

TULSA METROPOLITAN AREA PLANNING COMMISSION

Minutes of Meeting No. 2565

Wednesday, November 4, 2009, 1:30 p.m.

City Council Chambers

One Technology Center – 175 E. 2nd Street, 2nd Floor

Members Present	Members Absent	Staff Present	Others Present
Cantrell		Alberty	Boulden, Legal
Carnes		Fernandez	Steele, Sr. Eng.
Dix		Huntsinger	Warlick, COT
Leighty		Matthews	
Liotta		Sansone	
Marshall			
McArtor			
Midget			
Shivel			
Walker			
Wright			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, October 29, 2009 at 9:15 a.m., posted in the Office of the City Clerk, as well as in the Office of the County Clerk.

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

REPORTS:

Comprehensive Plan Report:

Mr. Warlick reported on the PLANitULSA updates for the Comprehensive Plan.

Director's Report:

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

Mr. Alberty reported that staff is revising the meeting schedule for 2010 and hope to have it ready soon.

Minutes:

Approval of the minutes of October 21, 2009 Meeting No. 2563

On **MOTION** of **CARNES**, the TMAPC voted 9-0-1 (Cantrell, Carnes, Dix, Leighty, Liotta, McArtor, Shivel, Walker, Wright "aye"; no "nays"; Marshall "abstaining"; Midget "absent") to **APPROVE** the minutes of the meeting of October 21, 2009, Meeting No. 2563.

* * * * *

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.

2. **LS-20343** – Roy Johnsen (8211)/Lot-Split (PD 8) (CD 2)
North of the northeast corner of West 81st Street South and South Olympia Avenue, Tulsa Hills
3. **LS-20344** – James Bo Harrison (9224)/Lot-Split (PD 6) (CD 9)
Northwest corner of South Madison Place and East 35th Place, 1019 East 35th Place
4. **LC-215** – Sonora Square (9418)/Lot Combination (PD 17) (CD 5)
Northwest corner of East 31st Street and East 30th Street, 10915 East 31st Street South

The Planning Commission considered the consent agenda.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; Midget "absent") to **APPROVE** the consent agenda Items 2, 3 and 4 per staff recommendation.

* * * * *

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA

5. **AC-094 – HRAOK/Dwayne Wilkerson** (PD-18) (CD-2)

East of the northeast corner of 71st Street South and Riverside Drive (Alternative Compliance Landscape Plan for a QuikTrip gas station and convenience store.)

STAFF RECOMMENDATION:

The applicant is requesting TMAPC approval of an alternative compliance landscape plan for a QuikTrip gas station and convenience store located at the above described location. This landscape alternative compliance plan is a modification of a previously approved landscape alternative compliance plan approved by the TMAPC on December 7, 1995 (see Exhibit A).

The re-examination of the landscape plan is being triggered by the expansion of the canopy over the fueling facility and the reconfiguration of the access point located at the southeast corner of the lot. The access reconfiguration should allow for easier ingress/egress to the site.

The plan does not meet the technical requirements of the code since the existing site does not meet the minimum PUD open space requirement of 18%; there is one space in front of the store that is not within 50' of a required landscape area; and the street yard along 71st Street is not 15% landscaped.

The applicant is proposing to put an additional 12 trees on the site. This will bring the number of trees on the site to 25; 13 trees over the required 12 trees.

Since the site will remain above the 10% open space required for commercial properties by the PUD chapter of the code and there will be 12 trees added to the 13 existing trees on site, staff feels the proposed plan meets or exceeds the technical requirements of chapter 10 of the code and meets the intent of §1000 of the code. Therefore staff recommends **APPROVAL** of alternative compliance landscape plan AC-94.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-0-1** (Cantrell, Carnes, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; Dix "abstaining "; Midget "absent") to **APPROVE** the alternative compliance landscape plan for AC-094 per staff recommendation.

