

PLAT NO. S/D 69-102 MAP NO. 5850

NAME UNIVERSITY GARDENS

LOCATION Northeast corner of 21st Street and Oliver

ENGINEER Baughman Company

OWNER Seldin Homes, Inc.

APPLICATION FILED 11-24-69

SKETCH PLAT FILED None

PRELIMINARY FILED 11-24-69

S/D ACTION 12-4-69 Approve

FINAL FILED 12-29-69

S/D ACTION 1-4-70 Defers = 2-5-70 Defers = 3-5-70 Approve

MAPC ACTION 3-12-70 Approve

* " " 7-9-70 106 pgs

BCC ACTION 2-2-71 Approve etc de-vel line

RECORDED 3-10-71

REMARKS

* MAPC ACTION 1-14-71 Approve

* MAPC 2-11-71 Reapprove

S/D 69-102 - UNIVERSITY GARDENS
Northeast corner of 21st and
Oliver. Baughman

DATE

S/D	COMMITTEE	Walter Approuve	12-1-69
"	"	Gene D. Fisher	1-8-70
"	"	Walter Approuve	2-5-70
"	"	Walter Approuve	3-2-70
*	M.A.P.C.	Refer	7-9-70
*	"		
	B.C.C./B.C.C.E.	Approved; except 2-2-71 see notes; return to map	
*	map	Approved	1-14-71
	map	Reapproved	3-11-71

Map No. 5850
Sec. No. 1
Twp. No. 27
Range 1 E

Subdivision Report and Progress
S/D No.: 69-102

Name: UNIVERSITY GARDENS

General Location: Northeast corner of 21st Street and Oliver

Owner: Seldin Homes, Inc. - % Edward R. Johnson
Address: Wheatshocker Apartments, 4000 E. 17th Phone: 682-1589
Subdivider: SAME % W. P. Higgins
Address: 1st National Bank Building Phone: FO 3-6148
Engineer/Surveyor: Baughman Company
Address: 2522 East Kellogg Phone: MU 3-7431

Application Received 11-24-69
Conf. with Applicant None
Sketch Plat Received None
Present Zoning AA IC & B
Proposed Zoning Same
Letter of Intent N/A

FINAL PLAT RECEIVED 12-29-69
S/D Comm. Action 1-8-70 Refer
2-5-70 Refer = 3-5-70 Approve
Dept. Report on Final 3-6-70
* M.A.P.C. ACTION 3-12-70 Approve
Dept. Report on Final 3-13-70
Letter on Irons Received
Title/Taxes Rec'd & Reviewed 6-5-70
Final Review 1-28-71 2-12-71
Referral to B.C.C. 1-28-71

PREL. PLAT RECEIVED 11-24-69
S/D Comm. Action 12-4-69 Approve
Dept. Report on Prel. 12-8-69

**B.C.C. ACTION 2-2-71 Approve exc. de-vel lanes; ref. to Map
Recorded 3-10-71

TRACING PROGRESS:
Received 6-4-70
Released 2-18-71
Received _____
Released _____

Comments:

ASSOCIATED CASE DP-8 and 7-1099
* - MAPC ACTION on 7-9-70, Refer
- Dept. report: 7-10-70
- MAPC ACTION on 1-14-71 Approve
- Dept. report:
-
** Mapc ACTION on 2-11-71 Reapprove
2-18-71 Released tracing for recording to Bill Broun

REGISTER OF DEEDS
SEDGWICK COUNTY, KANSAS

UNIVERSITY GARDENS

ADDITION was

filed for record on March 10, 1971

R-2 7-16

Book 78

vh

John Hale

Register Of Deeds

T9-328

RESTRICTIVE COVENANTS

These restrictions and covenants made this 20 day of November, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real property described as:

A tract in the Southwest Quarter (SW1/4) of the Southwest Quarter (SW 1/4) of Section 1, Township 27 South, Range 1 East of the 6th P. M., Sedgwick County, Kansas, beginning at a point 60 feet East and 951.08 feet North of the Southwest (SW) corner of said Section 1, thence East 190 feet, thence South 251.38 feet, thence East 1048.44 feet, thence North 626.95 feet, thence West 1047.5 feet, thence South 308 feet, thence West 190 feet, thence South 66 feet to the point of beginning;

which tract is being platted as:

Lot 3, University Gardens, Wichita, Kansas; and

WHEREAS, said property (Lot 3, University Gardens) is designated as a multi-family development included in a total Community Unit Plan (DP-8) covering the entire plat of University Gardens and as such is designated to be developed into garden apartments including common open areas for driveway, parking, grass and landscaping with a community building and other appropriate recreational facilities as part of said development; and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the care and maintenance of said common areas and recreational facilities which are to be provided for the apartment complex;

NOW, THEREFORE, the owner declares that the real property described above is and shall be held, transferred, sold and conveyed subject to the covenants, restrictions and charges hereinafter set forth.

1. Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens Addition to provide for said diverse ownerships. It is further understood that the owner shall not dispose of the common properties and/or facilities in any way which would diminish the degree and extent of such facilities to any diverse ownership than is proposed by the approved Community Unit Plan, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

2. In the event Owner should comply with the terms of the "Apartment Ownership Act," K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

3. The Owner shall be responsible for the maintenance in a good and usable condition, of the common facilities as shown on the Community Unit Plan approved by the Board of City Commissioners of Wichita, Kansas. Maintenance shall include, but not be limited to, providing a safe surface for pedestrians and vehicular circulation and access, the mowing of grass and elimination of debris and unsanitary conditions.

4. Upon the failure of the Owner, his successors or assigns, to maintain the facilities as provided in the above paragraph, the City of Wichita shall cause notice to be served on the Owner, his successors or assigns, of his failure to perform, setting out the manner in which he has failed to perform, and granting him ten (10) days within which to perform all of the items listed in the notice so delivered. After said ten (10) days the City may proceed upon the property to perform the work listed in the notice of deficiency, above referred to, and costs of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Owner, his successors or assigns, upon receipt of said notice, feel that the deficiencies listed on said notice are not proper for any reason, he may within the ten (10)

day period provided in notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal of said notice.

5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, his successors or assigns, and shall inure to the benefit of and be enforceable by the City of Wichita for 30 years, or unless sooner terminated as provided herein. During said period, these restrictive covenants may be changed only by a recorded instrument filed by the then owner and the chief elected executive of the City of Wichita, Kansas.

6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter. Nothing in this paragraph shall negate the requirements for notice and right to a hearing as provided in article (5) hereof.

7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

BY *Michael J. Sech*
President



Arthur C. Sullivan
Secretary

HIGGINS & BRIMER
ATTORNEYS AT LAW
FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

PHONE 263-6148
AREA CODE 316

MEMORANDUM

DATE: February 12, 1971

TO: Mr. Jack Galbraith
RE: University Gardens
Certification of Title

Dear Jack:

Enclosed please find a Certification of Title for University Gardens.

Yours truly,

HIGGINS & BRIMER

By *William P. Higgins*
William P. Higgins

WPH:nm



HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING

WICHITA, KANSAS 67202

February 12, 1971

WILLIAM P. HIGGINS
JOHN W. BRIMER

263-6148
AREA CODE 316

Wichita Metropolitan Area Planning
Department
City Building Annex
Wichita, Kansas 67202

Re: University Gardens
Certification of Title

Gentlemen:

We wish to certify that good and merchantable title to the following described real estate in Sedgwick County, Kansas, to-wit:

The SW 1/4 of the SW 1/4 of Section 1,
Township 27 South, Range 1 East of the
Sixth Principal Meridian in Sedgwick
County, Kansas

is vested in University Mall, Inc., a Kansas corporation, subject only to the following exceptions, to-wit:

1. A mortgage recorded in Book 1549 of Mortgages at page 226 in the Office of the Register of Deeds of Sedgwick County, Kansas, dated October 26, 1965.
2. Taxes for the year 1970 are paid in full as of the date of this letter.
3. Easements and restrictions of record.

Respectfully submitted,

HIGGINS & BRIMER

By *William P. Higgins*
William P. Higgins

WPH:nm



February 12, 1971

Ralph Wulz, City Manager

Jack H. Galbraith, Chief Planner

S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

This is to advise you that the Planning Commission reconsidered the above-captioned plat at the regular meeting on February 11, 1971. The question was raised as to whether or not property owners on the west side of Oliver might be involved in a future benefit district for construction of the deceleration lanes at such time as they are ordered in. The action of the Planning Commission was to reapprove the plat, subject to the original conditions, except that they concurred with the City Commission that the required guarantee for the construction of the deceleration lanes not be required at this time. They instructed, however, that at such time as a project for paving the lanes is proposed, all adjacent property owners involved in a benefit district be advised prior to the discussion of that matter before the Board of City Commissioners.

If you have any questions concerning this matter, please call.

JHG:ber

cc: Bob Finch
Executive Secretary

February 12, 1971

Mr. William P. Higgins
313 First National Bank Building
Wichita, Kansas 67202

Re: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on February 11, 1971, the above-captioned plat was reconsidered. It was the action of the Planning Commission to reapprove the plat, subject to the original conditions, with the exception that the guarantee for the deceleration lanes not be required, and that at such time as the paving of the deceleration lanes is proposed, adjacent property owners in the benefit district be advised.

At such time as you have complied with all the conditions, we will release the plat tracing for recording.

If you have any questions concerning this matter, please contact John Gist of our Staff.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Baughman Company, 2522 East Kellogg 67211
Edward R. Johnson, Seldin Homes, 4000 East 17th Street 67208
Curtis Terflinger, 2250 North Roosevelt 67220
Barbara Morgan, 13 Crestview Lakes 67220
Mrs. Cline Hensley, 4707 Looman 67220

February 2, 1971

Mr. William P. Higgins
313 First National Bank Building
Wichita, Kansas 67202

Subject: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

The Board of City Commissioners at their regular meeting of February 2, 1971 considered the above captioned plat. The action of the City Commission was as follows:

Approve the petitions and instruct the Director of Law to prepare the necessary resolutions, instruct the City Clerk to file the certificate and restrictive covenants with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant; approve the plat as approved by the Metropolitan Area Planning Commission, with the exception that the applicant not be required to guarantee the paving of a full deceleration lane as required in Condition No. 7; and authorize the Mayor to sign, and return the plat to the Metropolitan Area Planning Commission for their reapproval.

This is to advise you that we will schedule this plat on the next regular meeting of the Planning Commission on February 11, 1971, at 1:30 p.m., Room 401 City Building Annex, 104 South Main, Wichita, Kansas. If you have any questions, please call.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ls

cc Baughman Company, 2522 East Kellogg 67211
Edward R. Johnson, Seldin Homes, 4000 E. 17th St. 67208
Curtis Terflinger, 2250 North Roosevelt 67220

Barbara Morgan, 13 Crestview Lakes 67220
Mrs. Cline Mensley, 4707 Looman 67220
Dr. George Platt, Planning Office. WSU

S/D 69-102 - UNIVERSITY GARDENS

Approve the petitions and instruct the Director of Law to prepare the necessary resolutions, instruct the City Clerk to file the certificate and restrictive covenants with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant; approve the plat as approved by the Metropolitan Area Planning Commission, with the exception that the applicant not be required to guarantee the paving of a full deceleration lane as required in Condition #7; and authorize the Mayor to sign, and return the plat to the Metropolitan Area Planning Commission for their reapproval.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

RECOMMENDATION FROM METROPOLITAN AREA PLANNING COMMISSION TO
BOARD OF CITY COMMISSIONERS

SUBDIVISION APPROVAL

S/D Number	69-102	Name	UNIVERSITY GARDENS
Application Filed:	11-24-69	Sketch Filed:	None
Preliminary Plat Filed:	11-24-69	Approved by S/D:	12-4-69
Final Plat Filed:	12-24-69	Approved by S/D:	3-5-70
Approved by Metropolitan Area Planning Commission:			3-12-70
Reapproved by Metropolitan Area Planning Commission:			1-14-71

DESCRIPTION

General Location: Northeast corner of 21st
Street and Oliver

Surveyor or Engineer: Baughman Company
Owner: Seldin Homes, Inc., & Edward R. Johnson
Address: Wheatshocker Apartments, 4000 East 17th Street
OWNER: UNIVERSITY MALL, INC.

1. Gross Acreage of Plat	40	5. Lineal Feet of New Streets:
2. Number of Lots:		a. 30 R/W 1207 ft.
Residential	5	b. 60 R/W 1930 ft.
Commercial	2	c. 75 R/W 625 ft.
Industrial		d. R/W ft.
Other	1	e. R/W ft.
Total Number of Lots:	8	TOTAL 3,762 ft.
3. Minimum Lot Frontage:	200 ft.	
4. Minimum Lot Area	40,000 sq.ft.	6. Existing Zoning: AA, LC & R

Petitions have been submitted guaranteeing the extension of sanitary sewer, the paving of Pinecrest Avenue, and for the construction of sidewalks on Pinecrest, Oliver and 21st Street. The applicant has also submitted a "certificate" certifying the petitions, and a letter requesting that proceedings be instituted by the City for construction of a storm water sewer to serve University Gardens and adjacent areas to the north and south.

Planning Commission Recommendation:

HENNESSY moved and BLAKEY seconded that the Planning Commission recommend to the City Commission that this plat be approved, subject to: (See attached sheet for conditions.)

Associated Cases: Z-1099, "B" to "LC", and DP-8 Amendment to CUP, approved by the City Commission subject to platting.

NOTE: The applicant has requested that this matter be forwarded to the City Commission at this time, and that they desire to discuss condition number seven (7) with the Commission.

Vote of Planning Commission: Unanimous.

ACTION: Approve the petitions and instruct the Director of Law to prepare the necessary resolutions, instruct the City Clerk to file the certificate and restrictive covenants with the Register of Deeds, the publication and filing costs of which shall be billed to the applicant; approve the plat as approved by the Metropolitan Area Planning Commission and authorize the Mayor to sign, and instruct the Planning Department to withhold release of the plat tracing until all conditions have been complied with.

S/D 69-102
UNIVERSITY GARDENS

Recommended conditions of approval.

1. At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
- OK 2. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
- OK 3. The applicant shall install or guarantee the installation of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.
- OK 4. The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue.
- OK 5. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.
- OK 6. The applicant shall join in the necessary petition or over-all benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm water sewer has been constructed.
7. The 50 feet of half-street right-of-way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.
P/W OK
no guarantee
reg. by BEC
- OK 8. The applicant submitting a restrictive covenant which sets forth the development and maintenance responsibilities of the developer pertinent to the common areas, parking, etc., which are proposed for Lot 3. Such covenant is also to provide for retaining legal title to the common properties and facilities, and any change in fee title is to include * ownership, and such covenant is to be approved by the Department of Law.
9. Recording of the plat within 30 days after approval by the Board of City Commissioners.

ALSO NEEDED:

- OK 1. Completing and making the remaining corrections which are necessary on the final plat tracing.
- OK 2. Submitting evidence that taxes for the year 1970 have been paid in full.

* all property, living units, etc., as an integrated and common

CERTIFICATE

City of Wichita)
Sedgwick County) ss
State of Kansas)

I, University Mall, Inc., owner and plat-
tor of University Gardens Addition, do hereby
certify that petitions for the following improvements have been
submitted to the Board of Commissioners of the City of Wichita,
Kansas:

1. sidewalks on Oliver, 21st Street and Pinecrest
2. sewer lateral (sanitary sewer to serve subject property)
3. paving of Pinecrest north of Twenty-first Street
4. storm sewer
5. N/A
6. N/A
7. N/A

As a result of the above-mentioned petitions for im-
provements, lots within University Gardens Addition
may be subject to special assessments assessed thereto for the
cost of constructing the above-described improvements.

Signed this 29th day of April, 1970.

UNIVERSITY MALL, INC.

By Millard Seldin
Millard Seldin President

City of Wichita)
Sedgwick County) ss
State of Kansas)

Be it remembered that on this 29th day of April,
1970, before me, a notary public in and for said County and State,
came Millard Seldin, to me personally
known to be the same person who executed the fore-going instrument
of writing and duly acknowledged the execution of same.

In Testimony Whereof, I have hereunto set my hand and
affixed my notarial seal the day and year above written.

Nancy Mann
Notary Public Nancy Mann

My Commission Expires:
February 20, 1973

January 27, 1971

Ralph Wulz, City Manager

Jack H. Galbraith, Chief Planner

S/D 69-102 - Final Plat of UNIVERSITY GARDENS
Generally located at the northeast corner of
21st Street North and Oliver

Regarding the above-captioned plat, William P. Higgins, attorney for the applicant, has requested that we forward this plat on to the City Commission without compliance with the conditions of approval pertinent to the applicant providing a continuous accel-decel lane on Oliver and 21st Street adjacent to their property. Mr. Higgins desires to express the position of his client of not being agreeable to this requirement.

The Planning Commission required the accel-decel lane in the plat approval on March 12, 1970, and at Higgins' request reconsidered the matter on January 14, 1971, wherein it was the action of the Planning Commission to again require the guarantee of the third lane. Attached are the minutes of the Planning Commission meeting on the 14th at which the discussion principally addressed itself to this matter. These minutes may be some help in providing background information to you and the City Commission, as the plat is being forwarded for the Manager's agenda for the Commission meeting on February 2, 1971.

JHG:JDG:ber

Attachment

cc: Ray W. Bruggeman, Director of Public Works
Paul Graves, Traffic Engineer

EXCERPT FROM PLANNING COMMISSION MINUTES OF JANUARY 14, 1971:

9. S/D 69-102 - Final Plat of UNIVERSITY GARDENS, generally located at the northeast corner of 21st Street and Oliver.

GALBRAITH pointed out that this plat was approved in March 1970 and that a Commercial and Residential CUP has previously been approved on subject property and that the Board of Zoning Appeals has previously approved the 200-foot buffer area on the east side of Oliver for off-street parking. GALBRAITH said that numerous requirements were associated with the approval of the plat, all of which have been complied with, except for the guarantee for the paving of a full deceleration lane on the east and north sides of Oliver and 21st Street North.

GALBRAITH said that as to precedent established as to paying for such lanes, on the Marina Lakes CUP, the developer paid for the entire installation, including the area around the curve, and at The Mall Shopping Center, the developer paid for all lanes constructed, and the developer on the north side of Harry across from The Mall is presently in the process of constructing a decel lane for which he will pay the full cost.

GALBRAITH said it was the Staff recommendation that all conditions still be required as originally established.

WILLIAM P. HIGGINS, attorney for the subdivider, pointed out that his client has already agreed to other conditions, which include the guarantee of installation of sidewalks on Oliver, 21st Street and Pinecrest; guarantee the installation of sanitary sewer to serve subject property; guarantee of paving of Pinecrest Avenue; guarantee of the cost difference of going around rather than through the site with the proposed storm water sewer system; joined in the necessary petition on overall benefit district for the construction of a storm water sewer system to serve the general area, submitted restrictive covenants related to maintenance responsibilities of the developer pertinent to the common areas, parking, etc. of the apartment complex.

HIGGINS agreed that the only matter pending is guaranteeing the construction of the decel lanes referred to by GALBRAITH. He continued that such should be reserved until it is determined whether or not such a requirement is reasonable. He stated that the traffic flow being what it is and based on the proposed planning for the intersection, he does not feel there is any need in the foreseeable future for the type of traffic control contemplated by the decel/accel lanes.

HIGGINS pointed out further that this places a tremendous disservice on the developer economically, and that the requirement of the numerous guarantees for improvements have more than doubled the cost of the property. He commented that there is no way they can control the time of construction of the lanes and yet there is so little traffic at this intersection, it does not warrant such construction.

With respect to Marina Lakes, HIGGINS pointed out that the density of light commercial development in the area justified the construction of decel lanes, but in subject case, development in the general area is not such that a tremendous amount of traffic can be expected in the foreseeable future. He pointed out the nursing home and doctor's clinic, Country Club and very desirable residential area to the west as an indication that there is not likely to be a change in land use on such properties soon. On The Mall on East Harry, HIGGINS referred to the density of population in this area and the traffic problems created by the drive-in theaters, and he felt that was no comparability of the subject property and Marina Lakes and The Mall.

BLEDSON questioned the figure of \$125,000 for construction of the decel lanes and said the additional lane is usually figured at \$20 per running foot, and he pointed out further to Mr. Higgins that the decel lane would not be installed right away.

HIGGINS explained that his clients deal all over the country and that their experience has been in negotiating with companies such as K-Mart as an example, they are not interested in buying or leasing property unless all the special assessments are paid. If petitions for the decel lanes are signed in subject case, then it is likely that a potential user of the property would require that it be paid at that time. He continued that there is no way they can sell or develop without paying the specials.

HIGGINS said they are not concerned with dedicating the lane areas to the public for construction at such time as the City deems proper, but it is only that to have construction assessed against subject property places a tremendous economic hardship on the owner in that all specials amount to almost 1/4 million dollars.

BLEDSON doubted that the actual construction of the decel lane would be \$125,000, but Public Works always sets the guarantee high to be sure construction costs will be covered.

HIGGINS commented that requirements should be reasonable and there should be a logical need. In this case, he considered the decel lane on 21st possibly being needed, but questioned any possible need for a right decel lane on Oliver on the west side of

subject property in view of the limited traffic going north on Oliver. HIGGINS continued that he is not arguing that because it was required on Marina Lakes and The Mall that it should not be required in subject case, but his contention is that the circumstances are not the same in view of the limited development at subject location and the indication that it will never be developed to the density of Marina Lakes or The Mall, or possibly other intersections.

