

TULSA METROPOLITAN AREA PLANNING COMMISSION
Minutes of Meeting No. 2619

Wednesday, February 1, 2012, 1:30 p.m.

City Council Chamber

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

Members Present	Members Absent	Staff Present	Others Present
Cantrell	Stirling	Alberty	Edmiston, Legal
Carnes		Bates	Steele, Sr. Eng.
Dix		Fernandez	Warlick, COT
Edwards		Huntsinger	
Leighty		Matthews	
Liotta		Sansone	
Midget			
Perkins			
Shivel			
Walker			

The notice and agenda of said meeting were posted in the Reception Area of the INCOG offices on Thursday, January 26, 2012 at 1:07 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, Chair Walker called the meeting to order at 1:30 p.m.

REPORTS:

Director's Report:

Mr. Alberty reported on the City Council and Board of County Commissioner's agendas.

AGENDA:

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. **LS-20484** - (Lot-Split) (County), Location: Southwest corner of North 88th East Avenue and East 137th Street North
2. **LS-20487** - (Lot-Split) (CD-4), Location: Southeast corner of South Yorktown Avenue and East 6th Street South
3. **LC-379** - (Lot-Combination) (CD-4), Location: Southwest corner of South Atlanta Avenue and East Admiral Boulevard
4. **LS-20488** - (Lot-Split) (CD-2), Location: Northwest corner of South Elwood Avenue and West 71st Street South
5. **PUD-648-A-5 – Gary Larsen/Olympia Medical Park/Tulsa Spine Hospital**, Location: North of the northeast corner of West 71st Street South and South Olympia Avenue, Requesting a **Minor Amendment** to permit additional ground signage and decrease the minimum 100-foot separation required between signs in a PUD, (CO/PUD), (CD-2)
6. **AC-112 –HRAOK/Barrick Rosenbaum/Kum-n-Go**, Location: Southeast corner of 21st Street South and South Sheridan Road, Requesting **Landscape Alternative Compliance** to permit the use of Crepe Myrtle trees/shrubs in required parking lot landscaped areas, (CH), (CD-5)
7. **PUD-448-6 – Wallace O. Wozencraft/Planet Fitness**, Location: Northeast corner of 91st Street South and South Memorial Drive, Requesting a **Minor Amendment** to add health club use only within Use Unit 19 – Hotel, Motel and Recreation as a permitted use within PUD-448 to allow for the redevelopment of currently vacant retail space within the PUD, (RM-1/CS) (CD-7)
8. **AC-113 – PSA/Dewberry/Paul Hames/QuikTrip**, Location: Northwest corner of South Peoria Avenue and Interstate 44/Skelly Drive, Requesting **Landscape Alternative Compliance** for a new QuikTrip store, (CH) (CD-9)

CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA:

ZONING CODE AND FORM-BASED CODE PUBLIC HEARING

9. **Proposed Amendments to the Tulsa Revised Ordinances, Title 42 and Title 42-B, the Zoning Code and Form-Based Code of the City of Tulsa (Public Comment portion has been closed and the TMAPC is now in review only)**

PUBLIC HEARINGS:

10. **PUD-397-B-1 – Andrew A. Shank/61 MM, LTD**, Location: Southwest corner of East 61st Street and South 91st East Avenue, Requesting a **Minor Amendment**, (CD-7) (Continued from 12/21/2011 and 1/18/2012) (Staff is requesting a continuance to 2/15/2012; this case was continued by the BOA to 2/14/2012)
11. **Z-7193 – Luke Wright**, Location: 4782 East Admiral Place, Requesting rezoning from **CH to IH**, (CD-4) (Applicant is requesting a continuance to 2/15/2012; this case has to go before the BOA for clarification on 2/14/2012)
12. **Inpatient Hospice Midtown – (9323) Preliminary Plat**, Location: West of Interstate 44, south of East 31st Street South (CD 5)
13. **CBOA-2408** – Plat Waiver, Location: 7250 West 50th Street South, North of West 51st Street, East of West 73rd West Avenue (County) (Continued from 1/18/2012)
14. **Z-7190 – Sajid S. Salimi**, Location: South of southwest corner of South 33rd West Avenue and West Skelly Drive, Requesting rezoning from **RS-3 to CS**, (CD-2) (Continued from 1/4/2012)
15. **PUD-313-9 – Kenney Russell**, Location: South of the southwest corner of West 61st Street South and South 28th Avenue West, Requesting a **Minor Amendment** to increase the permitted coverage for a driveway in the required front yard, (**RT/RS-3**) (CD-2) (Continued from 1/18/2012)
16. **PUD-313-10 – Kenney Russell**, Location: South of the southwest corner of West 61st Street South and South 28th Avenue West, Requesting a **Minor Amendment** to increase the permitted coverage for a driveway in the required front yard of an RS-3/PUD zoned lot per the attached plan, (**RT/RS-3**) (CD-2) (Continued from 1/18/2012)

OTHER BUSINESS

17. Commissioners' Comments

* * * * *

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

MINUTES:

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. **LS-20484** - (Lot-Split) (County), Location: Southwest corner of North 88th East Avenue and East 137th Street North
2. **LS-20487** - (Lot-Split) (CD-4), Location: Southeast corner of South Yorktown Avenue and East 6th Street South
3. **LC-379** - (Lot-Combination) (CD-4), Location: Southwest corner of South Atlanta Avenue and East Admiral Boulevard
4. **LS-20488** - (Lot-Split) (CD-2), Location: Northwest corner of South Elwood Avenue and West 71st Street South
5. **PUD-648-A-5 – Gary Larsen/Olympia Medical Park/Tulsa Spine Hospital**, Location: North of the northeast corner of West 71st Street South and South Olympia Avenue, Requesting a **Minor Amendment** to permit additional ground signage and decrease the minimum 100-foot separation required between signs in a PUD, (CO/PUD), (CD-2)

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to permit additional ground signage and decrease the minimum 100-foot separation required between signs in a PUD. The intent of the minor amendment request is to allow for "way-finding" signs to be constructed allowing clients/patients entering the hospital grounds to have an easier time finding where they need to be. The hospital is in a campus type setting. The underlying zoning of the property is Corridor.

The PUD currently allows one free-standing sign along the corridor collector street not to exceed 125 square feet (SF) of display area nor 25-foot in height for this lot. The applicant proposes to make the sign permitted along Olympia Avenue a lower profile monument style sign with 25 SF of display area at approximately five feet in height, in exchange for allowing the three, 12 SF signs in the attached exhibits as directional or way-finding signs. The hospital also has a presence on the tenant ID sign located along West 71st Street.

This same relief has been granted at other hospitals which are located in PUDs. Specifically, the relief has been granted at St. Francis South and Southcrest Hospitals.

With no frontage on a major street, the underlying zoning on the lot would permit .2 (two-tenths) of a square foot of display surface area for each linear foot of street frontage. The sign could not be held under 32 SF nor exceed 150 SF of display area. With 992 linear feet of frontage along Olympia Avenue the hospital would be allowed 150 SF of display surface area. The total display surface area for the signs being proposed is 63 SF.

Staff contends the lower profile monument style sign, the way-finding signs and reduction of the minimum 100-foot sign separation on this lot only will not substantially alter the approved PUD Development Plan, the character of the development or the intent of the PUD chapter of the Code.

Therefore recommends **APPROVAL** of minor amendment PUD-648-A-5.

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

6. **AC-112 –HRAOK/Barrick Rosenbaum/Kum-n-Go**, Location: Southeast corner of 21st Street South and South Sheridan Road, Requesting **Landscape Alternative Compliance** to permit the use of Crepe Myrtle trees/shrubs in required parking lot landscaped areas, (CH), (CD-5)

STAFF RECOMMENDATION:

The applicant is requesting TMAPC approval of an alternative compliance landscape plan to permit the use of Crepe Myrtle trees/shrubs in required parking lot landscaped areas. The Crepe Myrtles would be used in addition to Hackberry and Canada Red Choke Cherry Trees within the interior of the site.

