

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**APRIL 11, 2013**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 11<sup>th</sup> day of April 2013. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

Chairman Chris Lewis called the meeting to order at 6:30 p.m.

\* \* \*

Item No. 1, being:  
**ROLL CALL**

MEMBERS PRESENT

Curtis McCarty  
Jim Gasaway  
Roberta Pailes  
Cindy Gordon  
Dave Boeck  
Sandy Bahan  
Tom Knotts  
Chris Lewis

MEMBERS ABSENT

Andy Sherrer

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Jane Hudson, Principal Planner  
Ken Danner, Subdivision Development  
Manager  
Roné Tromble, Recording Secretary  
Leah Messner, Asst. City Attorney  
Larry Knapp, GIS Analyst II  
Terry Floyd, Development Coordinator

\* \* \*

Item No. 2, being:

**CONSENT DOCKET**

Chairman Lewis announced that the Consent Docket is designed to allow the Planning Commission to approve a number of items by one motion and vote. The Consent Docket consisted of the following items:

Item No. 3, being:

**APPROVAL OF THE MARCH 14, 2013 REGULAR SESSION MINUTES**

Item No. 4, being:

**COS-1213-6 – CONSIDERATION OF A CERTIFICATE OF SURVEY SUBMITTED BY CHERYL BRUCKER (MORRIS ENGINEERING AND SURVEYING) FOR BRUCKER FARMS GENERALLY LOCATED AT THE NORTHEAST CORNER OF EAST FRANKLIN ROAD AND 175<sup>TH</sup> AVENUE N.E. (PRIVATE ROAD).**

Item No. 5, being:

**FP-1213-30 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY SWITZER'S LOCKER ROOM OF NORMAN, L.L.C. (ARC ENGINEERING CONSULTANTS, L.L.C.) FOR SWITZER'S LOCKER ROOM EXPANSION ADDITION GENERALLY LOCATED ON THE WEST SIDE OF CLASSEN BOULEVARD APPROXIMATELY ¼ MILE NORTH OF CEDAR LANE ROAD.**

Item No. 6, being:

**FP-1213-31 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY CIES PROPERTIES, INC. (CLOUR PLANNING & ENGINEERING SERVICES) FOR BROOKHAVEN NO. 43 ADDITION GENERALLY LOCATED APPROXIMATELY ¼ MILE SOUTH OF WEST ROCK CREEK ROAD ON THE EAST SIDE OF BROOKHAVEN BOULEVARD.**

Item No. 7, being:

**FP-1213-32 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ROSE ROCK SCHOOL FOUNDATION (PRIORITY LAND SURVEYING, L.L.C.) FOR ROSE ROCK SCHOOL ADDITION LOCATED AT 1515 WEST MAIN STREET.**

Item No. 8, being:

**FP-1213-33 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY KENT CONNALLY (SMC CONSULTING ENGINEERS, P.C.) FOR FOUNDERS PARK ADDITION, SECTION 1, A PLANNED UNIT DEVELOPMENT FOR PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF TECUMSEH ROAD APPROXIMATELY ¼ MILE WEST OF 12<sup>TH</sup> AVENUE N.W.**

Item No. 9, being:

**FP-1213-34 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ST. JAMES PARK, L.L.C. (CRAFTON TULL) FOR ST. JAMES PARK ADDITION, SECTION 5 FOR PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF 24<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE SOUTH OF STATE HIGHWAY NO. 9.**

Item No. 10, being:

**FP-1213-35 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ST. JAMES PARK, L.L.C. (CRAFTON TULL) FOR ST. JAMES PARK ADDITION, SECTION 6 FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF 24<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE SOUTH OF STATE HIGHWAY NO. 9.**

Item No. 11, being:

**PP-1213-14 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY MONTEREY DEVELOPMENT COMPANY, L.L.C. (LEMKE LAND SURVEYING) FOR MONTEREY ADDITION FOR PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 12<sup>TH</sup> AVENUE S.E. AND CEDAR LANE ROAD.**

\*

Chairman Lewis asked if any member of the Commission wished to remove any item from the Consent Docket. There being none, he asked if any member of the audience wished to have an item removed. There being none, he asked for discussion by the Planning Commission.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

*Jim Gasaway moved to place approval of Item Nos. 3 through 6 and 8 through 11, and postponement of Item No. 7 indefinitely at the request of the applicant, on the Consent Docket and approve by one unanimous vote. Dave Boeck seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailles, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to place approval of Item Nos. 3 through 6 and 8 through 11, and postponement of Item No. 7 indefinitely at the request of the applicant, on the Consent Docket and approve by one unanimous vote, passed by a vote of 8-0.

\* \* \*

Item No. 3, being:

**APPROVAL OF THE MARCH 14, 2013 REGULAR SESSION MINUTES**

This item was approved as submitted on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 4, being:

**COS-1213-6 – CONSIDERATION OF A CERTIFICATE OF SURVEY SUBMITTED BY CHERYL BRUCKER (MORRIS ENGINEERING AND SURVEYING) FOR BRUCKER FARMS GENERALLY LOCATED AT THE NORTHEAST CORNER OF EAST FRANKLIN ROAD AND 175<sup>TH</sup> AVENUE N.E. (PRIVATE ROAD).**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Certificate of Survey
3. Staff Report
4. Request for Variance to Minimum Acreage

COS-1213-6, the Certificate of Survey for BRUCKER FARMS was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 5, being:

**FP-1213-30 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY SWITZER'S LOCKER ROOM OF NORMAN, L.L.C. (ARC ENGINEERING CONSULTANTS, L.L.C.) FOR SWITZER'S LOCKER ROOM EXPANSION ADDITION GENERALLY LOCATED ON THE WEST SIDE OF CLASSEN BOULEVARD APPROXIMATELY ¼ MILE NORTH OF CEDAR LANE ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Final Site Plan
5. Preliminary Plat

FP-1213-30, the Final Plat for SWITZER'S LOCKER ROOM EXPANSION ADDITION was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 6, being:

**FP-1213-31 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY CIES PROPERTIES, INC. (CLOUR PLANNING & ENGINEERING SERVICES) FOR BROOKHAVEN NO. 43 ADDITION GENERALLY LOCATED APPROXIMATELY ¼ MILE SOUTH OF WEST ROCK CREEK ROAD ON THE EAST SIDE OF BROOKHAVEN BOULEVARD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Revised Preliminary Plat

FP-1213-31, the Final Plat for BROOKHAVEN NO. 43 ADDITION was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 7, being:

**FP-1213-32 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ROSE ROCK SCHOOL FOUNDATION (PRIORITY LAND SURVEYING, L.L.C.) FOR ROSE ROCK SCHOOL ADDITION LOCATED AT 1515 WEST MAIN STREET.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Final Site Plan
5. Preliminary Plat

FP-1213-32, the Final Plat for ROSE ROCK SCHOOL ADDITION was postponed indefinitely at the request of the applicant on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 8, being:

**FP-1213-33 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY KENT CONNALLY (SMC CONSULTING ENGINEERS, P.C.) FOR FOUNDERS PARK ADDITION, SECTION 1, A PLANNED UNIT DEVELOPMENT FOR PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF TECUMSEH ROAD APPROXIMATELY ¼ MILE WEST OF 12<sup>TH</sup> AVENUE N.W.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Final Site Plan
5. Preliminary Plat

FP-1213-33, the Final Plat for FOUNDERS PARK ADDITION, SECTION 1, A Planned Unit Development was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 9, being:

**FP-1213-34 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ST. JAMES PARK, L.L.C. (CRAFTON TULL) FOR ST. JAMES PARK ADDITION, SECTION 5 FOR PROPERTY GENERALLY LOCATED ON THE EAST SIDE OF 24<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE SOUTH OF STATE HIGHWAY NO. 9.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Revised Preliminary Plat

FP-1213-34, the Final Plat for ST. JAMES PARK ADDITION, SECTION 5 was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 10, being:

**FP-1213-35 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY ST. JAMES PARK, L.L.C. (CRAFTON TULL) FOR ST. JAMES PARK ADDITION, SECTION 6 FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF 24<sup>TH</sup> AVENUE S.E. APPROXIMATELY ½ MILE SOUTH OF STATE HIGHWAY NO. 9.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Report
4. Revised Preliminary Plat

FP-1213-35, the Final Plat for ST. JAMES PARK ADDITION, SECTION 6 was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 11, being:

**PP-1213-14 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY MONTEREY DEVELOPMENT COMPANY, L.L.C. (LEMKE LAND SURVEYING) FOR MONTEREY ADDITION FOR PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 12<sup>TH</sup> AVENUE S.E. AND CEDAR LANE ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Preliminary Plat
3. Staff Report
4. Transportation Impacts
5. Oil Well Exhibit
6. Pre-Development Summary

PP-1213-14, the Preliminary Plat for MONTEREY ADDITION was approved on the Consent Docket by a vote of 8-0.

\* \* \*

Item No. 12, being:

**CONSIDERATION OF AN APPLICATION SUBMITTED BY BRECKENRIDGE LAND ACQUISITION, L.P. FOR PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF IMHOFF ROAD APPROXIMATELY 900 FEET EAST OF CLASSEN BOULEVARD.**

Item No. 12a, being:

**RESOLUTION NO. R-1213-113 – BRECKENRIDGE LAND ACQUISITION, L.P. REQUESTS AMENDMENT OF THE NORMAN 2025 LAND USE AND TRANSPORTATION PLAN (LUP-1213-9) FROM INDUSTRIAL DESIGNATION TO MEDIUM DENSITY RESIDENTIAL DESIGNATION FOR PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF IMHOFF ROAD APPROXIMATELY 900 FEET EAST OF CLASSEN BOULEVARD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. 2025 Map
2. Staff Report
3. Pre-Development Summary

Item No. 12b, being:

**ORDINANCE NO. O-1213-41 – BRECKENRIDGE LAND ACQUISITION, L.P. REQUESTS REZONING FROM A-2, RURAL AGRICULTURAL DISTRICT, TO PUD, PLANNED UNIT DEVELOPMENT, FOR 18.52 ACRES OF PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF IMHOFF ROAD APPROXIMATELY 900 FEET EAST OF CLASSEN BOULEVARD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. PUD Narrative

Item No. 12c, being:

**PP-1213-16 -- CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY BRECKENRIDGE LAND ACQUISITION, L.P. (SMC CONSULTING ENGINEERS, P.C.) FOR ASPEN HEIGHTS ADDITION, A PLANNED UNIT DEVELOPMENT FOR 18.52 ACRES OF PROPERTY GENERALLY LOCATED ON THE SOUTH SIDE OF IMHOFF ROAD APPROXIMATELY 1/4 MILE EAST OF CLASSEN BOULEVARD (HIGHWAY No. 77).**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Preliminary Plat
3. Staff Report
4. Transportation Impacts
5. Preliminary Site Plan
6. Greenbelt Commission Comments

**PRESENTATION BY STAFF:**

1. Jane Hudson – We have two applications before us for Breckenridge Land Acquisition: one for the NORMAN 2025 Land Use Plan amendment. The 2025 map shows Industrial Designation, Commercial, Medium Density Residential, Low Density Residential, Mixed Use, and Office Designations in this area. As proposed, the subject tract would become Medium Density Residential Designation on the Land Use Plan. The request on the rezoning application would go from A-2 to a Planned Unit Development. The existing zoning is currently A-2, with Industrial to the east, Commercial to the west. We have some Planned Unit Developments on the north side of Imhoff Road for medium density apartments. The existing land use in that area consists of the industrial, office on the north, a single-family home adjacent to the site, commercial, and some additional office, with apartments on the north. This tract of land was set aside with an Industrial Designation in the 2020 as well as the 2025 Land Use Plan. One policy in the 2025 is to direct environmentally responsible industrial growth onto suited properties for that industrial development. A second policy is to protect suitable industrial land from residential conversion and encroachment by (1) identifying and rezoning land to industrial use, if possible; (2) critically

reviewing rezoning requests for conversion of industrial land to non-industrial uses; and (3) assessing the impact of incompatible land uses adjacent to these industrial uses. In March of 2010, staff completed an Industrial Land Use Study in response to another area that was being looked at to change from an Industrial land use designation to essentially a Mixed Use area – it was consisting of commercial, office, multi-family, and some single-family use as well, I believe. The results of the study revealed that almost 849 acres have been rezoned and designated for uses other than industrial uses. This tract of land is of adequate size and location for an industrial use. The south side of Imhoff, as I showed in those slides, was never really intended for residential use – it was set aside for commercial and industrial designations. As applications are processed through the Planning Department, staff is charged with making a recommendation for those projects. In this case, due to the incompatible land uses between the existing industrial area and the proposed residential, as well as the policies that I mentioned earlier, staff is unable to support the request for the amendment to the Land Use Plan and the rezoning. I believe we did have two letters of protest, as well as a letter of support, which brought us to 6% support and 40.4% protest within the notification area. The applicant's representative is here with a presentation as well as the applicant if you have any questions of them.

2. Mr. McCarty – Is the decision not to support this based off of the comments about the industrial use in the 2025 Plan? Is that the main reason the City is not supporting this or is there more to it than just that?

Ms. Hudson – I can speak to what we're charged with as far as the 2025. We're here to enforce those policies. The incompatibility between the industrial and residential use is all kind of bundled into the policies in the plan.