BLEDSON took exception to HIGGINS' claim that they would be obligated for construction now. HIGGINS said that the economics of the situation must be considered and that any petitions signed for construction of improvements or special assessments would show up on the plat and as stated above, most big users of land require that all specials be paid prior to their purchase or long term lease.

BLEDSON commented that maybe the zoning to "LC" was premature in view of the limited traffic as claimed by Higgins, but if the traffic builds up to the point where decel lanes are actually needed, it will have increased the value of the property.

HIGGINS pointed out that the light commercial zoning was established prior to the purchase by his client. He pointed out the fact that the Planning Commission had waived any decel lanes at Hillside and Douglas in connection with the redevelopment of the northwest corner with a new Safeway Store, because there was no chance of obtaining additional right-of-way from the other three corners of the intersection except through condemnation.

BLEDSON agreed that specials are high throughout the City, but could see no justification for waiving the requirement since it was required on Marina Lakes and The Mall. HIGGINS said his contention is that such applies to density of traffic and amount of light commercial zoning and activity in the area, which was great at Marina Lakes-Twin Lakes and at the Mall, but which is not present at subject intersection.

BLAKEY suggested that perhaps in a matter of ten years hence, some of the other corners may be developed for light commercial.

BLEDSON pointed out the possibility that if this requirement is not made at this time, it is possible that the increase in traffic in ten years would increase the value of the property at the northwest corner of Oliver and 21st Street to the point where light commercial would be allowed, which would definitely indicate a need for the decel lanes.

HIGGINS suggested that if that occurs and it increases the value of his client's development, then any public body should assume that people who invest money would have reasonable intelligence so far as economics and would at that time ask for a decel lane, but now at this point, it is a terrible hindrance to developing.

BLEDSOE suggested that possible tenants for the development are only interested in a total amount of specials and potential taxes so that they can be fitted into their overall plans in determining whether or not it would be a good proposal economically.

HIGGINS pointed out that his client has agreed to all other requirements which results in tremendous special assessments or guarantees and that in considering the plat, the decel lanes were actually an after thought, after other requirements had been decided on. He pointed out that subject property will be assessed about 70% for the total sewer costs.

HENNESSY asked if there was any way something could be attached indicating that so far as construction of the decel lane it would be only when needed. GALBRAITH thought something could be worked out about the need or justification, but pointed out that the lane across the street from the Mall is under construction now yet development is not complete.

GALBRAITH referred to the fact that there have been several comments made about the need for the decel and its justification because of the lack of development on the other three corners, and stated that the need for the lane is solely because of subject property, the commercial development proposed, and the fact that there is only one access point to the apartment complex. The reason for the decel lane is so there can be two free moving lanes of traffic going north or coming from the east. The third lane is for those people negotiating right turn movements into the proposed shopping center and apartment complex.

HENNESSY continued that he wondered if an instrument could be drawn that if and when the decel lane is needed, then the City would order it constructed. HIGGINS said he did not know whether such an instrument would be binding, but if there is no petition, the owners would have an opportunity to be heard on whether or not there was a need at a specific time.

GALBRAITH said he knew the decel lane would not be constructed prior to development but felt they probably would be installed along with construction of the shopping center or apartments.

BLEDSON agreed that they would not be constructed until such time as the landowner requested it or until the City felt there was such a need.

HIGGINS said the reason the property has not been developed is because of the many requirements of the platting process. BLEDSON said that all the petition is, is a request and agreement that the decel lane will be built whether requested by the owner or required by the City, when the City feels there is a need and until that is done, there are no specials placed against the property.

MRS. CLINE HENSLEY said she was not really opposed, but that she has spoken several times on behalf of the Northeast Heights Residents Association because they are concerned over traffic problems in the area. It was her feeling that the decel lanes are important and she asked the Commission to retain this condition of approval of the plat.

BARBARA MORGAN, 13 Crestview Lakes, suggested the possibility of the residential property on the west side of Oliver having to bear at least some of the cost of the decel lane on Oliver if the developer is not made to make such guarantee at this time. She commented that if the developer doesn't have enough money to finance the development, perhaps he should not be undertaking the project and perhaps the zoning should not have been granted.

MRS. MORGAN further questioned the use of the words "shall" and "may" in the restrictive covenants associated with the plat, noting that there is an indication that decisions at this time "may" be changed at some future time. SOUDERS said it was his understanding that an application for changes in the covenants could be made at some later time.

MRS. MORGAN felt strongly that the developer should be responsible for construction of the decel lanes because their development is what is creating the need for such lanes.

MOTION: HENNESSY moved and BLAKEY seconded that the Planning Commission again recommend to the City Commission that this plat be approved, subject to the same conditions as established on March 12, 1970.

It was pointed out to Mrs. Morgan that the covenants she referred to were reviewed and approved as to form by the Legal Department with special provisions applicable to this plat, and that she may want to contact Mr. Pirtle, one of the Assistant City Attorneys, with respect to her questions concerning the use of the words "shall" and "may".

VOTE ON THE ABOVE MOTION: Carried unanimously.

January 27, 1971

Ray W. Bruggeman, Director of Public Works

John D. Gist, Senior Planner

S/D 69-102 - UNIVERSITY GARDENS at the
northwest corner of 21st Street and Oliver

At their regular meeting on January 14, 1971, the Metropolitan Area Planning Commission again considered the above-captioned plat. The action of the Commission was to recommend that the plat be approved, subject to certain conditions, three of which are as follows:

1. The applicant shall provide or guarantee the cost difference of going around rather than through the site with the proposed storm water sewer system.
2. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm water sewer has been constructed.
3. The 50 feet of half-street right-of-way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.

The applicant has agreed to these requirements except for number three. While they are agreeable to increasing the right-of-way from 50 feet to 60 feet, they are not in agreement with submitting a guarantee for improvement of the accel-decel lanes.

The applicant's attorney, William P. Higgins, has requested by letter that the final plat be forwarded on to the City Commission for final consideration. At that time he intends to further express his client's opposition to the requirement of providing continuous accel-decel lanes on Oliver and 21st Street. We want to advise you that the final plat is being scheduled before the City Commission on February 2, 1971, and request that you, or representatives of the appropriate Division of your Department, be in a position to respond to questions which may arise and come from the Commission re: reasons and recommendations for requiring the third lane adjacent to the proposed development.

In regard to conditions one and two, it is intended by carbon copy hereof to advise the Engineering Division to proceed accordingly with the letter from Higgins, on behalf of the owner and

Page 2 - Ray W. Bruggeman
January 27, 1971

plattor, wherein he requests the Board of City Commissioners to institute proceedings for the needed storm water sewer project. This letter was prepared by Higgins based on his collaboration with the Engineering Division and the Department of Law. A carbon copy of the letter has previously been furnished to Engineering, but if the original thereof is necessary for your purposes, please advise.

JDG:ber

cc: Bill Smith, City Engineer
Dick Linn, Design Chief Engineer
Paul Graves, Traffic Engineer

January 27, 1971

Mr. William P. Higgins
Attorney at Law
First National Bank Building
Wichita, Kansas 67202

Re: S/D 69-102 - Final plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

This is to acknowledge receipt of your letter dated January 22, and your request that the final plat be forwarded on to the City Commission for final consideration, where at you intend to further express your client's position of not agreeing to the requirement of the applicant providing continuous accel-decel lanes on Oliver and 21st Street. Further, this is to advise you as well as those receiving copies of this letter that the plat will be scheduled before the City Commission at their regular meeting on February 2, 1971. The meeting is to begin at 9:00 a.m. in Room 201 of the City Buildingg at 204 South Main.

If you have any questions concerning this matter, please contact our office.

Sincerely,

John D. Gist
Senior Planner

JDG:ber

cc: Baughman Company, 2522 East Kellogg 67211
Edward R. Johnson, Seldin Homes, 4000 East 17th Street 67208
Curtis Terflinger, 2250 North Roosevelt 67220
Barbara Morgan, 13 Crestview Lakes 67220
Mrs. Cline Hensley, 4707 Looman 67220
Dr. George Platt, Planning Office, Wichita State University

HIGGINS & BRIMER

ATTORNEYS AT LAW

SUITE 315 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

January 22, 1971

263-6148
AREA CODE 316

Mr. Jack H. Galbraith
Chief Planner
Metropolitan Area Planning Commission
City Building Annex
104 South Main
Wichita, Kansas 67202

Re: S/D 69-102 - Final Plat of
University Gardens

Dear Mr. Galbraith:

In conformity with our telephone conversation had today, I am formally requesting that this matter be sent on to the City Commission since my client is not in a position to agree to the conditions of the plat regarding paving petitions for the accel/decel lanes on Oliver and 21st Streets. In light of this, we feel our only recourse is to a hearing before the City Commission prior to taking any further action necessary to complete this plat.

As we discussed, we would appreciate not being required to prepay our 1970 installments on taxes until we are certain the matter will be platted since our taxes are tied to mortgage payments and it would just confuse the bookkeeping in the event we do not get our plat. I will immediately get the taxes paid and provide a certificate of payment of taxes after the hearing before the City Commission in the event they determine in our favor.

I would, therefore, request this matter be put on the City Commission agenda as soon as possible so that we might expeditiously proceed with our hearing. I would appreciate your notifying me of the definite setting for this matter on the City Commission when such is determined.

Yours truly,

HIGGINS & BRIMER

By *William P. Higgins*
William P. Higgins

WPH:nm



January 15, 1971

Mr. William P. Higgins
Attorney
First National Bank Building
Wichita, Kansas 67202

Re: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

At the regular meeting of the Metropolitan Area Planning Commission on January 14, 1971, the above-captioned plat was considered. The action of the Planning Commission was to again recommend that the plat be approved, subject to the same conditions as established in their consideration on March 12, 1970. All of such conditions have now been complied with, with the exception of submitting a satisfactory guarantee for the paving of the accel/decel lanes on Oliver and 21st Street.

It is now necessary that the following matters be completed before this plat can be forwarded to the Board of City Commissioners for consideration:

1. *no longer requirement*
Returning of the properly executed paving petitions for the accel/decel lanes on Oliver and 21st Street to the Engineering Division of the Department of Public Works.
2. Having the applicant's surveyor make the following changes on the final plat tracing:
 - a. Change the dates within the approval text to reflect the year 1971.
 - b. Change the chairman of the Board of County Commissioners to Elmer S. Peters.
 - c. Correct the approval text by the Metropolitan Area Planning Commission in accordance with the action taken on January 14, 1971.
3. Affix the corporate seal of University Mall, Inc. to the restrictive covenants which have previously been submitted.

Page 2 - Mr. William P. Higgins
January 15, 1971

JHG Submit a current tax opinion reflecting that the taxes for
the year 1970 have been paid in full.

If you have any questions concerning this matter, please contact
our office.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Baughman Company
2522 East Kellogg 67211

Edward R. Johnson, Seldin Homes
4000 East 17th Street 67208

Curtis Tarflinger
2250 North Roosevelt 67220

Barbara Morgan
13 Crestview Lakes 67220

Mrs. Cline Hensley
4707 Looman 67220

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

April 29, 1970

FOREST 3-6148
AREA CODE 316

Wichita Board of City Commissioners
c/o Wichita Metropolitan Planning Commission
City Building Annex
Wichita, Kansas 67202

Re: University Gardens Addition Plat

Gentlemen:

This is to advise you that I represent University Mall, Inc., who is the owner and plattor of the above captioned property and am authorized to make this request for and on behalf of the owner. I, at this time, am requesting proceedings be instituted for the construction of a storm sewer to serve all of University Gardens Addition and adjacent areas in the designated sewer district, both to the north and south of said addition, and that the cost of said storm sewer be assessed against all of the properties as provided in the statutes of the State of Kansas. I further request that the additional cost caused by the geometrics of the sewer layout be assessed to Lot 2, University Gardens Addition, since the deviation of the sewer lay-out specifically benefits the said Lot 2.

I would appreciate it if an initiating resolution could be taken up at the same Commission Meeting that the final hearing on the plat of University Gardens addition is heard.

Thanking you in advance for your attention in this matter, I remain,

Yours truly,

HIGGINS & BRIMER

By

William P. Higgins
William P. Higgins

WPH:nm

*Eng. Div. of the Dept. of
Public Works will forward
original letter and
initiate a project
accordingly along with,
or subsequent to, the
hearing of the plat by
the City Commission.*

Dish

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

April 29, 1970

FOREST 3-6148
AREA CODE 316

Wichita Board of City Commissioners
c/o Wichita Metropolitan Planning Commission
City Building Annex
Wichita, Kansas 67202

Re: University Gardens Addition Plat

Gentlemen:

This is to advise you that I represent University Mall, Inc., who is the owner and platlor of the above captioned property and am authorized to make this request for and on behalf of the owner. I, at this time, am requesting proceedings be instituted for the construction of a storm sewer to serve all of University Gardens Addition and adjacent areas in the designated sewer district, both to the north and south of said addition, and that the cost of said storm sewer be assessed against all of the properties as provided in the statutes of the State of Kansas. I further request that the additional cost caused by the geometrics of the sewer layout be assessed to Lot 2, University Gardens Addition, since the deviation of the sewer lay-out specifically benefits the said Lot 2.

I would appreciate it if an initiating resolution could be taken up at the same Commission Meeting that the final hearing on the plat of University Gardens addition is heard.

Thanking you in advance for your attention in this matter, I remain,

Yours truly,

HIGGINS & BRIMER

By

William P. Higgins
William P. Higgins

WPH:nm

*OK See memo to PW
of notify Eng. Div. 1-27-71
to proceed with
this letter re:
storm sewer project
when plat can be
scheduled for
consideration by the
City Commission.*

January 8, 1971

Wichita-Sedwick County Metropolitan
Area Planning Commission

John D. Gist, Senior Planner

S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

At your meeting of March 12, 1970, you considered and approved the above-captioned plat involving approximately 40 acres of land at the northeast corner of 21st Street North and Oliver. The conditions of approval which were established at that time, and which remain applicable, are as follows:

1. At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.

OK The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest. *petitioned*

OK The applicant shall install or guarantee the installation of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter. *petitioned*

OK The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue. *petition*

5. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.

OK 6. The applicant shall join in the necessary *letter requests project to* petition or *over-* all benefit district for the construction of the storm water *has initiated* sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm water sewer has been constructed.

7. The 50 feet of half-street right-of-way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.

- R/W OK

- petitions need

BCC not reg.
on 2-2-71

- OK 8. The applicant submitting a restrictive covenant which sets forth the development and maintenance responsibilities of the developer pertinent to the common areas, parking, etc., which are proposed for Lot 3. Such covenant is also to provide for retaining legal title to the common properties and facilities, and any change in fee title is to include all property, living units, etc., as an integrated and common ownership, and such covenant is to be approved by the Department of Law.
9. Recording of the plat within 30 days after approval by the Board of City Commissioners.

At the applicant's request, the Planning Commission again considered the plat at your meeting on July 9, 1970, relative to their questioning of the requirements of deceleration lanes on 21st Street and Oliver and of the contents of the restrictive covenants. I believe that it was the consensus of the Commission at that meeting that the entire cost of installing the decel lanes were to be paid for by the applicant. Action of the Commission, however, was to defer further consideration of these two matters until the covenant was approved as to form by the Legal Department and for further checking as to who in the past has paid for installation of decel lanes around the corner at the intersection of two major streets.

The covenant has now been approved and submitted by the applicant, and the plat has been rescheduled on your agenda for the meeting of January 14, 1971.

JDG:bar

January 8, 1971

Wichita-Sedgwick County Metropolitan
Area Planning Commission

John D. Gist, Senior Planner

S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

At your meeting of March 12, 1970, you considered and approved the above-captioned plat involving approximately 40 acres of land at the northeast corner of 21st Street North and Oliver. The conditions of approval which were established at that time, and which remain applicable, are as follows:

1. At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
 - OK2. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
 - OK3. The applicant shall install or guarantee the installation of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.
 - OK4. The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue.
 5. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.
 6. The applicant shall join in the necessary petition or over-all benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm water sewer has been constructed.
 7. The 50 feet of half-street right-of-way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.
- Letter from
Engineering
Division will
process*
- R/W OK 7
Guarantee not
required by
BAC on
2-2-71*

8. The applicant submitting a restrictive covenant which sets forth the development and maintenance responsibilities of the developer pertinent to the common areas, parking, etc., which are proposed for Lot 3. Such covenant is also to provide for retaining legal title to the common properties and facilities, and any change in fee title is to include all property, living units, etc., as an integrated and common ownership, and such covenant is to be approved by the Department of Law.
9. Recording of the plat within 30 days after approval by the Board of City Commissioners.

At the applicant's request, the Planning Commission again considered the plat at your meeting on July 9, 1970, relative to their questioning of the requirements of deceleration lanes on 21st Street and Oliver and of the contents of the restrictive covenants. I believe that it was the consensus of the Commission at that meeting that the entire cost of installing the decel lanes were to be paid for by the applicant. Action of the Commission, however, was to defer further consideration of these two matters until the covenant was approved as to form by the Legal Department and for further checking as to who in the past has paid for installation of decel lanes around the corner at the intersection of two major streets.

The covenant has now been approved and submitted by the applicant, and the plat has been rescheduled on your agenda for the meeting of January 14, 1971.

JDG:ber

January 8, 1971

✓ Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Subject: S/D 69-102 - Final Plat
of UNIVERSITY GARDENS, generally
located at the northeast corner
of 21st Street and Oliver.

Gentlemen:

You will recall that, per request of the applicant, the above captioned case was reconsidered by the Planning Commission on July 9, 1970, relative to the submission of Restrictive Covenants affecting the development of Lot 3, and the requirement of deceleration lanes on Oliver and 21st Street. It was the action of the Commission to defer the matter until the covenants had been resolved and approved by the Legal Department, and for further checking as to who in the past has paid for the installation of decel lanes around the corners of major street intersections.

This is to advise you as well as those receiving copies of this letter that the covenants have now been approved and submitted by the applicant, and the plat has now been rescheduled before the Planning Commission at their regular meeting on January 14, 1971, at 1:30 p.m. If you have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Senior Planner

JDG:rme

cc: ✓ William P. Higgins, Attorney, 1st National Bank Bldg., 67202
✓ Edward R. Johnson, 400 E. 17th Street, 67208
✓ Curtis Terflinger, 2250 N. Roosevelt, 67220
✓ Barbara Morgan, 13 Crestview Lakes, 67220
✓ Mrs. Cline Hensley, 4707 Looman, 67220

December 10, 1970

Mr. William P. Higgins
Attorney at Law
Suite 313
First National Bank Bldg.
Wichita, Kansas 67202

RE: S/D 69-102 - Final plat of
University Gardens

Dear Mr. Higgins:

In regard to your letter dated December 8, 1970, concerning the above captioned case and the rescheduling of same before the Planning Commission, we have discussed the matter with Jack H. Galbraith who attended the Commission meeting at which this plat was last considered. Please find enclosed a copy of Jack's letter to you dated July 10, 1970, wherein it reflects the action of the Planning Commission at their meeting on July 9. The Commission deferred further consideration on the covenants until they were approved as to form by the Legal Department, and on your request for reconsideration of the accel-decel lanes for further checking as to who in the past has paid for such lanes around the corners of street intersections.

Since the approved and executed covenants have now been submitted, the plat has been scheduled before the Planning Commission at their regular meeting on January 14, 1971, and may be forwarded to the City Commission subsequent thereto.

Very truly yours,

John D. Gist
Senior Planner

JDG:rme

Enclosure

cc: Gene Pirtle, First Assistant City Attorney

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 315 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67020
December 8, 1970

WILLIAM P. HIGGINS
JOHN W. BRIMER

263-6148
AREA CODE 316

Mr. John Gist
Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas 67202

Re: 21st and Oliver
University Gardens

Dear Mr. Gist:

I was advised of your telephone conversation with my secretary on the above captioned matter wherein you stated that this matter must be resubmitted to the Planning Commission before being presented to the City Commission.

I understood that it was to be brought back to the Planning Commission only if Mr. Pirtle and I failed to agree on the covenants. This makes it rather lengthy and would put my clients to the additional expense of another hearing. I would appreciate you looking into this matter and letting me know the results.

Thanking you in advance for your attention to this matter, I remain,

Yours truly,

HIGGINS & BRIMER

By *William P. Higgins*
William P. Higgins

WPH:nm

cc: Gene Pirtle, Esq.



THE CITY OF WICHITA

OFFICE OF DEPARTMENT OF LAW **DATE** December 2, 1970

TO John Gist, Planning Department

FROM Eugene L. Pirtle, First Assistant City Attorney

SUBJECT Lot 3 - University Gardens

Enclosed are the original restrictive covenants executed by University Mall, Inc., and forwarded to me by Mr. Higgins' letter of November 25, 1970, in which he requests that this plat be placed on the agenda at the earliest possible time.

Eugene L. Pirtle
Eugene L. Pirtle
First Assistant City Attorney

ELP:cg
Encl.