* * * * *

Ms. Cantrell read the opening statement and rules of conduct for the TMAPC meeting.

PUBLIC HEARING

- 6. **LS-20340** – Stephen Schuller (9225)/Lot-Split (PD 6) (CD 9)
Northwest corner of South Peoria Avenue and Skelly Drive, 4956 South Peoria Avenue East

Mr. Dix recused himself and left the room at 1:36 p.m.

STAFF RECOMMENDATION:

This is an application to split one parcel into two tracts. TAC reviewed this application on October 15, 2009 due to its zoning and having more than three side lot lines. Per Development Services, sidewalks are required along Peoria Avenue when the applicant applies for their permit. Staff recommends **APPROVAL** subject to all conditions from Development Services being met.

There were no interested parties wishing to speak.

TMAPC Action; 9 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; Dix, Midget "absent") to **APPROVE** the lot-split LS-20340 per staff recommendation.

* * * * *

Mr. Dix in at 1:37 p.m.

- 7. **LS-20341** – Lou Reynolds (9404)/Lot-Split (PD 17) (CD 6)
South of southwest corner of East Admiral Place and South 145th Avenue, 420 South 145th East Avenue

STAFF RECOMMENDATION:

This is an application to split one parcel into two tracts. TAC reviewed this application on October 15, 2009 due to it having more than three side lot lines. Per Development Services, a mainline extension must be completed and sidewalks are required along 145th East Avenue. Staff recommends **APPROVAL** subject to all conditions from Development Services being met.

There were no interested parties wishing to speak.

The applicant indicated his agreement with staff's recommendation.

TMAPC Action; 10 members present:

On **MOTION** of **LEIGHTY**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; Midget "absent") to **APPROVE** the lot-split LS-20341 per staff recommendation.

* * * * *

8. **Block 5 Chelsea Pond –** (8328) Preliminary Plat (PD 26) (CD 8)
South of the southeast corner of East 101st Street South and South
Harvard Avenue

STAFF RECOMMENDATION:

This plat consists of 2 Lots, 1 Block on 4.4 acres.

The following issues were discussed October 15, 2009 at the Technical Advisory Committee (TAC) meeting:

1. **Zoning:** The property is zoned PUD 426. All PUD standards must be met and shown in the restrictive covenants.
2. **Streets:** Access is from a private street and access must be permitted through mutual access. Show sidewalk easement. Sidewalk language required.
3. **Sewer:** No comment.
4. **Water:** No comment.
5. **Storm Drainage:** Vensel Creek City of Tulsa Regulatory Floodplain must be labeled as such, and must be located by plotting the 100 year water surface elevation. It cannot be placed on the plat by digitizing the City of Tulsa floodplain panels. If an off-site detention facility is being used to control the additional runoff from this fully-urbanized development, then the name and location of that facility must be noted on the plat. Documentation must be provided to show that the facility was sized to receive this additional fully-urbanized drainage. Both Francis Hills and Block 4 Chelsea Pond provided stormwater detention for their subdivision. Use standard language for both stormwater detention easement and overland drainage easement. Additional easements may be required for the plat. Section II A.4 refers to Reserve Area "A", but the face of plat does not show this Reserve Area in the area being platted. The conceptual stormwater drainage system must

be clarified.

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

7. Other: Fire: No comment.

GIS: Label the northwest corner of Section 28 as the point of commencement. Show the bearings and the distances from the point of commencement and the point of beginning. Submit subdivision control data form.

Staff recommends **APPROVAL** of the Preliminary Subdivision plat subject to the TAC comments and the special and standard conditions below. There is a request for a sidewalk waiver for the plat. Staff could support a fee-in-lieu-of sidewalk for this project due to the surrounding area never having been required to put in sidewalks, but to help enforce and provide sidewalks for the future as an important goal for the community.

Waivers of Subdivision Regulations:

1. A waiver to the sidewalk requirement is requested and attached.

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.

Mr. Midget in at 1:44 p.m.