The code allows the Planning Commission to approve Alternative Compliance Landscape Plans that do not meet the technical requirements of Chapter 10 of the code, so long as the submitted plan is, “equivalent to or better than” the requirements of Chapter 10.

In exchange for allowing Crepe Myrtles to be used, the applicant will voluntarily landscape the street yard, although section 1002.A.5 of the Code does not require it. The applicant also proposes to plant three extra trees in the parking area as compensation. Additionally, the applicant proposes to provide a minimum 8.5 foot wide landscape strip along South Sheridan Road.

The subject property is zoned CH. Chapter 10 of the Code states that 15% of the street yard on non-residential lots shall be landscaped. However, Chapter 10 further states where no street yard exists street yard landscaping will not be required. Section 1800 of the Code defines “street yard” as the area encompassed by the right-of-way line (ROW)/property line along the street and the building setback line. Since there is no building setback requirement in the CH District, technically there is no street yard and therefore no street yard landscaping required on CH zoned lots.

Staff contends the applicant has met the requirement that the submitted Alternative Compliance Landscape Plan be “equivalent or better than” the technical requirements of Chapter 10 of the code and recommends **APPROVAL** of Alternative Compliance Landscape Plan AC-112.

7. **PUD-448-6 – Wallace O. Wozencraft/Planet Fitness**, Location: Northeast corner of 91st Street South and South Memorial Drive, Requesting a **Minor Amendment** to add health club use only within Use Unit 19 – Hotel, Motel and Recreation as a permitted use within PUD-448 to allow for the redevelopment of currently vacant retail space within the PUD, (RM-1/CS) (CD-7)

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to add health club use only within Use Unit 19 – Hotel, Motel and Recreation as a permitted use within PUD-448 to allow for the redevelopment of currently vacant retail space within the PUD. There is no request to modify any existing development standard of PUD-448, excepting the request to for the additional use.

Section 1107.H.15 of the Code permits the change (addition) of an approved use to another by minor amendment, provided that the use being requested is permitted by right by the underlying zoning and the proposed use will not result in any increase of incompatibility with the present and future use of proximate properties. The underlying zoning on the property is CS, a zoning district in which Use Unit 19 is a use by right.

Staff has conducted site visits and contends that the proposed additional use and redevelopment of a now vacant tenant space will not substantially alter the approved Development Plan, the character of the PUD or the intent of the PUD chapter of the code.

Staff notes that the main difference in the former retail use and the proposed use is the parking ratio. Retail uses have a parking ratio of 1 space for every 250 square feet while the health club use has a ratio of 1

space for every 150 square feet. As part of an interior remodel permit application with the City of Tulsa (which triggered the need for the minor amendment), existing parking facilities have been established as being sufficient for the additional use.

Staff contends the addition of the proposed use will not result in any increase of incompatibility with the present and future use of proximate properties. Therefore staff recommends **APPROVAL** of minor amendment PUD-448-6.

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

8. **AC-113 – PSA/Dewberry/Paul Hames/QuikTrip**, Location: Northwest corner of South Peoria Avenue and Interstate 44/Skelly Drive, Requesting **Landscape Alternative Compliance** for a new QuikTrip store, (CH) (CD-9)

STAFF RECOMMENDATION:

The applicant is requesting TMAPC approval of an Alternative Compliance Landscape Plan for a new QuikTrip store to be located at the northwest corner of South Peoria Avenue and Interstate 44/Skelly Drive.

The landscape plan submitted does not meet the technical requirements of Chapter 10 of the code because three parking spaces located in front of the new store will not be within 50-feet of a required landscaped area with a minimum area of 30 square feet (SF) and minimum length or width of three feet as required by section 1002.B.1 of the Code. In exchange for allowing the three spaces to be greater than 50 feet from a landscaped area, the applicant proposes to voluntarily landscape the street yard and provide four more trees in the parking area than required.

The code allows the Planning Commission to approve Alternative Compliance Landscape Plans that do not meet the technical requirements of Chapter 10 of the code, so long as the submitted plan is, “equivalent to or better than” the requirements of Chapter 10.

The subject property is zoned CH. Chapter 10 of the Code states that 15% of the street yard on non-residential lots shall be landscaped. However, Chapter 10 further states “where no street yard exists landscaping will not be required”. Section 1800 of the Code defines “street yard” as the area encompassed by the right-of-way line (ROW)/property line along the street and the building setback line. Since there is no building setback requirement in the CH District, technically

there is no street yard and therefore no street yard landscaping required on CH zoned lots.

Additionally, the applicant proposes to provide a minimum 10' wide landscape strip along South Peoria Avenue and Skelly Drive. The applicant also proposes to plant four extra trees in the interior of the site, making the total number of trees provided in the parking area 10.

Staff contends the applicant has met the requirement that the submitted Alternative Compliance Landscape Plan "be equivalent or better than" the technical requirements of Chapter 10 of the code and recommends **APPROVAL** of Alternative Compliance Landscape Plan AC-113.

The Planning Commission considered the consent agenda.

There were no interested parties wishing to speak.

TMAPC Action; 9 members present:

On **MOTION** of **CARNES**, TMAPC voted **9-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Midget, Stirling "absent") to **APPROVE** the consent agenda Items 1 through 8 per staff recommendation.

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

ZONING CODE AND FORM-BASED CODE PUBLIC HEARING

9. **Proposed Amendments to the Tulsa Revised Ordinances, Title 42 and Title 42-B, the Zoning Code and Form-Based Code of the City of Tulsa (Public Comment portion has been closed and the TMAPC is now in review only)**

STAFF RECOMMENDATION:

Section 102. Other applicable regulations

- A. All development must comply with relevant federal, state and City regulations. Whenever any provision of this Code imposes a greater requirement or a higher standard than is required in any state or federal statute or other City ordinance or regulation, the provisions of this Code shall govern unless preempted by state or federal law.
- B. Wherever there appears to be a conflict between the Form-Based Code and other sections of the City of Tulsa Zoning Code, Title 42, Tulsa Revised Ordinances and subdivision regulations for the Tulsa Metropolitan Area, the requirements specifically set forth in this Code shall prevail.

~~C.~~ Land, building and structure uses are addressed in this Code by prescribing street frontage types, which generally facilitate mixed use development. Except where this Code clearly provides to the contrary, land use districts prescribed in Title 42, Tulsa Revised Ordinances, the Zoning Code shall be used in the administration of this Code. consistent with the following table

Table: Land Use Zoning District to Street Frontage Type

<p><i>TRADITIONAL LAND USE DESCRIPTIONS DETAILED IN THE CITY'S ZONING CODE REFER TO ZONING DISTRICTS. FOR PURPOSES OF APPLYING AND INTERPRETING THIS CODE, LAND USE DESCRIPTIONS USED IN THE ZONING CODE SHALL CORRESPOND TO THE FOLLOWING STREET FRONTAGE TYPES.</i></p>	
Zoning District	Frontage Type
RS, RD, RT, and RM	Townhouse/Small Apartment / Detached
OL, OM, OMH, OH, CS, CG, CH and CBD	Urban General/Storefront
IL and IM	Workshop

~~C. D.~~ This Code shall not interfere with or annul any easements, covenants, or other agreements between parties; provided that where this Code imposes a greater restriction upon the use and dimensions of buildings, structures or land, or requires larger open spaces than imposed by other ordinances, regulations, permits, private easements, covenants or agreements, the provisions of this Code shall govern.

~~D. E.~~ Where this Title (42-B) is silent or fails to address the procedure in question, applicable provisions of Title 42 shall control.