RESTRICTIVE COVENANTS

These restrictions and covenants made this 20-day of
November, 1970, by UNIVERSITY MALL, INC., hereinafter
called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the
real property described as:

A tract in the Southwest Quarter (SW1/4) of the Southwest
Quarter (SW1/4) of Section 1, Township 27 South, Range 1
East of the 6th P. M., Sedgwick County, Kansas, beginning
at a point 60 feet East and 951.08 feet North of the Southwest
(SW) corner of said Section 1, thence East 190 feet, thence
South 251.38 feet, thence East 1048.44 feet, thence North
626.95 feet, thence West 1047.5 feet, thence South 308 feet,
thence West 190 feet, thence South 66 feet to the point of
beginning;

which tract is being platted as:

Lot 3, University Gardens, Wichita, Kansas; and

WHEREAS, said property (Lot 3, University Gardens) is designated
as a multi-family development included in a total Community Unit Plan (DP-8)
covering the entire plat of University Gardens and as such is designated to be
developed into garden apartments including common open areas for driveway,
parking, grass and landscaping with a community building and other appropriate
recreational facilities as part of said development; and

WHEREAS, the Board of Commissioners of the City of Wichita has
approved said Community Unit Plan and is desirous of protecting against
problems which might arise with the care and maintenance of said common
areas and recreational facilities which are to be provided for the apartment
complex;

NOW, THEREFORE, the owner declares that the real property
described above is and shall be held, transferred, sold and conveyed subject
to the covenants, restrictions and charges hereinafter set forth.

1. Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens Addition to provide for said diverse ownerships. It is further understood that the owner shall not dispose of the common properties and/or facilities in any way which would diminish the degree and extent of such facilities to any diverse ownership than is proposed by the approved Community Unit Plan, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

2. In the event Owner should comply with the terms of the "Apartment Ownership Act," K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

3. The Owner shall be responsible for the maintenance in a good and usable condition, of the common facilities as shown on the Community Unit Plan approved by the Board of City Commissioners of Wichita, Kansas. Maintenance shall include, but not be limited to, providing a safe surface for pedestrians and vehicular circulation and access, the mowing of grass and elimination of debris and unsanitary conditions.

4. Upon the failure of the Owner, his successors or assigns, to maintain the facilities as provided in the above paragraph, the City of Wichita shall cause notice to be served on the Owner, his successors or assigns, of his failure to perform, setting out the manner in which he has failed to perform, and granting him ten (10) days within which to perform all of the items listed in the notice so delivered. After said ten (10) days the City may proceed upon the property to perform the work listed in the notice of deficiency, above referred to, and costs of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Owner, his successors or assigns, upon receipt of said notice, feel that the deficiencies listed on said notice are not proper for any reason, he may within the ten (10)

day period provided in notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal of said notice.

5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, his successors or assigns, and shall inure to the benefit of and be enforceable by the City of Wichita for 30 years, or unless sooner terminated as provided herein. During said period, these restrictive covenants may be changed only by a recorded instrument filed by the then owner and the chief elected executive of the City of Wichita, Kansas.

6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter. Nothing in this paragraph shall negate the requirements for notice and right to a hearing as provided in article (5) hereof.

7. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

BY *Mullal A. Velt*
President

ATTEST:

Stanley C. Sweeney
Secretary

STATE OF KANSAS)
) SS:
SEDGWICK COUNTY)

BE IT REMEMBERED, That on this 20th day of November,
1971, before me, a Notary Public in and for said County and State, came
Millard R. Bellin, President, and Stanley C.
Silverman, Secretary of University Mall, Inc., to me personally
known to be the same person who executed the foregoing instrument and duly
acknowledged the execution of the same for and on behalf, and as the act and
deed of said University Mall, Inc.

IN WITNESS WHEREOF, I have hereunto subscribed my name and
affixed my official seal the day and year last above written.



Mairind Chamberlain
Notary Public

My Commission Expires:

April 18, 1972

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67020

WILLIAM P. HIGGINS
JOHN W. BRIMER

November 25, 1970

263-6148
AREA CODE 316

Eugene L. Pirtle, Esq.
First Assistant City Attorney
Department of Law
City Building Annex
Wichita, Kansas 67202

Re: Lot 3, University Gardens

Dear Gene:

Enclosed please find the Restrictive Covenants on the above captioned property which have been executed by my client.

I would like this plat placed on the agenda the earliest possible time.

Yours truly,

HIGGINS & BRIMER

By
William P. Higgins

WPH:nm
Enclosure

cc: John Gist
Planning Department



A tract in the Southwest Quarter (SW $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 1, Township 27 South, Range 1 East of the 6th P.M. Sedgwick County, Kansas, beginning at a point 60 feet East and 951.08 feet North of the Southwest (SW) corner of said Section 1, thence East 190 feet, thence South 251.38 feet, thence East 1048.44 feet, thence North 626.95 feet, thence West 1047.5 feet, thence South 308 feet, thence West 190 feet, thence South 66 feet to the point of beginning;

which tract is being platted as:

Lot 3,

Bill
get this out
10-6-70

recd. from Pirtle
on 10-23-70

RESTRICTIVE COVENANTS

Called Ome
on 10-27-70

These restrictions and covenants made this ____ day of _____, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real property described as:

(notes & bounds description)

get from
Rangman Co.

which tract is being platted as:

Lot 3, University Gardens, Wichita, Kansas;

and

WHEREAS, said property (Lot 3, University Gardens) is designated as a multi-family development included in a total Community Unit Plan (DP-3) covering the entire plat of University Gardens and as such is designated to be developed into garden apartments including common open areas for driveway, parking, grass and landscaping with a community building and other appropriate recreational facilities as part of said development, and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the ~~improvement~~, care and maintenance of said common areas and recreational facilities which are to be provided for the apartment complex.

OK to
delete

NOW, THEREFORE, the owner declares that the real property described above, is and shall be held, transferred, sold and conveyed subject to the covenants, restrictions and charges hereinafter set forth.

1. Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens Addition to provide for said diverse ownerships. (It is further understood that the owner shall not dispose of the common properties and/or facilities in any way which would diminish the degree and extent of such facilities to any diverse ownership than is proposed by the approved Community Unit Plan, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.)

X ?
Name in

2. Transfers of title necessitated by Owner's needs for financing for all or a portion of the development proposed on said Lot 3, University Gardens, may be exempted from article 1 herein (by approval of the Board of Commissioners of the City of Wichita) provided, such transfers shall contain provisions assuring the continuing obligation of Owner for the improvement and maintenance of common facilities described in article 4 herein, and the extension of the rights of the City of Wichita regarding maintenance and special assessments described in article 5 herein.

X
Call
Meline
delete

3. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

4. The Owner shall be responsible for the installation and improvement, and the maintenance in a good and usable condition, of the common facilities, as shown on the Community Unit

X
OK to
delete

Plan approved by the Board of City Commissioners of the City of Wichita. Maintenance shall include, but not be limited to, providing a safe surface for pedestrians and vehicular circulation and access, the mowing of grass and elimination of debris and unsanitary conditions.

5. Upon the failure of the Owner, his successors or assigns, to maintain the facilities as provided in the above paragraph, the City of Wichita shall cause notice to be served on the Owner, his successors or assigns, of his failure to perform ~~and granting him ten (10) days within which to perform any~~ ^{SETTING OUT THE MANNER IN WHICH HE HAS FAILED TO PERFORM} of the items listed in the notice so delivered. After said ten (10) days the City may proceed upon the property to perform the work listed in the notice of deficiency, above referred to, and costs of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Owner, his successors or assigns, upon receipt of said notice feel that the deficiencies listed on said notice are not proper for any reason, he may within the ten (10) day period provided in notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal of said notice.

6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, his successors or assigns, and shall inure to the benefit of and be enforceable by the occupants of any land ~~subject to the Restrictive Covenants or~~ by the City of Wichita for 30 years, or unless sooner terminated as provided herein.

~~After said time, these Restrictive Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owner and the chief elected executive of the City of Wichita has been~~ ^{changed by recorded instrument} agreeing to the change of said

OK to X
abandon
noted

only
changed by
automatically
recorded
instrument

covenants and restrictions or the release thereof; provided, however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

OK X
delete

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter. Nothing in this paragraph shall negate the requirements for notice and right to a hearing as provided in article (5) hereof.

8. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

RESTRICTIVE COVENANTS

These restrictions and covenants made this _____ day of _____, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real property described as:

which tract is being platted as:

Lot 3, University Gardens, Wichita, Kansas;

and

WHEREAS, said property (Lot 3, University Gardens) is designated as a multi-family development included in a total Community Unit Plan (DP-8) covering the entire plat of University Gardens and as such is designated to be developed into garden apartments including common open areas for driveway, parking, grass and landscaping with a community building and other appropriate recreational facilities as part of said development, and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the improvement, care and maintenance of said common areas and recreational facilities which are to be provided for the apartment complex,

10-5-70

Proposed draft prepared by combining B. Higgins last submission marked Sept. 30, '70 in our file and draft prepared by D. Perle, Assis. City Attorney. [Signature]

NOW, THEREFORE, the owner declares that the real property described above, is and shall be held, transferred, sold and conveyed subject to the covenants, restrictions and charges hereinafter set forth.

1. Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens Addition to provide for said diverse ownerships. It is further understood that the owner shall not dispose of the common properties and/or facilities in any way which would diminish the degree and extent of such facilities to any diverse ownership than is proposed by the approved Community Unit Plan, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

2. Transfers of title necessitated by Owner's needs for financing for all or a portion of the development proposed on said Lot 3, University Gardens, may be exempted from article 1 herein by approval of the Board of Commissioners of the City of Wichita; provided, such transfers shall contain provisions assuring the continuing obligation of Owner for the improvement and maintenance of common facilities described in article 4 herein, and the extension of the rights of the City of Wichita regarding maintenance and special assessments described in article 5 herein.

3. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

4. The Owner shall be responsible for the installation and improvement, and the maintenance in a good and usable condition, of the common facilities, as shown on the Community Unit

Plan approved by the Board of City Commissioners of the City of Wichita. Maintenance shall include, but not be limited to, providing a safe surface for pedestrians and vehicular circulation and access, the mowing of grass and elimination of debris and unsanitary conditions.

5. Upon the failure of the Owner, his successors or assigns, to maintain the facilities as provided in the above paragraph, the City of Wichita shall cause notice to be served on the Owner, his successors or assigns, of his failure to perform ~~and granting him ten (10) days within which to perform any~~ ^{SETTING OUT THE MANNER IN WHICH HE HAS FAILED TO PERFORM} the items listed in the notice so delivered. After said ten (10) days the City may proceed upon the property to perform the work listed in the notice of deficiency, above referred to, and costs of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Owner, his successors or assigns, upon receipt of said notice feel that the deficiencies listed on said notice are not proper for any reason, he may within the ten (10) day period provided in notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal of said notice.

6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, his successors or assigns, and shall inure to the benefit of and be enforceable by the occupants of any land subject to the Restrictive Covenants or by the City of Wichita for 30 years, or unless sooner terminated as provided herein. After said time, these Restrictive Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owner and the chief elected executive of the City of Wichita has been recorded agreeing to the change of said

covenants and restrictions or the release thereof; provided, however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter. Nothing in this paragraph shall negate the requirements for notice and right to a hearing as provided in article (5) hereof.

8. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

Higgins latest draft
rec'd. from Pirtle on
Sept. 30, 1970.

RESTRICTIVE COVENANTS

These restrictions and covenants made this ___ day
of _____, 1970, by UNIVERSITY MALL, INC., herein-
after called Owner.

replace

W I T N E S S E T H:

THAT, WHEREAS, University Mall, Inc., is the owner
of the real property described as follows:

which tract is ^{UNITS & BOUNDS} being platted as:
Lot 3, University Gardens Addition to Wichita,
Sedgwick County, Kansas, and

WHEREAS, said property is designated as a multi-
family development included in a total Community Unit Plan ^(DP-8)

amend
NON-PV

covering the entire plat of University Gardens and, as such,
is designated to be developed into Garden Apartments including
open areas for ^{BLIC COMMON} ~~drives~~ ^{and} ~~parking~~ ^{areas} ~~grass and landscaping~~ ^{together with}
a community building and other appropriate recreational ^{access with pool & lakes} ~~facilities~~
as part of said development, and

replace

WHEREAS, the City of Wichita is desirous of pro-
tecting against problems which might arise in placing responsi-
bility for the care and maintenance of said open areas and
recreational facilities provided in the apartment complex.

NOW, THEREFORE, the owner declares that the real
property described above, is and shall be held, transferred,
sold and conveyed subject to the covenants, restrictions and
charges hereinafter set forth.

combine
1 & 1

1. Owner shall not dispose of any portion of Lot 3
in a manner which would develop diverse ownerships in said lot
without petitioning to replat Lot 3, University Gardens Addi-
tion to provide for said diverse ownerships and as a result
thereof, to petition for an amendment to the Community Unit
Plan, which would be necessitated by the replatting, all as
provided by the ordinances of the City of Wichita and the
Statutes of the State of Kansas.

own
#4

2. Transfers which are necessitated by different methods of obtaining financing for all or a portion of the development proposed on Lot 3, University Gardens Addition shall be exempt from Provision (1) of these restrictions, but shall not affect the application of the remainder of the provisions contained herein.

own
#8

3. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, upon notification of said compliance the Board of Commissioners of the City of Wichita shall dissolve these Restrictive Covenants.

amend
→

4. The Owner shall be responsible for the ^{*}maintenance in a good and usable condition of the common facilities, as shown on the Community Unit Plan approved by the Board of City Commissioners of the City of Wichita. Maintenance shall include, but not be limited to, providing a safe surface for pedestrians and vehicular circulation and access, the mowing of grass and elimination of debris and unsanitary conditions.

5. Upon the failure of the Owner, his successors or assigns, to maintain the facilities as provided in the above paragraph, the City of Wichita shall cause notice to be served on the Owner, his successors or assigns, of his failure to perform, setting out the manner in which he has failed to perform and granting him ten (10) days within which to perform any of the items listed in the notice so delivered. After said ten (10) days the City may proceed upon the property to perform the work listed in the notice of deficiency, above referred to, and costs of such work performed by the City may be assessed against the property in the same manner as provided by law for such assessment and said assessment may be established as a lien upon the land. Should the Owner, his successors or assigns, upon receipt of said notice feel that the deficiencies listed on said notice are not proper for any reason, he may within the ten (10) day

period provided in notice, apply for a hearing before the Board of City Commissioners to appeal said notice and any further proceedings under the notice shall be delayed pending the outcome of any proceedings on appeal of said notice.

Combine

6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present owner, successors or assigns, and shall inure to the benefit of and be enforceable by the City of Wichita for thirty (30) years, or unless sooner terminated as provided herein. These covenants may be changed or modified at any time by recorded instrument signed by the then owner and the chief elected executive of the City of Wichita agreeing to the change or modification of said covenants and restrictions or the release thereof.

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by the interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter. Nothing in this paragraph shall negate ^{Article} the requirements for notice and right to a hearing as provided in ~~Paragraph~~ (5) hereof.

8. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

THE CITY OF WICHITA



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
252-0611 — AREA CODE 316
SUITE 600 — CITY BLDG. ANNEX
WICHITA, KANSAS 67202

September 24, 1970

Mr. William P. Higgins
Higgins & Brimmer
Suite 313
First National Bank Building
Wichita, Kansas 67202

RE: University Gardens
Restrictive Covenants



Dear Mr. Higgins:

In answer to your letter of September 23, 1970, this is to report that upon receipt of your third or fourth redraft of the University Gardens Restrictive Covenants, I sought to confer with the city planners relative to the redraft, but in the intervening period since then I have been involved in the preparation of cases for trial and also spent a week out of town.

It is my recollection that subsequent to May 6, 1970, our departments examined your draft of the covenants submitted at that time, and we met with you on July 23, 1970. After the meeting we appeared to have conceded some of the principal contentions upon which you had been insistent, and you subsequently advised by telephone that you would be unable to redraft portions of the covenants until you had returned from vacation.

Your most recent redraft appears to have made those changes, but I am unable to comprehend why you insist on submitting your original first page of the redraft. I have started on two different occasions to attempt to reconstruct our conferences that have been in process prior to May 6,

William P. Higgins

- 2 -

9/24/70

1970, and as soon as I am able to confer with the Senior Planner, I will attempt to submit another draft of the city's version to your office.

Very truly yours,

Eugene L. Pirtle
Eugene L. Pirtle
First Assistant City Attorney

ELP:cg

cc: John D. Gist, Senior Planner

HIGGINS & BRIMER

ATTORNEYS AT LAW

SUITE 313 - FIRST NATIONAL BANK BUILDING

WICHITA, KANSAS 67202

July 21, 1970

WILLIAM P. HIGGINS
JOHN W. BRIMER

FOREST 3-6148
AREA CODE 316

Eugene Pirtle, Esq.
First Assistant City Attorney
Suite 600
City Building Annex
Wichita, Kansas 67202

Re: University Gardens
Restrictive Covenants

Dear Mr. Pirtle:

I am in receipt of your letter of July 15, 1970, and have examined the Restrictive Covenants as resubmitted by you. In conformity with the contents of your letter, I am advising you that we cannot accept the revision as submitted and we will be happy to meet with you and Mr. Galbraith concerning these Restrictive Covenants at which time I will be happy to explain our objections to the resubmitted covenants. I would appreciate if the meeting could be had some time prior to Friday afternoon as I am leaving on a two weeks vacation Saturday and will be unavailable.

I would also be happy to discuss the matter of the de-acceleration lanes with you and the traffic engineer at any time you so desire.

Yours truly,

HIGGINS & BRIMER

By William P. Higgins

WPH:nm

cc: Mr. Jack Galbraith



THE CITY OF WICHITA



DEPARTMENT OF LAW
OFFICE OF CITY ATTORNEY
262-0611 — AREA CODE 316
SUITE 600 — CITY BLDG. ANNEX
WICHITA, KANSAS 67202

July 15, 1970

Mr. William P. Higgins
Higgins and Brimer
Attorneys at Law
First National Bank Building
Wichita, Kansas 67202



Re: University Gardens
Restrictive Covenants

Dear Mr. Higgins:

I have this date received your redraft of the Restrictive Covenants in the above matter, and have attempted to adjust your provisions to my original redraft, and particularly to the terms of Mr. Galbraith's letter to you dated January 10, 1970.

July? I appreciate your prompt draft of your version, and if our present redraft does not meet with your approval, I should be happy to meet with you and the City planners before you reinsert the provisions that we could not agree upon before.

The intent of the enclosed redraft is to provide for the installation and maintenance of non-public common areas by your developer, and to make some sort of assurance that transfers of all or portions of the proposed Lot 3, University Gardens, should make provision for the same maintenance and/or special assessment requirements.

Mr. Galbraith's letter also mentions the item regarding deacceleration lanes deferred by the Planning Commission. We shall be glad to confer with you

Mr. William P. Higgins
Higgins and Brimer
Attorneys at Law
July 15, 1970

and the Traffic Engineer on this matter.

Very truly yours,

Eugene L. Pirtle
Eugene L. Pirtle
First Assistant City Attorney

ELP:cr
Enclosure

cc: / Jack Galbraith, Senior Planner - Regulations

RESTRICTIVE COVENANTS

These restrictions and covenants made this ____ day of _____,
1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real
property described as:

which tract is being platted as:

Lot 3, University Gardens, Wichita, Kansas;

and

WHEREAS, said Lot 3, University Gardens, is designated as a multi-family development included in a total Community Unit Plan (DP-8) covering the entire plat of University Gardens and, as such, is to be developed into Garden Apartments including non-public common open areas, access drives and parking areas, together with a community building with pool, lakes and other appropriate recreational facilities, all for the use and enjoyment of the occupants of the apartments in said development; and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the improvement, care and maintenance

of said common areas and recreational facilities which are to be provided for the apartment complex,

NOW, THEREFORE, the Owner declares that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and charges hereinafter set forth.

1. The Owner shall retain legal title to the common properties and shall not dispose of said common properties and/or facilities or in any way otherwise diminish the degree and extent of such facilities, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

2. The Owner shall be responsible for the installation and improvement of the common facilities, parking areas and common open space lakes and recreation facilities, as shown on the Community Unit Plan approved by the Board of City Commissioners of the City of Wichita, and their maintenance in a good and usable condition. Improvement and maintenance shall include, but not be limited to, providing a safe and smooth surface for pedestrians and vehicular circulation and access, providing trees, the planting of grass and mowing of same, lighting and elimination of debris and unsanitary conditions.

3. Upon the failure of the Owner, his successors or assigns, to maintain such facilities, the City of Wichita may cause such work to be done and the cost of such work shall be paid by the owner upon the completion of such work; or in the event such payment is not made, the cost of such work may be assessed against the property in the same manner as provided by law for other special assessments and such assessment may be established as a lien upon the land.

4. Transfers of title necessitated by Owner's needs for financing for all or a portion of the development proposed on said Lot 3, University Gardens, may be exempted from article 1 herein by approval of the Board of Commissioners of the City of Wichita; provided, such transfers shall contain provisions assuring

the continuing obligation of Owner for the improvement and maintenance of common facilities described in article 2 herein, and the extension of the rights of the City of Wichita regarding maintenance and special assessments described in article 3 herein.

5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, his successors or assigns, and shall inure to the benefit of and be enforceable by the occupants of any land subject to the Restrictive Covenants or by the City of Wichita for 30 years. After said time, these Restrictive Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owner and the chief elected executive of the City of Wichita has been recorded agreeing to the change of said covenants and restrictions or the release thereof; provided, however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by any interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter.

7. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

8. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or

dissolution of these Restrictive Covenants.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

Approved as to form:

Eugene L. Pirtle,
First Assistant City Attorney

July 10, 1970

Mr. William P. Higgins
Attorney at Law
Suite 313 - First National Bank Building
Wichita, Kansas 67202

Re: S/D 69-102 - Final Plat
of UNIVERSITY GARDENS

Dear Mr. Higgins:

At your request, at the regular meeting of the Planning Commission on July 9, 1970 the above-captioned plat was reconsidered. With regard to the discussion of the restrictive covenants, the Planning Commission requested that you submit a draft covenant to the Department of Law for their review and approval as to form guaranteeing the installation and maintenance of non-public common areas, including parking area, community facilities, lake, fence, etc. In addition, the covenant is also to include a provision as to sale of the entire parcel proposed for apartment development without the segmenting of the ownership of such parcel.