Applicant's Comments:

Ricky Jones, Tanner Consulting, 5323 S. Lewis, Avenue, 74105, stated that he was outside visiting with a couple of the neighbors who live in that subdivision. They have some concerns with drainage issues and they would like to talk to the Planning Commission about those issues. The drainage issues can be handled during the Engineering Plan process.

Mr. Jones explained that this is the old homesite and it is unplatted. He considers this an infill development because it is the last remaining piece to be developed. The existing home is not in good repair and the owners plan to raze the existing home and split it into two lots to build two homes. He did discuss a lot-split procedure with his clients and determined that it wasn't a good procedure since it is part of PUD and part of the Homeowners' Association. Mr. Jones felt it was best that his client plat the subject property. He indicated that he is in agreement with all of the Technical Advisory Committee conditions. The issue is the sidewalk. Subdivision Regulations provides for waivers when the conditions warrant an appropriate waiver. He believes in this case it does warrant an appropriate waiver. This is a gated private subdivision that was developed years ago and there are no sidewalks. To require sidewalks on the subject property would connect to nothing on either end. There are other issues: topography, drainage issues and the neighborhood doesn't want the sidewalk. The neighbors

use the private streets as their pedestrian access. There are roughly 57 or 58 lots in the subdivision, which is gated and private.

Mr. Jones stated that he doesn't believe that staff, in general, has a problem with waiving the sidewalks. What they have recommended is that there be a fee-in-lieu-of. After researching, this he contacted Development Services and acquired the ordinance for fees-in-lieu of and the regulations specifically deal with parkways and arterial streets. He doesn't know if there is a vehicle for the City to require a fee-in-lieu-of on anything other than an arterial or a parkway. (Mr. Jones submitted the ordinance and regulations to Mr. Boulden for clarification.) Mr. Jones commented that he doesn't feel that the fee-in-lieu-of is appropriate. He understands that the fee-in-lieu-of was established to pay a fee in lieu of a sidewalk where the City has plans to widen a street in the near future and do not want the developer to install the sidewalk that will be torn up later. The fee-in-lieu-of would pay for the replacement of that sidewalk. In this case this is a private street, gated subdivision and doesn't connect to anything. He doesn't believe that the fee-in-lieu of is appropriate here and it isn't appropriate to ask the potential buyers to pay for something that will not be used in their subdivision. He requested for a waiver of the Subdivision Regulations not to build sidewalks and that the fee-in-lieu-of not be applied to this application.

TMAPC COMMENTS:

Mr. McArtor asked where the sidewalk would be located if it were to be built. In response, Mr. Jones stated that in a private street it would roughly be three to four feet behind the curb. There is a wrought-iron fence with stone columns present and a sidewalk could be squeezed in if required.

Ms. Cantrell asked if the fence is along the utility easement and if the fence will have to come down. In response, Mr. Jones stated that the fence is a nice fence and he is not sure of the exact location. The fence is probably back six feet from the curb.

Mr. Marshall asked Mr. Jones how much the sidewalk would cost to install. In response, Mr. Jones stated that at today's rate of \$55.00 a square yard it would be approximately \$8,000.00 in fee for the fee-in-lieu-of.

Ms. Cantrell stated that she understands Mr. Jones's argument, but in terms of why this is not a good place to put a sidewalk and why it should be waived is because there are no sidewalks around and that as a reason for waiving sidewalks has been problematic. There are a lot of places in Tulsa that do not have sidewalks. She understands not wanting to put sidewalks in right now, but what would be the basis for not having the fee-in-lieu-of. Mr. Jones stated that this is in an established, gated and private subdivision and it is the very last lot to be redeveloped. All of the other lots have been developed and they do not have sidewalks. It is safe to say that the City will never come on a private street and build a sidewalk for a gated subdivision that the public has no benefit of. The

City doesn't maintain the street and doesn't have the right to come in and build a sidewalk. Mr. Jones commented that he doesn't believe a sidewalk will ever be built within the gated subdivision. The current residents do not want sidewalks.