Mr. McCarty – We had a study of the industrial land use several years ago, I believe, that the City had prepared for the Planning Commission. The absorption rate of industrial land in Norman is pretty low, from what I remember. Has that changed since that report?

Ms. Connors – No, I don't believe that the absorption rate has changed, but one of the things that was pointed out in that study is that if we had larger tracts of industrial land, we should keep those intact, because what we were doing was losing some of the larger tracts. We already have industrial development on the south side of Imhoff, and this could be an expansion area of industrial land and that would create a larger block of industrial land, rather than breaking it up into smaller pieces.

#### **PRESENTATION BY THE APPLICANT:**

1. Sean Rieger, 136 Thompson Drive, representing the applicant – First, let me just say congratulations to the one that's not here tonight, Mr. Andy Sherrer, who, as we speak, is about to stand up in front of 550 people and take the Chairmanship of the Chamber of Commerce. So congratulations to Andy Sherrer, who is not here tonight for that reason.

Thank you for our opportunity to address you tonight. This is a multi-family student housing project that is before you. We're going to talk at some length, so I hope you'll give me your indulgence to address all the points and the concerns that are in the staff report and that will be raised tonight. You're going to hear from three of us. I'm going to sit down very quickly so that Tom McCaleb will tell you what it is we're proposing and how we've designed it. Then you're going to hear from the applicant themselves as to who is proposing this. Then I will be back up here and tell you why we want you to approve of it. So, first, Mr. Tom McCaleb is going to take you through the design.

2. Tom McCaleb, SMC Consulting Engineers – This application tonight will go into great depth. I will keep my comments to the engineering. This application is different from some previous, because staff has indicated the design, from an engineering and architectural point of view, is not the issue that controls the decision to approve this site. That's pretty good. Meetings with the adjacent owners – Hitachi – have not realized any room for reconciliation for land use. However, the matter will be acknowledged as the PowerPoint presentation by Mr. Rieger. My dialogue will consider design and engineering principles. My firm, SMC, secured a licensed

surveyor in the beginning to check this property out, survey it, get topographic information to determine what we got. We secured that services and we based all of our data based upon the topo. Also, to respond to traffic issues, we hired Traffic Engineering Consultants to perform a traffic impact analysis to determine if the units, the design, and the flow of this tract will work. You will find in your staff report on page 12c-5 the results of that study, and you will find that staff is supporting the TA and findings of that traffic report. There is also an oil well on this site. We did not know it was there in the beginning until we did the survey. There is a well there. Upon investigation of the well, we found the well is plugged. So we had to redesign our site plan to accommodate the setback that's required by the City ordinance to accommodate that well. So we revised the site plan, fixed it, and made sure that the site plan does accommodate those areas, and it does. You can see now that it does flow around – we can pave over it; we just can't build over it. So we've accommodated the oil well issue. In addition, the water lines. There's an existing water line that's adjacent on Imhoff Road that serves the area along the drive. We constructed a water system to accommodate the site and had it circulate throughout the tract of land. Upon visiting with staff and with the topo and survey, we found there is an existing water line right there in the right-of-way of Highway 9. It's a large 24" line. The City has suggested that we either tap to that line, or oversize our internal lines. We've elected to tap to that line. So we will now have a connectivity water loop system that will connect here, and through the site up to there, and internally circulate the water so that we have all the domestic requirements satisfied and fire protection satisfied. Sanitary sewer. The site has an existing sewer line on Imhoff that drains back to the west, and it satisfied a portion of the site but not all of it. So we entertained the idea of maybe putting a pump station in to accommodate that. But, here again, with some help of staff, we found that there is an existing sewer line in Classen and the plat of this tract of land right there was platted and gives us a 17' utility easement. So we are going to take the sewer from this corner and go down the tract to Classen and tie to the existing line. So there's no lift station required. So it's all gravity flow system and staff is satisfied with that. The drainage situation. The water, as the sewer, drains to the west. In the site plan, you'll see that Hitachi has an existing detention area that drains the water back this direction and there's an existing pond right there that was built by the land owner and that water discharges to this pond right here. We're going to take that pond – that was a manmade pond – and relocate it right here. So this pond will be gone and would be built here. We would still accommodate the water that is presently draining from the property to the east. It will collect it, put it into our system, and discharge it into this area right here. In brief, we satisfied all those requirements. Transportation, water, sewer use. And on staff report you will note it on page 12c-4, the preliminary plat, they recommend approval. With that, I will let Mr. Charles Vatterott speak. Thank you.

3. Charlie Vatterott, Executive Vice President of Development for Aspen Heights – I appreciate the opportunity to be here this evening. Aspen Heights is excited about the prospects of being in Norman. A little bit of background of who we are, where we are, what we do. Aspen Heights is a full-service development, construction, and management company based out of Texas. Over the last several years you can see just a list of some of the projects that we've had and, basically, kind of gives you an idea of our capacity. We have completed over 9,000 beds; we have another 5,000 beds under construction. We are a cottage-style student housing development company. So, basically, it's what you see there. We build kind of new urban subdivisions – smaller front yards. These are rented by college students, although they're open to anybody. We wouldn't want to get in a situation where we – you know, fair housing things – if a family wanted to rent in there, they certainly could. Those give you kind of a picture of our product. Our portfolio averages over 95% leased. We're excited about the Norman market for a number of reasons. The supply/demand dynamics in this market are very favorable, especially for the cottage product. And, from a location perspective, the site actually could not be better. Again, some streetscapes. It gives you an idea. We're not trying to maximize densities here; we're looking at providing a superior product and services to our client. So nothing over two story. These are bedrooms that have their own bathrooms and walk-in closets

– very nice communities. If you have any particular questions about Aspen Heights, where we are, what we do – based out of Texas. We do have a development in your state going on in Stillwater. I know that's the other university; I don't know if I'm allowed to say the word Stillwater. That's doing very well. Matter of fact, we are over 90% pre-leased for the fall in that community, so we're doing very well. Thank you, again, for your time and if you have questions, certainly available after our presentation.

4. Sean Rieger – Thank you, Mr. Chairman. Now let's spend some time talking about what is at issue tonight. As you've heard, you now know what we're going to build. We're essentially going to build virtually the same concept that is immediately across the street to the north – The Cottages project. That was done by Capstone, another national producer of that product. This is Aspen Heights. But virtually the same style and manner of product as immediately across the street. So what we're going to focus on is really two issues tonight, because that's what is at the forefront of this project. We know now that, as we've heard from staff and others, there's really not an issue with the design, with the style, with the concept. We've not heard any negativity of any kind as to that. We've heard it put best, I think, by staff in one sentence, and this is in your staff report. It says, "The question is not whether the development itself has been correctly designed, but whether this is the appropriate location for a multi-family development." I want you to look at the screen, if you would, please, and you will see the center of that screen is showing what we're proposing right there as this multi-family development and around it, within about 700 yards in any direction, you're going to find multi-family all around it – everywhere. So I could probably stop right now and answer that question at the top of the page by saying is this an appropriate location for multi-family by just showing you that. I think, on its face, that says yes. But, obviously, I won't. We'll talk through another few issues here.

2025 also supports this site. 2025, as I've shown you many times and I'll keep showing you, Goal 1, Policy 1, says we must accommodate a project year 2025 population of 137,000 people. That's in 12 years and right now we're only at about 112,000 people. We have a lot of people left to accommodate in our community, and many of those also are students who look for newer and better concepts and places to live all the time. Goal 2 says promote a compact urban area. This, of course, does that. This is a site that is completely surrounded by utilities infrastructure. It's all there. In fact, one of the great benefits of this – and this is down under Goal 2 – it says support growth that minimizes operational costs. Well, this is one of those great projects for a city in that it's right in an area that has all the infrastructure and utilities it needs. Classen and Imhoff has already been improved substantially so the traffic has been solved there. Water lines, sewer lines – they're all there. And the developer is going to build out this site and own it and maintain it. All of those streets inside this site are not going to be city streets; they're going to be the developer's streets so you get a great bang for your buck in that, as Goal 2 says, you don't even have to take care of what's built there, but you get the population so you supported number 1. It also says encourage commercial and residential development on the urban east side. It actually instructed us, let's start putting some population on the east side in the urban context. We're doing that. And I thought most instructively here was Goal 3 under Housing and Neighborhoods. And I read this and I thought about it and I remember why this is a goal. It reads encourage housing designed for university student occupancy – that's us – that's tonight – in areas suitable for high intensity uses. I thought about it and I thought, where did that come from? And then I remembered where that came from and I think what happened was, if you'll remember back in the 90s and so forth, we had a great deal of controversy in Norman because what was happening was students were starting to infiltrate the established single-family neighborhoods of our community and it was a problem. It became a serious problem. That's why that goal was written. What that goal essentially says is that students maybe aren't that good of neighbors and compatible for single-family neighborhoods, so let's find a place to put them. High intensity uses is where to put them. They're not a problem in those areas. And I think you're going to hear in a minute that they haven't been a problem on Imhoff either. So this is supported by the goals of 2025.

Two issues tonight basically are Hitachi and whether we can give this site up from the industrial land use. That's really what is at the core of the debate tonight. Let's talk about Hitachi. They're here tonight. They'll talk to you, I'm sure. Hitachi protested this. Hitachi came to the Pre-Development hearing, and at the Pre-Development hearing they were quite blunt. They came to the hearing and Pre-Development is intended to be a dialogue – an exchange of information – what are our concerns and is there anything that we can do for you? I'm just going to say, in all candor, it was not much of a dialogue. They sat in front of us and said we don't want you here. We're going to beat this zoning and we want no part of it. It was very candid. I'll give them their opportunity to do that. So we left that meeting. That was really the only comments at the Pre-Development that we heard. We then left that meeting and we started to reach out to Hitachi. We thought let's get into an even more informal setting; let's meet with them; let's see what we can do, because we have had success in the past on Imhoff with dealing with Hitachi. Nobody means them harm. Nobody wants to exclude them or cause any interference upon them, and nobody has in the past. We've worked well with them in the past. The Capstone Cottages project to the upper left, right there – I was the zoning attorney on that. We dealt with Hitachi at that time. And one of the things, for instance, that we did on that was every single lease that gets signed on that site has a paragraph in it that says you are living across the street from a high manufacturing facility. You recognize that now, you know that now, and you're assuming that risk and you're not going to complain later. We can do things like that. We offered that to Hitachi. Another thing that happened – right over here this was just last year. Hitachi protested this site right across the street to the north. That got approved with a super majority vote of Council to Medium Density Residential – more dense than this proposed tonight – and that was protested by Hitachi. Something we did there – we met with Hitachi there. Now, at that meeting, they said it was cheaper to protest than it was to buy the land, but we worked with them and we said what can we do. They were concerned about their truck stalls right here. We had shown some residential out in the front here, and what we did was we took the clubhouse for that multi-family project and we said, okay, let's do this. So we modified the PUD and we put the clubhouse right here, so in essence the office of the property became the buffer between Hitachi and the residences behind it. We accommodated them. And it got approved. So we can do some things. We did finally meet with Hitachi at 2:00 Monday this week. They agreed to meet with us. We went to the Hitachi headquarters. We sat down with their president, a couple officers, an attorney, NEDC and we talked again with them. We went into this meeting and with good faith said again we're here to dialogue. We're here to see what can we do, as we have in the past, to accommodate you – hear your concerns. I will say, in all candor, it was blunt again. In fact, they looked at us and said we thought we made ourselves clear. That was the response. We tried again. Tell us, though, what are your concerns? What are you concerned about? Then they started telling us a couple things. They said they planned on adding an addition to the west here, and they were concerned that that would be too close. I want to note that there's already an oil and gas road right here. There's already pipelines right here. And there's already a substantial large quite enormous mature tree line that we intend to do nothing with. But we asked them, again, what can we do – and Mr. Vatterott specifically threw out a number of things and he said we can do additional landscaping; we can design buffer areas, setbacks; we can do fencing – whatever height – whatever material is reasonable; we can rearrange the Aspen site plan; we can do the lease agreement thing like we did at Capstone. And, again, the response was I thought we made ourselves clear. They refused to work with us to say any of those things might help them. That was the response we got. The meeting then kind of turned and I said, well, tell us some of these complaints. What are the complaints that you've gotten, because they told us their fear was complaints – when residential starts moving close they would get complaints. I asked what are your complaints? And the first thing out of the president's mouth was, well, we had a complaint that we were disturbing a bee colony. And the bee colony he's talking about is – it's kind of a legendary thing around this area. Right there, just north of Hitachi and their truck bays, is an older gentleman that has a bee colony and they were disturbing that and that was what the president told us, that we were disturbing the bee colony and we got a complaint about that.

Now I was looking for something about residents, basically. What was the complaints? I asked him again, what other complaints have you had? His response was, well, a few years back, back when these apartment buildings were getting built, a sewer line got backed up and we were blamed for it from the construction work of those apartments. Again, I was trying to see what were the complaints from residents in the area, because that's the focus of the protest. So then I just asked him point blank, I said have you had much problems with the Cottages? Tell me about that issue. That's what we're going to build. That is very close to where we're going to build it. And he said this, and I quickly wrote it down on my yellow pad – I've got it right there, in fact, if you want to look at it. He said, no, not much complaints from the Cottages. Hasn't had any complaints from the Cottages. That's what we were told Monday. We're proposing cottages. The complaints they've had is a bee colony and a construction problem down the street, but not the residents across the street. It hasn't been a problem. We don't anticipate that this one will be, either. They can still do their addition. In fact, they do not need this land at all to do an addition. They're going to put their employees' parking under the addition we're told. Well, if it's a very hazardous or dangerous practice of whatever they're going to build there, I wouldn't suspect they'd be putting their employees under it. So I think Hitachi can be easily accommodated. We don't see the danger there. We don't see the concern there and the complaints that we've been told don't warrant it.