The Planning Commission, also at your request, again discussed the requirement for guaranteeing the continuous deceleration lane. I believe that it was the consensus of the Planning Commission that the entire cost of installation, even including that part of the decel lane around the corner of Oliver and 21st Street, would be paid by the applicant.

Further consideration of these two matters was deferred until the draft of the covenant is approved as to form by the Legal Department, and for further checking as to who has paid for installation of decel lanes around the corners of major streets.

We will place this plat back on the Planning Commission agenda at such time as we receive the approved covenants.

Page 2 - Mr. William P. Higgins
July 10, 1970

If you have any questions concerning this matter, please call.

Sincerely,

Jack H. Galbraith
Chief Planner

JHG:ber

cc: Eugene L. Pirtle
First Assistant City Attorney

Dick Linn
Design Chief Engineer

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

June 23, 1970

FOREST 3-6148
AREA CODE 316

Metropolitan Area Planning Commission
City Building Annex
Wichita, Kansas 67202

Re: University Gardens Plat

Gentlemen:

This is a request for a rehearing on the requirements for the approval of the plat of University Gardens by reason of the fact that the sum total of the cost of the requirements placed on this property for plat approval makes the ownership of the property and the development of the same prohibitive. It is the feeling of the applicant that a re-evaluation by the Planning Commission would eliminate some of the costs which might be unnecessary in nature and give this applicant an opportunity to make use of his property which he cannot do at the present time with the tremendous economic burden placed upon it by so many additional requirements. This applicant agreed to all requirements up to and including the deceleration lanes on Oliver and on 21st Street. The estimated cost of these deceleration lanes is in the amount of \$125,000.00. This last figure is the one that has broken the camel's back. As a potential cost to the property evidenced by University Gardens, it is interesting to note projected sidewalk costs total approximately \$10,600.00; sanitary sewer costs, approximately \$39,000.00; storm sewer, a percentage of \$220,000.00 plus approximately \$30,000.00 for additional costs to divert the sewer from center of property. The costs for paving Pinecrest have not been estimated by the Engineering Department but they will be considerable. All of this in addition to the following special assessments against the property at the present time makes the total picture from an economic standpoint oppressive:

Sub Main Sewer	\$26,059.05
Paving on Oliver	19,247.60
Paving on 21st Street	6,999.10
	<hr/>
	\$52,305.75



Metropolitan Area Planning Commission
June 23, 1970
Page 2

Also at the time of this hearing it might be possible to clear up the confusion between the staff and myself on the meaning of the motion covering the Restrictive Covenants against Lot 3 of this property.

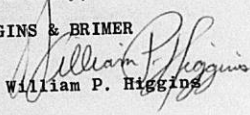
I would appreciate being notified as soon as possible as to the date of the hearing on this matter.

Thanking you in advance for your attention to this matter, I remain,

Yours truly,

HIGGINS & BRIMER

By


William P. Higgins

WPH:nm

cc: Millard R. Seldin

June 15, 1970

Mr. William P. Higgins
Higgins & Brimer
Attorneys at Law
Suite 313 - First National Bank Building
Wichita, Kansas 67202

Re: University Gardens - Lot 3

Dear Mr. Higgins:

With reference to your letter of June 11, 1970, and our telephone conversations on that date, this is to report that I have listened to the Planning Commission tapes pertaining to the restrictive covenants covering University Gardens plat. I am informed that you listened to the same tapes last Friday while I was out of town. In the interest of expediting the preparation of these restrictive covenants, I suggest that you draft your version of what you think the restrictive covenants were to be, rather than try to explain it to me in a letter such as yours dated June 11, 1970.

It would appear that we may have to return to the Planning Commission to obtain their clarification of Mr. Hennessy's motion regarding the restrictive covenants.

Very truly yours,

Eugene L. Pirtle
First Assistant City Attorney

ELP:cr



HIGGINS & BRIMER

ATTORNEYS AT LAW

SUITE 313 - FIRST NATIONAL BANK BUILDING

WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

June 11, 1970

FOREST 3-6149
AREA CODE 316

Mr. Eugene L. Pirtle
First Assistant City Attorney
Department of Law
Suite 600 City Building Annex
Wichita, Kansas 67202

Re: University Gardens
Lot 3

Dear Gene:

I am writing this letter in conformity with the conversation we had at my office on the occasion of your delivering to me the redraft of the Restrictive Covenants on the above-captioned property. Gene, I think we should get together with the Planning staff and listen to the Minutes of that Planning Commission meeting. It was my understanding that the discussion boiled down to an agreement by me that my clients would agree to restrictive covenants that would prevent the sale of parcels or buildings off of Lot 3 separately from the entire parcel, thereby, eliminating the fear of the staff that there would be no way to control or attribute responsibility to keeping the area clean, etc. As we agreed to do with the one provision that this be allowed where it is necessary for a security transaction. I agree with you that my paragraph setting that exception out might have been rather vague and I, therefore, feel that you and I should get together and redraft that provision to your liking.

We cannot agree to the theory that every occupant of the apartment complex shall have the right and easement of enjoyment in and to the common properties. This property will be privately held and will be operated under separate

Mr. Eugene L. Pirtle
June 11, 1970
Page 2

leases for apartments, and there will be restrictions in those leases which will not give every person or tenant unrestricted right and easement to enjoyment of the common properties. We intend to operate this property in conformity with all applicable laws, but with the right to make the business judgments that are available to private owners and we therefore, could not place that type of provision in the Restrictive Covenants. My client further fears that subsequent lenders on different portions of the entire project would not accept those provisions and it would definitely restrict the potential of financing, since every institutional lender makes real estate loans with the thought that should a forfeiture develop, they would be potential owners and this type of provision is so arbitrary as to eliminate the freedom of decision on the use of the property and freedom of decision on the treatment of the tenants with whom the owner would be contracting for rental of the premises.

I would appreciate it, Gene, if you would set up a meeting at your convenience when we could go over this tape. I would be happy to meet Wednesday, if that is convenient with your schedule and listen to the tapes so we can see where we stand. The reason I request Wednesday is that we are attempting to get our item on the agenda for the City Commission's final approval and this would require that we get it in by Wednesday evening. I will do all the necessary revision on typing the covenant if we can have some time when we can get together to determine what the contents of the tape of the Planning Commission Meeting includes.

I wish to thank you in advance for your attention in this matter.

Yours truly,

HIGGINS & BRIMER

By *William P. Higgins*
William P. Higgins

WPH:nm

June 10, 1970

Mr. William P. Higgins
Higgins & Brimer
Attorneys at Law
Suite 313, First National Bank Building
Wichita, Kansas 67202

Re: University Gardens

Dear Bill:

I have redrafted your proposed Restrictive Covenants in the matter of Lot 3, University Gardens.

I should appreciate your reviewing this draft, and will be glad to confer with you relative to further amendments. We will need to rewrite the first page, so I have inserted the suggestion that you provide a metes and bounds description from which Lot 3 is to be platted.

Very truly yours,

Eugene L. Pirtle
First Assistant City Attorney

ELP:cr
Enclosure

Draft

RESTRICTIVE COVENANTS

These restrictions and covenants made this ____ day of _____, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real property described as: *Great Meters & Bounds*
which tract is being platted as:
Lot 3, University Gardens, Wichita, Kansas;

and

WHEREAS, said Lot 3, University Gardens, is designated as a multi-family development included in a total Community Unit Plan (DP-8) covering the entire plat of University Gardens and, as such, is to be developed into Garden Apartments including non-public common open areas, access drives and parking areas, together with a community building with pool, lakes and other appropriate recreational facilities, all for the use and enjoyment of the occupants of the apartments in said development; and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the improvement, care and maintenance of said common areas and recreational facilities which are to be provided for the apartment complex,

NOW, THEREFORE, the Owner declares that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and charges hereinafter set forth.

- 1. Every occupant shall have a right and easement of enjoyment, in and to the common properties as designated on the approved Community Unit Plan, and such easement shall be appurtenant to and shall pass with the occupancy of every unit in the development.

2. The Owner shall retain legal title to the common properties and shall not dispose of said common properties and/or facilities or in any way otherwise diminish the degree and extent of such facilities, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

3. The Owner shall be responsible for the improvement of the common facilities, fenced play areas, parking areas and common open space lakes and recreation facilities, as shown on the Community Unit Plan approved by the Board of City Commissioners of the City of Wichita, and their maintenance in a good and usable condition. Improvement and maintenance shall include, but not be limited to, providing a safe and smooth surface for pedestrians and vehicular circulation and access, providing trees, the planting of grass and mowing of same, appropriate fencing for play areas, lighting and elimination of debris and unsanitary conditions.

4. Upon the failure of the Owner, his successors or assigns to provide such facilities and the maintenance thereof, the City of Wichita may cause such work to be done and the cost of such work shall be paid by the owner upon the completion of such work; or in the event such payment is not made, the cost of such work may be assessed against the property in the same manner as provided by law for other special assessments and such assessment may be established as a lien upon the land.

5. Transfers of title necessitated by Owner's needs for financing for all or a portion of the development proposed on said Lot 3, University Gardens, may be exempted from article 2 herein by approval of the Board of Commissioners of the City of Wichita; provided, such transfers shall contain provisions preserving the rights of occupants contained in article 1 herein, and the continuing obligation of Owner for the improvement and maintenance of common facilities described in article 3 herein, and the extension of the rights of the City of Wichita regarding maintenance and special assessments described in article 4 herein.

6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, successors or assigns, and shall inure to the benefit of and be enforceable by the occupants of any land subject to the Restrictive Covenants or by the City of Wichita for 30 years. After said time, these Restrictive Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owner and the chief elected executive of the City of Wichita has been recorded agreeing to the change of said covenants and restrictions or the release thereof; provided, however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by any interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter.

8. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

9. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

Approved as to form:

Eugene L. Pirtle,
First Assistant City Attorney

HIGGINS & BRIMER

ATTORNEYS AT LAW

SUITE 313 - FIRST NATIONAL BANK BUILDING

WICHITA, KANSAS 67202

May 26, 1970

WILLIAM P. HIGGINS
JOHN W. BRIMER

FOREST 3-6148
AREA CODE 316

Eugene L. Pirtle, Esq.
City Attorney
903 Brown Building
Wichita, Kansas 67202

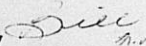
Re: University Gardens

Dear Gene:

We would certainly like to hear something on the proposed Restrictive Covenant which was forwarded to you on May 4, 1970. We are trying to complete the platting on this, so we would appreciate hearing from you.

Yours truly,

HIGGINS & BRIMER

By  *W.P.H.*
William P. Higgins

WPH:nm

June 30, 1970

Wichita-Sedgwick County Metropolitan
Area Planning Commission

John D. Gist, Senior Planner

S/D 69-102 - Final Plat of UNIVERSITY GARDENS

At your meeting of March 12, 1970, you considered and approved the above-captioned plat involving approximately 40 acres of land at the northeast corner of 21st Street and Oliver. Attached is a letter regarding same written by the applicant's attorney, Mr. William P. Higgins, wherein he requests that the plat be returned to the Planning Commission for a rehearing on the requirements for approval. In his letter, he refers to the specific requirement of installing or guaranteeing the construction of the deceleration lanes on Oliver and 21st Street adjacent to the application area.

He also has indicated that the Commission could clarify the contents of the Restrictive Covenants which were required covering the property shown as Lot 3 on the final plat, being that area proposed for multiple-family development.

This matter has been placed on your agenda for July 9, 1970.

JDG:ber

Attachment

cc: William P. Higgins, Attorney
Suite 313, First National Bank Building

Paul B. Graves
Traffic Engineer

Dick Linn
Design Chief Engineer

NEED:

OK 5 - Covenants
~~discuss with applicant
return to Planning Commission~~

OK B - storm sewer
project? (see D. Gist)

OK C - guarantee paving
did not require of full decel
lane on Oliver &
21st St.

June 30, 1970

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Subject: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS, generally located
at the northeast corner of 21st Street
and Oliver.

Gentlemen:

This is to advise you that the applicant of the above captioned plat has requested the matter be returned to the Planning Commission for a rehearing on the requirements for approval. The applicant's request refers to the requirement of installing or guaranteeing the construction of the deceleration lanes on Oliver and 21st Street, adjacent to the application area. The applicant has also indicated that the Commission might clarify the contents of the Restrictive Covenants which were required covering the property shown as Lot 3 on the final plat, being that area proposed for multiple-family development.

This matter has been scheduled for further consideration by the Planning Commission at their regular meeting on Thursday, July 9, 1970, at 1:30 p.m. If you have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Senior Planner

JDG:rne

Page 2
June 30, 1970

cc: ✓ Edward R. Johnson
Seldin Homes
4000 East 17th Street 67208

✓ Curtis Terflinger
2250 North Roosevelt 67220

✓ W. P. Higgins, Attorney at Law
1st National Bank Building 67202

✓ Barbara Morgan
13 Crestview Lakes 67220

✓ Mrs. Clina Hensley
4707 Looman 67220

✓ C. Bickley Foster
Office of Campus Planning
Wichita State University 67208

*this covenant
drafted by City
Att'y. D. D. D.*

RESTRICTIVE COVENANTS

These restrictions and covenants made this ____ day of _____, 1940, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH:

THAT, WHEREAS, University Mall, Inc., is the owner of the real property described as:

Lot 3, University Gardens, Wichita, Kansas;

and

WHEREAS, said Lot 3, University Gardens, is designated as a multi-family development included in a total Community Unit Plan (DP-8) covering the entire plat of University Gardens and, as such, is to be developed into Garden Apartments including non-public common open areas, access drives and parking areas, together with a community building with pool, lakes and other appropriate recreational facilities, all for the use and enjoyment of the occupants of the apartments in said development; and

WHEREAS, the Board of Commissioners of the City of Wichita has approved said Community Unit Plan and is desirous of protecting against problems which might arise with the improvement, care and maintenance of said common areas and recreational facilities which are to be provided for the apartment complex,

NOW, THEREFORE, the Owner declares that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and charges hereinafter set forth.

1. Every occupant shall have a right and easement of enjoyment, in and to the common properties as designated on the approved Community Unit Plan, and such easement shall be appurtenant to and shall pass with the occupancy of every unit in the development.

2. The Owner shall retain legal title to the common properties and shall not dispose of said common properties and/or facilities or in any way otherwise diminish the degree and extent of such facilities, unless the sale thereof shall include all properties, living units, interests and other facilities in said Lot 3, University Gardens, as an integrated and common ownership.

3. The Owner shall be responsible for the improvement of the common facilities, fenced play areas, parking areas and common open space lakes and recreation facilities, as shown on the Community Unit Plan approved by the Board of City Commissioners of the City of Wichita, and their maintenance in a good and usable condition. Improvement and maintenance shall include, but not be limited to, providing a safe and smooth surface for pedestrians and vehicular circulation and access, providing trees, the planting of grass and mowing of same, appropriate fencing for play areas, lighting and elimination of debris and unsanitary conditions.

4. Upon the failure of the Owner, his successors or assigns to provide such facilities and the maintenance thereof, the City of Wichita may cause such work to be done and the cost of such work shall be paid by the owner upon the completion of such work; or in the event such payment is not made, the cost of such work may be assessed against the property in the same manner as provided by law for other special assessments and such assessment may be established as a lien upon the land.

5. Transfers of title necessitated by Owner's needs for financing for all or a portion of the development proposed on said Lot 3, University Gardens, may be exempted from article 2 herein by approval of the Board of Commissioners of the City of Wichita; provided, such transfers shall contain provisions preserving the rights of occupants contained in article 1 herein, and the continuing obligation of Owner for the improvement and maintenance of common facilities described in article 3 herein, and the extension of the rights of the City of Wichita regarding maintenance and special assessments described in article 4 herein.

6. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present Owner, successors or assigns, and shall inure to the benefit of and be enforceable by the occupants of any land subject to the Restrictive Covenants or by the City of Wichita for 30 years. After said time, these Restrictive Covenants shall be automatically extended for successive periods of ten years unless an instrument signed by the then owner and the chief elected executive of the City of Wichita has been recorded agreeing to the change of said covenants and restrictions or the release thereof; provided, however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

7. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants, and failure by any interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter.

8. Severability. Invalidation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

9. In the event Owner should comply with the terms of the "Apartment Ownership Act", K.S.A. 58-3101, et seq., as amended, Owner may apply to the Board of Commissioners of the City of Wichita for amendment or dissolution of these Restrictive Covenants.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

Approved as to form:

Eugene L. Pirtle,
First Assistant City Attorney

HIGGINS & BRIMER
ATTORNEYS AT LAW
SUITE 313 - FIRST NATIONAL BANK BUILDING
WICHITA, KANSAS 67202

WILLIAM P. HIGGINS
JOHN W. BRIMER

April 29, 1970

FOREST 3-6148
AREA CODE 316

City of Wichita
Planning and Zoning Department
City Building Annex
Wichita, Kansas 67202

Re: Certification of Title

Gentlemen:

We wish to certify that good and merchantable title to the following described real estate in Sedgwick County, Kansas, to-wit:

The SW 1/4 of the SW 1/4 of Section 1,
Township 27 South, Range 1 east of the
Sixth Principal meridian in Sedgwick
County, Kansas

is vested in University Mall, Inc., a Kansas corporation,
subject only to the following exceptions, to-wit:

1. a mortgage recorded in Book 1549 of Mortgages at Page 226 in the office of the Register of Deeds of Sedgwick County, Kansas dated October 26, 1965. (*Fredeska Marie Paulay*)
2. Taxes for the year 1969 are shown paid in full as of the date of this letter.
3. Easements and restrictions of record.

Respectfully submitted,

HIGGINS & BRIMER

By *John W. Brimer*
John W. Brimer

JWB:nm

*MAPD
Regs Div.
rec'd. 6/5/70*

- Developer's maintenance responsibilities regarding:
- a) common open space
 - b) lake
 - c) private drives
 - d) off-street parking
- ETC. -

- Developer to retain fee title to common properties and facilities, and any change in title is to include all property, living units, etc. as an integrated & common ownership.

RESTRICTIVE COVENANT

These restrictions and covenants made this ____ day of _____, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

WITNESSETH: _____, Inc.,

THAT, WHEREAS, University Mall is the owner of the real property described as follows:

Lot 3, University Gardens, ~~Addition to~~ Wichita, Sedgewick County, Kansas, and

WHEREAS, said real property is designated as a multi-family development included in a total Community Unit Plan covering the entire plat of University Gardens and as such is designated to be developed into Garden Apartments including open areas, ~~for driveway~~ ^{access drives} and parking ~~and~~ ^{which are together with} a community building with pool and other appropriate recreational facilities, all for the use and enjoyment of the occupants of the apartments in said development, and

WHEREAS, ^{Ed. of Com. of the City of Wichita} the City of Wichita ^{has approved said Community Unit Plan and} is desirous of protecting against problems which might arise with the ^{improvement} care and maintenance of said common areas and recreational facilities ^{which are to be} provided for the apartment complex.

NOW, THEREFORE, the Owner declares that the real property described above, is and shall be held, transferred, sold and conveyed subject to the covenants, restrictions and charges hereinafter set forth.

~~Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens, Addition to provide for said diverse ownerships and as a result thereof, to petition for an amendment to the Community Unit Plan, which would be necessitated by the replatting, all as provided by the ordinances of the City of Wichita and the Statutes of the State of Kansas.~~

is notes & binds described. Necessary here? BEING PLATTED AS

use Article I BII of New Hope - BUT I came out with 2) refer to Lot 3 only

think to make the sales including all properties & for Wichita Lot 3 as an integrated community ownership.

*must
do not
look good
?*

*ES
probably
covered anyway
in # 1.*

*failure to enforce
does not waive
right to enforce
thereafter*

2. Transfers which are necessitated by different methods of obtaining financing for all or a portion of the development proposed on Lot 3, University Gardens Addition shall be exempt from provision 1 of these restrictions.

3. In the event of the development or passage by the State of Kansas and the municipality of the City of Wichita of a condominium law or of any other laws which would obviate the necessity for the restrictive covenant herein set out, and which these restrictions would hamper and/or render impotent should the owner desire to take advantage of the provisions of such laws, then and in that event, the restrictive covenants contained herein shall be released upon request made to the City of Wichita.

4. Enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to enforce any lien created by these covenants.

5. In validation of any one of these covenants or restriction by judgment or court order shall be in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

(Seal)

Covenant does not provide:

- 1) improvement & maintenance responsibilities of common facilities by Owners*
- 2) does not allow the City of Wichita to provide improvements or maintenance to be done & its assessment against property*
- 3) duration covenant and for the benefit of occupants within the development & the City of Wichita.*

Notary?