In response to Mr. McArtor, Mr. Jones stated that he has talked to one homeowner specifically and then he has talked to the two interested parties who are present today. He asked them if they were okay that he tells the Planning Commission that they are okay with not building the sidewalk and they indicated that they were okay with that.

Mr. Alberty stated that he would like to comment on the issue of the sidewalks. The Subdivision Regulations require sidewalks within residential subdivisions. Planning Commission does have the right to waive sidewalks upon the finding of fact, but the consistency of that issue has always been that if they waive the sidewalk requirement upon fact, the fee-in-lieu has been required. Mr. Alberty commented that the applicant has presented fact and he thinks it is reasonable to say that the sidewalk probably is not appropriate based on the full development of the adjacent.

Mr. Dix asked if the fee-in-lieu of is dedicated to that particular subdivision for use. Mr. Alberty stated that the funds go into a general fund for street improvements and sidewalks.

Mr. Marshall asked if the fee-in-lieu-of fee was applied to the existing development. In response, Mr. Alberty stated that he doesn't believe that the sidewalk requirement was not in place when it was developed and only came into effect June 2005.

Ms. Wright asked staff if the Planning Commission has ever waived the fee. In response, Mr. Alberty stated that he can't think of any at this time.

INTERESTED PARTIES COMMENTS:

Sally Thompson, 10202 South Knoxville, 74132, expressed concerns about drainage. She explained that currently she receives a tremendous amount of stormwater runoff and she is concerned about the new development increasing it. Ms. Thompson indicated that she was told that the new development can't add to the existing drainage, but she was hoping it would improve the situation, not keep it status quo. Ms. Thompson cited all of the things she has done to improve the drainage for her subject property.

Ms. Thompson stated that while it would be nice to have a subdivision with sidewalks, the existing subdivision doesn't and it would look very strange to have a sidewalk in the middle that connects to nothing.

TMAPC COMMENTS:

Ms. Cantrell explained that part of the expectation of the fee-in-lieu-of is that the City can begin to build more and more sidewalks. When new development comes in and pays into fee-in-lieu-of, then certain areas can benefit from that and hopefully get their sidewalks. Just because there's not any here now, there may be chance in the future for sidewalks. It has been a policy since 2005 to make sure that there are sidewalks. Sidewalks provide safety for pedestrians.

Ms. Thompson stated that the advantage of a gated community is that there is very little traffic and they get to decide the speed limit. She doesn't feel it is necessary to have sidewalks for the gated subdivision and the subject property.

Ms. Wright encouraged Ms. Thompson to take pictures of the stormwater drainage so that Public Works can determine where the water flows and give them a visual record.

Ms. Cantrell explained the platting process, today's application and action necessary to Ms. Thompson.

INTERESTED PARTIES COMMENTS:

Kim Hutton, 3528 East 102nd Place, 74137, stated that there are drainage issues in the subject area and he understands it can be addressed during the engineering phase. He intends to keep in touch with Mr. Steele and Mr. Jones regarding this issue.

Mr. Hutton stated that he would love to see sidewalks along Louisville to 101st and then down Riverside. In his neighborhood the subject property would be the only one with a sidewalk and would be kind of odd. He is glad to see someone come in and develop the subject property.

TMAPC COMMENTS:

Ms. Wright explained the reason for fees-in-lieu to Mr. Hutton.

Applicant's Rebuttal:

Mr. Jones stated that he agrees with Mr. Alberty. One of things he would ask the Planning Commission to look at is that when they waive a requirement of the Subdivision Regulations and place a condition on that, the condition should have some connection or some nexus to what is being waived. He doesn't know if it is appropriate to make the people of this lot pay into a fee-in-lieu-of fund to provide sidewalks to somebody else on the other side of town. Mr. Jones stated that he doesn't see the correlation between the waiver and the condition that is being waived. He doesn't believe the subject subdivision will ever get the benefit of sidewalks from the fee-in-lieu.