There is another issue with Hitachi, and I think it's fair that the Commission knows about it, because you had a letter submitted to you that talked about it. It was the property owner next to Hitachi. It was Mrs. Todd and the Tullius family. Long time family in Norman. That is their homestead going way back – many, many decades back. They didn't come to Hitachi; Hitachi came to them. They've been there for generations. They've been there for decades. Time for them to move on on the 20-acre site that is in play tonight. That site is owned by a number of heirs – it's not specifically owned by Mrs. Todd. This 20 acres is owned by a number of heirs. I think a number of them are sitting behind me tonight. Mr. and Mrs. Todd own this site right up here where the house is. And what happened, basically, is, of course, over the years – and I can just tell you when people have come in town looking for land, many have cited that land. Many people have looked at this location. There's not many open areas left on the periphery of OU and that area. What happened was recently the heirs have decided it is time – we're ready – to sell this land. Aspen came calling and Hitachi came calling. Aspen made an offer. Aspen wanted the 20 acres – 18 or so right here in this area. Aspen didn't need the home. Hitachi came calling and Hitachi wanted the home. And this was all detailed in the letter and anybody can come up here and correct me if they want, but I've read the letter and I've talked to the Todds and this is what I understand occurred. What occurred was Aspen said, fine. We don't need the home and this is our price. Hitachi declined to match that price. More importantly, Hitachi said we want that home. We won't buy it without the home. The Todds are in their 80s – maybe I shouldn't have said that – I'm sorry, Mr. and Mrs. Todd. But the Todds are not ready to go find another home and put down a mortgage and start over again. But they were willing to and they said that to Hitachi. Okay, we're willing to do that, but we're not ready to start a new mortgage somewhere so you have to buy the house – the improvements, the property – to help us replace our cost and relocate. In essence, relocate us. Hitachi declined to do that. Their offer was we'll put down an 18 month option contract. When we're ready to buy, we'll give you 90 days and you're moving out. Todds said no for less of a price, too, by the way, than Aspen was offering. The Todds couldn't do that, so they declined, and they went with Aspen. And so Aspen is here tonight, and that's why they're here tonight.

I think one of the things that's important for you to consider – one of the hallmarks of zoning – one of the hallmarks of land use is that we do effectively try to put land into its highest and best use to the extent we can appropriately do that – to the extent we can properly do that. So what is highest and best use? We never really talked about that much in the past, but I thought maybe we ought to talk about that tonight. What is highest and best use? Is it industrial or is it multi-family? I'll give you Black's Law – Black's Law is a big old law book that we all use in law and it's kind of the Webster's Dictionary of law. Here's what Black's Law says highest and best use is: "What condemned property's fair market value would realistically be if the owner

were hypothetically allowed to adapt his property to its most advantageous and valuable use." Well, you just had it play out and decided for you. Was the highest and best use industrial? Apparently not, because the industrial buyer would not pay the most valuable price for it. The highest and best user – the multi-family person – would. The industrial user would not match it. Is it an appropriate use? Well, I just showed you that – make your argument as you wish – but directly across the street and all around it are multi-family uses. So it's an appropriate use and it's the higher value use. It's the highest and best use. This Commission should support it for that reason. We have precedent around Hitachi; I've shown it to you before. Just recently in the last few years the Cottages got built. Just this past – I believe it was about a year ago – the Commission and the Council, through a super majority vote, approved the multi-family to the north. I think the policy is clearly set. We believe we can do this and we can properly accommodate Hitachi. Hitachi still has 30 acres to the east, by the way; they own over 70 acres. They still have 30 acres to the east. Thank goodness they're a very profitable company; they have \$6 billion in cash sitting in the bank is what their last annual report showed. They can figure it out – I hope they can figure it out, and I'm glad they can figure it out. But they are not what we would say is a land-locked property that has nowhere to go. They have 30 acres immediately to the east of them. The only thing in the way is an asphalt parking lot which, as anyone knows, can be easily paved over – they can move parking right down to here. There are many options for Hitachi still on that site. This, in no way, land-locks them to no options. The distances are really pretty similar, actually. You see them now on the screen. They have natural buffers, again, right here with the oil and gas road, the pipelines, the trees. I was talking actually to Mrs. Todd earlier – you know, have you heard noises and disruptions? Has it been a problem for you? Not at all, she said. I want you to understand, when we met with Hitachi, they met with us in lab coats, not coveralls. This is not a loud mining operation of any kind. This is a closely enclosed high-tech manufacturer that is not a terribly obtrusive or nuisance to the area. So we can accommodate Hitachi. That's my message tonight. The fear should not be warranted to turn this down.

We also have a good history in Norman of accommodating industrial users very close to, in fact, single-family users and we have a history of policy that has approved these projects. You see on the upper left is Astellas; right south of it, across the street from Cedar, is Eagle Cliff. I come here quite a bit; I haven't seen anybody from Eagle Cliff standing at this podium bemoaning that we've created a terrible tragedy for them. I haven't seen it in the papers. I think it has worked. On the upper right you see the Norman Business Park – Albon Manufacturing, and you see a single-family lot addition right there, not much distance difference than what we're talking about tonight. On the lower left – this is probably the more recent example – you see Sysco right there. And it was ironic tonight when I heard the Chairman read off the Consent Docket, because one of the items you read off was the final plat of Founders Park, immediately to the north of Sysco. That was hotly contested – heavily contested – and that was contested on the exact same topic that I'm about to go into depth on, was can we lose an industrial tract. That one, the Council said yes. And when they said yes, the president and CEO of Sysco stood at this podium and he said they would have nothing else to do with Norman and they would move. What happened? They expanded. They expanded right there. You can see the single-family homes right there next to Sysco. It's happening in Norman. It has not been a problem in Norman. We can accommodate this. It shouldn't be something we fear. Here is another large-scale view of what I'm talking about. You see on the right – you see the yellow area – that is low-density residential. We're proposing medium density residential. That's low-density residential, and the gray is industrial. Huge areas of interface all over this area. This is Sysco right up in here – here you see the aerial. This is all going to get developed out as single-family residential – all of it right next to industrial. We've accommodated it. It's planned in 2025. The policy has not been denied. So we can accommodate multi-family next to industrial, particularly the kinds of industrials we have in Norman.

So let's go to the second issue tonight. The second issue is, can we lose this land as an industrial piece of land? We've debated it before hotly with the Founders Park one, that you

approved final plat on tonight – that was the Connally farm. We also debated this hotly for the Campus Crest/Victory Park site on Southeast 12<sup>th</sup>. Same issue. Big tracts of land that were 2025 industrial that were being promoted to change to multi-family under one case, multi-family, commercial and single-family in another case. Same position of staff. In fact, the industrial land use report they're talking about was generated out of that Founders Park zoning; that's when it came up and the Council went ahead and said yes we can lose that industrial piece. So why did they say that? Well, let's just look at the numbers. These aren't my numbers; this is straight out of your documents. Industrial land – 2025 – when you look at what was planned in the 2025 document on the top, you will see there was 1,100 acres put in 2025 for industrial planned uses. When you look on the bottom chart, you will see that this was the actual demand projected, and the actual demand of acres was 198. So they actually planned 556% -- or 5½ times the number of industrial acres that they thought would ever be used by 2025. They did that for a good reason – because of what we're talking about tonight. They knew that the market pressure would probably be stronger for the other uses so let's put in ample – generous – amounts of industrial. They did. They did that properly. But that was in anticipation of this happening. It didn't say we shouldn't do this; it says that's okay if we do this because we have ample amounts of industrial. The absorption rate – what we talk about meaning how much of that industrial land was going to be used a year – was roughly going to be 10 acres. Again, the demand was over 20 years – 2004 to 2025 – 198 acres, so they anticipated about 10 acres a year of industrial land to be used. So let's look at what has happened, though. Let's look at the actual history of what has happened. Again, at the top, they intended – you see this chart right out of 2025 – they anticipated industrial warehousing uses floor area generated – and these are five-year increments – and they anticipated 500,000 square feet – 434, et cetera – here's the acres – 50 – you roughly have – that's about a 5:1 margin of acres to site – roughly on each of those five-year increments they averaged that out – it's about 465,000 square feet every five years is what they anticipated would happen. What has actually happened? This report down here is the status update – I got this from the City Clerk's office just last week and this is actual data. This is actual numbers from our city as to what has actually occurred in the sense of square footage being built. There it is right down there – you can't see it – but that number is 162,000 square feet over the past five years. It was anticipated 465,000 square feet; we've actually done 162,000 square feet. We're actually absorbing about a third of what 2025 thought we would absorb. Remember, I told you the absorption rate thought to be in 2025 was 10 acres a year. We're actually doing about a third of that, so we're actually doing about 3 acres a year of industrial land. 2025 set aside 1,100 acres of industrial land. We're absorbing 3 a year. I'll let you think about that for a moment. It shouldn't take long to realize we have a ton of industrial land – far, far, far in excess of anything we're absorbing – anything we're using. There is no shortage of industrial land. We had 5½ times put out there so that we could use it; we've only used a third of even what was projected – a vast, vast difference. And, in fact, staff has recognized that back when Founders Park – the one read off the final plat – this was from that staff report. It said we know that we have a surplus; therefore, it must not be a concern to lose some of the industrial land designated in the Plan. I want you to look at 2025 right here. You can just see what we're talking about. Remember? I just told you we're absorbing 3 acres a year. Well, 3 acres is not much. Here's that little site right here – 18 acres right here. If you let this go, Hitachi still has about 30 acres over here. You still have the Saxon Office Park over here painted industrial. You still have a couple of sites in the Norman Business Park. You still have a site over here, and you still have all of Classen down here, and I'm not even showing you north Norman. We still have a lot of industrial land left. And at 3 acres per year, we're going to have it for a long time. It's not a problem.

So let's talk about what we've talked about before and that what happens, then, when you have these lands in south Norman and you have them in the private ownership of somebody like a historical estate – a homestead. First, I want to read what Mr. Don Wood said on April 8, 2010 at this microphone. He said, we would like to be focused on something to the north – and this was about industrial land – he said, because there's a 20 minute extra commute from the north end of Norman all the way around Highway 9 to that particular area – and that

was the context of the south industrial area. So the employers that are down there are saying that it's a problem for us. He told the Commission and Council that we needed industrial land on the north – Will Rogers, Oklahoma City – we needed that connection. The time around to here was not working any more. I think, in fact, that's why, perhaps, you see that the University North Park and industrial areas have not worked very well in southeast Norman. Hitachi is forlorn, really, in that they told us in the meeting they came here in the 80s and they expected this whole area to be industrial, and they're hanging onto that idea. Reality is it's just not there, and maybe that's why. Maybe that's why, because this area just doesn't work for the industrial because it's too far away from Oklahoma City for that 20-minute extra drive.

But what I want you to also focus on, when you look at the southeast area of Norman, is I want you to think about Mr. and Mrs. Todd and I want you to think about the Tullius family, and I want you to think about that if you make a decision tonight that this ought to stay industrial, then they must compete with the University of Oklahoma and the State of Oklahoma for the South Research Campus. They must compete with the NEDC, funded by the City of Norman, Moore-Norman VoTech, and the University of Oklahoma with the Saxon Business Park, Norman Business Park – those areas. You will put them in that position. Can they do it? I doubt it. The Todds are great people, but I don't know how you compete with a government. That's what you're doing to them. Remember 3 acres per year of industrial land is what we're actually absorbing. Ten acres is what's even projected. This community adopted a TIF – a lot of people talk about the TIF and most of the people talk about the retail area of the TIF. There was another whole area of the TIF – it doesn't get much discussion because, again, not much has happened up there industrially, but this is from staff reports – not our words – approximately 175 acres in the University North Park TIF area is still available for industrial purposes. That's right up here. North of Rock Creek Road. That whole area is not intended to be retail. That whole area is intended to be a multitude of uses, 175 acres of which can be industrial land. Do the math on that one. How long does 3 acres a year cause us to use up 175 acres? That is funded with public money – \$54 million of which – the Tulliuses didn't get any public money. They don't have any public TIF infrastructure to promote for their industrial site. But the City wants them to mothball it so that somebody can go use it. The TIF, in its own project plan, says the attraction of quality jobs through economic development. Again, this area alone – 175 acres – heavily subsidized – publicly funded – heavily promoted through the City, the University of Oklahoma Foundation – a billion dollar foundation – through this City – that parcel alone, at 3 acres absorption rate – that can accommodate our industrial need for 58 years. Is the Tulliuses going to stick around for 58 years? Is that what we're going to do – make them sit on that land for 58 years? I hope not. This is what they're competing against. As Ms. Connors said, the City wants them to sit there and keep that land as an industrial parcel. Well, here you go – this is the NEDC. This is screen shots from their website. Here's their business parks. Here's their research parks. University of Oklahoma Partners Place – they're on their seventh Partners Place building. Here's the University North Park Corporate Center. Here's the Norman Business Park. Here's the Saxon Business Park. Here's the OU Research Campus and I don't see the Tullius land. I don't see it. How are they supposed to do that? How is that supposed to happen? It's impossible. It's wrong. It's wrong for a city to say that we're going to make this family sit on industrial land while everybody for the government around here is going to market all of these business park and industrial sites and we're going to fund them with TIFs and we're going to fund them with all kinds of marketing money. It's not right. This is what you're making the decision on tonight. Let's be very clear about it. I will be as blunt as Hitachi was with us. Your decision tonight is, if you turn down this zoning, you are telling the Tulliuses that you are going to deny them the highest and best use of their property and you will be putting them in a position to do only one of two things. You'll be putting them in a position that they will be forced to sell the land at a lower price and lesser terms to Hitachi, or they can sit on that land and try to market it against the University of Oklahoma, the City of Norman, and the NEDC at an absorption rate of 3 acres a year. It's an impossible position. It's a taking. That's what you're discussing tonight.