OPTION "A"

Applicability Matrix	BFS: General Provisions	Individual BFS: Height	Individual BFS: Siting	Individual BFS: Elements	Uses	Urban Space Standards	Parking Standards	BFS: Signage	BFS: Lighting and Mechanical
Urban General/Storefront, Workshop, or Townhouse/Small Apartment Frontages									
New Construction	X	X	X	X	X	X	X	X	X
Reconstruction/Replacement of Damaged or Destroyed Building					X				
Change of Use, Expansion of Use					X				
Expansion of Building Footprint									
0%-25% expansion of building footprint					X				
26%-50% expansion of building footprint*		X			X	X		X	
51% expansion of building footprint	X	X	X	X	X	X	X	X	X
Expansion of Surface Parking Area Only (not in conjunction with a use/building)									
Up to 10 spaces			X			X			
11 or more additional spaces	X		X	X		X	X	X	X
Façade Changes (increase/decrease in fenestration, awnings)				CA				X	
Detached Frontage									
New Construction	X	X	X	X	X	X	X	X	X
Reconstruction/Replacement of Damaged or Destroyed Building					X				
Change of Use					X				
Expansion of Use (addition, deck, sun room, porch)*		X	X	X	X			X	
Expansion of Use (accessory structure, shed, detached garage, recreation facility)*		X	X	X	X			X	
Expansion of Building Area									
0%-25% expansion of building footprint					X				
26%-50% expansion of building footprint*		X			X	X		X	
51% expansion of building footprint	X	X	X	X	X	X	X	X	X
Notes: CA Code Administrator's discretion * Expansion to an existing footprint or use shall, in themselves, comply with the Code (but do not require the retrofitting of existing elements to comply with the Code.) Building expansions permitted within two (2) calendar years of each other on a single lot shall be viewed by this Code in the aggregate.									

OPTION "B"									
Applicability Matrix	BFS: General Provisions	Individual BFS: Height	Individual BFS: Siting	Individual BFS: Elements	Uses	Urban Space Standards	Parking Standards	BFS: Signage	BFS: Lighting and Mechanical
Urban General/Storefront, Workshop, or Townhouse/Small Apartment Frontages									
New Construction	X	X	X	X	X	X	X	X	X
Reconstruction <i>Replacement of Building Destroyed or Damaged in excess of 51%**</i>					X				
Change of Use, Expansion of Use					X				
Expansion of Building Footprint									
0%-25% expansion of building footprint					X				
26%-50% expansion of building footprint*		X			X	X		X	
51% expansion of building footprint	X	X	X	X	X	X	X	X	X
Expansion of Surface Parking Area Only (not in conjunction with a use/building)									
Up to 10 spaces			X			X			
11 or more additional spaces	X		X	X		X	X	X	X
Façade Changes (increase/decrease in fenestration, awnings)				CA				X	
Detached Frontage									
New Construction	X	X	X	X	X	X	X	X	X
Reconstruction <i>Replacement of Building Destroyed or Damaged in excess of 51%**</i>					X				
Change of Use					X				
Expansion of Use (addition, deck, sun room, porch)*		X	X	X	X			X	
Expansion of Use (accessory structure, shed, detached garage, recreation facility)*		X	X	X	X			X	
Expansion of Building Area									
0%-25% expansion of building footprint					X				
26%-50% expansion of building footprint*		X			X	X		X	
51% expansion of building footprint	X	X	X	X	X	X	X	X	X
Notes: CA Code Administrator's discretion * Expansion to an existing footprint or use shall, in themselves, comply with the Code (but do not require the retrofitting of existing elements to comply with the Code.) ** Requires Approval by Board of Adjustment <u>the Code Administrator</u> Building expansions permitted within two (2) calendar years of each other on a single lot shall be viewed by this Code in the aggregate.									

Option A:

Reconstruction:

- a. If any legally nonconforming structure sustains damages, it may be restored but without expanding the nonconformities that existed prior to sustaining damages.
- b. Reconstruction must begin within one (1) year from the date the damage occurred, unless the time is extended by the Code Administrator. If

reconstruction of the structure is not begun until after one year from the date of damage to the structure, such work will be deemed new construction.

- c. As used herein “damages” shall mean physical impairment to the structure not caused or resulting from the intentional, reckless act or gross negligence of the owner, but must result from the acts of a party other than the owner or result from an act of God.
- d. As used herein “reconstruction” shall mean continuous action to rebuild the physical nonconforming structure which sustained damages as defined herein.
- e. Any decision as to the applicability of and/or adequate compliance with this provision shall be made by the Code Administrator.
- f. Decisions by the Code Administrator shall be appealable pursuant to Section 204 (H) of this Chapter.

Option B:

Reconstruction:

- a. A legally nonconforming structure that sustains damages for which restoration costs are less than 50% of the fair market value of the structure prior to damage, as determined by the Code Administrator, may be restored but, without expanding the nonconformities that existed prior to sustaining damages.
- b. A legally nonconforming structure that sustains damages for which reconstruction costs are 50% or more than the fair market value of the structure prior to damage, as determined by the Code Administrator, may be restored to its pre-damaged state, if the Code Administrator determines that restoration will not be detrimental to the neighborhood and if conditions justify the restoration.
- c. As used herein “damages” shall mean physical impairment to the structure not caused or resulting from the intentional, reckless act or gross negligence of the owner, but must result from the acts of a party other than the owner or result from an act of God.
- d. As used herein “reconstruction” shall mean continuous action to rebuild the physical nonconforming structure which sustained damages as defined herein.
- e. Conditions to be considered by the Code Administrator to justify restoration of a structure which has sustained damages beyond 50% of its fair market value include, but are not limited to:
 - 1) The structure’s style compared to the predominant architectural style of the neighborhood.
 - 2) The uniqueness of the structure to be restored and its intrinsic value to the community.
- f. Any decision as to the applicability of and/or adequate compliance with this provision shall be made by the Code Administrator.

- g. Decisions by the Code Administrator shall be appealable pursuant to Section 204 (H) of this Chapter.

TMAPC COMMENTS:

Ms. Cantrell stated that she did see Jamie Jamieson briefly and spoke with him for about five minutes. Ms. Cantrell further stated that she wouldn't be recusing herself but did want to disclose that. Ms. Cantrell commented that she also sent some information for the proposed language to Wayne Alberty and Theron Warlick based on some language she had seen in some other cities. Both options would be a good approach, but there may need to be more clarification for "continuous" or it may need to be defined.

Mr. Edmiston stated that the general definition of continuous would simply be implied as it is normally implied now. There is no unreasonable break in activity at the site. Unreasonable would be at the discretion and interpretation of the Code Administrator. Ms. Cantrell asked at what point it would be considered a break, six months. Ms. Edmiston stated that if something sat without activity and without explanation for the inactivity, then it would be an unreasonable stall. If there is an explanation (sickness, death, lack of material, etc.) that would justify the inactivity and then it would fall upon the one making that decision whether it is a reasonable time of inactivity. Mr. Edmiston stated that Ms. Cantrell has a good point and he could work on some additional language if the Planning Commission would like, but it would still be up to the interpretation of the Code Administrator to whether it is reasonable or unreasonable stall. Ms. Cantrell stated that when she made the recommendation, some the issues that she looked at actually had a completion date as opposed to a start date and that makes it a little less confusing. Ms. Cantrell stated that she has seen several instances where something was started and then stopped for a long period of time. Ms. Cantrell asked who will be administering the Form-Based Code.

Mr. Sansone stated that Carolyn Back will be the administering the Code. With respect to the concern "continuous", when one obtains a building permit from the City of Tulsa, one has to show activity on that permit by calling in inspections over a period of time and if that doesn't happen the permit center will contact the applicant and warn that they will be shut down if they don't show some activity. One can't call for inspections unless there is activity/work being done and so this issue is already covered.

Mr. Leighty stated that he had ex parte communications with the members of the Pearl District Association, including Mr. Jamieson. He doesn't plan to recuse himself. Mr. Leighty asked Mr. Alberty if there wasn't a third option, which would be to leave it as it is now that Title 42 is connected to Title 42-B. If a catastrophic event happened, then Title 42 kicks in and the applicant would go before the BOA for a special exception. Mr. Alberty stated that is an option, but after the last meeting he understood that the Planning Commission and interested parties wanted to do either Option A or Option B. Mr. Leighty asked for the differences

between “A” and “B”. Mr. Alberty stated that Option A is by right and Option B would require someone to decide, the Code Administrator, whether it could proceed. Mr. Alberty further stated that the third option would be to send the applicant to the Board of Adjustment.