TMAPC COMMENTS:

Ms. Cantrell stated that if this continues, it is kind of like Social Security. Hopefully someone else will pay into the fee-in-lieu fund and eventually the subject subdivision would get their sidewalks. It may take time, but she hopes that eventually all of the residential areas would have sidewalks.

Mr. Liotta asked if the City of Tulsa own a right-of-way on the subject streets. Mr. Jones stated that they do not. These are private streets that are owned by the residents. Mr. Liotta commented that if the City were to ever build sidewalks in the subject subdivision they would first have to go in and buy the right-of-way. Mr. Jones stated that they would have to get either an easement or purchase or do something in order to install sidewalks. He doesn't think the City has the right to go in and install sidewalks at this time. Mr. Liotta stated that it is very unlikely that the City will ever go into the subject subdivision and put in sidewalks. Mr. Jones agreed.

Mr. McArtor asked Mr. Jones if his client is willing to pay the fee-in-lieu of the sidewalks. Mr. Jones stated that they do not want to do that because they do not feel that it is equitable. His clients do not believe they would benefit from the fee-in-lieu of at anytime since this is not a public street.

Ms. Wright stated that there are many citizens who have been paying for sewer that do not have them. Unless the Planning Commission enforced this and enforces it uniformly across the board, then the revenue will not be coming in to install sidewalks, storms or sewer. This is not just about this person's property and the cost justification doesn't matter in this instance or it is not a hardship. Mr. Jones stated that the cost is not a hardship, but he doesn't think the size or the cost of the house has anything to do with the waiver that is front of the Planning Commission. Mr. Jones further stated that \$8,000 dollars is a large amount to anybody regardless the size of the house. He indicated that his client's do not feel that this is an appropriate fee.

Mr. Leighty stated that sidewalks are important to him as they are to his fellow Commissioners. He commented that he takes this seriously and he for one would like to state for the record that he will not be supporting a waiver for a sidewalk or a fee-in-lieu of without very compelling reasons. Because of that, he visited the site to look at it. Being a realtor he has been in this subdivision a number of times and has seen this particular lot. He doesn't necessarily think that he has to disclose ex parte communications in this case because he did meet with Mr. Jones of Tanner Consulting and he only wanted to see the subject property. He indicated that he didn't talk about the merits or demerits of what the pending application was, but simply showed him the layout and how the map and plat corresponds to the subject property. Mr. Leighty stated that he came to the conclusion that he would support the application without the requirement for the sidewalk or the fee-in-lieu. This would be a penalty against the landowner for the bad planning that we had in the past (when we weren't requiring these

sidewalks). The sidewalk location doesn't make any sense and would not connect to anything and stick out like a sore thumb. This is a very hilly area and he doesn't buy the comment that it would make it difficult to build a sidewalk because if a street can be built, so can a sidewalk. However, there will never be a sidewalk because this is a private-gated community with private streets. He would like to request of the Chair to place this fee-in-lieu-of be on a work session and actually have staff brief the Planning Commission on how much money is taken in on an average years time and who makes the decision as to where the money is spent. Mr. Leighty stated that in this single case he would support the idea of not requiring the fee-in-lieu-of. He further stated that the Planning Commission will probably see this situation again and why would the Planning Commission put themselves in the position where an undeveloped piece of property in the middle of developed area, that had no sidewalks whatsoever, be required to put in a sidewalk or pay toward the fee when it doesn't seem consistent or fair. He indicated that he is for sidewalks and he really believes that, looking back on it, the decisions that were made in the past to waive these sidewalks between the development community and the staff were really some of the worst ideas we ever had and we are now paying the price for it. Mr. Leighty stated that he would like to have an opportunity to make a motion without requiring the sidewalks or the fee-in-lieu-of.