Yes, this site is appropriate for multi-family. It's across the street; it's down the street; it's all around the street. You see the additions all around it. That's the Cottages right there across the

street. That's all we're proposing. We've lined up the entries. It's the same concept. It's the same thing. They've been there since 2006 – no complaints that we're aware of. Hitachi – I asked three times in that meeting, tell me about complaints, didn't hear one. It's a good project. It merits approval. You should support it. It provides a good place for OU students. It provides a place they want. The Cottages stands at 99% occupancy routinely across the street. This is what students seek; they deserve the right to have a good place to live as well. It's a recruitment factor for OU to have good places for them to go to. No negative impacts. Industrial not needed. Clearly, I think we've proven that. It's correctly designed. With that, I'll leave it to others to discuss. I'm happy to answer your questions. I thank you very much for your time, and please let us know if you have any questions.

5. Chairman Lewis – I didn't realize there was a well on that site. Can you walk me through what the requirements of building around a well are? What proximity you have to stay away from?

Mr. McCaleb – Yes. If the well is plugged, which it is, it has one requirement; if it's an active well, it is different requirements. An active well is 125' radius of no-build area – stay away from it. If it's plugged, you reduce it to 45' radius and you cannot build over the well itself, within the 45', but you can pave over it. We've had some subdivisions that we've done in Norman where we've had some wells that have been plugged and, with staff's support and if it makes sense, we've actually built a street over it – public streets. The only criteria is that we can gain access to that well if, for any reason, we need to. So it's been an area that you can utilize it. You can be adapted into the design, which we did. You just can't put a structure on top of it, plugged or not plugged.

Chairman Lewis – So in this situation, we have a plugged well. There's no way now, or any time in the future, that anything – a structure – could be built over that well. At the most, we could have a parking lot?

Mr. McCaleb – That's correct.

6. Ms. Pailes – One difference between this and some of the other places where residents and industrial are joined is a lot of those are separated by streets. One of the places that would be directly analogous might be the old historic neighborhood along Miller that has a dairy right next door. That neighborhood shows up in front of City Council on a somewhat regular basis with issues about being an industrial neighbor. One of their biggest complaints is truck noise, truck lights. Hitachi's loading dock is right there. If Hitachi expands to the west, it's really going to be right there. Would you address truck noise, truck traffic, truck lights, and how you would plan on sheltering your occupants from those annoyances, so that your occupants don't wind up in front of City Council complaining?

Mr. Rieger – I appreciate that, Commissioner. We asked Hitachi in the meeting if we could see these expansion plans they had and the gentleman held up one sheet of paper, quickly flashed it, and wouldn't give us a copy. We asked for a copy, so that we could maybe accommodate that. We weren't given a copy, so I don't know exactly. Presently, this wall right here is just a big flat blank wall; there is no windows; there is no nothing on that wall. The truck docks are all out here. In fact, you see our closest residence is not anywhere near the truck docks. The truck docks are far more of a nuisance – should be – to the Cottages up here than they would ever be down here.

Ms. Pailes – Are you planning on a masonry wall or any such thing?

Mr. Rieger – It's intended to be a gated community. I haven't actually asked the client yet what the particular wall type would be. Do you want to talk about that, Charlie, real quick?

Mr. Vatterot – It's a good question. We haven't got to that level of detail. One of the things that we had proposed is that we would certainly look at whatever material, whatever height fencing that Hitachi may think is appropriate or reasonable.

Ms. Pailes – Just an idle question – the little units with Cs on them – what are those?

Mr. Vatterot – Those are townhomes. Those are two- and three-bedroom townhomes. They're like row houses. We could go over each one of those codes, but I'd need some really powerful glasses.

Mr. Rieger – Let me make one other comment, Commissioner, if I can. One thing we do know that Hitachi showed us was the plan would come – their expansion would come right off the edge of this building. You can see, for the vast majority of this site, that's not an issue. It is literally only about four units right in here that that becomes an issue. And, again, what we understood the expansion would be – the truck docks would remain out front. In fact, they did describe a little bit – they said they would put employee parking over here under the expansion. Again, they didn't show us the plans, but I'm guessing as an architect that means there's probably not truck docks there. If there's employee parking, that also tells me it's probably not a very loud or intense or dangerous use they're putting there.

Ms. Pailles – But parking lot lights.

Mr. Rieger – Well, we have parking lot right here as well. So we've got the same parking lot that people would be facing. Again, frankly, we would need to know more about the addition – and we tried, but we weren't given that information. But we've been welcoming and open to put up the wall, a fence, buffering. It does have very large mature trees all along this side. If the expansion ends just like it is right now, with just a blank empty end wall, I don't think there's any issue there.

7. Ms. Gordon – Sean, maybe you can make this connection for me. Staff mentions that the 2025 Plan, talking about accommodations for how many multi-family units based on a population of 137,000, and that basically they need over 1,700 and we've basically permitted well past that. And the gentleman remarked that supply and demand is very favorable in Norman. Bottom line, are you guys going to be able to fill these? I mean, it doesn't seem to me that there's a lack of apartment space in Norman. It's not like the University student population is increasing exponentially. And you're marketing this to students.

Mr. Vatterot – I can tell you from experience – and this is not just Charlie Vatterot's idea of what works and what doesn't work. Our banking relationships, especially in a time where – if you saw the dynamic growth of the company, that was occurring during very difficult times in the economy. So it's not just that Aspen Heights believes in the product – believes it will lease very well. It's JPMorgan, Chase, Key, Frost, Arvest – all the big banks that see the same numbers. So we'll put together market research. Say, for example, right across the street were the Cottages, over 99% leased. We'll put together what our competitors, show that to the bankers. The bankers will go out, say thank you, throw it away, go make their own competition list – look at occupancies, absorption rates, rental rates – and come back, and they have come back every time backing up the numbers that we have found in the markets. We've been very successful. It's something that we're completely confident. And, again, just as a reflection – the closest community that we have is the one at that other university where it's now April and we're well beyond 90% pre-leased, and the students didn't have anything to look at as far as walking in. I think it was just this past week we finished our model and we leased, again, over 90% without having something to look at. A lot of times what we do find – and it's actually we see as a benefit, because we focus on college towns. There's a lot of times the residents that were in older neighborhoods that were traditionally designed – because students like to live in houses, hence the new design with the cottage and our concept – is that we end up pulling some of those students out and we end up giving them a chance to be with other students that like to be in houses, but also have the amenities that are not available in some of the older traditional community subdivisions.

Ms. Gordon – So you're saying that it's not necessarily a population increase – it's a shift, maybe?

Mr. Vatterot – It can be. It can be a change in what people are willing to pay for and what they like. It can be preference and change in demand.

Mr. Rieger – Let me add something to that. Commissioner, I'll relate a personal experience. This happened in a public courtroom, so I can share it, but it was for the Cottages

across the street. I was there on a landlord/tenant issue for the Cottages – same concept – same thing. This was within the last year and a half. The judge got to talking with them about the downturn – and that got built and occupied right before the downturn – about 2006, I think – and then the downturn. The lowest occupancy rate they ever hit, as expressed in the courtroom, was 83%. In the last year or two since the market, they literally have – they have 600 beds, I think, up there. They rarely have more than a few beds. They run at 99% occupancy all the time. So part of that is it's a concept that students apparently dearly love, and I think it's a little bit like Charlie said, in that they like to live in neighborhoods – they like to live in a house kind of setting. The problem is Norman had a big problem with that. They were doing that. And so, as that policy of 2025 said – and these companies are no different. They say, well, they want to live in that – we can come up with that. Let's put them in a setting like that. That's what the Cottages did and it's been extremely successful.

8. Mr. Boeck – I think, when you talk about shifts in housing – I remember when I came here to go to school, which is a long time ago – when I moved out of the dorms, I tried to find an apartment and the housing availability around campus was deplorable. You had lots of these rental units that were just garages turned into apartments with window air conditioning units, flooring below street level so they were flooded. So University and developers have come in here and built good units, and I know my kids love them because they live in them. So that might force some land owners or property owners to do something different, which is what I hoped would happen and it seems like it has happened. So the demand is there because the kids are looking for good places, and dorms are being taken off-line. There are more students. Cate Center is being shifted, and apartments are being torn down.

9. Ms. Gordon – My concern is that, at some point, you're going to hit a saturation. You're going to, because the University population isn't increasing that much. It's just not. I know the numbers because I work there, like you do. At some point you're going to hit a saturation. This is a massive unit. I'm not saying it's happening now. I'm just saying that that's a concern. This is a disconnect from what the staff report says about the number of units we need and the number we have. That's the issue I have.

10. Mr. McCarty – I would just like to follow up on Roberta's comments. It looks like there's a drive lane down the east boundary along Hitachi. How wide is that? And then what is the approximate proximity to the property line of the row houses?

Mr. Rieger – That's correct.

Mr. McCarty – So the buildings are actually sitting off of the property line a pretty good distance.

Mr. Rieger – That's correct. I think roughly about 50 or 70' off the east edge. There is a drive lane and a parking bay. We have to have a landscape buffer, too.

Mr. McCarty – And the row houses are probably a little closer than that, approximately. So, really, that's the closest buildings to the property line.

Mr. Rieger – Yes. I do want to make sure you understand this is not 500-some units, but beds. It's a big difference.

11. Ms. Gordon – I have a hypothetical. Looking at this picture, if you were to take the residential areas that are north of Imhoff and the commercial and the industrial that's south of Imhoff, and you were to switch them around and you would make all of the areas north of Imhoff – basically switch their purposes – industrial – commercial – and the areas that are now south of Imhoff would be residential. Would you stick in a commercial or industrial use right between those two residential uses? Would you do the opposite of what you're doing now, essentially, if the areas to the east and west were residential? Would you stick an industrial use right smack in the middle between those two residential areas?

Mr. Rieger – I think it depends on what the use is. These are all pretty tied to what the particular use is. Multi-family, for instance, has been a very good buffer and transition point all

around Norman. I think of that apartment complex we did up in the northwest area of Norman recently, and I showed you guys all of west Norman is commercial, RM-6 and then single-family. Multi-family are good middle ground zoning pieces.

Ms. Gordon – But that's not what I'm asking. Where you have the residential going in now, let's say it was surrounded on the east and west sides – flip what you're doing now, essentially. So let's say it was surrounded on east and west sides with residential, would you stick a Hitachi in between the two?

Mr. Rieger – If it was an office kind of clean industrial use, I wouldn't have a problem with that. Again, they put them in industrial sites, but it's lab coats and not coveralls. If it's a fairly clean and unobtrusive kind of industrial use, I don't know that you would have a negativity. We've seen it, in fact, on these other areas, as I showed you, with Astellas right next to Eagle Cliff. Albon and the Norman Business Park right next to that one. Greenleaf Trails and Trailwoods – those are right next to industrial tracts. No separation of multi-family or anything like it.

12. Mr. Knotts – You've mixed numbers, it appears. You talk about this target population and you include students in that. Students are not included in population, so you can't use that as an argument for this project. Do you agree with that, or not?

Mr. Rieger – Well, I would challenge you a little bit on that, Commissioner. What you build for students means you don't necessarily have to build for the rest of the population. So you provide openings for the rest of the population to move into.

#### **AUDIENCE PARTICIPATION:**

1. Don Wood, 2715 72<sup>nd</sup> Avenue S.E., representing NEDC as the Executive Director – This is a great project. I like the project. This is just not the place for it. Sean makes the arguments about all the changes in industrial property and how we have so much. We also have a lot of places you can put a project like this – stuff across the street – lots of other areas and lots of other places that this project could go that would be a lot more compatible. This particular piece of property is right next to Hitachi. That's the problem. It's not across the street. It's not separated by anything. It's right next to Hitachi. George Wilson is going to get up here in a little bit and he's going to talk to you about what their plans are. We fought hard to keep Hitachi. Three years ago that company was almost going to leave Norman because they were in competition to consolidate plants and we may or may not have won that consolidation move, and we did. That has been a great thing for Norman. They've gone from 300 employees to 500 employees. George is going to talk about their next expansion. We want them to have the potential to do what they need to do and continue to be a shining star in our community. Corporations make noise. They have trucks. They have people coming and going. Many of them are 24-hour operations. They're not compatible to neighborhoods. We don't need to encroach on them and create an environment where they're living with complaints that they really can't do a lot about, unless they close and move. We promised Hitachi when they came that this land would be light industrial, and we get closer and closer and closer. And now we're right on top of them – right next to them. One of the things I heard that was very disturbing to me is that whoever will pay the most for a particular piece of land ought to be able to do whatever they want with it. I don't think that's what planning is about. I don't think that's what you're about. That you want whoever can pay the most to get to do whatever they want to the property. You have to look at compatible uses. You have to look at where our community is growing and what's best for the overall community. George will talk about their attempts to try to buy that property, and I think you'll see this is not trying to treat the family or the estate poorly. I think they made some very fair offers to try to make this work, and they were rejected. They were rejected for 5 cents or 10 cents a square foot. That's when this use was never planned for this particular piece of property. They never should have had the expectation that this was going to be something other than what it was intended to be, and that was light industrial. So I think we need to consider that. We would recommend, and ask, that you not grant this change.