Ms. Cantrell stated that originally she thought the third option of going back to the Board of Adjustment would be the best option, but after looking at Title 42 she believes that could be problematic. Ms. Cantrell indicated that she personally prefers to have some discretion regarding the 50% mark, which then allows Code Administration to actually look at it and then make a judgment call. This is consistent with the way the Zoning Code is written. The first option leads to the possibility of misuse and she likes the idea that somebody would be able to oversee it somewhat. She is also anxious to move this forward and get something to City Council. This is a rare occurrence and Mr. Alberty stated that he has never seen this issue before the BOA.

Mr. Carnes asked Mr. Dodd if he had an opportunity to review and respond to the proposal.

INTERESTED PARTIES COMMENTS:

Doug Dodd, Two West 2nd Street, Suite 700, 74103, Judge Advocate for American Legion Post 1, stated that he did look at the two options and the language that were brought forth after the Planning Commission’s last meeting and he believes that it does have a lot of improvement in terms of clarifying the questions that he asked at the last meeting. Mr. Dodd pointed out that the matrix in Option B states “reconstruction of building destroyed or damaged in excess of 51% and then the written language for Option B states 50%. Mr. Dodd stated that he prefers Option A and he suggested that if Option B is the recommended approval, it would be with Mr. Edmiston’s agreement that it would say “50% or less”. Mr. Dodd stated that he isn’t sure how easy it would be to get a destroyed building appraised at a good and accurate pre-destruction fair market value if they follow the general appraisal rules. Mr. Edmiston stated that the Code Administrator would have to state the value and that would require getting the experts necessary to make that determination. Mr. Dodd reiterated that he likes Option A.

Theron Warlick, Planner for the City of Tulsa, stated that he did some FHA/HUD research and it would be for Option B. FHA doesn’t have a problem with legal nonconforming properties; however, they do need to be assured that something can be built back on the subject property. A legal nonconforming structure is a disclosure that would need to be made when applying for FHA mortgage and a Code Administrator wouldn’t be able to do that if it had to go before the BOA first. Mr. Carnes asked Mr. Warlick if he had any problems with Option A. In response, Mr. Warlick answered negatively.

TMAPC COMMENTS:

Ms. Cantrell asked if anyone has contacted the consultant regarding the recommended amendments. In response, Mr. Warlick stated that at this point the only conversation he has had with the consultant is that there would be some administrative changes.

Mr. Leighty stated that he would support Option A and thanked the City staff and INCOG staff for collaborating on this.

Mr. Carnes moved to approved Option A for Title 42-B text and chart as recommended by staff.

TMAPC Action; 10 members present:

On **MOTION** of **CARNES**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to recommend **APPROVAL** of the Option A Applicability Matrix and Option A Reconstruction Text per staff recommendation.

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PUBLIC HEARING

- 10. **PUD-397-B-1 – Andrew A. Shank/61 MM, LTD**, Location: Southwest corner of East 61st Street and South 91st East Avenue, Requesting a **Minor Amendment**, (CD-7) (Continued from 12/21/2011 and 1/18/2012) (Staff is requesting a continuance to 2/15/2012; this case was continued by the BOA to 2/14/2012)

STAFF RECOMMENDATION:

This application needs to be continued to 2/15/2012 to allow for the Board of Adjustment to hear the case.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **LEIGHTY**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **CONTINUE** the minor amendment for PUD-397-B-1 to February 15, 2012.

* * * * *

11. **Z-7193 – Luke Wright**, Location: 4782 East Admiral Place, Requesting rezoning from **CH to IH**, (CD-4) (Applicant is requesting a continuance to 2/15/2012, this case has to go before the BOA for clarification on 2/14/2012)

STAFF RECOMMENDATION:

This applicant has requested a continuance in order to go before the BOA for clarification.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **LEIGHTY**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **CONTINUE** Z-7193 to February 15, 2012.

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12. **Inpatient Hospice Midtown – (9323)** Preliminary Plat, Location: West of Interstate 44, south of East 31st Street South (CD 5)

STAFF RECOMMENDATION:

This plat consists of 1 Lot, 1 Block, on 1.928 acres.

The following issues were discussed January 5, 2012, at the Technical Advisory Committee (TAC) meetings:

1. **Zoning:** The property is zoned RS-3 with BOA 21314 to allow the hospice type of use and recently approved BOA 21314 A which revised the original site plan.
2. **Streets:** No comment.
3. **Sewer:** No comment.
4. **Water:** Installation of the fire hydrant can be done under an IDP (infrastructure development plan) or WSD (watershed development) permit.

5. **Storm Drainage:** Label Audubon Creek FEMA AE floodplain. Increase the width of the storm sewer easement to a minimum of 15 feet (see stormwater manual for required minimum width due to pipe size and depth of pipe) with the minimum distance from the centerline of pipe being 7.5 feet on both sides. The last inlet before the pipe connection to the public storm sewer, and that pipe, must be in a storm sewer easement. In Section I.H: the last line should say "... Runoff to the public storm sewer system located within this subdivision". It appears that a minimum of five feet of additional storm sewer easement should be added to the east side of the existing easement. On-site runoff must be collected and piped to the on-site public storm sewer system.
6. **Utilities: Telephone, Electric, Gas, Cable, Pipeline, Others:** ONG needs additional access through easement. PSO needs to be assured existing overhead lines are not impacted. AT&T requests a 17.5-foot easement in front.
7. **Other: Fire:** No comment. **GIS:** Tie the plat from a section corner using bearings and distances from a labeled point of commencement to the labeled point of beginning. Add leading zero to all single digit degree descriptions on the face of the plat to match what is shown in the legal description. The basis of bearing should be clearly described and stated in degrees, minutes, and seconds. Submit a subdivision control data form. In the legal description include a less and except clause for the "15-foot right-of-way dedicated by this plat" shown on the face of the plat. Street addressing must be included on plat per Development Services approval.

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 and Development Services 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.

Applicant indicated his agreement with the staff recommendation.

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, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **APPROVE** preliminary plat for Inpatient Hospice Midtown subject to special conditions and standard conditions per staff recommendation.

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13. **CBOA-2408** – Plat Waiver, Location: 7250 West 50th Street South, North of West 51st Street, East of West 73rd West Avenue (County) (Continued from 1/18/2012)

STAFF RECOMMENDATION:

The platting requirement is being triggered by a board of adjustment approval of a Special Exception for a wedding chapel.

Staff provides the following information from TAC for their December 15, 2011 meeting:

ZONING:

TMAPC Staff: The property has not been platted previously.

STREETS:

Sidewalks are required.

SEWER:

No comment.

WATER:

The existing four-inch water mainline is inadequate in supporting fire hydrant protection in this area. The water service demands for this development may not be available as well.

STORMWATER:

No comment.

FIRE:

Out of City of Tulsa Fire Department response area so applicant needs to get with the responding fire department. The International Fire Code requires fire hydrants.

UTILITIES:

No comment.

County Engineering and planning and development services staff believe the property should be platted with at the minimum a Minor Subdivision plat. There is concern about the water line and fire protection service. The applicant had stated that Berryhill Fire Department will serve the site. A letter stating that this is the case must be received. See attached information from the applicant, Berryhill Fire Department, and City of Tulsa concerning the request.

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

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

	YES	NO
8. Change of Access		
a) Are revisions to existing access locations necessary?		X
9. Is the property in a P.U.D.?		X
a) If yes, was plat recorded for the original P.U.D.		
10. Is this a Major Amendment to a P.U.D.?		X
a) If yes, does the amendment make changes to the proposed physical development of the P.U.D.?		
11. Are mutual access easements needed to assure adequate access to the site?		X
12. Are there existing or planned medians near the site which would necessitate additional right-of-way dedication or other special considerations?		X

Some of the above questions may result in the need for additional easements through the platting process.