Mr. Dix stated that normally he wouldn't be in favor of waiving the sidewalk requirement or the fee-in-lieu; however, in this case he is in support waiving both. The last lot or a created last lot in the subdivision where there are no other sidewalks doesn't warrant that lot building a sidewalk. A fee-in-lieu of sidewalks where no sidewalks will ever be built is an impact fee, which is something that is not used in Tulsa. Mr. Dix cited other instances where a fee-in-lieu of a requirement is necessary, but he doesn't feel that applies in the subject subdivision.

Mr. Marshall stated that he visited the subject site and he agrees with Mr. Leighty and Mr. Dix. This is an exception to the rule and in this case it would be penalizing the homeowner because he purchased the property. Mr. Marshall stated that he can't support the fee-in-lieu of sidewalks.

Ms. Wright stated that there has been many conversations concerning when the Planning Commission would or would not waive the fee. This would probably be the first time ever waiving the fee. If the Planning Commission waives the fee it will be setting a precedent and eroding the ordinance.

Ms. Cantrell stated that she would echo Commissioner Wright's comments. If the Planning Commission waived it at this time, then she believes that from now on gated communities wouldn't have to build sidewalks, and the TMAPC can waive the fee. The argument is that there won't be any sidewalks there, but what if the homeowners decide that they do want them. Ms. Cantrell stated that today is a bad day for her because a child was hit in front of her children's school today

and to her sidewalks are necessary. Ms. Cantrell stated that she will waive in favor of the fee-in-lieu of.

Mr. Marshall stated that when he was talking about an exception to the rule, this is for this case only. It should be considered case-by-case and in this particular case he would waive the fee.

Mr. Boulden stated that Mr. Jones's point is well taken. The ordinance only relates to parkways and arterial rights-of-way. The ordinance under which the City of Tulsa operates on the fee-in-lieu-of option only provides for those kinds of sidewalks. He believes that the reason for this is that generally the City of Tulsa doesn't go into residential subdivisions and build sidewalks. There are many residential developments that do not have sidewalks and it would cost a lot of money to go back and install sidewalks. The purpose of the ordinance was, when the Planning Commission had an applicant who voluntarily requested the fee-in-lieu-of and there was no vehicle for the Planning Commission to make a requirement, that somebody pays money to the City of Tulsa and this ordinance was to facilitate that. The ordinance indicates that the funds are placed in the parkway/arterial street sidewalk fund. He doesn't believe that there have been that many cases where that fund has been utilized and there are not a lot of monies. The monies can be spent anywhere, including the location where the sidewalk requirement is waived. Mr. Boulden reminded the Planning Commissioners of the Utica Place development at 21st and 22nd and Utica where there was an appeal to District Court for the sidewalk. Ultimately the City will build a sidewalk on that roadway and they may or may not use the funds but most likely will use bond monies. He doesn't believe that the Planning Commission really has an option, at least under the ordinance, to require fee-in-lieu of sidewalks for this occasion. The developer could voluntarily pay the fee if the City agreed to it. The straight board option would be to require a sidewalk or not. Another option is to waive it only on condition that an agreement is reached with the City of Tulsa to pay the fee-in-lieu of.

Ms. Cantrell stated that she believes that the Planning Commission never really waived the sidewalk requirements, but they have said that they are required to put the sidewalks in. However, if they come to an agreement with the City, then they do not enforce it. Mr. Boulden stated that the City doesn't have a vehicle in the ordinance to deal with this fee.

Mr. Carnes stated that Mr. Marshall stated that this would be the exception to the rule, but he doesn't believe it is an exception to the rule. This is an infill lot and he doesn't believe the Planning Commission should be putting an impact fee on somebody. This is not a subdivision; it is an infill lot.