2. George Wilson, 515 Shawnee Street, representing Hitachi as the President of the Hitachi facility here – I did want to say just a few things, and I appreciate Sean leaving the diagram up. It will be helpful. Hitachi located here in the 80s – in '86-'87. At that time, all of this area was zoned light industrial. That was very much part of Hitachi's initiative – was to be in an industrial park. They don't locate their facilities in residential areas, for very good reasons. And, also, it was close to the University, which made a very big benefit to them. Throughout the reviews, again and again, in the 2020 and 2025 plan, it showed that this was designated industrial. But there has been a lot of encroachment. All of these rezonings since the time Hitachi moved in there. I do want to talk about a couple things. I appreciate Sean's characterization of our meeting. I appreciate the question about the dairy, because, quite frankly, our comment was we don't want to be the next Hiland Dairy. That is a problem. When you locate industrial facilities directly next to residential, it is inevitably going to be problems. Have we had a lot of complaints? No. We have worked very, very hard not to have complaints. We have tried to support all our neighbors, and have tried to accommodate them as much as they've tried to accommodate us.

There was an incorrect statement made about the price for the property. We actually bid 5 cents a square foot above Aspen's property price. That was a specific intent to show we were not trying to undercut anything or force anything into a lower price. We did, however, offer that same price per square foot for the homestead. That makes that piece of property where the homestead is – value from that proposal at about \$400,000, which is above the market for that area for a home. So the price was actually above theirs. What we were requested was then buy the house again on top of the price we just paid for that property, and that's the point where we felt like it was becoming too expensive for us to approach that as a property purchase.

It's been characterized that we have plenty of room, and that is one of the things we are looking at. We have an active project with a local architect designing our next expansion. This is a key element for us as a corporation. We currently have about 500 employees. But we are always pushing to try to expand our operation and our business in Norman. This property is the key for that business in Norman. It was noted we do have plans and the current plans that the architect is working on is two-phase expansion. The first one, which is the one we did show at the meeting with Aspen, does come almost to that property line. It does encompass that access road to the oil well. There are agreements with the oil company that we can share access – we just cannot prohibit their access. So our building expansion that is currently in development actually extends about 100 feet north of here. There is limitation, as has been indicated, because there is an oil well on our property as well, that we cannot come all the way out, but it takes basically and puts our main employee entrance along that property line. As we said, in order to be environmentally sound, we did not want to add roof space and then add parking again on top of that, so we plan to put the parking underneath the building. That puts the building, at current design, about 50 feet tall. That will put a 50' building probably about 60' off that property line, with the access for the employee parking directly next to it. This is currently being reviewed by the architects, of course, on feasibility to make sure all permits are met. That access for parking is – we operate in many times 24 hours a day, seven days a week. We actually do operate the distribution center 365 days a year. That means that there will be traffic next to these houses throughout the year at 24 hours a day – not necessarily continuous, of course. But at shift changes, it will be very, very heavy. That also puts the truck docks much, much closer than it is currently shown. I will say that we also have, within that same plan, a phase two, which expands off the other end, because the comment was made that we have plenty of acreage on the other side. The shape of this property, and the need to have contiguous space, dictates that we have to expand off this core. As we move this direction, we are limited by the shape of the property. The farther we go out, that moves the employee parking almost – probably an eighth of a mile down the road from their actual workspace. So it has been reviewed.

I appreciate the comment that we can easily move this parking lot, and I appreciate that recommendation, because that's another million and a half dollar cost to us to move that

parking lot. Believe me, we've checked. It is in our plan to also do that, but not in the first phase. It is to maximize the utilization of our property, based on the shape of our property and the need to have contiguous space. It is very important for us to have the ability to expand, and that is one of our key elements – in order to know that we can expand in this site and expand without complaints.

Hitachi, if you look on their website, is very much about social structure – about giving back to the culture of the community and has been a big part of our efforts here in Norman, and we do not want to become the place for the next complaints. So that is why we continually work to do that. We have accommodated almost every one of our neighbors in some respect over the years. But we do have to reconsider if we are to know that we cannot move in one direction or the other because of incompatible neighbors. Fundamentally for us, we do view this as incompatible with our objectives. That's not an issue with the Todds, by any means. We did try to buy the property. The price was – per square foot for the land value, was actually 5% higher than was previously offered. But when it came to the home, it was asked that that price per square foot plus an additional home, which would make that request – make for that small piece well over a half million dollars. I appreciate the opportunity to talk about it. We've characterized a lot what industrial users would like, and yet I can't speak for all industrial users. But there is a big difference between wanting to live in a neighborhood with houses and others that are – homeowners like to live in a neighborhood where other homeowners live. It's the same with industrial users. That's why, when Hitachi located here, they viewed this as a planned industrial area, because the uses of the property and the expectations of the property, as well as the environment, is common among industrial users. So I think it's important to note that you can't speak for an industrial user without being an industrial user, and that is one of my key issues here. I think that's all I've got, but I appreciate the offer. We've always had a very good relationship with the City and appreciate the opportunity to actually be able to come and voice our concerns and hope for a positive outcome. Thank you.

3. Brent Armstrong, 1400 East Imhoff – We are to the west of the proposed site on the same side of the street – on the south side. We have a maintenance and storage building that is located on the far east side of our property. We have construction equipment. We're general contractors. We're in the construction business. We work on a lot of our equipment out there and it would be – I know they keep talking about Hitachi and they're showing 350 feet away, but according to the way the drawing is shown, our maintenance facility – our maintenance warehouse out there – we are about, I guess, 8 feet away from where the cars will be parked. I don't know what kind of fencing that they're proposing, but we've got a tilt-up concrete facility out there that is, as I stated, on the east side of our property. Where that vacant area is, if you look up there, that's usually full of our job site trailers, which, luckily, it's empty – that means they're all out on jobs. All of our equipment is out right now, too. But as the projects – because we run on 12 to 14 month time schedules – those come back in and they've got to be worked on and have maintenance done on them before they can go back out. With that, there's a fair amount of noise that gets generated with working on that equipment. As it was stated, there is land on the north side of the road that I think would be fitting for this project, but it seems like to me that – or to us at Armstrong – that this industrial. It's light industrial. We have the lot on the corner that's to the west of us and that is commercial and it will be developed fairly soon and it will be commercial. I can't see the need for any residential on this side. To the southwest of the project, those are all automobile maintenance and different facilities that are associated with that, so the whole west side, as well as the east side, is all industrial. I can't understand why you'd want to stick a residential right in the middle of it. That's all I have. Thank you.

4. Helen Todd, 1600 East Imhoff Road – I guess I'm the one involved with the estate. I have lived on this property all my life, except for ten years. I was born, in fact, on the property that Hitachi currently has. During the war – or before the war started, when Japan bombed Pearl Harbor, the federal government came along and took over 20 acres from my parents and condemned it. That property then was added to others and became an auxiliary landing field.

After the war was over, my parents tried to buy it back and they could not; the government would not sell it to them. They, in turn, gave it to the University and the University then was supposed to have it only for landing field purposes. So what they did was to go and buy some property on the northeast of 24<sup>th</sup> and Highway 9 and put in an auxiliary landing strip that was made of dirt. They then sold the property to Hitachi. Hitachi has been a good neighbor. They were talking about complaints about noise and what have you. They have been a good neighbor to us, as far as noise is concerned. The train track makes much more noise than they do, which is right next door. That has not been a problem, as far as noise. But then, since that time, on top of that, Highway 9 has been taken through there and the State took that and the State said, you know, we're not going to pay you much – the same as the government. We don't pay you much, but you'll get it when something happens later, you know. You can make that up by your property. Well, then the State took Highway 9 and on both sides of the road – they had property on the west side as well as the east side. And after that they widened Highway 77, which was only two lanes at the time, and they now have it four lanes, plus an additional turn lane, and they took the porch off of the house that we were living in at the time. No problem with that – you'll make up the money later on. Okay. So now I'm trying to make up some of the money. I was offered 5 cents more per square foot by Hitachi than I was by Breckenridge, but when I asked them – Breckenridge said that they would buy the property without buying the 2.5 acres – they were interested in my 2.5 acres but they would buy the property even though they didn't get that 2.5, and later on if I wanted to sell it, then they would deal with me and perhaps buy it at that time, which I thought was – I would like to live out my life in that property, if possible. Hitachi, in turn, though, would not pay me anything additional for my house or my cellar or my water well or my out buildings to help us move. We've got over 51 years of accumulated junk, but some of that would be kept and we would want to move it. We would have to buy a new house – someplace to move into and they would not give us anything for that except for the same price for our land as the other land that belongs to the estate.

I have been trying to sell this since my mother died, which was in 2002. I have not had too many offers – I have had some, but normally what happens is we have a downturn in our economy and everybody all at once becomes disinterested and so I have not had any of those come to fruition at all. So I would like to go ahead and sell it, if possible. I would like to say that I support Breckenridge and I hope that you can see fit to go ahead and change that property so that they can have it. With the current price, I would have to have something for my house. Hitachi says they will not buy it unless I sell my property also. That was the stipulation. I said you could go ahead and buy that and let us live on it. No. We would have to move out. So that was all part of the stipulation. But rather than me having to take that much money out of my pocket to buy a new house and other things – I just did not think that was a good offer. I have tried to sell it commercially. Lowes came in and wanted to put a store on the east side of town and they wanted to put it on that property. Then, again, we had a downturn and so that did not come to fruition. They would have come and asked for it to be commercial rather than industrial. So it would have been something different, even. I sold a little over 3 acres of property since my mother died, and I did not receive enough money for that. I came to the City. They said it was zoned as industrial. I said it's really good prime land for commercial and is there any chance at all that it can be zoned commercially? No, there was not. There's no way at all it will rezone. Well, within two years' time it was zoned commercial by the people who had bought it. So I would just like for you to consider the letter that I wrote and also any of the statements that I may have made. If you have any questions, I'd be happy to answer them.

5. Chairman Lewis – Mrs. Todd, I do have one question. We've heard from both sides, and you're the party that is in the middle. You are the property owner. My question is simply very blunt. Hitachi came to you and offered a price, and Mr. Vatterot's company came to you and offered a price. In your best judgment, the land that your family has owned since – I believe you said the 1940s.

Mrs. Todd – No, no. Since before the 20s.

Chairman Lewis – So how long has your family owned this piece of property?

Mrs. Todd – Well, my parents owned it for – I know it had to be in the teens. My parents were married in 1923. My father had already been married before and had two children, and he had lived in that house then. Then my mother and my father married in 1923. So it's been in my family over – since 1910. And it's always been zoned rural.

Chairman Lewis – It would be fair to say, then, this piece of property has been in your family's history for a very, very long time.

Mrs. Todd – Yes.

Chairman Lewis – And pretty close to when the City of Norman became incorporated.

Mrs. Todd – Yes.

Chairman Lewis – So, in your judgment, what do you think should happen with this piece of property?

Mrs. Todd – I think, based upon the fact that the apartments that are across the street – there was nothing over there. We get along real well with the apartments and they don't really cause that much trouble. I thought they would, but they don't. And I would like to see it to be apartments.

Chairman Lewis – And one last question. Had Hitachi come to you and been willing to purchase your land, including your home, and relocate you and your husband to a new home, would you have sold it to Hitachi gladly?

Mrs. Todd – I probably would have.

Chairman Lewis – Thank you so much for your comments.

Mrs. Todd – I've got six other heirs that are all involved, and so I really need to do something with the property.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

*Curtis McCarty moved to recommend adoption of Resolution No. R-1213-113, Ordinance No. O-1213-41, and approval of PP-1213-16, the Preliminary Plat for ASPEN HEIGHTS ADDITION, A Planned Unit Development to the City Council. Roberta Pailles seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Roberta Pailles, Dave Boeck, Chris Lewis
NAYES	Jim Gasaway, Cindy Gordon, Sandy Bahan, Tom Knotts
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to recommend approval of Resolution No. R-1213-113, Ordinance No. O-1213-41, and PP-1213-16 to City Council, failed by a vote of 4-4.