THE CITY OF WICHITA
OFFICE OF LAW DEPARTMENT

DATE May 6, 1970

TO Dick Linn, Design Chief Engineer
John Gist, Planner III

FROM Eugene L. Pirtle, First Assistant City Attorney



SUBJECT University Gardens Plat
Restrictive Covenants

I should appreciate your examining the attached copy of Restrictive Covenant submitted by attorney William Higgins and letting me know of any suggestions you may have relative to their amendment. Perhaps we could confer on this toward the end of the week. - *or the week after or the week after.*

Eugene L. Pirtle
Eugene L. Pirtle
First Assistant City Attorney

ELP:cr
Attachment



ROUTE SLIP (PLEASE CIRCLE DESTINATION)

City Manager	Dir. of Adm.	Planning Dept.
Deputy City Manager	Auditing	Police Dept.
Housing	Budget	Dir. of Public Works
Human Res. Dev.	Data Proc.	Administration
Model Cities	Industrial Rel.	Central Insp.
City Clerk	Personnel	Engineering
Civil Defense	Public Info.	Traffic Engr.
Community Facilities	Purchasing	Maintenance
Fire Department	Duplicating	Sanitation
Health Department	Ret. & Group Ins.	Urban Renewal
Director of Law	Treasury	Water Department
Prosecutor's Office	Library	Water Pol. Control
Municipal Court	Park Department	

For: *John Gist*

___ For your information ___ Reply sending me ___ copies
___ For your comments ___ Prepare reply for my signature
___ Note and return ___ You handle. No report required.

MESSAGE:

SIGNED _____
000-013

Lew DATE *5/6*

RESTRICTIVE COVENANT

These restrictions and covenants made this ____ day of _____, 1970, by UNIVERSITY MALL, INC., hereinafter called Owner.

W I T N E S S E T H: _____, Inc.,

THAT, WHEREAS, University Mall is the owner of the real property described as follows:

is notes & should describe necessary here? BEING PLATTED AS

Lot 3, University Gardens, ~~addition to~~ Wichita, Sedgwick County, Kansas, and

WHEREAS, said real property is designated as a multi-family development included in a total Community Unit Plan covering the entire plat of University Gardens and as such

is designated to be developed into Garden Apartments including open areas, ^{access drives} ~~for driveway~~ and parking ^{area together with} and a community building with pool and other appropriate recreational facilities, all for the use and enjoyment of the occupants of the

apartments in said development, and ^{Bd. of Com. of the City of Wichita has approved said Community Unit Plan and} WHEREAS, the City of Wichita is desirous of protecting against problems which might arise with the care and maintenance of said common areas and recreational facilities ^{improvement, which are to be} provided for the apartment complex.

NOW, THEREFORE, the Owner declares that the real property described above, is and shall be held, transferred, sold and conveyed subject to the covenants, restrictions and charges hereinafter set forth.

1. Owner shall not dispose of any portion of Lot 3 in a manner which would develop diverse ownerships in said lot without petitioning to replat Lot 3, University Gardens, ~~addition~~ ^{approved} to provide for said diverse ownerships and as a result thereof, to petition for an amendment to the Community Unit Plan ^(DP-8) ~~which would be necessitated by the replatting~~, all as provided by the ordinances of the City of Wichita and the Statutes of the State of Kansas.

think this needs to elaborate further on sales including all properties & facilities of Lot 3 as an integrated & common ownership.

2. Transfers which are necessitated by different methods of obtaining financing for all or a portion of the development proposed on Lot 3, University Gardens Addition shall be exempt from provision 1 of these restrictions.

Doesn't look good?

3. In the event of the development or passage by the State of Kansas and the municipality of the City of Wichita of a condominium law or of any other laws which would obviate the necessity for the restrictive covenant herein set out, and which these restrictions would hamper and/or render impotent should the owner desire to take advantage of the provisions of such laws, then and in that event, the restrictive covenants contained herein shall be released upon request made to the City of Wichita.

Go probably covered anyway in # 1.

4. Enforcement of these covenants and restrictions shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to enforce any lien created by these covenants.

Failure to enforce does not waive right to enforce thereafter

5. In validation of any one of these covenants or restriction by judgment or court order shall be in no wise effect any other provision which shall remain in full force and effect.

UNIVERSITY MALL, INC.

By _____
President

ATTEST:

Secretary

(Seal)

Covenant does not provide:

- 1) improvement & maintenance responsibilities of common facilities by Owner
- 2) does not allow the City of Wichita to provide improvements or maintenance to be done & its assessment against property
- 3) duration covenant and for the benefit of occupants within the development & the City of Wichita.

Notary?

University Gardens
(MAPC agenda 3-12-70)

Bill Higgins opposes
filing covenants on
development of Lot 3
& S/D Com. asked
Higgins, Planning and
Adept. ~~Law~~ of Law
to resolve legal
position by MAPC
meetings.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

MARCH 14, 1969

Mr. H. B. Kuhn
300 West Douglas
Wichita, Kansas

Subject: Draft Restrictive Covenants
for New Hope Addition

Dear Mr. Kuhn:

Bob Lakin has asked that I forward you a copy of the draft covenant that you have discussed with him. Although we have copies of other approved covenants which have guaranteed the maintenance of common open space, parking areas and community facilities, they all were for development where either lots or dwelling units are being sold and where it was necessary for assurances that all owners would be annually assessed for maintenance.

In Bob's draft he has attempted to protect the City of Wichita by making it possible for the City to cause such maintenance work to be done in the event the owner does not perform, and assess the property in such manner as provided by law for other special assessments. We are forwarding copies of the attached draft to John Dekker, Graham Hayes, and Paul Gray and would appreciate comments that any of you might have.

Mr. Hayes is anxious to complete the plat of New Hope Addition, and a satisfactory covenant is all that is keeping the plat from being recorded. We would appreciate your comments at your earliest convenience.

Sincerely,

Jack H. Galbraith
Senior Planner

JHG:js

cc: Graham Hayes, 511 Colorado Derby Bldg., Wichita, Kansas 67207
Paul Gray, 2202 E. 17th St., Wichita, Kansas 67214
John Dekker, Director of Law

Residential C.U.P.s

~~DP-1, Parkwood South CUP~~

* - DP-8, University Gardens (original)

orig. P. Staff recon: - density & height controls assured through restrictive covenants

~~DP-13, Builders Lane~~

~~DP-14, Peter Dros. Const. Co.~~

* - DP-20, Lakton Lodge Apts. (Home Assoc)

* - DP-23, Marina Lake Development
Home Assoc. w/ platting Parcel 7

* - DP-24, Chisholm Apts. CUP
Home Assoc. or other similar agreement (FHA bond) ^{contract}

* - ~~DP-26, Queen's Lake CUP~~

* - ~~DP-30, Mt. Carmel Homes CUP~~

NEW
HOPE
ADD.

DP-31, (South Hydraulic & 13rd St. So.)
Required Covenant, see copy
of letter

General Provision 18, required a Home Assoc.
agreement providing for the maintenance of non-
public common areas, parking areas, community
facilities, lake, fences, etc.

STATE OF KANSAS
RECORDS & COPIES
FILED FOR RECORD

APR 15 1969

APR 23 1969
1969

Real Estate Dept

Original Compared
With Record

JOHN HALE
COUNTY CLERK

RESTRICTIVE COVENANT

These restrictions and covenants made this 8th day of April, 1969, by MODERN METHODS, INC., hereinafter called Developer.

W I T N E S S E T H :

WHEREAS the Developer is the owner of the real property described as:

SAMPLE

A tract of land in the West Half (W $\frac{1}{2}$) of the Northwest Quarter (NW $\frac{1}{4}$) of Section 15, Township 28S, Range 1 East of the 6th Principal Meridian, Sedgwick County, Kansas, described as follows: Beginning at a point in the West line of the NW $\frac{1}{4}$ of Section 15, Township 28S, Range 1 East of the 6th P.M., said point being 457.0 feet North of the Southwest (SW) corner of said NW $\frac{1}{4}$ of Section 15; thence North along the West line of said NW $\frac{1}{4}$ a distance of 753.48 feet; thence East parallel with the South line of said NW $\frac{1}{4}$ a distance of 1,330.27 feet; thence South a distance of 753.48 feet; thence West parallel with the South line of said NW $\frac{1}{4}$ a distance of 1,329.05 feet to the point of beginning,

being platted as NEW HOPE ADDITION; and

WHEREAS, such Real property has been approved by the Board of Commissioners of the City of Wichita as a Community Unit Plan for the development of garden apartments, community buildings, project office, and a day care center for the occupants of the development; and

WHEREAS there are non-public common open spaces to be provided for the occupants of such dwellings; and

WHEREAS there are common recreational facilities, access drives, parking areas and other facilities for usage by the occupants of the development; and

WHEREAS the Community Unit Plan as approved by the Metropolitan Area Planning Commission and the Board of City Commissioners of the City of Wichita includes such facilities on said plan.

NOW THEREFORE, the Developer declares that the Real property described above is and shall be held transferred, sold, conveyed and occupied subject to the covenants, restrictions, charges and liens hereinafter set forth.

*City Clerk
Room 104 City Bldg.*

ARTICLE 1. Every occupant shall have a right and easement of enjoyment, in and to the common properties as designated on the approved Community Unit Plan and such easement shall be appurtenant to and shall pass with the occupancy of every unit in the development.

ARTICLE 2. The Developer shall retain legal title to the common properties and shall not dispose of said common properties and/or facilities or in any otherwise diminish the degree and extent of such facilities without having first offered such common properties and facilities for sale to the City of Wichita or its nominee unless such sales shall include all properties, living units and other facilities as an integrated and common ownership.

ARTICLE 3. The Developer shall be responsible for the improvement of the common facilities, fenced play areas, parking areas and common open space and recreation facilities, as shown on the Community Unit Plan approved by the Board of City Commissioners of the City of Wichita, and their maintenance in a good and usable condition. Improvement and maintenance shall include but not be limited to providing a safe and smooth surface for pedestrians and vehicular circulation and access, providing trees, the planting of grass and mowing of same, appropriate fencing for play areas, lighting, and elimination of debris and unsanitary conditions.

ARTICLE 4. Upon the failure of the Developer, his successors, or assigns to provide such facilities and the maintenance thereof, the City of Wichita may cause such work to be done and that the cost of such work shall be paid by the owner upon the completion of such work; or in the event such payment is not made the cost of such work may be assessed against the property in the same manner as provided by law for other special assessments and such assessment may be established as a lien upon the land.

ARTICLE 5. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and be binding upon the present owner, successors, or assigns and shall inure to the benefit of and be enforceable by the occupants of any land subject to the Restrictive Covenants or by the City of Wichita for 30 years. After said time, these restrictive covenants shall be automatically extended for successive periods of ten years unless an instrument

signed by the then owner and the chief elected executive of the City of Wichita has been recorded agreeing to the change of said covenants and restrictions or the release thereof, provided however, that no such agreement to change shall be effective unless made and recorded at least three years in advance of the effective date of such change.

ARTICLE 6. Enforcement. Enforcement of these covenants and restrictions shall be by any proceedings at law or in equity against any person or persons violating or attempting to violate any covenant or restriction either to restrain violation or to recover damages and against the land to enforce any lien created by these covenants and failure by any interested party to enforce these restrictive covenants shall in no event be deemed a waiver of the right to do so thereafter.

ARTICLE 7. Severability. In validation of any one of these covenants or restriction by judgment or court order shall in no wise effect any other provision which shall remain in full force and effect.

MODERN METHODS, INC.

By John L. Polston
John L. Polston, President

ATTEST:

Virginia Farnite
Secretary



Approved by To Form:
Ernest L. Smith
Assistant City Attorney

MISSOURI 642 174404

STATE OF MISSOURI)
JACKSON COUNTY) SS:

BE IT REMEMBERED, That on this 8th day of April, 1969,
before me, the undersigned, a Notary Public in and for the county
and state aforesaid, came JOHN L. POLSTON, President of
Modern Methods, Inc., a Corporation, to me personally known to be
the same person who executed the within instrument as President
of said corporation, and such person duly acknowledged the execution
of the same as President, for and on behalf of, and as the act and
deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and
affixed my Official seal the day and year above written.



Jonnie Ruth Pollock
Notary Public
Jonnie Ruth Pollock

Commission Expires:
April 5, 1970.

RETURN
TO
CITY CLERK



Southwestern Bell Telephone Company

P.O. Box 2206
Wichita, Kansas 67201
March 31, 1970

*Incorporate in
S/B minutes*

Mr. John Gist
Metropolitan Area Planning Commission
City Building Annex
104 South Main
Wichita, Kansas 67202

Re: SWB mobile tower site
and connecting drive adjacent
to the east line of University
Gardens Plat

Dear Mr. Gist:

Pursuant to your conversation with our Mr. R. L. Nicholas re-
garding the above:

Southwestern Bell Telephone Company purchased this site and
the associated ingress, egress and public utility easement in
May, 1963.

This easement provides right of way for existing aerial utility
lines and a drive connecting the site to 21st St.

The General Warranty Deed covering the site and easement is re-
corded in Deed Book 1314 at page 425.

Would you please see that the minutes of the Subdivision Com-
mittee of January 8, 1970 reflect the above recording information.

Thank you for your interest in this matter.

Respectfully,

Alfred A. Snider
District Engineer

*Dec. 4, 1969
when plat considered*





WICHITA STATE UNIVERSITY

OFFICE OF PLANNING

WICHITA, KANSAS 67208
PHONE 316-685-9161
Ext. 215

March 17, 1970

Mr. Jack H. Galbraith, Senior Planner
Regulations Division
Metropolitan Area Planning Department
City Building Annex
104 South Main
Wichita, Kansas 67202

Dear Jack:

Please notify me by phone when the plat of University Gardens is forwarded and scheduled for the City Commission agenda. I will be letting the neighborhood association and affected residents know of this date as soon as you let me know.

Sincerely yours,

A handwritten signature in cursive script that reads "Bick".

C. Bickley Foster
Director of Land Use Planning

em



March 13, 1970

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Re: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Gentlemen:

At the regular meeting of the Metropolitan Area Planning Commission on March 12, 1970, the above-captioned plat was considered. The action of the Planning Commission was to recommend that the plat be approved as recommended by the Subdivision Committee, subject to conditions 1 through 15, and 17, as stated in our letter of March 6, 1970.

OK
In addition, it is necessary that the applicant submit a restrictive covenant which sets forth the development and maintenance responsibilities of the developer pertinent to the common areas, park areas, lake, etc. which are proposed for Lot 3. Such covenant is to be approved by the Department of Law. Such covenant is also to provide for the developer retaining legal title to the common properties and facilities, and any change in fee title is to include all property, living units and other facilities as an integrated and common ownership.

In addition to complying with those conditions, it is necessary that you meet the following requirements before this plat can be forwarded to the Board of City Commissioners for consideration:

1. Compliance with the requirements of the Metropolitan Area Planning Commission.
2. Submission of the fully completed and signed tracing of the subdivision to the Metropolitan Area Planning Department.

Page 2 - Baughman Company
March 13, 1970

OK 2. Certification by an attorney that fee title is vested in the platlor.

OK Certification that all taxes due and payable have been paid.

3. Certification that the irons have been set as required by the Subdivision Regulations of the Metropolitan Area Planning Commission.

N/A per Amendment of Sub. Regs. 3/4/70
If you have any questions concerning this matter, please call our office.

Sincerely,

Jack H. Galbraith
Senior Planner

JHG:ber

cc: ✓ Edward R. Johnson
Seldin Homes
4000 East 17th Street 67208

✓ Curtis Terflinger
2250 North Roosevelt 67220

✓ Barbara Morgan
13 Crestview Lakes 67220

✓ W. P. Higgins, Attorney at Law
1st National Bank Building 67202

✓ Mrs. Cline Hensley
4707 Looman 67220

✓ C. Bickley Foster
Office of Campus Planning
Wichita State University 67208

March 6, 1970

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Subject: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, March 5, 1970, the above captioned plat was considered. The action of the Committee was to recommend that this plat be approved, subject to:

- OK 1. The applicant's surveyor shall change all notarization and approval dates on the final plat to refer to the year 1970.
- OK 2. The proper angles shall be indicated at corners of the plat.
- OK 3. A north arrow, scale and iron designation shall be indicated on the face of the plat.
- OK 4. Dimensions for the north and south lines of Lot 3, shall be indicated on the face of the plat.
- OK 5. The utility easement on the north side of Lots 3 and 4 shall be properly labeled as a 12-foot utility easement.
- OK 6. Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.
7. At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements

to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.

OK 8. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest. *petitions forwarded to Eng. Div. 6-5-70*

OK 9. The applicant shall install or guarantee the installation of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.

OK 10. The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue. *petition forwarded to Eng. Div. 6-5-70*

11. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.

see letter from Higgins dated 4-25-70 OK Engineering will problem before REC

12. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm water sewer has been constructed.

Ascertained that required by REC 2-27-71

13. The 50 feet of half street right of way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively. *R-O-W OK*

OK 14. The applicant and/or their surveyor shall contact the Engineering Division relative to a change in the geometrics of the drainage easement across the northeast corner of Lot 3.

OK 15. Amend the access controls along the north side of 21st Street and reflect "complete access control" adjacent to the south side of Lot 8. The access control to Oliver, adjacent to the west side of Lot 8, may be amended to provide three openings.

Page 3 - S/D 69-102
Baughman Company
March 6, 1970

16. Prior to the Planning Commission meeting on March 12, 1970, the applicant shall meet with the Planning and Law Departments relative to the need for submission of restrictive covenants which would set forth the development and maintenance responsibilities of the developer pertinent to common open areas, parking areas, lake, etc. which are proposed for Lot 3.

17. Recording within 30 days after approval by the Board of City Commissioners.

It was also pointed out at the meeting that the applicant should understand that the City reserves the right of approval of any system designed to discharge drainage from Lot 3 into the future storm water sewer, and the construction and cost of such system will be the responsibility of the applicant.

The enclosed "marked" copy of the final plat is for your information and files.

This matter will be forwarded to the Planning Commission for its consideration on Thursday, March 12, 1970, at 1:30 p.m. If you should have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Planner III

JDG:vjp

Enclosure

cc: Seldin Homes
Edward R. Johnson
4000 E. 17th St. 67208

Curtis Terflinger
2250 N. Roosevelt 67220

Barbara Morgan
13 Crestview Lakes 67220

W. P. Higgins
Attorney at Law
1st National Bank Bldg. 67202

Mrs. Cline Hensley
4707 Looman 67220

C. Bickley Foster
Office of Campus Planning
Wichita State University 67208

CURTIS D. TERFLINGER
ATTORNEY AT LAW

2250 N. ROOSEVELT

WICHITA 20, KANSAS

File

TELEPHONE MU 4-5953

February 26, 1970

Mr. H. D. Bledsoe, Chairman
Subdivision Committee of MAPC
Resthaven Gardens of Memory
11800 W. Highway 54
Wichita, Kansas

Dear Mr. Bledsoe:

In order not to cause a delay in the consideration of the plat of University Gardens at the meeting of the Subdivision Committee of the MAPC on March 5, 1970, I wish to bring to your advance attention the crucial traffic flow problems involving this development. Involved are the number of points of ingress-egress for the shopping area and also the single ingress-egress for the apartment development.

It is the position of the Northeast Heights Residents Association, Crestview Lakes Estates Association, and Willow Lake Estates Association that the final plat should take into account an overall traffic plan for the 21st and Oliver vicinity, including planning for turnbays, medials, etc.

It is our considered judgment that the southernmost entrance into the parking area from Oliver should be eliminated. The most serious defect we detect, however, is the funneling of all the apartment traffic (approximately 600 parking places indicated) onto Oliver into an almost 100% left turn situation. It is incredible to believe that serious congestion and safety problems will not result from such a design. The associations involved have acquiesced in the use of 165 feet of the AA buffer zone on the west for parking purposes. It is being asked, in return, that the developer be required to use some of the space he has gained to provide a corridor to 21st Street along the east side of the shopping development for a second exit for apartment traffic. The associations consider such a requirement to be in the public interest and most reasonable. The problems here can be anticipated, planned for, and at this point are easily solvable. It is the purpose of this letter to be positive and to make clear that we do not intend to let the public interest in this matter be ignored.

Very truly yours,

Curtis D. Terflinger
President, NHRA

cc: Robert Lakin
Secretary of MAPC
104 S. Main

Paul Graves
City Traffic Engineer
104 S. Main

W. P. Higgins
Attorney at Law
1st National Bank Building



February 6, 1970

Mr. W. P. Higgins
Attorney at Law
1st National Bank Building
Wichita, Kansas 67202

Subject: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, February 5, 1970, the above captioned plat was considered. The action of the Committee was to again defer the plat until after the associated and pending Board of Zoning Appeals case, which pertains to Lot 8, has been considered by said Board on February 24, 1970.

This matter will be rescheduled for the first Subdivision Committee meeting following the BZA meeting which will be on Thursday, March 5, 1970. If you have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Planner III

JDG:vjp

cc: Seldin Homes, Inc.
Edward R. Johnson
4000 East 17th St. 67208

Baughman Company
2522 East Kellogg 67211

Curtis D. Terflinger
President, MERA
2250 N. Roosevelt 67220



The Seldin Companies
Westwood Professional Center
11929 Elm St., Omaha, Nebraska 68144
Telephone 402/333-7373

December 23, 1969

Fire Chief Hobbs
Fire Department
3rd & Water Street
Wichita, Kansas

Dear Chief Hobbs:

Ed Johnson has informed me that you wanted verification of a couple of points in regard to the final plat of University Gardens C.U.P. located on the northeast corner of 21st & Oliver Street, Wichita, Kansas. We are agreeable to give you a point of access from Pine Crest to the middle part of the parking lot in parcel 5. If a fence is built at a future date, a gate will be installed and it is also understood that the gate may be kept locked.

Also in parcel 5, a fire easement, as shown on the C.U.P. will remain as an easement for the Fire Department to use for access. In parcel 2, it is also agreeable that the Fire Department will have access to the front and backs of any buildings being constructed on this parcel.

University Mall, Inc. is the Trustee and Titleholder to this parcel. I am signing this letter both as the President of the University Mall, Inc. and also as partner of Seldin Properties who is the owner of this parcel.