Mr. Leighty stated that early it was noted that this would set a precedent that the Planning Commission would no longer require sidewalks in subdivisions. He doesn't believe that will happen. One of the good things is that the Planning

Commission can look at these on a case-by-case basis and determine the merits of the particular application. After viewing the subject property and the surrounding area it doesn't make any sense to him to force the sidewalk issue. Mr. Leighty stated that he would like to make a motion if there is no further discussion.

Ms. Cantrell stated that when she was first on the Planning Commission there was sidewalk waiver requests all the time. Each one of them had an excuse and it took a long time to stick together and say no sidewalks are before they finally stopped having so many requests. She is concerned that once the Planning Commission starts making exceptions there will be a flood of people requesting waivers for sidewalks. There were problems with lawsuits because the Planning Commission wasn't consistently applying those regulations. It took several years of consistent applications and rules of saying that the applicant would either put in the sidewalks or pay the fee before they got the message that the Planning Commission was serious about sidewalks.

Mr. Leighty stated that he would like to respond to Ms. Cantrell's comments. He doesn't see the point in trying to set something in stone that cannot be changed under any circumstances. The Planning Commission wouldn't need to vote on this and just have the staff state that this is required and that is all there is to it. He doesn't like that idea and he doesn't believe it serves the public. Mr. Leighty reminded the Planning Commission that he has voted for sidewalks and held some people to the requirement. However, this is one case that he feels is an exception to the rule and warrants a waiver of the sidewalk requirement.

Mr. Walker stated that he is trying to get a distinction between the waiver requirement and the fee. He asked if Legal stated that the Planning Commission can not or shouldn't waive the fee based on the ordinance. Mr. Boulden stated that it was to not waive the fee, but to waive the sidewalk based upon the ordinance. The ordinance contemplates that the fee would be voluntary. Mr. Dix asked why the ordinance was written if it is voluntary. Mr. Boulden stated that the applicant has a choice between building a sidewalk or paying the fee, it is their choice and it is voluntary in that sense. Ms. Cantrell stated that the Planning Commission can't say don't build the sidewalk and pay the fee. The Planning Commission does have the right to say that the applicant has the choice. Mr. Dix asked if the Planning Commission has the option of allowing the waiver of either. Mr. Boulden stated that the Planning Commission can waive it straight without the fee or waive it and make it a condition that they come to some arrangement with the City to pay the fee-in-lieu of, but this would be outside of the ordinance. Mr. Dix asked if the Planning Commission has the right to waive both. In response, Mr. Boulden answered affirmatively.

In response to Ms. Wright, Mr. Boulden stated that it took four years to get the ordinance in place. Ms. Wright stated that she remembers this ordinance coming before the Planning Commission in 2008. If this waiver is granted today it would

be essentially eroding the ordinance that took four years to get into place. Mr. Boulden stated that this may be Ms. Wright's understanding, but there was a policy statement in there that he doesn't want to step into. Ms. Wright stated that basically what is on the table is that the option of the developer is that they can either build the sidewalk or pay the fee-in-lieu of. Mr. Boulden stated that is true unless the Planning Commission waives the sidewalk requirement. Ms. Wright stated that if the Planning Commission waives the sidewalk requirement, then the Planning Commission would be going against their ordinance that took a long time to get into place. Mr. Boulden reminded Ms. Wright that the ordinance only speaks to parkways and arterials. Ms. Wright stated that not too long ago it was brought up that the modern home today is only built to last 25 to 50 years. Is there anything that would guarantee that in perpetuity this land will never become a different kind of subdivision that might not be gated and might require City maintenance?

Mr. Liotta stated that because the ordinance contemplates arterials and this particular situation, then wouldn't it be correct to say that the City does not have the legal authority to impose the fee in this particular situation. Mr. Boulden stated that it wouldn't be the City imposing it would be the Planning Commission imposing the requirement. The City does not have a vehicle to deal or provide for residential sidewalk fees-in-lieu of for residential sidewalks. It would have to be something done by agreement between the developer and the City.

