would just like something to be done. Lamar is not taking a position regarding spacing and haven't discussed spacing with staff during any of their discussions nor during the last meeting regarding the ordinance.

Mr. McArtor asked Mr. Hickman if his lawsuits will go away if this ordinance comes into effect. In response, Mr. Hickman stated that he doesn't know and he is not able to discuss that at this time. This would be a business decision of his client's. Mr. McArtor asked Mr. Hickman why he would need the lawsuits if the ordinance goes into effect. In response, Mr. Hickman stated that he doesn't know if he would. He further stated that if Lamar's rights were protected in some form or fashion, as compared to how they might have been protected in August of 2006. Mr. McArtor asked Mr. Hickman if he sees anything in the draft ordinance that doesn't protect Lamar's interests. In response, Mr. Hickman stated that there are restrictions in the proposal that are greater than what has existed in August 2006. It is not his decision if Lamar makes a business decision to continue with litigation.

Mr. Marshall stated that he thought Mr. Hickman argued for the 1,200-foot spacing and also for the eight-second dwell time at the last meeting. In response, Mr. Hickman stated that he doesn't believe he argued for the 1,200-foot spacing, but he did state that he believes the eight-second dwell time would be best, but he didn't oppose the 12-second dwell time either.

In response to Mr. Marshall, Mr. Hickman stated that advertising for digital signs is not sold by the minute. The advertiser buys a spot on the board and if that gives them so many ultimate showings over a course of a minute, hour or day, then those are the showings that they might get depending on how often the advertising copy might change. There are a limited number of spots going to be put in place because someone wouldn't buy a spot on the digital board if there is

already 100 spots sold and would only be seen one time a day. The dwell time wouldn't have a significant impact from that respective.

Mr. McArtor asked Mr. Hickman if he had a problem with the 300 NITs at night. In response, Mr. Hickman stated that he does feel that the 500 NITs would give more flexibility, but the way to go would be wording in the ordinance regarding photo cells kicking on when the ambient light changes. It is important to include the photo cell language in the ordinance and the component is on these machines. He suggested the following wording: "...300 NITs above ambient light conditions." The 300 NITs would be okay as long as it is 300 NITs above ambient light. There is not a set ambient light answer because the ambient light condition is different in various areas of the City and freeways. Ambient light can be measured by foot candles and there would have to be some sort of conversion or calculation to determine if the NITS are over the ambient light condition.

Mr. McArtor asked Mr. Hickman if he knows how the SAB came up with the 2,400-foot spacing of the signs. In response, Mr. Hickman answered negatively.

Mr. Boulden asked Mr. Hickman if the ambient light is measured by a different standard (foot candles) and is it possible to measure this to determine if a sign is 300 NITs above ambient light. In response, Mr. Hickman stated that they are different measurement forms and they are really proper measurement forms for different types of lighting. Pure ambient light and measuring it in foot candles can be taken run it through an equation to give one a basis of what percentage of the NIT level that would be coming from the display. Mr. Hickman explained that he has seen a graph that shows this measurement, but it is very confusing to him. Mr. Hickman stated that he sent the draft ordinance to Daktronics to see if they are able to help with the measurement, but he hasn't heard back from the company.

Mr. McArtor recognized Mr. Jennings.

Mr. Harmon gave Mr. Jennings five minutes to speak.

Mr. Jennings stated that he has a study, which he would forward to the Planning Commission, that basically refutes the study from Ohio and the study from Vermont as being method logically flawed. The two studies that were proposed today were paid for by the industry and have been found by another study done in October 2007 that they are both scientifically flawed.

Mr. Jennings stated that Daktronics sent a letter to Lamar in 2007 that stated that the calibrated brightness control capabilities falls within the perimeters of 6500 maximum day and 2500 maximum night candles per square meters at any focal point on any roadway or berm or vehicle approach to any roadway. These perimeters are the industries standard levels used for digital outdoor advertising

displays, which are generally more stringent to those used from signs. He finds it more interesting that they now have a problem with 300 NITs when clearly back one year ago they had no problem with 250 NITs. Mr. Jennings submitted a chart from Lincoln Nebraska attempting to make a comparison with ambient light to NITs. This may be a way to regulate the NITs above ambient light.

Mr. Jennings stated that some cities have taken a look at the spacing of signs and they have given sign companies a sign commemorative with the market share that they currently have and this maybe something that the City would like to do as well. Mr. Jennings suggested that the Planning Commission have some of the Sign Advisory Board members speak on these issues since they spent the last year looking at this.

Mr. Harmon closed all public debate and went into review.

Ms. Cantrell stated that it is getting very late and she still has some questions for the Sign Advisory Board, but she would rather continue this to the next meeting.

Mr. McArtor stated that he has no problem with continuing this to the next meeting before making a decision.

Mr. Alberty stated that the City Council is expecting a report by April 1, 2008.

Mr. Boulden stated that he believes that the City Council wanted a report and that typically comes from the TMAPC with a recommendation of language changes. He believes the Planning Commission can give them whatever they can right now.

Mr. Harmon stated that he believes a continuance to the next week would be appropriate. In response, Mr. Boulden stated that the public hearing has been closed and the Planning Commission could continue their decision to the next meeting. Mr. Boulden explained that he would like to change some of the proposed language after hearing today's comments. He invited the Planning Commission to give him any input that they may have.

After a lengthy discussion Mr. Harmon continued the consideration of the ordinance to March 26, 2008. Mr. Harmon requested that the Sign Advisory Board to be present at the next meeting. Mr. Harmon declared the public hearing on this issue ended.

\* \* \* \* \*

**OTHER BUSINESS:**

**Refund Request for withdrawn case Z-7093/PUD-751 – Roy D. Johnsen**

The applicant has withdrawn two applications and is requesting a refund of filing fees.

**STAFF RECOMMENDATION:**

Mr. Alberty explained that the two cases were withdrawn before staff advertised and reviewed applications and therefore staff is recommending a refund \$2,768.00.

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

**TMAPC Action; 6 members present:**

On **MOTION** of **MCARTOR**, TMAPC voted **6-0-0** (Cantrell, Harmon, Marshall, McArtor, Shivel, Walker "aye"; no "nays"; none "abstaining"; Ard, Carnes, Midget, Perry, Sparks "absent") to **APPROVE** the refund for Z-7093/PUD-751 – Roy D. Johnsen per staff recommendation.

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**Commissioners' Comments**

Mr. Harmon thanked Mr. Walker for attending his first TMAPC meeting as a Planning Commission and promised that not all meetings last this long.

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There being no further business, the Chair declared the meeting adjourned at 6:00 p.m.

Date Approved:

4/16/08



Chairman

ATTEST:   
Secretary