Very sincerely,

Millard R. Seldin *partner*

MRS:jn

*Rec'd. 2-5-70 from Chief Hobbs
RE: fire lanes and access
for fire trucks to proposed
development on UNIVERSITY GARDENS*

NORTHEAST HEIGHTS RESIDENTS ASSOCIATION

February 1, 1970

Mr. H. D. Eledsoe
Chairman, MAPC Subdivision Committee
c/o MAPD
104 So. Main
Wichita, Kansas 67202

Dear Mr. Eledsoe:

With regard to consideration of the final plat of the University Gardens' development at the northeast corner of Oliver and 21st streets scheduled for hearing on February 5, at 1:30 p.m., the Northeast Heights Residents Association requests that the matter be deferred until after the pending Board of Zoning Appeals case pertaining to the same property is considered on February 24. The NHRA considers the deferral necessary to provide sufficient time to reconsider the platting issue in light of the pending variance case. Your consideration of this request will be much appreciated.

Sincerely yours,

Curtis D. Terflinger
Curtis D. Terflinger
President, NHRA
2250 N. Roosevelt
Wichita, Kansas 67220



January 9, 1970

Mr. W. P. Higgins
Attorney at Law
1st National Bank Building
Wichita, Kansas 67202

Subject: S/D 69-102 - Final Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, January 8, 1970, the above captioned plat was considered. As per your request, the Committee has deferred further consideration of this plat until its regular meeting of February 5, 1970.

If you should have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Planner III

JDG:vjp

cc: Seldin Homes, Inc.
Edward R. Johnson
4000 East 17th Street
Wichita, Kansas 67208

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

FINAL PLAT
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 69-102 Name UNIVERSITY GARDENS
Date Application Rec'd. 11-24-69 Preliminary Approval 12-4-69
Scheduled S/D Meeting 1-8-70

DESCRIPTION

General Location Northeast corner of 21st Street and Oliver

Owner Seldin Homes, Inc. - % Edward R. Johnson
Surveyor/Engineer Baughman Company
Address 2522 East Kellogg Phone MU 3-7431

- | | | | |
|---|--|----------------------------------|--|
| 1. Gross Acreage of Plat | <u>40</u> | 7. Lineal Feet of New Streets: | |
| 2. Number of Lots: | | a. <u>30</u> R/W <u>1207</u> ft. | |
| Residential | <u>36</u> | b. <u>60</u> R/W <u>1930</u> ft. | |
| Commercial | <u>2</u> | c. <u>75</u> R/W <u>625</u> ft. | |
| Industrial | | d. _____ R/W _____ ft. | |
| Other | <u>1</u> | e. _____ R/W _____ ft. | |
| Total Number of Lots | <u>68</u> | TOTAL <u>3,762,384</u> ft. | |
| 3. Minimum Lot Frontage | <u>200</u> ft. | 8. Sidewalk adjacent to all | |
| 4. Minimum Lot Area | <u>40,000</u> sq.ft. | streets? <u>yes</u> <u>no</u> | |
| 5. Existing Zoning | <u>AA, LC & B</u> | | |
| 6. Proposed Zoning | <u>Same</u> | | |
| 9. Public Water Supply | <u>Yes</u> (Yes-No), Name _____ City _____ | | |
| 10. Public Sanitary Sewers | <u>Yes</u> (Yes-No), Name _____ City _____ | | |
| 11. Health Department Approval (where applicable) | _____ (Yes-No) | | |
| 12. City of Wichita | <u>X</u> : Three-Mile Area _____ | | |

STAFF COMMENTS:

1. The applicants surveyor shall change all notarization and approval dates on the final plat to refer to the year 1970.
2. The proper angles shall be indicated at corners of the plat.
3. A north arrow, scale and iron designation shall be indicated on the face of the plat.
4. Dimensions for the north and south lines of Lot 3, shall be indicated on the face of the plat.
5. The utility easement on the north side of Lots 3 and 4 shall be properly labeled as a 12-foot utility easement.
6. Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.
7. The 20-foot utility easement along the north line of Lot 2 shall be extended west to Oliver Avenue.
8. The applicant shall review the approved CUP and their proposed development plans for Lot 5 with F. E. Hobbs of the Wichita Fire Department. Firelane easements determined necessary for said lot should then be indicated on the final plat.
9. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
10. The applicaant shall install or guarantee the extension of sanitary sewer to serve subject property. The Engineering Division of the

Department of Public Works should be contacted regarding this matter.

11. The applicant will need to contact the Water Department and make satisfactory arrangements for the distribution of water to serve Lot 5. *Bill Otten called this date 2/4/70 and stated that this condition need not be a part of the plat.*
12. The applicant shall contact the Engineering Division and make satisfactory arrangements for an appropriate guarantee for the paving of Pinecrest Avenue.
13. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.
14. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2, until said storm sewer has been constructed.
15. A Homes Association Agreement or in lieu thereof, restrictive covenants, providing for the maintenance of non-public common areas, parking areas, community facilities, lake, fence, etc. involved in the development of Lot 5, shall be submitted to the Planning Department, approved as to content by said department and as to form by the Department of Law. Said executed agreement shall be forwarded with the final plat to the Board of City Commissioners.
16. Recording within 30 days after approval by the Board of City Commissioners.

December 15, 1969

Mr. William P. Higgins
Attorney at Law
1st National Bank Building
Wichita, Kansas 67202

Subject: S/D 69-102 - Preliminary Plat of
UNIVERSITY GARDENS

Dear Mr. Higgins:

Attached is a sample Restrictive Covenant which is probably the better instrument for conveying the assurances required in condition number 16 of our letter to Baughman Company, dated December 8, 1969, relative to the Subdivision Committee's action on the above captioned plat. This covenant seems more appropriate than a Homes Association Agreement for this particular case, and the sample should provide the intent and necessary format from which you can draw the proper instrument.

If you have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Planner III

JDG:vjp

Enclosure

December 8, 1969

Baughman Company
2522 East Kellogg
Wichita, Kansas 67211

Subject: S/D 69-102 - Preliminary Plat of
UNIVERSITY GARDENS

Gentlemen:

At the regular meeting of the Subdivision Committee of the Metropolitan Area Planning Commission, December 4, 1969, the above captioned plat was considered. The action of the Committee was to approve the preliminary and authorize preparation of the final plat, subject to:

1. Lots 3 and 4 are zoned "AA" Single Family, and the associated CUP indicates that each are to be used for 2 single family residences. Therefore, said lots shall be adjusted to create 2 lots each.
2. Indicate "complete access control" adjacent to the west and south 40 feet of the south and west lines respectively, of that area designated as Lot 6.
3. Indicate on the east side of Oliver and adjacent to the west line of the areas labeled as Lots 3, 4 and 5, the following: "access control except 1 opening per lot".
4. Indicate access controls along the north side of 21st Street adjacent to Lots 1 and 2 as approved on the associated CUP. Said controls being 2 openings to Lot 1 and 3 openings to Lot 2.

5. The applicant shall review the approved CUP and their proposed development plans for Lot 5 with F. E. Hobbs of the Wichita Fire Department. Firelane easements determined necessary for said lot should then be indicated on the final plat.
6. Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.
7. The 20-foot utility easement along the north line of Lot 2 shall be extended west to Oliver Avenue.
8. The easements along the north side of Lot 5 east of Bleckley Drive shall be adequately labeled as a utility easement for the north 12 feet, and a drainage easement for the south 20 of the north 32 feet.
9. The utility easement along the north side of Lot 5 west of Bleckley Drive shall be increased to 12 feet in width and extended west across Lot 3 to Oliver Avenue.
10. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
11. The applicant shall install or guarantee the extension of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.
12. The applicant will need to contact the Water Department and make satisfactory arrangements for the distribution of water to serve Lot 5.
13. The applicant shall contact the Engineering Division and make satisfactory arrangements for an appropriate guarantee for the paving of Pinecrest Avenue.
14. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.

Page 3 - S/D 69-102
Baughman Company
December 8, 1969

15. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2, until said storm sewer has been constructed.
16. A Homes Association Agreement providing for the maintenance of non-public common areas, parking areas, community facilities, lake, fence, etc. involved in the development of Lot 5, shall be submitted to the Planning Department, approved as to content by said department and as to form by the Department of Law. Said executed agreement shall be forwarded with the final plat to the Board of City Commissioners.
17. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAFC Subdivision Regulations).

Enclosed herewith is the "marked" copy of the preliminary plat for your information and files.

If you should have any questions concerning this matter, please call.

Very truly yours,

John D. Gist
Planner III

JDG:vjp
Enclosure

cc: Seldin Homes
% Edward R. Johnson
4000 E. 17th Street
Wichita, Kansas 67208

W. P. Higgins
Attorney at Law
1st National Bank Building
Wichita, Kansas 67202

Mrs. Barbara J. Morgan
13 Crestview Lakes
Wichita, Kansas 67220

PRELIMINARY PLAT
SUBDIVISION REPORT

SUBDIVISION COMMITTEE
METROPOLITAN AREA
PLANNING COMMISSION

S/D NO. 69-102 Name UNIVERSITY GARDENS
Date Application Rec'd. 11-24-69 Preliminary Approval _____
Scheduled S/D Meeting 12-4-69

DESCRIPTION

General Location Northeast corner of 21st Street and Oliver

Owner Seldin Homes, Inc. - % Edward R. Johnson

Surveyor/Engineer Baughman Company

Address 2522 East Kelloqg Phone MU 3-7431

- | | |
|---|---|
| 1. Gross Acreage of Plat <u>40</u> | 7. Lineal Feet of New Streets: |
| 2. Number of Lots: | a. <u>30</u> R/W <u>1207</u> ft. |
| Residential <u>3</u> | b. <u> </u> R/W <u>1930</u> ft. |
| Commercial <u>2</u> | c. <u> </u> R/W <u>625</u> ft. |
| Industrial <u> </u> | d. <u> </u> R/W <u> </u> ft. |
| Other <u>1</u> | e. <u> </u> R/W <u> </u> ft. |
| Total Number of Lots <u>6</u> | TOTAL <u>3842</u> ft. |
| 3. Minimum Lot Frontage <u>200</u> ft. | 8. Sidewalk adjacent to all |
| 4. Minimum Lot Area <u>40,000</u> sq.ft. | streets? <u> </u> yes <u> </u> no |
| 5. Existing Zoning <u>AA, LC & B</u> | |
| 6. Proposed Zoning <u>Same</u> | |
| 9. Public Water Supply <u>Yes</u> (Yes-No), Name <u> </u> City <u> </u> | |
| 10. Public Sanitary Sewers <u>Yes</u> (Yes-No), Name <u> </u> City <u> </u> | |
| 11. Health Department Approval (where applicable) <u> </u> (Yes-No) | |
| 12. City of Wichita <u>X</u> : Three-Mile Area <u> </u> | |

STAFF COMMENTS:

1. The associated cases, DP-8 - Amendment to University Gardens Community Unit Plan and Z-1099, have been approved by the Board of City Commissioners subject to platting within one years time, as recommended by the MAPC on May 22, 1969.
2. Lots 3 and 4 are zoned "AA" Single Family, and the associated CUP indicates that each are to be used for 2 single family residences. Therefore, said lots shall be adjusted to create 2 lots each.
3. The design of Lot 6 is not appropriate for its existing "AA" Single Family zoning classification. Therefore, it should be adjusted to create approximately 4 residential lots fronting onto Oliver.
4. Indicate "complete access control" adjacent to the west and south 40 feet of the south and west lines respectively, of that area designated as Lot 6.
5. Indicate adjacent to the east line of Oliver, "access control except 1 opening per lot" except for the south 40 feet thereof.
6. Indicate "access control except 1 opening" adjacent to the south line of that area designated as Lot 6, except for the west 40 feet thereof.
7. Indicate access controls along the north side of 21st Street adjacent to Lots 1 and 2 as approved on the associated CUP. Said controls being 2 openings to Lot 1 and 3 openings to Lot 2.
8. The applicant shall review the approved CUP and their proposed development plans for Lot 5 with F. E. Hobbs of the Wichita Fire Department Firelane easements determined necessary for said lot, should then be

indicated on the plat.

9. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
10. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations.
11. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

Map No.: _____
Section No.: _____
Twp. No.: _____
Range: _____

S/D No. _____

APPLICATION FOR SUBDIVISION APPROVAL

Name of Subdivision: UNIVERSITY GARDENS

General Location: 21st St. & Oliver

Name of Property Owner: Soldin Homes Inc. & Edward P. Johnson
Address: Wheatshocker Apartments 4000 E. 17th St. Phone: 682-1540

Name of Subdivider: same W. P. Higgins
Address: 1st Natl. Bank Bldg. Phone: FO 36148

Name of Agent/Surveyor: Bauchman Co.
Address: _____ Phone: _____

Date of Application: Nov. 18, 1969

SUBDIVISION INFORMATION:

1. Gross Acreage of Plat 4.0 Ac.
2. Number of Lots:
Residential 5
Commercial 2
Industrial _____
Other 1
Total Number of Lots 8
3. Minimum Lot Frontage 200 ft.
4. Minimum Lot Area 40,000 ft.
5. Existing Zoning _____
6. Proposed Zoning _____
7. Lineal Feet of New Streets:
a. 30 R/W 1207 ft.
b. 50 R/W 1930 ft.
c. 75 R/W 625 ft.
d. _____ R/W _____ ft.
e. _____ R/W _____ ft.
TOTAL 3812 ft.
8. Sidewalk adjacent to all streets? yes no
9. Public Water Supply yes (Yes-No), Name _____ City _____
10. Public Sanitary Sewers yes (Yes-No), Name _____ City _____
11. Health Department Approval (where applicable) _____ (Yes-No)
12. City of Wichita City Three-Mile Area

The owner herein agrees to comply with the Subdivision Regulations for the Wichita-Sedgwick County Metropolitan Area, as approved, and all other pertinent ordinances of the City of Wichita and/or Resolutions of Sedgwick County, Kansas, and Statutes of the State of Kansas. He further agrees that he waives the 60-day statutory period in which the Planning Commission or governing body must act. In addition, it is agreed that all costs of recording the plat and supplemental documents thereto including petitions for improvements such as streets, sewer, sidewalks, etc. with the register of deeds as well as all costs of publication of initiating resolutions approving any petition for improvements shall be assumed and paid by the owner when billed. The undersigned further states that he is the owner of the property proposed for platting.

Owner's Signature: Edward P. Johnson
Wichita Area Representative

Wichita-Sedgwick County Metropolitan Area
Planning Commission, Room 402, City Building
Annex, 104 South Main Street, Wichita, Kansas

Received by [Signature]
Date 11-23-69
Fee Submitted \$ 65.00

T9-301B (10-68)



WICHITA-SEDGWICK COUNTY

DATE

METROPOLITAN AREA PLANNING DEPARTMENT

July 9, 1976

TO Subdivision Committee and Utility Advisory
Committee Members

FROM Jack H. Galbraith, Chief Planner

SUBJECT DP-8 - Amendment to University Gardens Community Unit
Plan.

At the regular meeting of July 8, 1976, the Planning Commission considered a request to amend provisions of the University Gardens Community Unit Plan (DP-8). The proposed amendments relate to increasing the two original commercial parcels to six and an increase in the maximum commercial gross floor area from 202,992 square feet to approximately 220,000 square feet. It was the action of the MAPC to defer consideration of the proposed amendments until their meeting of July 22, 1976 and to refer the Community Unit Plan to the Subdivision and Utility Advisory Committees for recommendations regarding drainage, number of access points to 21st Street North, and accel-decel lanes on both 21st and Oliver. It was also requested that consideration of this Community Unit Plan be scheduled as the first item of discussion because it is expected that several neighborhood residents will be attending the meeting.

During consideration of the proposed amendments by the MAPC, numerous neighborhood residents questioned drainage solutions and traffic considerations regarding the proposed center and many people also stated that they had been promised by staff in previous public hearings on the project that these problems would be solved but that the apartment development on the north portion of the site had aggravated the drainage situation rather than improving it. It is requested that members of the Utility Advisory Committee check their records regarding previous drainage, traffic, and site design proposals and be prepared to discuss past history in the area inasmuch as it is anticipated that many residents will attend the Subdivision Committee meeting and raise the same issues.

If there are any questions on this matter prior to the Subdivision Committee meeting, please call.

J.H.G.
Jack H. Galbraith
Chief Planner

JPG:JH:rne

Shopping Center Facilities -

not general
rules

1. Service Station, TBA, restaurants except those normally referred to as fast food, franchise sales businesses, liquor store, drug store, offices, dry cleaning, laundrette, barber/beauty shop.

2. Offices Shopping Center Facilities when combined as an integral structural part of the SC on Parcel 8-10-11, appliances, furniture, carpets, sales, no drive in or carry out type service.

3. no fast food - no 7-11
add TBA.

8-10-11 Shopping Center Facilities - with attached buildings - no free stands;

Intent to develop stage center
facility on Parks 8-10-11 - rather
than free standing building.

Will require subject to Proceed.

RE: AGENDA ITEM NO. 17

MAPC July 22 -
Hippi

WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING DEPARTMENT

Mr. Kamin 62

CPO I voted unanimously to reject the four proposed parcel sublots.

MAPC HEARING DATE: 7-8-76

Case No. DP-8 Request: Approval of Amendment to University Gardens CUP

90

Location: Northeast corner of 21st Street and Oliver.

02 - 1

Acres: 40 Size 1,241' x 1,275'

	Land Use	Zoning
Existing	Undeveloped, single family and Multi-family	"AA", "B" & "LC"
North	Undeveloped	"AA"
East	Taverns and Undeveloped	"AA" & "LC"
South	Church, care home, office, medical, and apothecary	"AA", "BB," & "LC"
West	Single family and vacant	"AA", "BB", & "LC"

Street rights-of-way are adequate. Platted: Yes
Sidewalk: Previously guaranteed.

59
60
65

- History:
- SCZ-0057 - "R-1" to "LC" - approved by Co. Comm 11-18-59
 - SCZ-0069 - "LC" to "R-1" - MAPC recommended denial 11-5-59 (Case closed)
 - SCZ-0074 - West 300 ft. "LC" to "R-1" MAPC recommended approval 12-17-59. Case closed as property annexed to City
 - Z-0244 - "AA" to "LC". MAPC recommended approval except West 250 ft. from Section Line. BCC approved 6-28-60
 - Z-0632 - "AA" to "B". DP-8 Residential CUP
MAPC 5-20-65 - not approved
BCC: 7-6-65 - Approved
 - Z-0665 - "LC" to "AA". MAPC recommended denial. BCC denied 7-6-65
 - DP-8 Amendment to include Commercial area, MAPC 5-22-69 approved
BCC 6-10-69 approved.
 - BZA Case No. 2-70 - Exception for off-street parking approved by Board of Zoning Appeals February 24, 1970.

?

COMMENTS

1. In June, 1969 a combination residential and commercial CUP for University Gardens was considered and approved.

1969

The applicants have now submitted a revised development plan proposing the following general amendments to the commercial part of the plan*:

1. Division of Parcel 2 into 5 parcels and redesignated as Parcels 2, 9, 9, 10 and 11.
2. Reduction of building height from 80 feet to 35 feet on Parcels 8, 10, 11, and to 30 feet on Parcels 2 and 9.
3. Increase in number of access points to 21st Street from 5 to 6.
4. Increase of maximum gross floor area from 202,992 square feet to 280,150 square feet.
2. The applicant is proposing a total of 11 buildings, three of which are now proposed to be connected for a total of 9 free standing structures. A total of six buildings are proposed to be located near the 21st Street setback line which will effectively "strip out" the 21st street frontage. This number of buildings would appear to be incompatible with the intent section of the Commercial Community Unit Plan (Section 28.04.190.B) Regulations.

A total of 280,150 square feet of floor area is proposed for the commercial parcels which would be similar in size to the existing Eastgate Shopping Center, except that this application proposes that this large amount of square footage be parceled out into 9 free standing buildings with inadequate use limitations.

During the early 1960's, most major cities in the United States amended their zoning regulations to provide for Planned Unit Developments or Community Unit Plans because it had long been recognized that large commercial and residential developments can severely impact surrounding neighborhoods unless adequate safeguards such as use limitations, setbacks, limits on number of buildings, access control, height limitations, etc., were provided to protect adjacent property. Section 28.04.190.B code of the City of Wichita provides:

"The intent and purpose of this section is to provide well planned and well organized developments of com-

* The parcels proposed for residential usage (parcels 3, 4, 5, 6, and 7) are not included in the proposed amendment to the Community Unit Plan).

mercial areas which are held in single ownership or under single control.----- The character of the commercial developments should be appropriate to the neighborhood and conditions and safeguards should be provided to insure that the development will minimize any diminuation, if any, in value of surrounding residential property."

It is rather difficult to support an increase in square footage of commercial development on this C.U.P. from 202,992 to 280,150 square feet (a 38% increase) when adequate safeguards, such as parcel, building, and use limitations are not proposed with the plan.

Consideration should be given to eliminating one structure on each of parcels 1, 9 and 10, and increasing the setback line on Parcel 10 from 75 feet to 150 feet as was originally proposed by the applicant in the revised plan first submitted for review by the staff.

3. The uses proposed for the commercial parcels contain statements such as: "General retail" (parcels 9 and 10)
"Retail uses per zoning ordinance" (parcel 1)
"Other related uses" (parcel 2)

The applicant should be prepared to list uses which are actually proposed for the parcels rather than include open ended statements which permit any use allowed under the present zoning without lessening potential impacts on the neighborhood.