Applicant's Comments:

Dale Slone, 5019 South 73rd West Avenue, 74107, stated that he is proposing to build a wedding chapel on the subject property. He understood that the setbacks and other requirements are in place. There is an existing residence on the subject property and there is an addition built on the existing residence about six or seven years ago. Four or five years ago the water service changed and there is a fire hydrant within access of the subject property, but the water volume to the hydrant is on a four-inch line. The City of Tulsa is stating that he should pay for the upgrade and he has a problem with this because he is not the only one that would use the fire hydrant. There are several residences in the subject area. The City of Tulsa and the City of Sand Springs have use to the fire hydrant. Mr. Slone stated that he is currently on Sand Springs's water for his residence, which is on the east side of 73rd (Skyline Drive). Mr. Slone stated that he is building one building on a piece of property and there is nothing in the subject area that has been platted except for one subdivision. Mr. Slone stated that having to plat is creating a hardship for him. All of the utilities are in place and there is an existing residence on the subject property. The setbacks are in place and there is a pond on the subject property that takes care of the stormwater runoff. Mr. Slone concluded that he proposed, via letter, that the Planning Commission allow the plat waiver, but hold his permits until the fire hydrant issue is resolved. Mr. Slone stated that he feels it is unreasonable for him to pay for the upgrade on the fire hydrant because he is not the only one that would have use of the hydrant.

TMAPC COMMENTS:

Mr. Leighty asked Mr. Slone if he had any idea of what it would cost to upgrade the fire hydrant. Mr. Slone stated that he doesn't know off the top of his head, but he would guess it would be over \$20,000.00.

Mr. Walker stated that this application doesn't meet the plat waiver requirements.

Mr. Dix stated that he sees no reason to grant a waiver of the plat or allowing the applicant to hook onto a waterline that isn't adequate. He is the one who needs the water, which has nothing to do with his neighbors and it is irrelevant. The applicant is requesting it in order to meet the needs of the City and he has to extend the waterline and file a plat. There is no extenuating or compelling reason to allow any type of waiver.

Mr. Leighty stated that he is sympathetic with the applicant, but he has to agree with Mr. Dix on this one. Mr. Leighty indicated that he couldn't support the plat waiver.

There were no interested parties wishing to speak.

TMAPC Action; 10 members present:

On **MOTION** of **DIX**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **DENY** the plat waiver for CBOA-2408.

- 14. **Z-7190 – Sajid S. Salimi**, Location: South of southwest corner of South 33rd West Avenue and West Skelly Drive, Requesting rezoning from **RS-3 to CS**, (CD-2) (Continued from 1/4/2012)

STAFF RECOMMENDATION:

ZONING ORDINANCE: Ordinance number 11821 dated June 26, 1970, established zoning for the subject property.

RELEVANT ZONING HISTORY:

Z-7076 December 2007: All concurred in approval of a request for rezoning a 1.5± acre tract of land from RS-2 to CS for financial services and commercial shopping, on property located southeast of the southeast corner of South 33rd West Avenue and West Skelly Drive.

Z-7073 September 2007: All concurred in approval of rezoning a 2+ acre tract of land from RS-2 to CS for a financial services and commercial shopping center, on property located south of the southeast corner of South 33rd West Avenue and West Skelly Drive.

Z-6321 October 1991: All concurred in approval of a request for rezoning a tract of land from RS-3 to CS/PK on property located on the southwest corner of West Skelly Drive and South 33rd West Avenue and abutting north of the subject property.

AREA DESCRIPTION:

SITE ANALYSIS: The subject property is approximately 12,600+ square feet in size and is located south of southwest corner of South 33rd West Avenue and West Skelly Drive. The property appears to be used residentially and is zoned RS-3.

SURROUNDING AREA: The subject tract is abutted on the east by a commercial business (bank), zoned CS; on the north by a commercial use and its parking lot, zoned CS and PK; on the south by residential uses, zoned RS-3; and on the west by residential uses, zoned RS-3.

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

TRANSPORTATION VISION:

The Comprehensive Plan designates 33rd West Avenue south of West Skelly Drive (I-44) as a secondary arterial. The Comprehensive Plan encourages multiple modes of transportation, offering the public a choice in means of travel, from automobile to bus to bicycling and pedestrian.

STREETS:

<u>Exist. Access</u>	<u>MSHP Design</u>	<u>MSHP R/W</u>	<u>Exist. # Lanes</u>
South 33rd West Avenue	Secondary arterial	100'	4

RELATIONSHIP TO THE COMPREHENSIVE PLAN:

The Comprehensive Plan designates this property as an Existing Neighborhood and an Area of Stability. Both of these designations seem erroneous, since the CS/PK lots adjacent to the north are also shown as Existing Neighborhood. That zoning has been in place since 1991. The convenience store itself is designated as a Growth Area, but the parking lot south of it is not. Similarly, the properties east of the subject property, across South 33rd West Avenue, are designated as Employment areas and Areas of Growth. It seems poor planning to expect single-family residential use to continue adjacent to these uses. The proposed CS zoning **is not in accord** with the Comprehensive Plan.

STAFF RECOMMENDATION:

Staff believes this is another case in which the Comprehensive Plan is in error. This area should be examined when another small area plan is contemplated. Staff can support the requested CS zoning, pointing out that screening will be required where it abuts R zoned properties and the developer must meet or exceed the landscaping requirements of the Zoning Code. The requested CS zoning on the subject tract would align with the CS zoning on the east of the tract at 33rd West Avenue. Therefore, this is a logical extension of the CS/PK zoning and development to the north and staff recommends **APPROVAL** of CS zoning for Z-7190.

TMAPC Comments:

Ms. Cantrell asked Ms. Matthews if the applicant discussed a PUD with her. In response, Ms. Matthews answered negatively.

Applicant's Comments:

Jason Smith, 12419 South Date Place, Jenks, Oklahoma, 74037, stated that he is a broker involved in the purchase of the subject property. He is brokering the subject property between the owner of the convenience store and the owner of the subject property. The convenience store is being purchased by Mr. Sajid Salimi from his family. His business is doing well and he would like to invest into more property in the subject area because he has done well. Since the last meeting he has met with Danny Mitchell to draw a diagram of the proposed development. The proposal is for a strip center with approximately 4,000 square feet. There is a buffer zone between the proposed building and adjacent properties. There is a five-foot landscaping plan with fencing to go around the subject property as well.

INTERESTED PARTIES COMMENTS:

Kaye Price, 5815 South 51st West Avenue, 74107, stated that she has some residents from the subject neighborhood present today. Ms. Price indicated that many of the neighbors have lived in the subject area for over 20 years or longer. The neighbors do not feel that it is a transitional neighborhood and it is a very stable neighborhood. Ms. Price indicated that the neighbors were vehemently opposed to the bank for the very reason that is happening now with this application. She doesn't see using the bank as a justification to align this residential property to a commercial property that was only recently built and to which residents were opposed. This is a real thin thing to balance to base a decision on this parcel. Ms. Price submitted photographs of the privacy fence that is required between the existing commercial property and residential property that is in poor condition (Exhibit A-3). The resident has repeatedly asked the property owner to deal with the fence and his response is that it is not his responsibility. The applicant has not been a responsible neighbor to the

community and it gives the residents pause to allow him to encroach farther into the neighborhood. The applicant has not given any information to the neighbors of what it is he wants to put in the subject property. Ms. Price commented that the applicant wants to make money for himself and he doesn't care what the community looks like. Ms. Price reiterated that the neighborhood is stable and surrounded by residential property. Ms. Price stated that the bank property was residential too, but in poor condition. This neighborhood is not in poor condition and it is a neighborhood with affordable housing. Ms. Price further stated that the bank lined up with high intensity uses along the service road. The subject area is not lined up with commercial use and is residential all the way to the west. Everything to the south is residential and across the street from the subject property. There is a community church in the subject area that has been there for 50+ years. Ms. Price indicated that the applicant didn't meet with the neighborhood as requested by the Planning Commission. Ms. Price concluded by requesting the Planning Commission to deny this application.

Jo Lambert, 5173 South 34th West Avenue, 74107, stated that she has lived on the west side for 52 years and loves her community. She is opposed to the commercial zoning.

Matt Crain, 3210 West 51st Street, 74107, representing the Southwest Tulsa Chamber of Commerce, stated that he is concerned with how much empty space is already in southwest Tulsa. There are many places already zoned commercial and many that are very near the subject property. The house is in good condition and doesn't need to be torn down. Mr. Crain cited that the bank across the street has a three-car lane drive-through that buffers it from the nearest resident. That won't be true with the subject proposal.