Ms. Cantrell wanted to clarify that under no circumstances can the Planning Commission can impose the fee. Mr. Boulden stated that it is an option.

Mr. Dix stated that he thinks what he just heard was that the Planning Commission does not have the option of waiving both requirements, but does have the option to waive the sidewalk requirement. If it is waived then it waives the fee-in-lieu-of. Mr. Boulden answered affirmatively.

TMAPC Action; 11 members present:

On **MOTION** of **LEIGHTY**, TMAPC voted **9-2-0** (Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Midget, Shivel, Walker "aye"; Cantrell, Wright "nays"; none "abstaining"; none "absent") to **APPROVE** the preliminary plat for Block 5, Chelsea Pond, subject to special conditions and standard conditions and waive the sidewalk requirement.

* * * * *

9. **PUD-646-3 – Doug Walker/Truong Residence** (PD-26) (CD-8)

North of the northeast corner of South Sheridan Road and East 109th Place South (Minor Amendment to reduce the required rear setback from 35 feet to 20 feet for a small portion of the northeastern corner of the house.) (Continued from 10/21/09 and 10/28/09)

TMAPC COMMENTS:

Ms. Cantrell stated that staff and the Planning Commission received a letter from Ms. Long indicating that she has no objections to the subject application.

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to reduce the required rear setback from 35' to 20' for a small portion of the northeastern corner of the house (see Exhibit A).

Referring to Exhibits A and B this lot is a five-sided lot with a 35-foot setback requirement along the north and the west lot lines. There is a 40' setback requirement along the southeast lot line along 109th Place South. There is an 82' overland drainage easement along the entire east lot line. All of which makes the developable area of the lot much smaller than the lot would appear to allow.

Referring to Exhibits B and C, the lot line in question abuts directly to a reserve area for the Forest Trails single-family subdivision. Per the attached deed of dedication for plat #3827, this area is reserved for stormwater detention only. A reduction in setback along this lot line would appear to have no effect on any single-family structures.

The proposed layout of the house has received the approval of the architectural committee of the Wenmoor subdivision as the preferred layout.

Therefore, staff recommends **APPROVAL** of minor amendment PUD-646-3.

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

TMAPC COMMENTS:

Ms. Wright expressed concerns about adding more impervious land to the subject area and the closeness to the marsh. Mr. Sansone didn't feel that the subject proposal would affect the marsh due to the square footage of the house and the overall size of the lot. Ms. Wright asked if the marsh land is unbuildable. In response, Mr. Sansone stated that it is dedicated to stormwater detention. Ms. Wright asked if any runoff would go onto anyone else's residence. In response, Mr. Sansone stated that it shouldn't.

TMAPC Action; 11 members present:

On **MOTION** of **CARNES**, TMAPC voted **11-0-0** (Cantrell, Carnes, Dix, Leighty, Liotta, Marshall, McArtor, Midget, Shivel, Walker, Wright "aye"; no "nays"; none "abstaining"; "absent") to **APPROVE** the minor amendment for PUD-646-3 per staff recommendation.

* * * * *

OTHER BUSINESS:

Commissioners' Comments

Ms. Wright asked what amount of money the Planning Commission spends on lunches and training sessions. Can that money be spent on the evening meetings? Mr. Alberty stated that the Planning Commission training session luncheons are a part of the budget and far as the cost, it has never exceeded \$200.00 per month. Ms. Cantrell suggested that this be discussed when this is brought up during the next meeting. Mr. Alberty stated that the extra cost for evening meetings has not been determined of how it would be absorbed.

Mr. Marshall asked if the assessment of the cost based on one evening meeting or all of the TMAPC meetings being held in the evening. Mr. Alberty stated that he believes the cost was for two night meetings per month.

* * * * *

There being no further business, the Chair declared the meeting adjourned at 2:40 p.m.

Date Approved:

12/21/09
Michelle Carter

Chairman

ATTEST:

Johnnie G. Walker
Secretary