4. It should be pointed out that a serious drainage problem exists on subject property which the Department of Public Works advises must be resolved prior to any additional development. It should also be pointed out that in the early part of 1974, an application to vacate the existing drainage easement on Lots 2 and 3 of University Gardens Addition (V-0673) was recommended for approval by the Planning Commission subject to the approval of a new drainage dedication by the Department of Public Works, however, as of this date, the matter has not been resolved and the case remains an open file.
5. Should the Planning Commission recommend approval of this request, the following are recommended conditions of approval:
 - a. Replatting of subject property into lots coinciding with the parcel boundaries within one year from the date of approval by the City Commission; or the case be considered denied and closed.

*Drainage
Problem*

?

b. At the time of replatting, the applicant shall guarantee the construction of accel-decel lanes on Oliver and 21st Street.

c. At the time of replatting, the applicant shall provide appropriate drainage and floodway easements and submit a satisfactory guarantee for construction of drainage improvements prior to issuance of any building permits.

?

d. The maximum number of buildings for parcels 1, 2, 9, 10, and 11 shall not exceed one per parcel.

?

e. At the time of replatting, the applicant shall guarantee that one of the access points to parcel 11 shall be constructed to major driveway standards as determined by the City Traffic Engineer.

?

f. The curb cut proposed to 21st Street North from parcel 2 shall be eliminated and the second curb cut proposed to parcel 1 shall become a joint opening for parcels one and two. General provision #5 shall be amended to reflect a total of five access points to 21st St., North and the parcel descriptions for parcels one and two shall be amended to reflect this change.

g. General Provision #3 shall be amended to add the following statement:

Will no copy of a landscape plan for Parcel 2 -

"Failure to properly maintain the planting strips shall be considered a violation of the C.U.P. after a joint determination by the Director of Planning and the Superintendent of Central Inspection that the planting strips are not properly maintained."

h. A general provision #8 shall be added as follows:

"8. All new utilities shall be installed underground."

?

A general provision #9 shall be added as follows:

"The applicant shall guarantee the installation of accel-decel lanes on Oliver and 21st Street at the time of replatting."

The construction of the accel-decel lanes on Oliver and 21st Street at the time of replatting shall be determined.

- 22.
- j. The wall described in general provision # 4 shall be depicted on the face of the C.U.P.
 - k. The building setback line adjacent to 21st Street North on Parcel 10 should be increased to 150 feet.
 - l. Specific use limitations should be proposed for each parcel.
 - m. The development of this property proceeding in accordance with the development plan as approved by the Planning Commission and any substantial deviation of the plan, as determined by the Superintendent of Central Inspection and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development
 - n. Any major changes in this plan being resubmitted to the Planning Commission and City Commission for their consideration.
-

Also side setbacks between garages
required if building built separate,
none required if attached

- Drago - would like minutes of former
meeting on 'BZA' -

Vehicle access is logical, convenient,
flow manner in and thru all corner
garages in part of all other corner
garages

Colon John 4710 E. 26th Street

Dr. John Kain Present of the
Castroville Falls area had a
much larger area -

Cyprus 25 people stood in opposition

Hold the footprint of floor area as
originally approved

Barbara Grogg - NW of area -
Dresden's Mammor -

- Margaret Taltay -
- George Platt
- Another man (get name)

Taylor

March 2 Copy of the original CUP

- ^{Savin} Refer for ~~30 days~~ - 2 were deferred
- Concrete suggestions for drainage -
- Scheduled for consideration to the Sub Committee -

- Drury - amendment to the motion. to take to the Sub Committee -
Savin -

After a recess -

Taylor Amended motion -
2 were deferred -

at 1:00 off agenda item.

BOARD OF SUPERVISORS
METROPOLITAN AREA PLANNING COMMISSION

MINUTES

JULY 16, 1959

The regular meeting of the Metropolitan Area Planning Commission was held on Thursday, July 16, 1959, at 2:00 P.M. in Room 401, City Building Annex, 104 South Main, Wichita, Kansas. The following were present: Lester Wilkinson, Chairman, Charles Harris, Frank Messler, J. W. Kiedre, and Bill Esker. Members absent were Eric Jennings, Ernest Flood, and Bradford Hall. Also present were L. L. Little, Leland A. Edwards, Deloris Walls and other members of the planning staff.

1. The minutes of the meeting of June 22, 1959, and July 2, 1959 were approved as written and mailed.

2. Case SMZ-0057 Vern L. and Lodesha Marie Pauley request change from Light Residential for a tract beginning 600' east of the southwest corner of the SW_{1/4} of Section 1, Township 27, Range 1 East, thence north 600'; thence east to the east line of west half of SW_{1/4} of said Section 1; thence south along said east line to south line of said SW_{1/4}; thence west along said south line to point of beginning - North side of 21st Street in an area east of Oliver.

BERNARD BONST appeared as attorney for the applicant and stated that it is their desire to construct a community center type of development. The building as proposed would be of the ultra-exclusive type with general services rendered to the public occupying the ground floor, and the top floor will be an apartment building. In the area to the west, it is proposed to build additional buildings - apartments with businesses on the lower floor including doctor's offices. This will provide apartments for doctors and people who need to be near the medical center being developed to the southeast of subject property, for an extended period of time. There is nothing of this type in this area and this type of carefully selected buildings will not deteriorate from the surrounding area in any way, but would benefit the area and increase the value of existing property and future development to the east.

VERN LAING, attorney, spoke on behalf of residents in the area pointed out that Cloudridge, Willow Lakes and Crestview Heights; located in this immediate area make this one of the nicest residential areas in the City of Wichita. The residents of these areas are unaware that the southeast corner of Oliver and 21st Street, where Doctor Pauley's house is located, had been zoned Light Commercial at the time the County Zoning Resolution went into effect, until a few days prior to this hearing. They are opposed to any extension of Light Commercial zoning unless a buffer is provided along the west side of the proposed development which would shield the residential area to the west.

MR. LAING noted further that in 1956 an agreement was entered into by the residents of the area to eliminate all restrictions governing building in this area and the only one still in effect is the one which applies to the Unitarian Church development which is located on the east side of Oliver and on the south side of 21st Street.

GENE MILBURN, a resident of Crestview Lakes appeared in opposition to the request and stated that they have platted this area in large lots making

a nice residential area out of it and if a light commercial establishment is permitted on this corner, it will ruin the whole plan of development.

JIM HLENSCH represented a group of doctors developing the Medical Center to the southeast and stated that they are in favor of the application.

BERNARD DOMST suggested that those in opposition are not actually opposed to the zone change being requested but rather to the Light Commercial zoning on the corner which was established some time ago.

MOTION: It was moved, seconded and carried unanimously that this matter be deferred until such time as the applicant applies for rezoning of the "LC" at the NE corner of 21st Street and Oliver.

-
3. Case SCE-0058 - Initiated by the Planning Commission for a change from "R-1" to "C" for the $\frac{1}{2}$ of SE $\frac{1}{4}$ of Section 35, Township 27 South, Range 1 West of 6th P.M. - in an area west of West Street and south of Harry.

No one appeared in opposition to this change of zoning.

MOTION: It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of County Commissioners that this application be approved.

-
4. Case Z-0029 - Consideration of a request to approve a revised plot plan for the Westway Community Unit Plan located at the Southwest corner of the intersection of Seneca and Pawnee.

EDMONDS described the Community Unit Plan which was established for this area and noted that an area to the west and south was rezoned to "EB" and was not a part of the Community Unit Plan approval. The proponents now request approval of a revised plot plan so construction can begin. It was reported that the traffic engineer had indicated that he had no objection to the plan provided that he can work with the applicant on the final arrangements for parking. He is agreeable to curb cuts as shown. It was reported that utility representatives have also indicated their approval. No structures fall on the "EB" area, it being for parking purposes only.

It was noted that this proposed revision had not been submitted to the Subdivision Committee, so that the Planning Commission might have the benefit of the comments of that Committee.

JOHN DARTM, attorney, stated that he had personally contacted all of the utility companies, and they approved the revised plot plan. He stated that he also contacted Paul Graves, Traffic Engineer, and other interested persons; and that they indicated that they think it is a workable and agreeable plan. He stated that a Parking Plan would be worked out to the satisfaction of Mr. Graves.

MR. HARRIS pointed out that the Community Unit Plan is not a zoning classification, but is a plan whereby the Commission maintains restrictions. He also suggested a question of whether or not the Community Unit Plan includes the area zoned "EB".

It was pointed out that this proposed right-of-way is adjacent to a borrow pit in connection with construction of highways in the area and that it would be advisable to determine definitely that the proposed dedication does not cover any portion of the area which has been excavated. VERN LAMING, Attorney, stated that he drew the legal documents connected with the borrow pit operation and that sufficient allowance was made for the dedication area to be clear of any excavation.

MOTION: It was moved, seconded and carried unanimously that the Planning Commission recommend to the City Commission that this dedication be approved, but that before it is recorded, the staff make a check to determine that there is no excavation within the boundary of the proposed dedication.

- 9, D-0147 - Dedication from Lester and Audrey Matlock for right-of-way for Young Street from Central north to north line of Elm, legally described as the west 30' of the S 92.44' of Lot 2, and the West 30' of Lot 1, Dougherty Place Addition.

MOTION: It was moved, seconded and carried unanimously that the Planning Commission recommend to the City Commission that this dedication be approved.

10. D-0148 - Dedication from Indian Hills Development Company, Inc. for the $\frac{1}{2}$ of Jeann Street in an area N of 13th Street, legally described as the East 30' of Lot 5, Mice's Addition.

MOTION: It was moved, seconded and carried unanimously that the Planning Commission recommend to the Board of City Commissioners that this dedication be approved. Kessler abstained from discussion or voting.

the 16
in Bl
area w

11. A59-4 - Request from owners of Chisholm Park Estates that this area be annexed to the City of Wichita, being an area on the west side of Oliver and on both sides of 29th Street North if extended west of Oliver.

The platting of this area has been accomplished in accordance with area inside the city. It has been determined that utilities are available to the area.

MOTION: It was moved, seconded and carried unanimously that the Planning Commission recommend to the City Commission that that portion of Chisholm Park Estates now outside the City limits be annexed, inasmuch as sewer, water and other services are available to the area.

of Sheri
as best
South,
on Topel
right-

12. SCZ-0057 - Vern L. and Lodecka Marie Pauley request change from "W-1" to "W-C" for an area beginning 600' E of the SW corner of the SW $\frac{1}{4}$ of Section 1, Township 27, Range 1 E; thence N 600'; thence E to the E line of $\frac{1}{2}$ of SW $\frac{1}{4}$ of said Section 1; thence S along said E line to S line of said SW $\frac{1}{4}$, thence W along said S line to point of beginning - north side of 21st St. in an area E of Oliver. (Deferred July 16, 1959).

13. SCZ-0069 - Change from "UC" to "R-1" initiated by the Planning Commission tract beginning at a point 30' N of the SW corner of Section 1, Township South, Range 1 East; thence N along the W line of the SW 1/4 of said Section thence E 900'; thence S 570'; thence W 600' to point of beginning - north corner of 21st Street and Oliver.

MOTION: It was moved, seconded and carried unanimously that the above two cases be simultaneous but that separate actions be taken.

The Director read a letter from F. H. McKown which indicated objection to SCZ-0057 above described and which also expressed a desire for no commercial zoning in the area.

BERNARD BORST, attorney, represented Dr. and Mrs. Pauley on both of the above cases. He displayed an architect's drawing of proposed development on the area described in SCZ-0057 which indicated an ultra modern and exclusive shopping center developed in conjunction with the lake already on the property, with apartments on the second floor and shops on the first, which would cater to residents of the high type residential development west of Oliver and north of 21st Street. Much of the property in the area is unplatted farm land and if approved platting can be done in accordance with the shopping facilities. It was disclosed that Dr. Pauley owns both properties under consideration and also the 20 acres immediately to the north.

One of the commissioners pointed out that the Prairie Hills Addition immediately north of the 20 acres has been denied FIA mortgage insurance because of drainage problems created by runoff from Dr. Pauley's property. It was suggested that Dr. Pauley's property be platted prior to consideration of any zone change so that proper drainage provisions can be established. The establishment of shopping facilities, paved parking area, etc. would increase the existing drainage problems.

MRS. BLAES, property owner to the south, stated that area to the south of 21st Street does not drain north across 21st Street. She expressed no opposition to "UC" development proposed.

VERN LAING, attorney representing owners of the residential area in Crest Lakes, Willow Lakes, and Cloudridge, spoke in opposition to the existing "UC" described in SCZ-0069, and indicated no opposition to SCZ-0057 if SCZ-0069 is changed to a residential classification.

The possibility of annexation of the property under consideration and the 20 acres between subject property and Prairie Hills was discussed. If annexed, the proposed development could be considered under the Community Unit Plan, which would give some control of the development and assures it being constructed as approved by the Planning Commission and the City Commission.

KEN STEWART, attorney representing the developers of the medical center on the south side of 21st Street and east of Oliver, spoke in support of SCZ-0057.

In considering SCZ-0069, Mr. Borst was opposed to the change as proposed by the Planning Commission. He pointed out that this corner should retain the residential zoning allotted to section line intersections. He stated also that if the Commission rezones this corner it will have accomplished something indirectly which it could never accomplish directly; it would be a change not instigated by the owner. Also, he felt it would be spot de-zoning and would not lend itself to an orderly well-developed community. Further, with the property presently used

o, D
vidence
e prop
VERN
e resid
intersect
ties are
ea is L
al the r

Some
ea is L
the City

Z-065
Lot 2
side

EDMON
finite a
ard of Z
udio as
e applic
ontage of
a well

PORT
it is an
udio and
e limited

CU-16
a trac
E 124
1 West
on bor

This r

Commissioner Dr. Pauley certainly doesn't intend to change his residence. Dr. Pauley's residence would provide a buffer between the residential area west of Oliver and the proposed developed under 002-0057.

WERN LAINE expressed support of the proposed change in 002-0069, on behalf of the residents west of Oliver. He pointed out the shopping facilities at the next intersection south (13th and Oliver) and expressed doubt that any commercial facilities are needed at this intersection since residential development in the general area is limited because of the existing Crestview Country Club, the two Cemeteries and the medical clinic development.

MOTION: It was moved, seconded and carried unanimously that the above two cases be deferred and that the Planning Commission recommend to the City Commission that the 40 acres at the north-east corner of 21st and Oliver be annexed to the city to straighten up the border of the city, inasmuch as public sewer, gas, electricity are available to the property.

Some expressed a desire for a public hearing prior to recommendation of annexation, and it was pointed out that the public hearing on annexations is held before the City Commission.

002-0055 - John Bozenan requests change from "RM" to "LC" for the north 300' of Lot 2 except the west 13' of the north 120' of Lot 2 in Knight Acres - south side of Central and in an area just west of Sheridan.

EDMONS reviewed past consideration of this case. Originally the request was for considerably more area to the south. Previous considerations resulted in no definite action on the zone change, but suggested that the applicant submit to the Board of Zoning Appeals a request for permission to establish the radio towers and studio as desired. An application was filed and approved with certain requirements. The applicant has now amended the request to cover only the north 300' which is the frontage on Central and covers the location of the studio which is presently located in a dwelling house.

PONT EARLY, attorney for the applicant, spoke in support of this request inasmuch as it is anticipated that at some future date the applicant will want to build a new studio and under the approval granted by the Board of Zoning Appeals his activities are limited so far as expansion is concerned.

MOTION: It was moved, seconded that the Planning Commission recommend to the City Commission that the north 150' of subject property be approved and that the balance be denied. Motion carried by a vote of 3 in favor and 2 opposed.

002-16 - Ted Prichard requests Conditional Use Permit to establish a sawmill on a tract beginning 1244' west from SE corner of 002, thence N 13' 4"; N 1317'; S 1244'; S 652'; S 140'; thence S to beginning of Section 2, Township 27, Range 1 West, except for floodway - immediately west of Wichita-Valley Center floodway on north side of 21st street.

This request was previously deferred until the Maintenance Division of the Department of Public Works had submitted their proposed recommendations concerning

OR THAN TWO
E PROPOSAL
ARE FEET,
IONING OF

ENDENT,
SMUCH AS IT
ULATIONS

CARRIED
ED TO
DMENT
E CITY

TISE ONLY
OFFERED
THE PRE-
ED; AND
COMPLY
:

TWELVE
ND NO
THAN

MINATED
KIND,

F THE CODE
LLOWING:

TISE ONLY
OFFERED
THE PRE-
ED; AND
COMPLY
:

TWELVE
ND NO
THAN

MINATED
KIND;

GWICK COUNTY
NG TO SECTION

6. SIGNS, PROVIDED THAT THEY ADVERTISE ONLY SERVICES, ARTICLES AND PRODUCTS OFFERED WITHIN THE BUILDING LOCATED ON THE PREMISES WHEREON THE SIGN IS LOCATED; AND FURTHER PROVIDED THAT IT SHALL COMPLY WITH THE FOLLOWING REQUIREMENTS:

A. SUCH SIGN SHALL NOT EXCEED TWELVE (12) SQUARE FEET IN AREA, AND NO DIMENSION SHALL BE GREATER THAN TWICE ANOTHER DIMENSION;

B. SUCH SIGN SHALL NOT BE ILLUMINATED BY ARTIFICIAL LIGHT OF ANY KIND,

THE PUBLIC HEARINGS FOR THE ABOVE PROPOSED AMENDMENTS TO THE SEDGWICK COUNTY ZONING RESOLUTION AND THE CODE OF THE CITY OF WICHITA TO BE SCHEDULED FOR HEARING ON DECEMBER 17, 1959.

4. SCZ-0057 - VERN L. AND LODESKA MARIE PAULEY REQUEST CHANGE FROM "R-1" TO "LC" FOR AN AREA BEGINNING 600 FEET EAST OF THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 1, TOWNSHIP 27, RANGE 1 EAST; THENCE NORTH 600 FEET; THENCE EAST TO THE EAST LINE OF WEST HALF OF SOUTHWEST QUARTER OF SAID SECTION 1; THENCE SOUTH ALONG SAID EAST LINE TO SOUTH LINE OF SAID SOUTHWEST QUARTER; THENCE WEST ALONG SAID SOUTH LINE TO POINT OF BEGINNING - NORTH SIDE OF 21ST STREET IN AN AREA JUST EAST OF OLIVER.

BERNARD BORST, REPRESENTING THE APPLICANTS, SPOKE IN SUPPORT OF THIS APPLICATION. HE STATED THAT HIS PRESENTATION HAD BEEN MADE AT A PREVIOUS MEETING AND ASKED THAT THE COMMISSION MAKE A DECISION AT THIS MEETING EITHER RECOMMENDING DENIAL OR APPROVAL. THE APPLICATION PREVIOUSLY WAS DEFERRED PENDING ACTION ON A RECOMMENDATION TO THE CITY COMMISSION THAT ALL OF THE SW $\frac{1}{4}$ SW $\frac{1}{4}$ SECTION 1, T27S, R1E BE ANNEXED TO THE CITY OF WICHITA.

VERN LAING, REPRESENTING RESIDENTS OF CRESTVIEW LAKES AND OTHER RESIDENTIAL AREAS NORTH OF 21ST AND WEST OF OLIVER SPOKE IN OPPOSITION. HE REVIEWED THE EFFORTS OF THE APPLICANTS IN THE PAST TO ASSURE THAT LAND USES AT THIS INTERSECTION WOULD BE COMPATIBLE WITH SUBJECT PROPERTY, ESPECIALLY AS SUCH LAND USES RELATED TO THE SOUTHEAST CORNER OF 21ST AND OLIVER, WHICH IS NOW OCCUPIED BY A CHURCH.

MOTION: IT WAS MOVED, SECONDED AND CARRIED BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED, THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THIS APPLICATION BE DENIED.

5. SCZ-0069 - CHANGE FROM "LC" TO "R-1" INITIATED BY THE PLANNING COMMISSION FOR AN AREA BEGINNING AT A POINT 30 FEET NORTH OF THE SOUTHWEST CORNER OF SECTION 1, TOWNSHIP 27 SOUTH, RANGE 1 EAST; THENCE NORTH ALONG THE WEST LINE OF THE SW $\frac{1}{4}$ OF SAID SECTION 570 FEET; THENCE EAST 600 FEET; THENCE SOUTH 570 FEET; THENCE WEST 600 FEET TO POINT OF BEGINNING - NORTHEAST CORNER OF 21ST AND OLIVER.

VERN LAING, REPRESENTING OWNERS AND RESIDENTS IN CRESTVIEW LAKES AND OTHER AREAS NORTH OF 21ST AND WEST OF OLIVER, SPOKE IN SUPPORT OF THE ABOVE PROPOSED CHANGE. HE REFERRED TO PAST ACTIONS ON THE PART OF THE OWNER OF THIS LAND, TO ASSURE THAT NO COMMERCIAL USES WOULD BE ESTABLISHED.

BERNARD BORST, REPRESENTING DR. PAULEY, OWNER OF SUBJECT PROPERTY, STRESSED THE FACT THAT MOST OTHER MILE SECTIONS ARE ZONED LIGHT COMMERCIAL UNDER THE COUNTY ZONING RESOLUTION AND THAT INASMUCH AS THE COUNTY COMMISSION HAS ESTABLISHED THIS ZONING, IT SHOULD BE LEFT AS IS, WHICH IS IN LINE WITH THE APPARENT POLICY. HE FELT THAT ANY ACTION OF THE PLANNING COMMISSION TO CHANGE THIS ZONING WOULD BE IN DIRECT OPPOSITION TO THE DESIRES OF THE COUNTY COMMISSION WHICH WAS RESPONSIBLE, IN PART, FOR THE ESTABLISHMENT OF THE PLANNING COMMISSION.