Applicant's Rebuttal:

Mr. Smith submitted pictures (Exhibit A-2) stated that the fence Ms. Price showed is around a shed that is in disrepair. The roof is caved in and there is a lot of debris and trash around it. It is in one of the neighbor's backyards, which is directly behind the convenience store and is not on the store's property. Mr. Smith indicated that he drove the neighborhood and there are some well-kept homes and there are several homes that aren't well-kept with debris and years and years of deferred maintenance. The subject property has an existing home on it and it has a lot of deferred maintenance on it. To bring it to FHA requirements it would require replacing the roof, repainting the entire house inside and out, repairing the roof of the garage/workshop or completely tearing it down. On the same side of the street as the subject property there is a church, a large warehouse building, a mini-storage facility, machine shop with junk in the

back yard, and a brand new donut shop with a drive-through that was built between two residences.

TMAPC COMMENTS:

Mr. Walker stated that he didn't see a donut shop when he drove the property and asked Mr. Smith where it is located. Mr. Smith stated that it is ½ mile away.

Mr. Smith concluded his presentation by stating that his client has made the convenience store successful and he would like to add onto his business. The proposed extension is actually about 30 to 40 feet less than how far the bank has come into the neighborhood.

Ms. Cantrell asked Mr. Smith why he didn't look into a PUD or contact staff about a PUD. Mr. Smith stated that he has a contract that states he would like to purchase the subject property and it is contingent upon the subject property being rezoned to commercial. INCOG told the applicant to file for a rezoning application and it cost \$1,500.00 and has gotten nowhere. He is concerned about paying additional fees for a PUD and not be granted the zoning. Mr. Smith stated that it is a lot of money to spend without any guarantees that the PUD and zoning will be granted. He indicated that he doesn't mind paying the money if he gets the zoning, but he would like to know if it is even possible to get the zoning before shelling out any more money.

Mr. Edwards stated that the Planning Commission requested Mr. Smith to meet with the neighbors. Mr. Smith stated that he personally went around and talked to several neighbors by foot. The store had a layout of the plan and asked neighbors to look at it and sign a petition in support and received 61 signatures (Exhibit A-1).

Mr. Dix stated that the diagram provided for the proposal shows a building being built on the PK-zoned property and that wouldn't be allowed. He asked Mr. Smith how he intended to do this. Mr. Smith indicated that when he applies for his building permits he would apply at that time to change the PK. Mr. Dix stated that the Planning Commission suggested at the last meeting to rezone the PK to commercial and rezone the subject property to PK and Mr. Smith doesn't seem to be listening. The Planning Commission told Mr. Smith several ways to get this done and he has chosen to go back to the same route he was doing, which is not what the Planning Commission was willing to accept at the first hearing. Mr. Dix stated that nothing seems to have changed and he can't support the proposal. Mr. Smith stated that he felt the big issue was the layout and he hired an architect to draw a plan. Mr. Dix stated that Mr. Smith gave the architect bad direction because he asked him to put a building on a lot that can't have a building on it. Mr. Dix further stated that Mr. Smith isn't

getting cooperation from the Planning Commission because he hasn't put forth the effort that he has been asked to do.

Mr. Walker asked Mr. Smith if he is wanting to change the subject lot from RS-3 to CS and the center piece that is currently zoned PK he intends to come back and rezone it to CS. In response, Mr. Smith answered affirmatively. Mr. Smith stated that the contract is contingent upon the subject tract being rezoned commercially. If he can't get the commercial zoning he doesn't know why he would need to try to rezone the parking to commercial first. He stated that if he could get the commercial zoning on the subject property, then he would go back and ask for a variance or whatever needs to be done there. Mr. Smith reiterated that he went to INCOG first and asked what he needed to file for commercial use and he was told several times that this is what he needs to file for, which was a zoning change. Mr. Smith stated that perhaps he did misunderstand the Planning Commission, but he is trying to do the right thing. He further stated that if there is something else he needs to do he has no problem doing that but he needs to know if he will be able to get the commercial zoning on the subject property.

Mr. Perkins stated that after the last meeting he told Mr. Smith if he had any questions to feel free to call him and as a Commission he would answer them, and he would be happy to meet him and talk about it. Mr. Perkins further stated that after the last meeting he didn't quite understand the proposal. Mr. Perkins indicated that he did meet with Mr. Smith on the subject site and actually knocked on some doors himself. Mr. Perkins asked if the neighbor south of the commercial zoning is present (not present). Mr. Perkins stated that the gentlemen he talked with indicated that would support the subject application.

Mr. Dix stated that the petition submitted by Mr. Smith has the proposed diagram on it and there are 61 signatures on the petition (Exhibit A-1). He further stated that he has no idea where these people live in relation to the project and it simply states that they have no objections for the zoning change.

Ms. Cantrell stated that she agrees with the neighborhood. This is a nice neighborhood, she drove the area this morning and she doesn't believe that this is an area that needs to be transitional. Ms. Cantrell further stated that she is not necessarily opposed to a little bit of commercial at the subject corner to line up with the existing bank across the street. However, she is opposed to this application and doesn't believe it is proceeding the correct way. Ms. Cantrell believes that this is a stable neighborhood and doesn't believe the Comprehensive Plan is in error. She would have been pleased had the applicant returned with a PUD that would be agreeable to everyone and provide the type of buffer necessary

for the neighborhood. It doesn't make sense to have CS, PK and CS. Ms. Cantrell recommended the applicant meet with Chris Sansone at INCOG and come up with a better plan.

Mr. Walker asked staff if the applicant could have requested to rezone the PK and RS-3 lots at the same time. In response, Ms. Matthews stated that it could have been done had the applicant requested it.

Mr. Perkins stated that a PUD would be much better. Mr. Perkins further stated that he spent quite a bit of time looking around the subject area and it is a great neighborhood and it is a stable neighborhood. Some of the yards could be better kept. Change is hard and especially increasing intensities are hard. Mr. Perkins stated that he would support the application because he believes that the applicant will come back to change the PK into something else and make a decent transition. The lining up with the bank makes complete sense to him. After talking with the property owner to the south of the subject property, it really swung him over to supporting this application.

Mr. Midget stated that he can't support the application as presented. The development to the east was argued that exactly what is happening now would happen, this type of encroachment. There is some merit with lining up the bank and the subject proposal, but not being sure what the plans are, he is fearful that the type of development that could go in there would further decay the neighborhood. Once the applicant gets the underlying zoning to commercial then that would be all he needs and the Planning Commission and the City would be taking a chance on him coming back to do anything. If the applicant were to have come in with a PUD, as the Planning Commission was trying to guide him to do, he believes that this application would have had a better position for approval, in addition to trying to work this out with the neighborhood. Mr. Midget reiterated that he can't support this application as it is being presented.

Mr. Carnes asked staff if there was an opportunity to apply the zoning money toward the PUD fees. Mr. Carnes stated that he drove the neighborhood and this is the proper place to lineup with the zoning, but it needs a PUD. Mr. Carnes stated that he believes he could support a PUD.

Mr. Leighty stated that he opposes the proposed application. He doesn't believe that the applicant really helped himself today. It was clear at the last hearing of what the Planning Commission was looking for and it seems like there was an effort here to just plow ahead. The current application doesn't make a lot sense and he doesn't think the applicant helped himself by showing negative pictures of the neighborhood that really didn't add anything to the conversation. Mr. Leighty asked staff if

Mr. Carnes's suggestion regarding the zoning application money being transferred to a PUD application.

Mr. Alberty stated that wouldn't be possible in this case because the application covers what he applied for. If the Planning Commission supports the development with a PUD, rather than denying this it should probably be continued, but that is up to the applicant if he wants to follow through on a PUD. The money has already been spent and obligated, and in this case it wouldn't apply. What might have been done in the past, is that prior to an application actually going forward when money was paid in and the applicant realizes he made a mistake, rather than pursuing a zoning application he chose to withdraw it and ask the money be applied to a PUD. In this case the money has already been spent with the two public hearings, advertising and posting signs. Mr. Alberty stated that he spoke with Mr. Smith and there seems to have been some confusion on what his role would be in the PUD process. Mr. Alberty further stated that he told Mr. Smith that he had two options, which is to pursue the zoning or apply for a PUD.