\* \* \*

Item No. 13, being:

**CONSIDERATION OF AN APPLICATION SUBMITTED BY SASSAN MOGHADAM FOR FOUNTAIN VIEW NORTH ADDITION, GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 48<sup>TH</sup> AVENUE N.W. AND TECUMSEH ROAD.**

Item No. 13a, being:

**RESOLUTION NO. R-1213-111 – SASSAN MOGHADAM REQUESTS AMENDMENT OF THE NORMAN 2025 LAND USE AND TRANSPORTATION PLAN (LUP-1213-8) TO REMOVE THE FLOODPLAIN DESIGNATION, AMEND A PORTION OF THE PROPERTY FROM VERY LOW DENSITY RESIDENTIAL DESIGNATION TO LOW DENSITY RESIDENTIAL DESIGNATION, AND AMEND A PORTION OF THE PROPERTY FROM LOW DENSITY RESIDENTIAL DESIGNATION TO VERY LOW DENSITY RESIDENTIAL DESIGNATION, FOR PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 48<sup>TH</sup> AVENUE N.W. AND TECUMSEH ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. 2025 Map
2. Staff Memo
3. Exhibit A
4. Pre-Development Summary

Item No. 13b, being:

**ORDINANCE NO. O-1213-35 – SASSAN MOGHADAM REQUESTS REZONING FROM PUD, PLANNED UNIT DEVELOPMENT, AND A-2, RURAL AGRICULTURAL DISTRICT, TO PUD, PLANNED UNIT DEVELOPMENT, FOR PROPERTY GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 48<sup>TH</sup> AVENUE N.W. AND TECUMSEH ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Memo
3. PUD Narrative
4. March 14, 2013 Planning Commission Minutes

Item No. 13c, being:

**PP-1213-13 – CONSIDERATION OF A REVISED PRELIMINARY PLAT SUBMITTED BY SASSAN MOGHADAM (SMC CONSULTING ENGINEERS, P.C.) FOR FOUNTAIN VIEW NORTH ADDITION, A PLANNED UNIT DEVELOPMENT GENERALLY LOCATED AT THE SOUTHEAST CORNER OF 48<sup>TH</sup> AVENUE N.W. AND TECUMSEH ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Preliminary Plat
3. Staff Memo
4. Transportation Impacts
5. Preliminary Site Plan
6. March 14, 2013 Planning Commission Minutes

Item No. 13d, being:

**FP-1213-36 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY SASSAN MOGHADAM (SMC CONSULTING ENGINEERS, P.C.) FOR FOUNTAIN VIEW NORTH ADDITION, SECTION 1, A PLANNED UNIT DEVELOPMENT GENERALLY LOCATED ON THE EAST SIDE OF 48<sup>TH</sup> AVENUE N.W. APPROXIMATELY ¼ MILE SOUTH OF TECUMSEH ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Final Plat
3. Staff Memo
4. Memo – Deferral of Street Improvements
5. Final Site Development Plan

**PRESENTATION BY STAFF:**

1. Jane Hudson – The application before you is actually one that you've seen before. The applicant is here for a Land Use Plan amendment as well as rezoning and placing a PUD for the entire property. You can see the subject tract here. Currently, he has got the approval already for the low density residential area designated there. The additional area outlined there is in a floodplain. If approved, the area to the north will become very low density residential, and then he will also expand out to the east in this yellow area with the low density residential. The additional application is for rezoning from A-2 to a Planned Unit Development. Again, there's the existing Planned Unit Development with this additional area that the applicant has acquired since getting the original Fountain View approved. This is currently vacant now – all these homes have been cleared out. This home will remain in the large acre lot area. This is a photo of the site looking back to the east at the corner of 48<sup>th</sup> and Tecumseh. This is looking east on Tecumseh – you've got large acre lots across the street to the north as well. This is the site looking to the east. Single family home – large acre lots back over on the east side. To the west is floodplain – agricultural area. Staff is in support of this application. The applicant's representative is here as well with a presentation and available for questions.
2. Mr. Knotts – On page 13a-6, the Pre-Development Summary, appears to be incomplete at the end.

**PRESENTATION BY THE APPLICANT:**

1. Tom McCaleb, engineer for the applicant – At the Pre-Development Meeting, there were a few people there who were a little bit concerned. One was a guy across the street wondering about wanderers. One was about taking care of some issues. And one was just taking care of stuff. After that meeting, I got a love letter from one of the lawyers and I responded to that and we now are a happy family. The issues that were a concern, particularly that landowner to the east, were some traffic and some stuff. We now have worked all those issues out and they are not here tonight. That has been resolved.
2. Ms. Pailes – I'm curious about areas that say Common Area in the north corner and along the northwest boundary. This presently is under water. Is that a concern? It's actually a pond.  
Ms. Hudson – That's going to remain is my understanding.  
Ms. Pailes – And along 48<sup>th</sup> Avenue where it says Common Area in kind of a long strip. That's presently under water, too. Is the whole common area likely to be inundated? It's not always under water, but presently.  
Ms. Hudson – Tom might be able to answer that as well, but there are actually two detention ponds there. One is for the Fountain View Addition to the south – the single family. The one to the north is for the gated adult community that you saw previously under the original Fountain View PUD that came through.  
Ms. Pailes – Is there dry land that is also common area, or is it all likely to be damp?  
Mr. McCaleb – The current pond that you're talking about stays. It will be a common area; it will be part of the amenity package for the whole project. That's a pond that Mr. Dake has manicured for a long time, and they're going to stay there for quite a while, and he wants to continue playing with his pond, so we're going to allow that to happen.
3. Mr. Boeck – Just eliminating floodplain status – how does that work? I mean, you just go ahead and say I don't want floodplain any more so I can get rid of it.  
Ms. Hudson – That was actually updated with the new FEMA maps and it wasn't taken off of the 2025 Plan. That's all we're doing is just taking that designation off.  
Mr. Boeck – What's the data as far as water elevations that says we can take that off the floodplain?  
Mr. McCaleb – The City retained a consulting firm a few years ago – I can't remember the name of the company. They went through the whole analysis and prepared the floodplain

analysis and took it out of the floodplain. It has been done by FEMA. It's done. The City adopted that process.

Mr. Boeck – I just think about the weather patterns and we talk about we're in a drought right now, but I've known that place down there to be flooded. I know we've developed other neighborhoods in what used to be floodplain by raising the elevation and saying we can do this because we get it up to a certain level. Is there a difference between floodplain and floodway?

Mr. McCaleb – Absolutely. This is not floodway. Floodway means stay out; you're going to get wet. Floodplain doesn't mean that. Floodplain means that you have the capability to take it out of the floodplain if you can demonstrate that it's not going to flood, and that's what has occurred. This whole application is just a revision of what you've already approved before. The area to the east or the south of it – the single family that we've got constructed and recorded. We've learned a lot during that construction of some of the issues you're talking about. We were digging the pond down at the bottom of 48<sup>th</sup> Street. I had below the pond to put in some CKD to solidify the bottom so it would hold the water. At the elevation that we had projected to be CKD, it was H<sub>2</sub>O. It was water and it was the constant level, so we've maintained that elevation, and that was last summer when it didn't rain at all. So we have found the water table. It is wet, but not wet above it. We're working with that elevation.

Mr. Boeck – How does that work as far as floodplain insurance, too?

Mr. McCaleb – That's underground. That's sub-surface conditions. Sub-surface doesn't have anything to do with floodplain. It's just working with the geology of the land. It's not in the floodplain. That was just something that got overlooked before by staff, and now this is correcting that. It was done quite a while ago; the Comp Plan was never advanced to that approval. It's a clean-up area for the Comp Plan right now. As far as the engineering, that's resolved and one. The pond that Ms. Pailes talked about has to be fed – he has to feed water to that pond, because it doesn't get water naturally.

4. Sean Rieger, representing the applicant – Most of the questions on this have been stormwater and you've probably just heard all the answers, so I'll be very quick on this. You're being asked tonight – you see on the left this was approved unanimously by the City Council in that configuration on the left. So that is done – that is approved – that's a plat that is complete. The only thing that happened here was this developer purchased additional land right next to it, so they're back tonight. I've tried to diagram it for you. This little piece right here is being changed to that – so two large lots instead of a whole bunch of little ones. This is the other piece of land that he bought – so if you can imagine, we're kind of taking that little piece right there and sticking it over here, and then the rest of the new land he bought is very large lot single-family homes with one little cul-de-sac gated entry. That's it. That's the extent of the change you're being asked to approve tonight. The rest was already approved previously. I won't waste your time to go through all the rest. I'll quickly glance through. These were some images of what you already approved last time. This was already approved, platted by City Council – basically a senior living area. I'll leave it at that to save your time. Happy to answer any questions.

5. Mr. McCarty – We've had issues with stacking in entries of gated communities. Has the design or the entryway been discussed with City staff, and where is that in the process for this gated community?

Mr. Rieger – Well, I'll tell you what's happened with gated entries – the short answer to that is this one will be in line with what staff requires us to do gated entries as. That all changed with Ashton Grove. If you'll recall, Ashton Grove did a gated entry that a lot of people didn't like – still don't like – and they're still in the courts about it today. But after Ashton Grove, the City adopted a standard. So we're done with this – we're going to find a standard for a gated entry and that's what it's going to be and that's what you're going to do and that's what we're doing.

**AUDIENCE PARTICIPATION:**

1. Tracy Calvert, 4831 West Tecumseh Road – It's just to the northeast of this area that's being built. I would like to just show you some pictures of last week's rain that we had. And this is the ditches that they're building. And that's just one of the three. I don't know exactly how deep they are, but I know if I stood in the middle of it, it would cover my head. And that was just four inches of rain. My concern is I am in the floodplain and it has come into my garage. My only concern is, with me living in the floodplain, and them building dirt up as high as they have so far. I don't have anything wrong with them building there. But the water that's going to be standing – and if we got 10 inches of rain – in Oklahoma, you can get some wet springs and falls. Is it going to flow over into the creek and cause a lot of mosquitoes with the livestock and all that? That's our biggest concern. We want to see if the City will help flow that water down towards the river where it should go naturally. That's all my concerns. Thank you.

2. Ms. Pailles – Could you indicate where the ditch is that you had pictures of?  
Ms. Calvert – The pictures that I had were in these retaining ponds that were all along here, and they're completely full.  
Ms. Pailles – That's my experience.

3. Mr. Gasaway – Mr. Chairman, since that has come up, can we address that a little further? It seems like there are two totally different opinions and we need to make an educated vote. I think most of us have driven along there and seen that. But you all seem to think there's a solution. Could you elaborate just a little further?

Mr. McCaleb – We're not finished, yet. The construction is done for the single-family with the ponds, and now we're interconnecting the other retention ponds. This is not finished. This structure is built. This is not finished. We haven't connected all this into there. And we haven't connected all the storm drain systems into this piece of land. But this whole designed system has been designed, reviewed, and approved to detain the water before it's released down here – it's off the picture here. It comes across the land owned by the horse ranch. I've watched that during the rains, too, and it stays nicely. Because that gentleman we met with a long time ago, when there was a lot of concern about flooding in all this area, and we had to make sure we accommodate his horses and the way he services horses. And we did that. He has been a real gentleman; he hasn't complained. He said his problem just does not exist. If you recall, at one point in time we suggested no detention here – that we shouldn't have any detention and that hydraulically it would be better off if the water would get on down to the river and act as a bypass. And we demonstrated that to Council that we should do that – it's a better hydraulic solution. Council rejected that and said put your detention in. We have. And so that's why it's there. And it work. And we haven't finished the whole project, but we will.

4. Chairman Lewis – The detention pond that looks like it is to the south and the west – that is actually not in place, then, currently as we speak?

Mr. McCaleb – It's not finished. We had to enlarge this area right here. We had to dig this out and we're putting in some walls along this thing to contain it. This is not finished, and all the infrastructure is not completed yet. When this is built, this cul-de-sac will take this water and this will be an underground system and discharge into that pond. There is an existing pond on the east that Lander owns. We've met with Lander. We're going to put a structure there and we're going to take the water that goes down to a hole, pick it up in this pipe, take that water over and into this system, so his existing pond will maintain the way the pond was designed and built. In doing so, he has about six pine trees that he was concerned about, and we have agreed to relocate those six pine trees way to the west on his other farm. So that took care of that issue. He was concerned about his pond; he built a pond that doesn't drain. There's no structure; it just fills up and spills out around both sides. So he was concerned about his pond being overloaded. We surveyed it, got the elevations, and came up with this solution. We did not have this in there before. We added it. It's a 24-inch RCP. He agreed and let us put an inlet right there to take his water and let his pond continue to work as it has and the water that drains

down his access road to his pond will be picked up in this inlet. There is surface water that drains from his house that goes back to the west, and in this area right there we would do nothing to impede that water from going back to the west. So it would go as it is today. That was one of his concerns. So we're not going to build any structure or berm or anything from about right there back to Tecumseh Road. What sheds to the west will continue to shed to the west. Drain across these lots, picked up into the street, and taken like this and then work its way down. As the lady said, it will be detained, retarded, and slowed down.

Chairman Lewis – And since that system is not completed, it's not functioning the way it's intended to function, and that's why we're seeing the pictures that Ms. Calvert showed us – the water is being retained in other places.

Mr. McCaleb – That's possible. It's probable. I didn't see her pictures.

5. Ms. Gordon – So do we know when that's going to be done? Is the manipulation of this area causing more flooding for what she's going through now, or it hasn't affected it at all? Does that make sense?

Mr. McCaleb – The timing – the change order plans that we turned in for this project – and you're approving the final plat tonight – those plans – we went with a change order to amend. Those plans were approved today. So I can release my contractor to finish. I had to pull him off the site to make sure we got approved plans so they had been reviewed, instead of trying to do the work before the approval had taken place. So, if you've driven by there, you've seen some equipment sitting there, doing nothing. I want to get them doing something and finish up.

6. Mr. McCarty – So the entryway to the adult active community – north of that – that area has been raised approximately 3 feet recently. They keep bringing more and more dirt in. Going north, that drops off significantly to where the pond is up on the corner. Will that pond always stay there?