Mr. Edwards stated that it seems that Mr. Smith went to what he thought was a good source for information and there was some confusion. The neighbors are in the same position that Mr. Smith is in and for the Planning Commission to put the imposition of a PUD on him and give him the impression that if he does a PUD the Planning Commission will approve it is not what they are saying and he doesn't want Mr. Smith to get that impression. Mr. Smith needs to understand that when the Planning Commission asks an applicant to go back and do some things, at that point we are not considering denial or approval, but to see what effort is made and it doesn't seem that there was much of an effort and that is bothersome. Mr. Edwards stated that he could support a continuance if Mr. Smith is willing to do so and take care of some of things the Planning Commission has asked him to do with an honest effort and come back with a solid application. One of the neighbors has been in her home for 52 years and he would fight something like this as well if it were in his neighborhood. The Planning Commission can't give Mr. Smith any guarantees and the presentation today has problems, but he could file for a PUD or come back and tell the Planning Commission why a PUD can't work and give a viable solution rather than giving us the impression that he will do what he wants to do.

Mr. Midget stated that Mr. Smith stated that his contract is contingent on the subject property being zoned for commercial. He stated that he was unwilling to spend any more dollars on this until he was assured that this would be zoned commercial. With that in mind, he is not sure what Mr. Smith's willingness is and as it is he can't support it.

Ms. Cantrell reminded Mr. Smith that the Planning Commission is only a recommending body and he will still have another step to go through with the City Council. Unfortunately, it is always a gamble and she understands him not wanting to spend the money, but that is the way the system works. Ms. Cantrell indicated that she can't guarantee that she would support a PUD, but if he wants a vote today she will have to vote against it.

Mr. Walker recognized Mr. Smith.

Mr. Smith stated that it is not an unwillingness to spend additional monies, but where this got off on the wrong step was when he went to INCOG and asked what he needed to do and they guided me in this direction. Later he found out this isn't the direction needed and spent \$1,500.00 dollars and now needs to file a different type of application, which will cost more because it is a PUD. The PUD also requires getting an architect, designers, plans drawn, etc. and will cost more money. He is concerned that after going through this expense and then only to go through this again and find out it is the wrong thing and need to file for something else. Mr. Smith stated that he plans to spend as much money as possible to make it look nice and a nice feature for the neighborhood. Mr. Smith stated that he would be willing to do a PUD, but could the Planning Commission approve the commercial zoning subject to a PUD being filed at a later date.

Ms. Cantrell stated that the application can be continued and ask that the applicant return with the rezoning and PUD request together. Straight zoning can't be conditioned.

Mr. Leighty moved to deny Z-7190 and Mr. Midget seconded the motion.

Mr. Dix told Mr. Smith that commercial use on the subject site makes sense, but what doesn't make sense is to have PK in the middle of the existing commercial and the requested commercial. Mr. Dix suggested that the applicant needs to rezone the PK to commercial or apply for a PUD. With a PUD the applicant will have to know the use.

Mr. Perkins stated that there seemed to be a misunderstanding on the applicant's part and there seems to be other avenues to look at. Mr. Perkins requested that Mr. Leighty withdraw his motion and allow this case to be continued. Mr. Leighty stated that he would like to have an up or down vote on this today. Mr. Perkins stated that it seems to be heavy-handed to him for someone that has spent a lot of money and is trying to make an investment in Tulsa. Mr. Leighty stated that the Planning Commission sees cases all the time where it is in a stable neighborhood. One can't expect to do something on the cheap like this. There are

professionals who could have worked with the applicant and it will be expensive. Mr. Leighty stated that he doesn't feel like there is anything heavy-handed about it and he is disappointed that it wasn't made clear to the applicant in the beginning that this would have been a good option (PUD). The neighborhood needs a buffer and a transition area and it needs to be a good development.

Mr. Midget stated that he seconded the motion because he would like an up or down vote on this too. The Planning Commission was abundantly clear that we wanted the applicant to consider a PUD. The applicant is in the business and he could have come back with a PUD. If the majority of the Planning Commissioners wants to continue this, then vote against the motion and offer another one.

Ms. Cantrell stated that denying the rezoning case is not going to make a lot of difference financially. It would make it very clear that as presented this is how many people are going to say no to it.

Mr. Edwards stated that he wouldn't be in favor of making the applicant start from square one. He would like to continue this case and give him a chance to make the effort. If the applicant doesn't make the effort, then we have a clear indication of where he is going.

Mr. Leighty and Mr. Midget withdrew their motion and second.

Mr. Leighty suggested that Mr. Smith get professional help with this proposal. Mr. Leighty suggested that applicant hire someone who does this day-in and day-out to get it done correctly.

After a long discussion the Planning Commission determined that they would continue Z-7190 to April 4, 2012.

TMAPC Action; 10 members present:

On **MOTION** of **CANTRELL**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **CONTINUE** Z-7190 to April 4, 2012.

Mr. Midget reminded Mr. Smith that the Planning Commission couldn't guarantee anything because they are a recommending body and it will still have to go before the City Council.

Ms. Cantrell informed Mr. Smith that it always helps to get the neighbors to be agreeable.

* * * * *

15. **PUD-313-9 – Kenney Russell**, Location: South of the southwest corner of West 61st Street South and South 28th Avenue West, Requesting a **Minor Amendment** to increase the permitted coverage for a driveway in the required front yard, **(RT/RS-3)** (CD-2) (Continued from 1/18/2012)

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to increase the permitted coverage for a driveway in the required front yard of an RS-3/PUD zoned lot per the attached plan. Necessitating the need for the minor amendment is the odd shape of the lot and limited street frontage the parcel has on this cul-de-sac.

Section 1303.D of the Code permits up to 34% coverage of the required front yard for driveways on RS-3 zoned lots. Section 1106 of the Code allows the Planning Commission to modify parking requirements by minor amendment so long as the approved modification is recorded in the subdivision plat. Since the definition of parking area in section 1800 of the Code includes the driveways that lead to required parking spaces, the request qualifies as a parking modification. Should the Planning Commission be inclined to approve the request, the applicant will need to record the modification with the plat by filing an amendment by separate instrument with the County Clerk's office.

Please refer to the attached aerial photograph, site plan, and case photographs. The PUD development standards state if a "double wide" driveway is built a lot permitting two automobiles to be parked side by side, the front setback on the lot may be reduced to 18-feet. Standard double wide driveways are 18-feet wide. Any of the lots on the cul-de-sac that are limited to 24-feet of frontage (including the subject tract) that have two-car wide driveways are going to exceed the 34% driveway coverage of the RS-3 district. Referring to the attached aerial photograph, as built conditions reflect that Lots 17, 18, 19 and 26 may exceed the 34% limitation on driveway coverage.

The PUD requires this parcel to have 1,368 square feet (SF) of livability space (open space) on the lot. With the extra coverage by the driveway the lot will meet the requirement having approximately 2,040 SF of livability space.

Please refer to the attached FEMA Regulatory Flood Plain Map and plat of the subdivision. The subject tract is not located within a floodplain nor has it been dedicated to stormwater detention. The designated use of the lot is for single-family residential use.

Given the odd shape of the lot and limited street frontage, combined with the livability space requirement being met staff can support the request.

Staff contends the increase in driveway coverage will not substantially alter the character of the development, the approved PUD concept plan and is in conformance with the intent of the PUD chapter of the Code. Therefore recommends **APPROVAL** of minor amendment PUD-313-9 per the attached site plan.

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

16. **PUD-313-10 – Kenney Russell**, Location: South of the southwest corner of West 61st Street South and South 28th Avenue West, Requesting a **Minor Amendment** to increase the permitted coverage for a driveway in the required front yard of an RS-3/PUD zoned lot per the attached plan, **(RT/RS-3)** (CD-2) (Continued from 1/18/2012)

STAFF RECOMMENDATION:

The applicant is requesting a minor amendment to increase the permitted coverage for a driveway in the required front yard of an RS-3/PUD zoned lot per the attached plan. Necessitating the need for the minor amendment is the odd shape of the lot and limited street frontage the parcel has on this cul-de-sac.

Section 1303.D of the Code permits up to 34% coverage of the required front yard for driveways on RS-3 zoned lots. Section 1106 of the Code allows the Planning Commission to modify parking requirements by minor amendment so long as the approved modification is recorded in the subdivision plat. Since the definition of parking area in section 1800 of the Code includes the driveways that lead to required parking spaces, the request qualifies as a parking modification. Should the Planning Commission be inclined to approve the request, the applicant will need to record the modification with the plat by filing an amendment by separate instrument with the County Clerk's office.

Please refer to the attached aerial photograph, site plan, and case photographs. The PUD development standards state if a "double wide" driveway is built a lot permitting two automobiles to be parked side by side, the front setback on the lot may be reduced to 18-feet. Standard double wide driveways are 18-feet wide. Any of the lots on the cul-de-sac that have limited frontage (including the subject tract) that have two-car wide driveways are going to exceed the 34% driveway coverage of the RS-3 district. Please refer to the attached aerial photograph. Using GIS technology staff conducted preliminary calculations of as built conditions which reflect that all the lots on the cul-de-sac excepting one, may exceed the 34% limitation on driveway coverage.

The PUD requires this parcel to have 1,368 square feet (SF) of livability space (open space) on the lot. With the extra coverage by the driveway the lot will meet the requirement having approximately 2,040 SF of livability space.

Please refer to the attached FEMA Regulatory Flood Plain Map and plat of the subdivision. The subject tract is not located within a floodplain nor has it been dedicated to stormwater detention. The designated use of the lot is for single-family residential use.

Given the odd shape of the lot and limited street frontage, combined with the livability space requirement being met staff can support the request. Staff contends the increase in driveway coverage will not substantially alter the character of the development, the approved PUD concept plan and is in conformance with the intent of the PUD chapter of the Code. Therefore recommends **APPROVAL** of minor amendment PUD-313-9 per the attached site plan.

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

Mr. Sansone stated that 15 and 16 are related and staff would like to present them together. The application before the Planning Commission today is to allow a driveway. There were some questions about floodplain issues and whether the lots were dedicated for detention. Staff has some researched, which is included in the agenda packet, and neither one of the lots are located within a floodplain and neither of them were dedicated for detention. The lots were intended for construction of single-family homes. Staff recommends approval for both items. There has not been anyone speaking against Item 16, PUD-313-10.

TMAPC COMMENTS:

Ms. Cantrell asked if the size of the driveway being requested is the same size of driveway that currently exists on all of the other lots. In response, Mr. Sansone stated that he didn't measure the other driveways, but the requested driveway is for 18 feet in width and 22 feet in depth. This is a standard size driveway. All of the driveways on the cul-de-sac have two-car driveways and the minimum for that would be 16 feet in width. One of the provisions of the PUD states that if one builds a two-car driveway they are entitled to an 18-foot setback line. Ms. Cantrell stated that by looking at the photographs it appears that the driveway being requested is similar to the sizes within the subdivision.

INTERESTED PARTIES COMMENTS:

Kaye Price, 5815 South 51st West Avenue, 74107, stated that she is sorry that her neighbors are unable to be present today; they have to

work. The neighborhood originally asked for one month to do some investigation and she wished that had been granted. Ms. Price stated that a neighbor went to INCOG for the stormwater maps and was directed to the City Engineering Department on Jackson. The City informed her that they were unable to find a stormwater management plan for her neighborhood. The neighbors are not saying that they are in a floodplain, but they are concerned about stormwater management. Ms. Price stated her theory that there are three cul-de-sacs in the subdivision being reserved. The subdivision was built in 1988 and there has never been anything built on the subject lots.

Mr. Price stated that another issue is the underground utilities and a tree that the developer planted. Ms. Price is convinced that there is a utility easement due to the flags that are displayed on the subject property. However, PSO has not returned any calls and she is not able to determine if it is a utility easement. Ms. Price asked for another continuance.

Applicant's Comments:

Kenney Russell, 10305 South 76th East Avenue, 74133, stated that he is 100% sure the reason no properties were ever built on the subject lots she pointed out was because they knew someday they would have deal with her. Mr. Russell stated that he met with the homeowners that were present at the first meeting a couple of weeks ago on a Saturday. On the 63rd Street property, both owners on the north and south of the subject property showed him their concerns about flooding and he addressed those issues. All of the flooding comes from rainwater, which is coming from the west. Mr. Russell indicated that he assured the neighbors that when he starts development he would be happy to setup a laser and shoot their yards and it would be very easy to reconfigure their drainage with a swale running north and south on the subject property and they were satisfied with that. The neighbors will have to sprinkle some new grass seed to accommodate their situation. On the 62nd Street property, with the tree and electrical box, whoever built the house to the south of the subject property was aggrandizing the sides of their property because they also put a tree to the south. He met with the new owner and laid out the location of the house and the new owner was concerned that the driveway would intersect with the existing drives and he was assured that they would not. There are easements on the lots and the lots are zero lot-line lots, which was part of the PUD. Everyone he talked to (Ms. Price didn't attend) was assured and happy with his answers. There are some flags going through one of the subject properties that belong to Cox and AT&T, which are notorious for cutting across the line and they will have to be moved at the proper time. The flags are not going across an easement, but they are going across the property. This is not a floodplain.

TMAPC COMMENTS:

Ms. Cantrell asked staff if anything that Ms. Price addressed is a concern and if there is any way to catch that.

Mr. Carnes stated that the developer cannot get a building permit if there is one "I" not dotted or one "T" not crossed.

Mr. Steele, Senior Engineer for the City of Tulsa Development Services, stated that the easements Ms. Price pointed out on the back of the lots are utility easements and the utilities are in place. When this subject area was platted and planned as a subdivision, the stormwater management was part of the plans that came forward and it would have a drainage plan. The subdivision was platted in 1983 and would be compatible with the stormwater management plans at that time. Today, it is required to have a stormwater management plan for the subdivision and by ordinance it is required to have a stormwater/drainage plan for each individual lot. If the subject lots are to be developed the plans that they bring in will have a stormwater management and drainage plan for that lot to ensure that the lot will accept any stormwater coming from off-site and convey it to the drainage system. At the time the subject subdivision was platted it was required to design stormwater drainage for full development of the subdivision. That means that the subject subdivision was designed to contain all of the 100-year flow from each of these lots. In summary, when these lots are developed, the plan that comes in for each lot will show that all of the water coming onto the site and falls on the site, no matter how big the driveways are, will be conveyed and not damage any of the neighbors and conveyed to the public system without causing any harm to anyone.

Ms. Price stated that was the neighbors' only concern. Ms. Alexander asked her to speak on her behalf and the water issues were their only concerns. This has been cleared up and they are all good.

Ms. Cantrell stated that she would move to approve Item 15, and remind everyone that the only thing being considered was the driveways and no one seems to be objecting to the driveways.

Mr. Dix stated that Mr. Russell addressed the concerns and after viewing the lots and finding them flat and narrow he doesn't have a problem with this application.

TMAPC Action; 10 members present:

On **MOTION** of **CANTRELL**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **APPROVE** the minor amendment for PUD-313-9 per staff recommendation.

TMAPC Action; 10 members present:

On **MOTION** of **CANTRELL**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **APPROVE** the minor amendment for PUD-313-10 per staff recommendation.

OTHER BUSINESS:

Commissioners' Comments

None.

TMAPC Action; 10 members present:

On **MOTION** of **MIDGET**, TMAPC voted **10-0-0** (Cantrell, Carnes, Dix, Edwards, Leighty, Liotta, Midget, Perkins, Shivel, Walker "aye"; no "nays"; none "abstaining"; Stirling "absent") to **ADJOURN** TMAPC meeting No. 2619, February 1, 2012.

There being no further business, the Chair declared the meeting adjourned at 3:22 p.m.

Date Approved:

Feb 15, 2012

Joshua A. Walker

Chairman

ATTEST:

[Signature]

Secretary