Mr. McCaleb – Yes, it will. There are two ponds there. There's a north pond and there's a little pond south of it. The north pond will stay.

Mr. McCarty – With that grade elevation – it drops 3 to 4 foot – it's pretty significant. Are all those lots along 48<sup>th</sup> going to be raised up to that same elevation?

Mr. McCaleb – This one will not be and this one will not be. This one will have some raised here. This lot here will be.

Mr. McCarty – My concern is the bar ditch on 48<sup>th</sup>, because right now in this last rain it's filling up and lapping onto 48<sup>th</sup>. There's nowhere for that water to go. So how is that going to be addressed? I'm not worried about the detention ponds; those are going to flow and do what they're doing. But the water in the bar ditch doesn't get to the ponds.

Mr. McCaleb – No, it does not. The water in the bar ditch of 48<sup>th</sup> Street does not get into the ponds. That's correct.

Mr. McCarty – So where is it going to go?

Mr. McCaleb – It will go where it goes. I mean, 48<sup>th</sup> Street has no grade whatsoever, and for years we've had the City and the County out there cleaning the bar ditches. And the bar ditches – it doesn't take much.

Mr. McCarty – In this last rain, I mean it wasn't dangerously, like hydroplaning type, but it was getting pretty close to that.

Mr. McCaleb – The plat for this will have the same responsibility as the plat for this, and that is construction of that system – that road – is going to be deferred to a massive City project to build the whole road system all the way from there down to a mile, so it does function, with curb and gutter and with proper drainage. That's not an arterial road. It is a project that is planned. We deferred pavement for Fountain View. We deferred pavement for Las Colinas. And the City has elected to make a comprehensive plan. I don't know the date, but it's not going to be an arterial design.

Mr. McCarty – That intersection is going to be signaled in August.

Mr. McCaleb – If you'll recall, when Ashton Grove was done, that half mile was not to be built – period. So I can't answer that question. But in the years past, what we've been able to do is get the County up there to clean up the bar ditches. And when they clean the bar ditches out, it drains better, but it's very flat.

Mr. McCarty – Lastly, any traffic concern with the proximity to the intersection of that exit of the gated community?

Mr. McCaleb – No.

Mr. McCarty – You're not very far from where the stop light is going to be.

Mr. McCaleb – There is a transition – a striping transition in this area and the traffic engineer has requested that we restripe that, so that's our commission to restripe that to make sure that is accommodated.

Mr. McCarty – That's not there currently, is it?

Mr. McCaleb – It is. It's a painted transition.

7. Mr. Boeck – I have concerns about drainage in this part of town, but City Council has already approved what's there, so what we're doing has no bearing on issues of drainage. It just has to do with moving some land around and changing the zoning.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

*Tom Knotts moved to recommend approval of Resolution No. R-1213-111, Ordinance No. O-1213-35, PP-1213-13, the Preliminary Plat for FOUNTAIN VIEW NORTH ADDITION, A Planned Unit Development, and FP-1213-36, the Final Plat for FOUNTAIN VIEW NORTH ADDITION, SECTION 1, A Planned Unit Development, with deferral of street improvements for 48<sup>th</sup> Avenue N.W., to the City Council. Curtis McCarty seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailles, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion to recommend approval of Resolution No. R-1213-111, Ordinance No. O-1213-35, PP-1213-13 and FP-1213-36 to City Council, passed by a vote of 8-0.

\* \* \*

Item No.14, being:

**CONSIDERATION OF AN APPLICATION SUBMITTED BY CHRISTIAN BROTHERS AUTOMOTIVE FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE IMMEDIATELY NORTH OF ROCK CREEK ROAD.**

Item No.14a, being:

**O-1213-40 – CHRISTIAN BROTHERS AUTOMOTIVE REQUESTS REZONING FROM PUD, PLANNED UNIT DEVELOPMENT, TO C-2, GENERAL COMMERCIAL DISTRICT, FOR PROPERTY GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE IMMEDIATELY NORTH OF ROCK CREEK ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Staff Report
3. Site Plan
4. Project Proposal

Item No.14b, being:

**PP-1213-15 – CONSIDERATION OF A PRELIMINARY PLAT SUBMITTED BY CHRISTIAN BROTHERS AUTOMOTIVE (SMC CONSULTING ENGINEERS, P.C.) FOR CHRISTIAN BROTHERS AUTOMOTIVE ADDITION, A REPLAT OF PART OF LOT 1 AND ALL OF LOT 2, BLOCK 1, LITTLE RIVER GREEN ADDITION, A PLANNED UNIT DEVELOPMENT, GENERALLY LOCATED ON THE WEST SIDE OF INTERSTATE DRIVE AND NORTH OF ROCK CREEK ROAD.**

**ITEMS SUBMITTED FOR THE RECORD:**

1. Location Map
2. Preliminary Plat
3. Staff Report
4. Transportation Impacts
5. Request for Alley Waiver
6. Request for Waiver of Sidewalk
7. Preliminary Site Development Plan
8. Greenbelt Commission Comments
9. Pre-Development Summary

**PRESENTATION BY STAFF:**

1. Jane Hudson – The application before you is for rezoning from a Planned Unit Development to C-2, General Commercial District. This is the subject tract on the north side of Rock Creek Road. As you can see, there's Office to the north. On the other side of Rock Creek there are some apartments and there's some C-1, a strip mall there to the south. There is a single-family home to the north. This is a photo of the site looking to the north. This is looking over to the west. There's the walking trail there and a little further on will be where the neighborhood Wal-Mart store is going to be. This is a photo of the commercial strip mall that is south of Rock Creek Road, and you can see the multi-family area there in the distance. Staff does support this rezoning request. The applicant's representative is here if you have any questions of him. I'd be happy to answer any questions you might have.

**PRESENTATION BY THE APPLICANT:**

1. Tom McCaleb, representing the applicant – This is a fairly simple application on a very difficult piece of property. In your staff report, I think staff is recommending approval with an issue on the sidewalk. There's a sidewalk that's normally constructed along the frontage of the property. This piece of property has no connection to sidewalks, either north or south. South is requesting that the sidewalk be accommodated. My client has agreed to build the sidewalk to nowhere, or we will be glad to put up a bond and let the City build it when they build the rest from somewhere. So we don't object to constructing the sidewalk. We think it's silly to do that right now, because it doesn't connect to nothing and sometimes when you connect to nothing,

when you try to connect to something, it don't work very well. So we're obliged to either build it or give you a cash surety and a bond of some sort to give that guarantee that it can be given to the City so that when they construct it – and I believe staff said they may construct one starting at Rock Creek Road and going north one of these day, and they'll have the money to put that in then. So we're agreeable to go either way. So that exception of the sidewalk, we will gladly dismiss that requirement and acquiesce to either way. We're not going to ignore the sidewalk; it just don't go nowhere. I prefer it to be hooked up to something. Anyway, my client is agreeable to either put it in or give you the surety to guarantee it be put in when the City builds the sidewalk from Point X to this location to continue it. With that, Mr. Chairman, I'd be glad to answer any questions.

2. Ms. Pailes – This drains into the pond that is part of the park.

Mr. McCaleb – That is correct.

Ms. Pailes – Any place with a lot of cars parked, the parking lot is just greasy. Is there any plan to do something to filter the water before it hits the City pond?

Mr. McCaleb – If you'll look in your staff report, I think you'll see an accommodation. There's a report about how they operate their facilities. "The City of Norman will find that we operate our stores to the highest possible standards. Our shops floors are cleaned with a Zamboni style machine and no pollutants are ever released into the environment. All automotive fluids are contained in federal and state compliant EPA containment vessels." So they contain all that stuff. Grease jobs and oil changes is not what they really work on. They only work on a car or a truck that's in bad shape and has an emergency to get in and get out. Their main support is electronics in your automobile – fixing your computer, fixing that kind of stuff. That's the main forte. But as far as taking care of anything that could get in the pond, they have assured that that's not going to happen. It's on page 14a-7.

3. Ms. Gordon – I have a quick question. The sidewalk to nowhere. So, if I understand you correctly, you guys are willing to pay to build it now, when there's no other sidewalks around, or when the City decides to finish their sidewalks later, you'll be happy to pony up the money then to pay for your portion of the sidewalk.

Mr. McCaleb – We'll put the money up now. We'll give the cost – it's a 5-foot sidewalk and so the cost per foot – we'll give them a CD, a surety or a bond – any surety that satisfies staff and give it to them right now before we do the final plat – or at the final plat, which is the next step.

Ms. Gordon – And is the reason they want you to build it now is because potentially, if they decide to wait and build it later, if the cost increased, then the money you put up now won't cover the cost. Is that the reason?

Mr. McCaleb – Well, that's why you put the bond. We got the cost per foot is what the City allows and so the cost per foot – that number we agree to and say we'll give them that check, which we have done before.

4. Mr. Danner – The sidewalk is part of the public improvements and, thereby, it's part of the platting process. However, visiting with the City Engineer, we have agreed to what we would classify as a deferral. If they'll post the money, we'll take the money, apply it to this part of the property with the project that we intend to do south of this, under the overpass.

5. Mr. Boeck – I guess the one question I have – it gets back to the drainage thing, because there's a big pond at that corner and I've almost considered it kind of a wetlands, and I was driving around there looking at where that stuff goes, and we've got that big creek and wetlands that run all the way along 36<sup>th</sup>, all the way down to the river from there. It kind of starts up there. I guess that would be the question I have. They say they're a real clean company and they use a Zamboni, and that's great. But how do we know that they're not going to leak stuff – because car repair places just leak stuff – into parking lots, and parking lots go into drainage ditches, and drainage ditches go downstream.

Mr. Danner – I know, through the Building Officials, there will be required a mud and grease trap that collects the fluids from that facility.

6. Ms. Pailes – I'm not contesting that or anything, but I've watched just a parking lot – I mean, it's not a mechanical parking lot – cars are just parked there – that killed a creek. Twenty years ago it had fish in it. It had herons. It had everything. Now it's got grease and oil. And it's not from things done there; it's just from cars parking there and dripping the stuff that cars drip and it runs straight into the creek with no filtering, no bales, no swales, no nothing. And it has ruined it. Any parking lot next to a body of water is going to impact that body of water if you don't put a swale in between it. I'm sorry – it just does. There's nothing that says legally you have to do that, so it's okay.

Mr. Danner – We understand that this was intended for commercial activities, so there will be parking no matter what facility it is. I do know the detention pond was designed – and part of the contractual agreement with the City is that storm water would go into that detention pond from this facility.

#### **AUDIENCE PARTICIPATION:**

1. Neil Suneson, 1803 Peter Pan Street – Ms. Pailes and Dr. Boeck have sort of taken the wind out of my sails a little bit. But I would like to read something from the floodplain permit application number 517. It states that on March 15, 2010, the Floodplain Permit Committee approved floodplain permit blah-blah-blah-blah. These permits were for the construction of the Rock Creek Road overpass, the Brookhaven Creek Wetlands and improvement project, and access road from Interstate Drive to the S&S Family Properties land on the west side of the retention pond. And that's the Brookhaven – capital B – Creek – capital C – Wetlands – capital W. When I see the word wetlands, I kind of get interested and especially when it's a capital letter – it sounds like this is some sort of officially designated wetlands area. My concern, very similar to Ms. Pailes and Dr. Boeck here, is that any car repair facility is going to have fluids. They're going to have cleaning chemicals – it's going to have grease, be it in the parking lot, be it under the shelter where they're working on cars. My concern is that there be something to keep rain water washing on the parking lot – anything accidentally that gets hosed into the parking lot – be prevented, in some way, from getting into evidently what is officially designated as a wetlands. I was over there as part of the Floodplain Permit Committee process and there are ducks in that pond. There are turtles in that pond. I don't know what else is in that pond, but it is a lively place for wildlife. Thank you.

2. Bobby Sharp, 201 NW 63<sup>rd</sup>, Phillips 66 Pipeline Company – We have a 12-inch cross-country line that goes along the front of the property that has been an oversight in this project. We have not reviewed any of the plans to this point to know exactly what is going to be put on top of us – the sidewalk, the landscaping, and also from what I've seen, preliminarily, the building may be too close to this pipeline, because it is a DOT pipeline.

3. Harold Heiple, 218 E. Eufaula, attorney for the owner – I asked to speak last because I knew of two potential problems with this application, and I've heard a third one now. As the attorney for the owner, who has a contract to sell this to Christian Brothers, perhaps I can give you some historical background, and also some attention to the three points that have been raised tonight. If you will look at the map on your page 14a-1 – let me give you a little historical background. The proposed tract for Christian Brothers along the service road is shown cross-hatched called the subject tract. The staff report says that zoning to the west is A-2, Agricultural, but if you will look at the map it requires some explanation because the irregular shaped tract immediately left of the subject tract on the map is actually a drainage pond with a City-created trail and park area surrounding it. That's what Neil Suneson just had reference to. I would tell you that that is there and in the configuration that it is because of agreements that my clients made at the outset in order when Bob Hanger was the City Engineer and trying desperately to upgrade the status of this more from a simple drainage structure to what it has become – both

wetlands and something that you could have people walking around and enjoying. And as it says, it's a lively place.

I hadn't heard the concern about the drainage from the parking lots, but – and I don't dispute that cars in parking lots, some of them, drip fluids. What better tenant to have in there than one who uses a Zamboni on his interior shop and certainly has the capability of – upon being made aware of don't let your parking lot foul up the pond over there – and the pond is needed for the drainage of this property as well as the drainage of a whole lot of other area. It's draining from here to Texas and back.

Ms. Pailes – If the Zamboni uses soap, that's actually another concern.

Mr. Heiple – Well, thank you. I'm glad you pointed that out. We'll take that up with CB. You can't – one thing you can't do, Ms. Pailes – you can't create anything on that lot – any use at all without a parking lot. Because if somebody doesn't have a parking – well, I take it back. The genius who bought this thing first and had the sense to plat it as a PUD for a tree farm, which enabled him to absolutely make a killing when the City condemned it, as opposed to being – it was platted, as opposed to being in its A-2 configuration – that might not require a parking lot. But it never was a tree farm – never will be a tree farm. But you've got to have a parking lot. So let's, as Mr. McCaleb has said, he's talked to the Christian Brothers people about the sidewalk, and I'm sure we can address things that will at least do everything we can to mitigate any problems from the parking lot. I'm not going to say that there won't be some problems, but if you're going to lay that on me, let's go down and shut Highway 9 down, because it's tearing up Lake Thunderbird. Being realistic and practical and as honest as we can, I think that, all things considered, the applicant who proposes to go in there is probably best equipped to try to maintain the integrity of that pond of anybody that we could possibly put in there.

The tract was created because of the fact that the City did not have the money that it needed to pay for the land that it needed to condemn in order to install what was first the bridge to nowhere and to widen Rock Creek Road. And because they paid so much money to the former owner of this tract, they did not have the money to pay market value to my clients, so this is where this very unique contract in 2009 came from between my clients and the City – the likes of which you've never seen before and probably will never see again in the City of Norman. But, among other things, our clients agreed to take this particular piece of land as compensation – take the title to it directly from the former owner, rather than being paid by the City of Norman for all of the land which the City acquired, much of which was this drainage pond – drainage structure. You see, the City now owns that. The City now owns the land that widened Rock Creek Road and relocated Rock Creek Road. And, because of that contract, at the time the City Council colored the whole area to the west – all the way over to 36<sup>th</sup> Avenue – the 27 acres remaining that my client owned originally – colored it red on the Comp Plan with the understanding that it would be – it was intended to be commercial and included this piece in the same manner. So the intention of the City for the last four years has always been there could be solid commercial development both on this tract and on the remaining tracts to the west. Now, there was no rezoning done on the other tract, because we did not know what uses might be made of the other 27 acres. And the first that happened on that was recently when the 5 acres at the corner of 36<sup>th</sup> and Rock Creek was rezoned and was purchased by Wal-Mart where they're constructing a supermarket. This, likewise, requires a C-2 rezoning and, as the staff report says, the staff supports the rezoning, because it's consistent with the 2025 Plan and other developments along the service road. As part of this, as a matter of fact, this applicant is required as a part of this contract, to build a public street along the north boundary of this which will connect the service road to the interior piece to the west, and that's because the City demanded that, when they gave Wal-Mart two curb cuts on its five acres out on the corner, that there be only one other curb cut all along Rock Creek Road for the rest of this tract. One curb cut for 20-some acre tract is most unusual, but my clients agreed to that, because there was this agreement that the street would be built out – not at City expense – but would be built out privately to the service road in order to have further access – ingress and egress – to the interior property that still remains to be developed.

The second question, about the sidewalk – I was the one who put in a letter to the City asking for a waiver. My client is not the applicant; my client is the seller. But I put in a request for a waiver, and my justification was all the conditions and facts that went along with the 2009 contract. I won't belabor you with all of it, but it's on file with the City, and you may even have a copy of the application in your book – I don't know whether you do or not. But the point is that, while City staff – particularly the Engineering Department – wants a sidewalk out there, and they say they want to connect from the south, as they have acknowledged, they can't point to any plans that are now appropriated in any project that will guarantee that there's going to be a sidewalk built under that bridge to connect to the south boundary of the property. I said to them let's just, at best, bond it so that if you ever do get one in the next five years the money will be there and this client can build it on up. But, because of the current situation on capital funds in Norman and the priority of spending for those capital funds, I would be very surprised if the City does, in fact, build a sidewalk under that bridge to connect to the south road. If they do, this piece of property then will have a sidewalk along its east side. If they don't, then the money will ultimately come out of escrow, like it does on any deferred construction project. So that was the second item that I wanted to discuss with you.

The third item I found out about at 4:30 this afternoon, and that was the statement by Conoco that this building may be too close to their pipeline. It was the first we've heard of it. I tried to go online to the City's website to download some aerial photographs and the website was down for maintenance – the map site was down for maintenance this afternoon. I did go out there in my effort just about 5:30 to take some pictures to show various configurations. Make a long story short – and I've got a copy of the 1952 easement that the gentleman from Conoco was talking about here and I don't believe that – well, I know it doesn't say anything at all about a requirement for a 50' separation between the pipeline and a building. When you look up and down the road, you can see examples that there certainly are buildings that are closer than 50' to this thing. You can certainly see that the supports for that bridge, which is immediately south of our tract and go quite deep in the ground, are certainly within 50' of where this pipeline is going to go. As a lawyer standing up here talking about harmonic waves, I know just enough to know that maybe sometimes they can rattle the ground and tear up a structure and if you get harmonic waves out of a bridge structure, it could do just as much damage to a pipeline. So the bottom line is I don't agree with Conoco's belief that they have a legitimate complaint about the proximity of the building to that. But I've learned that, in a situation like this, always write the other side – which I'm going to give the man my card tonight as soon as I leave this stand – and I'm going to write the Conoco lawyers and I'm going to say, okay, here's the facts as I see them and here's the law that I believe applies, so you tell me what you disagree with or if you do disagree with any of this, and let's try to resolve it. Because the one thing I learned a long time ago is, if there is going to be litigation that my client is likely to lose, I want to know about it up front and not after the jury comes in, and if that be the case, make every effort to settle it. But, if I'm correct in this, I want Conoco to realize that and acknowledge it. So we will address that, just as we will address the sidewalk. By the time we get to the City Council, we'll have the sidewalk issue taken – and, by the way, the City Engineer told me, when I suggested the business about putting up a bond for the sidewalk, that that was satisfactory as far as they were concerned.

The reason I'm standing up here is to say please consider, from the Planning Commission requirements and the subdivision regulations, this application and don't get hung up on either the easement that's talked about or the sidewalk. Now, the third thing that's come up that we will also have to say will be resolved or addressed before we get to the City Council is going to be this question about the parking lot possibly polluting the pond over there. I can't guarantee 100% compliance, but I can tell you that these people will work in good faith and good effort and do a better job than anybody else would do. So that's the best I can say. With that, I would respectfully second the request that you recommend approval to the City Council. Thank you.

**DISCUSSION AND ACTION BY THE PLANNING COMMISSION:**

1. Ms. Gordon – I just want to mention that I'm not comfortable voting yes on something when there could potentially be a 12-inch – this isn't like an issue of whether or not we put in a sidewalk and when we put one in. We're talking about a potential pipeline here that we're not sure if we're going to interfere with or where it's at, based on you going out there and looking at plans from the 1950s. I mean, that's a lot of maybes.

Mr. Heiple – I said that there is no reference in that easement to a 50' required separation between a structure and the pipeline, and there's not. I've got a copy of the easement here. In my opinion, our building site is exactly in conformance with all applicable laws and regulations, including what is required under the easement.

2. Chairman Lewis – I want the City to address, specifically, the pipeline and was that taken into consideration when the application was reviewed?

Mr. Danner – If I'm not mistaken, a representative was at the Pre-Development meeting regarding the pipeline, so they were aware of the platting process.

Mr. McCarty – If you read the email, it's from the City to them dated back in February. They knew it was there.

Mr. Danner – The pipeline is shown on the preliminary plat.

Chairman Lewis – What is the City's stance on this, again?

Mr. Danner – City's stance is recommending approval. What we were objecting to was the waiver of the sidewalk. That was the only objection. We were in favor of the waiver of the alley.

Chairman Lewis – Is the City recommending approval, knowing full well that the pipeline is underneath this piece of property?

Mr. Danner – That's correct. From our understanding of what the engineer has shown is that the pipeline is near the frontage road – the location of it. This property has been previously platted with the plat filed of record relating to this property. So this is news to me in regards to the fact that they have come up with the 50' setback requirement.

Chairman Lewis – I guess, again, I'm clarifying the City was aware that this pipeline was there when this was proposed.

Mr. Danner – Yes. Pipeline is north/south, goes from Sooner Fashion Mall all the way up to probably Tecumseh Road and beyond, possibly.

3. Mr. McCarty – He didn't say 50', but if you look at what was presented to us, the pipeline goes behind some other buildings. It looks like it is within 10 or 15'. I would say that, if there's a 50' easement, there are a lot of buildings that have been built recently that are not complying with that.

Mr. Danner – If I'm not mistaken, there was a house on this property originally that was more than likely closer than that 50'. It is shown. We're aware of the pipeline.

4. Mr. Knotts – Do we need to include in this some recommendation for how the sidewalk is treated? Whether it's built or waived?

Ms. Messner – You're welcome to word the motion however you'd like. So if the person that makes the motion wants to stipulate that a bond be posted, or the sidewalks be put in prior to acceptance of the final plat – however you want the motion to read. Make the motion that way.

Ms. Connors – I think the question, Leah, is if we don't make the stipulation for the bond, and waive the sidewalk, then they don't have to put up the bond. That was the question.

Ms. Messner – If you make the motion that's written in the agenda book, the sidewalk would be waived.

Ms. Connors – And the bond would not be required.

Ms. Messner – So you would want to take that part of the motion out.

5. Mr. Gasaway – I will make the motion to approve Item 14a, and add to that, since there's some concern about the pipeline, but we want to move this project on and not hold it up, subject to the meeting of the actual legal requirements of the pipeline agreement.

Chairman Lewis – Let me ask clarification. I don't mean to hold this up, but that was my specific question for Mr. Danner, and maybe Leah wants to comment to this – hold on, Mr. Heiple. Maybe Leah wants to comment to this. That's why I asked specifically if staff was aware of this pipeline and if it met all the requirements of their proposal.

Ms. Messner – I don't want to put words in Mr. Danner's mouth, but staff is certainly aware of the pipeline and has reviewed its location prior to bringing this item to you all tonight. I do not believe staff has reviewed the easement that's been mentioned.

Mr. Gasaway – So do we need to address the easement?

Ms. Messner – That would certainly be your option to do so.

Mr. McCarty – Leah, if we approved it how it is as 14a and it moves on to Council, the pipeline is going to be addressed before any final plat could ever be done. If there's a building in violation of an existing easement, it would not be allowed to be permitted. So, really, we don't need to address that at this point, the way I understand it – but we can. I'm just saying that that's how it would work.

Ms. Messner – While the City is involved in this process, it's certainly an issue between the easement holder and the property owner and they have to come to a meeting of the minds and comply with the terms of the easement. Staff has not reviewed the easement, cannot speak to what the easement does or does not require. So staff is in the position of recommending this application tonight based on our code and our requirements, but if they then want to build this building and it violates the terms of the easement, that would be something that those two parties would have to resolve amongst themselves.

Mr. Heiple – That's why, Jim, I would encourage you and ask you to please make your motion subject to compliance with City of Norman regulations and laws with respect to pipelines. But don't make it subject to the easement agreement, because the chances are very, very good that two lawyers are going to disagree and they're going to end up in litigation. We'd like to move this forward and put the burden – if they think they've got a lawsuit and we don't, let them take us to court. But if you'll make it just subject to compliance with City regulations and laws regarding pipelines, that's fine.

Mr. Gasaway – I don't even think we need to do that; that's just assumed.

*Jim Gasaway moved to recommend adoption of Ordinance No. O-1213-40 to City Council. Curtis McCarty seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailes, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to recommend adoption of Ordinance No. O-1213-40 to City Council, passed by a vote of 8-0.

6. Mr. Heiple – Just for the record, we have no objection if you remove the waiver of the sidewalk requirements from your recommendation. That way you're not recommending one way or the other on that, and it lets us go forward and work out whatever we'll work out. Because it's either going to be built or it's going to be bonded. But if you just remove that from your recommendation, then you're not recommending a waiver of our sidewalk requirements.

*Curtis McCarty moved to recommend approval of PP-1213-15, the Preliminary Plat for CHRISTIAN BROTHERS AUTOMOTIVE ADDITION, with waiver of alley improvements, but that the sidewalk bond is not waived, to City Council. Roberta Pailles seconded the motion.*

There being no further discussion, a vote on the motion was taken with the following result:

YEAS	Curtis McCarty, Jim Gasaway, Roberta Pailles, Cindy Gordon, Dave Boeck, Sandy Bahan, Tom Knotts, Chris Lewis
NAYES	None
MEMBERS ABSENT	Andy Sherrer

Ms. Tromble announced that the motion, to recommend approval of PP-1213-15, with waiver of the alley improvements, but no waiver to sidewalk bonding, to City Council, passed by a vote of 8-0.

\* \* \*

Item No. 15, being:

**MISCELLANEOUS DISCUSSION**

None

\* \* \*

Item No. 16, being:

**ADJOURNMENT**

There being no further comments from Commissioners or staff, and no further business, the meeting adjourned at 9:17 p.m.



---

Norman Planning Commission