IT WAS SUGGESTED BY ONE OF THE COMMISSIONERS THAT THE BETTER ARRANGEMENT WOULD BE TO ESTABLISH THE LIGHT COMMERCIAL ZONING EAST OF THE CORNER RATHER THAN ON THE CORNER, BUT IN VIEW OF THE DENIAL OF THE REQUESTED CHANGE IN SCZ-0057, IT MIGHT NOT BE FEASIBLE TO RECOMMEND CHANGE OF THIS CORNER. IT WAS POINTED OUT ALSO THAT THERE ARE SEVERAL OTHER PLACES IN THE SAME CLASSIFICATION WHERE COMMERCIAL HAS BEEN ESTABLISHED ON SECTION LINE CORNERS IN SPITE OF RESIDENTIAL DEVELOPMENT IN THE AREA.

BLOOD RECALLED CONSIDERABLE DISCUSSION OF THIS INTERSECTION BY THE SEDGWICK COUNTY PLANNING COMMISSION, AND EXPRESSED HIMSELF AS BEING OPPOSED TO RECOMMENDING ANYTHING WHICH THE COUNTY COMMISSIONERS HAVE ESTABLISHED.

ANOTHER COMMISSIONER EXPRESSED HIMSELF AS FAVORING THE CHANGE CONTEMPLATED BY SCZ-0069, IN VIEW OF DR. PAULEY'S PAST EFFORTS TO BAR COMMERCIAL DEVELOPMENT OR ZONING ON OTHER PROPERTIES AT THIS INTERSECTION AND NOW SEEKS TO RETAIN THE SAME ZONING FOR HIS OWN PROPERTY. HE CONSIDERS IT A MISTAKE THAT THE CORNER WAS EVER ZONED "LC" AND THOUGHT IT WAS THE DUTY OF THE PLANNING COMMISSION TO DO WHAT IT COULD TO RECTIFY SUCH MISTAKES.

HE DID NOT CONSIDER IT ADVISABLE TO WITHHOLD ACTION ON THIS CORNER BECAUSE OTHER CORNERS HAVE BEEN SIMILARLY ZONED AND PERHAPS WRONGLY. HE INDICATED THAT HE FELT AN

ATED BY THE
AT A POINT
ECTION 1,
RTH ALONG
70 FEET;
T; THENCE
HEAST CORNE

OBLIGATION TO THE PEOPLE IN THE AREA WHO HAVE TRIED TO DEVELOP AND MAINTAIN THE AREA IN A HIGH CLASS RESIDENTIAL DEVELOPMENT.

MOTION: IT WAS MOVED AND SECONDED THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE PROPOSED CHANGE BE APPROVED. MOTION LOST BE A VOTE OF TWO IN FAVOR AND THREE OPPOSED.

ENTS IN
ND WEST OF
CHANGE.
OWNER OF
ULD BE

6. PROGRESS REPORT ON MULTI-PURPOSE LAND USE SURVEY.

THE DIRECTOR OF PLANNING SUBMITTED A PROGRESS REPORT OF THE LONG RANGE DIVISION: THREE STUDIES WERE STARTED IN 1959; PHYSICAL CHARACTERISTICS STUDY, LAND USE STUDY, AND TRANSPORTATION STUDY PROSPECTUS. PLANNING GRANTS FROM THE HOUSING AND HOME FINANCE AGENCY WERE MADE FOR THE PHYSICAL CHARACTERISTICS AND LAND USE STUDY AND IT IS EXPECTED THAT ALL THREE OF THESE STUDIES WILL BE COMPLETED DURING THE COMING YEAR.

NER OF SUB-
R MILE INTER-
COUNTY ZONING
SSION HAS
S, WHICH IS
ANY ACTION
G WOULD BE
TY COMMISSION
SHMENT OF

7. CONSIDERATION OF THE ADOPTION OF A RESOLUTION RELATING TO AN URBAN PLANNING GRANT AUTHORIZING THE CHAIRMAN OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION TO EXECUTE AND FILE AN APPLICATION THEREFOR AND TO REPRESENT THE APPLICANT IN CONNECTION THEREWITH; AND AUTHORIZING THE DIRECTOR OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING DEPARTMENT TO REPRESENT THE PLANNING AGENCY.

RS THAT THE
GHT COMMERC-
HE CORNER,
GE IN
CHANGE OF
E ARE SEVER-
COMMERCIAL
SPITE OF

THE DIRECTOR EXPLAINED THAT AN APPLICATION FOR ADDITIONAL FEDERAL FUNDS HAS BEEN PREPARED AND REQUESTED THE COMMISSION TO APPROVE THE RESOLUTION AUTHORIZING THE EXECUTION AND FILING OF AN APPLICATION FOR ADDITIONAL FUNDS TO CARRY OUT FURTHER PHASES OF THE APPROVED PLANNING PROGRAM.

THIS INTER-
ION, AND
ING ANYTHING

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE FOLLOWING RESOLUTION BE ADOPTED:

FAVORING THE
PAULEY'S
ONING ON
EEKS TO
E CONSIDER-
P AND THOUGH
D WHAT IT

RESOLUTION

A RESOLUTION RELATING TO AN URBAN PLANNING GRANT AUTHORIZING THE CHAIRMAN OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING COMMISSION TO EXECUTE AND FILE AN APPLICATION THEREFOR AND TO REPRESENT THE APPLICANT IN CONNECTION THEREWITH: AND AUTHORIZING THE DIRECTOR OF THE WICHITA-SEDGWICK COUNTY METROPOLITAN AREA PLANNING DEPARTMENT TO REPRESENT THE PLANNING AGENCY.

LD ACTION
SIMILARLY
E FELT XN

CHANGE FROM
TOWNSHIP 27 S
RY BETWEEN

M REQUESTS
550 FEET
SOUTH, RANGE
LINE OF GYPS
OF THE WEST
NE CORNER
BEGINNING -
OWN.

PLICANT ON

NG OF SCZ-C
NANCING FOR
MITTED LETT
TED THEY W
F THE PROX
ED THAT HE
THE WEST SI

CLARIFICAT

TED A DEFER
POSITION O
THAT UNDER
NG COMMISS
ON WITHIN 45

CARRIED
ION
SSIONERS

CARRIED
ION
SSIONERS
THE WEST
50 FEET OF
OR A CHANGE

Z-0206 - RALPH J. PRYOR AND RICHARD JONES, TRUSTEES, REQUEST CHANGE FROM "A" TO "LC" FOR ALL OF LOT 2 AND THE SOUTH 10 FEET OF LOT 4 ON ERIE AVENUE, BLOCK 6, HARRIS & HOFFELD'S SUBDIVISION OF IMBODEN AND OLIVER'S ADDITION - NORTHEAST CORNER OF ERIE AND KELLOGG.

EDMONDS STATED THAT THIS APPLICATION FALLS WITHIN THE AREA GREEN HILLSIDE AND VOLUTSIA PREVIOUSLY DETERMINED BY THE METROPOLITAN AREA PLANNING COMMISSION AND CITY COMMISSION AS BEING APPROPRIATE FOR LIGHT COMMERCIAL ZONING.

NO ONE APPEARED IN OPPOSITION TO THIS APPLICATION.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF CITY COMMISSIONERS THAT THIS APPLICATION BE APPROVED.

Z-0209 - CHARLES J. IRVING REQUESTS CHANGE FROM "AA" TO "RB" FOR A TRACT BEGINNING 1865.9 FEET EAST OF THE SW CORNER OF S 1/2 SW 1/4 OF SECTION 5, TOWNSHIP 28, RANGE 1 EAST, THENCE NORTH 330 FEET, THENCE EAST 66 FEET, THENCE SOUTH 330 FEET, WEST 66 FEET TO BEGINNING - NORTH SIDE OF 31ST STREET SOUTH AND BETWEEN EXCHANGE AND OSAGE.

THE APPLICANT STATED THAT HE DESIRES THE ABOVE CHANGE IN ORDER TO PLACE A TRAILER FOR HIS CRIPPLED MOTHER ON THIS PROPERTY SO THAT SHE CAN BE NEAR, AS SHE NEEDS ATTENTION. NO ONE APPEARED IN OPPOSITION.

THE POSSIBILITY OF REFERRING THIS CASE TO THE BOARD OF ZONING APPEALS WAS DISCUSSED.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION REFER THIS CASE TO THE BOARD OF ZONING APPEALS FOR ACTION AND DEFER ANY ACTION ON THE ZONING APPLICATION UNTIL THE APPEAL BOARD HAS ACTED.

Z-0074 - CHANGE FROM "LC" TO "R-1" INITIATED BY THE PLANNING COMMISSION FOR AN AREA BEGINNING AT A POINT 30 FEET NORTH OF THE SW CORNER OF SECTION 1, TOWNSHIP 27 SOUTH, RANGE 1 EAST, THENCE NORTH ALONG THE WEST LINE OF THE SW 1/4 OF SAID SECTION 170 FEET, THENCE EAST 330 FEET, THENCE SOUTH 570 FEET, THENCE WEST 330 FEET TO THE POINT OF BEGINNING, EXCEPT THE WEST 30 FEET FOR STREET - NORTHEAST CORNER OF 21ST AND OLIVER.

VERNE LAING, ATTORNEY REPRESENTING RESIDENTS OF CRESTVIEW LAKES TO THE WEST OF OLIVER, APPEARED IN SUPPORT OF THIS PROPOSED CHANGE. NO ONE APPEARED IN OPPOSITION.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THIS ZONING BE APPROVED.

20. CU-28 - BEL AIRE IMPROVEMENT DISTRICT REQUESTS CONDITIONAL USE PERMIT TO ESTABLISH A SEWAGE LIFT STATION AT THE 5001 EAST 46TH STREET NORTH ON A 25 FOOT BY 25 FOOT EAST RECORDED IN THE PLAT OF LOT 4, BLOCK 5, REPLAT OF LAWYER'S ADDITION.

IT WAS POINTED OUT THAT THE LIFT STATION IS ALREADY CONSTRUCTED. GREY DRESIE WAS PRESENT TO REPRESENT THE APPLICANT. NO ONE APPEARED IN OPPOSITION.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THIS APPLICATION BE APPROVED.

21. CU-30 - JAYHAWK IMPROVEMENT DISTRICT REQUESTS CONDITIONAL USE PERMIT TO ESTABLISH AN ELEVATED WATER STORAGE TANK, CHLORINATOR AND COMBINED OFFICE AND GARAGE FOR USE OF UTILITIES, ON A TRACT BEGINNING AT THE SE CORNER EXCEPT B, F. A. BROWN FOURTH ADDITION, THENCE WEST ALONG NORTH LINE OF 51ST STREET, SOUTH 122.5 FEET, THENCE NORTH 122.5 FEET, THENCE EAST 122.5 FEET, THENCE SOUTH 120 FEET TO BEGINNING - NORTHWEST CORNER OF KANSAS AND 51ST STREET.

MALCOLM BLACK, ATTORNEY FOR THE APPLICANT OUTLINED THE FACILITIES REFERRED TO ABOVE TO ALLEVIATE THE POSSIBILITY OF WATER SHORTAGE FOR THE RESIDENTIAL AREA SERVING THE JAYHAWK IMPROVEMENT DISTRICT. BLACK STATED THAT THEIR ENGINEER HAS INDICATED THIS IS THE MOST FEASIBLE LOCATION IN TERMS OF COST AND EFFICIENCY. THE TOWER AS PROPOSED, IS A PEDESTAL TOWER WHICH WOULD BE IMPOSSIBLE TO SCALE FROM THE OUTSIDE. MR. BLACK POINTED OUT THAT THIS TYPE OF TOWER HAS BEEN KNOWN TO WITHSTAND EVEN THE MOST SEVERE WINDSTORMS OR TORNADOS.

BOB BRIDEWELL, A RESIDENT OF THE AREA, STATED THAT HE RECEIVED A PETITION CONTAINING APPROXIMATELY 173 NAMES PROTESTING THE PROPOSED FACILITIES. HE SUGGESTED THAT PERHAPS A CONTRACT COULD BE MADE WITH THE WICHITA DEPARTMENT OF WATER AND SEWAGE TREATMENT TO SUPPLY WATER WHICH IN THE LONG RUN WOULD BE MORE ECONOMICAL THAN PURCHASING THE IMPROVEMENT DISTRICT FACILITIES.

ROBERT HILL, ATTORNEY REPRESENTING SCHOOL DISTRICT #10, STATED HE SPOKE IN OPPOSITION. HE STATED THAT THE RESULTS OF A POLL CONDUCTED BY THE PARENTS OF CHILDREN ATTENDING THE SOUTH RIVERSIDE SCHOOL SHOW THAT THE PARENTS ARE OPPOSED TO THE PROPOSED USE.

L
C
S
P
C

C.
- D
D
D
D
D
D

FLO
THE C
PLICAT

THE
LD BE
ON CONC
HER TH
DICATED

BLOOD

ONE OF
RRAL WA
AL INFO
ON THE

DR59-23
SALVAGE
RESOLUTE
BLOCK 9,
KARL, CL

EDMONDS
AT THE

LETTER FR
COMMENDIN
PROBLEMS

ACTIO

LAKIN INDICATED THAT THIS PROPOSED CHANGE HAS BEEN ADVERTISED IN ORDER TO CORRECT AN ERROR MADE IN PUBLISHING THE ORIGINAL COUNTY ZONING MAP.

NO ONE APPEARED TO OPPOSE THIS CHANGE.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THE ABOVE PROPOSED CHANGE BE APPROVED.

8. CASE No. SCZ-0092 - CHANGE FROM "LC" TO "R-1" AND FROM "R-1" TO "LC" INITIATED BY THE PLANNING COMMISSION AS FOLLOWS:
CHANGE FROM "R-1" TO "LC" A TRACT BEGINNING 600 FEET SOUTH OF THE NE CORNER OF THE NE $\frac{1}{4}$, SECTION 25, TOWNSHIP 26 SOUTH, RANGE 1 EAST; THENCE WEST 600 FEET; THENCE SOUTH 220 FEET; THENCE EAST 600 FEET; THENCE NORTH 220 FEET TO POINT OF BEGINNING; AND

CHANGE FROM "LC" TO "R-1" A TRACT DESCRIBED AS BEGINNING 380 FEET NORTH OF THE SE CORNER OF SE $\frac{1}{4}$ OF SECTION 24, TOWNSHIP 26 SOUTH, RANGE 1 EAST; THENCE WEST 600 FEET; THENCE NORTH 220 FEET; THENCE EAST 600 FEET; THENCE SOUTH 220 FEET TO POINT OF BEGINNING - IN THE GENERAL AREA OF THE INTERSECTION OF WOODLAWN AND 45TH STREET NORTH.

LAKIN POINTED OUT THAT THIS PROPOSED CHANGE IS ALSO TO CORRECT AN ERROR IN THE PUBLICATION OF THE ORIGINAL COUNTY ZONING MAP.

PAUL JORGERSON, REPRESENTING GORDON DOUTZOUR AND N. C. MUELLER, PROPERTY OWNERS IN THE AREA, SPOKE IN FAVOR OF THE PROPOSED CHANGE.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF COUNTY COMMISSIONERS THAT THIS PROPOSED CHANGE BE APPROVED.

9. CASE No. Z-0244 - CHANGE FROM "AA" TO "LC" INITIATED BY THE PLANNING COMMISSION FOR A TRACT BEGINNING 30 FEET NORTH AND 30 FEET EAST OF THE SW CORNER OF THE SW $\frac{1}{4}$, SECTION 1, TOWNSHIP 27 SOUTH, RANGE 1 EAST; THENCE NORTH 570 FEET; THENCE EAST TO THE EAST LINE OF THE W $\frac{1}{2}$ OF THE SW $\frac{1}{4}$ OF SAID SECTION 1; THENCE SOUTH ALONG SAID EAST LINE TO A POINT 30 FEET NORTH OF THE SOUTH LINE OF SAID SW $\frac{1}{4}$, THENCE WEST PARALLEL TO SAID SOUTH LINE OF THE SW $\frac{1}{4}$ TO POINT OF BEGINNING - NORTHEAST CORNER OF 21ST STREET AND OLIVER.

THE DIRECTOR OF PLANNING REVIEWED PREVIOUS CIRCUMSTANCES CONCERNING THE STATUS OF ZONING OF SUBJECT PROPERTY. HE STATED THAT THERE WERE APPLICATIONS PENDING FOR A ZONE CHANGE (COUNTY) WHEN THE PROPERTY WAS ANNEXED TO THE CITY OF WICHITA. ALL PROPERTY ANNEXED IS AUTOMATICALLY CLASSIFIED AS "AA" (CITY). LEGAL COUNSEL HAS ADVISED THAT THE COUNTY COMMISSION WOULD HAVE NO AUTHORITY TO ACT ON THE PENDING APPLICATIONS (SCZ-0069 AND SCZ-0074). THIS MATTER WAS SUBMITTED TO THE PLANNING COMMISSION AND UPON DIRECTION OF THE PLANNING COMMISSION THE ENTIRE AREA PREVIOUSLY UNDER CONSIDERATION FOR ZONE CHANGE WHILE IN THE COUNTY WAS ADVERTISED FOR A CHANGE FROM "AA" TO "LC".

BERNARD BORST, ATTORNEY FOR DR. AND MRS. PAULEY, OWNERS OF SUBJECT PROPERTY, SPOKE IN FAVOR OF THE CHANGE AS ADVERTISED. HE STATED THAT AN AGREEMENT HAS BEEN REACHED AS TO PROVIDING A BUFFER ZONE ON THE WEST, WITH VERN LAING, WHO REPRESENTS HOME OWNERS IN THE CRESTVIEW LAKE AREA TO THE WEST OF OLIVER AND NORTH OF 21ST STREET. BOTH MR. BORST AND MR. LAING INDICATED THAT THEY HAD AGREED THAT THE AREA ON OLIVER STREET SHOULD BE LEFT IN RESIDENTIAL CLASSIFICATION AS A BUFFER BETWEEN THE HOMES IN CRESTVIEW LAKES AND THE COMMERCIAL DEVELOPMENT PROPOSED ALONG 21ST STREET TO THE EAST OF OLIVER.

MR. BORST STATED THAT THE AGREEMENT IS THAT THE WEST 200 FEET (MORE OR LESS) OF SUBJECT PROPERTY REMAIN IN "AA" ZONING WHICH WOULD BE COMPATIBLE WITH THE RESIDENTIAL DEVELOPMENT TO THE WEST AND WOULD PROVIDE A BUFFER ZONE.

VERN LAING, REPRESENTING PROPERTY OWNERS IN CRESTVIEW LAKES, CONCURRED WITH MR. BORST STATING THAT THEY HAVE AGREED ON THE WEST APPROXIMATELY 200 FEET TO BE LEFT AS "AA". HE ASKED THE COMMISSION TO CONSIDER MAKING THE BUFFER AREA SUFFICIENT TO INCLUDE THE DRIVEWAY TO THE EAST OF THE EXISTING RESIDENCE.

MR. BORST STATED THAT THE DRIVEWAY REFERRED TO IS NOT USED AT THIS TIME, AND THAT IF A GARAGE IS CONSTRUCTED IN THE FUTURE, IT IS PLANNED TO HAVE THE DRIVEWAY ENTER FROM OLIVER RATHER THAN FROM 21ST STREET.

STAN NELSON, REPRESENTING THE BAPTIST CHURCH IN THE AREA, INQUIRED AS TO THE TYPE OF DEVELOPMENT PROPOSED IF THE ZONING IS MADE LIGHT COMMERCIAL. MR. BORST REVIEWED THE PLANS FOR DEVELOPMENT OF A QUALITY SHOPPING CENTER WITH APARTMENTS ON THE SECOND FLOOR.

MOTION: IT WAS MOVED, SECONDED AND CARRIED UNANIMOUSLY THAT THE PLANNING COMMISSION RECOMMEND TO THE BOARD OF CITY COMMISSIONERS THAT THIS APPLICATION BE APPROVED, EXCEPT FOR THE WEST 250 FEET AS MEASURED FROM THE SECTION LINE.

Generally located in an area north of 31st Street South between Oliver and George Washington Boulevard.

GALBRAITH pointed out the area on the map and reviewed the following comments and staff recommendation:

Comments

1. This request is made inasmuch as this property is going to be developed for apartments. The applicant has also stated that the property is unusable for commercial use and to have it so zoned puts an undue burden on the property owners tax-wise.
2. This property has direct access to a major street and is also located close to Boeing and McConnell Airbase, which does make the property suitable for multiple family development.

Recommendation

Based upon the foregoing review, it is the recommendation of the Planning Department that this application be approved.

No one was present to speak either in favor of or opposed to this application.

MOTION: KRATZER moved MOONEY seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this application be approved.

-
13. Case No. Z-0632 - Vern L. and Lodeska Pauley request change from "AA" to "B" for the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 1, Township 27 South, Range 1 East, except the south 570 feet thereof and except the west 250 feet thereof. Generally located at the northeast corner of Oliver and 21st Street.

GALBRAITH pointed out the area on the map and reviewed the following comments and recommendation:

Comments:

1. The Sketch Plan for Land Use and the initial work on the Land Use Plan indicates that this particular area should be developed for residential use.
2. The applicants have requested that this property be rezoned to a "B" Multiple Family classification, which will enable them to construct the proposed garden apartments on the property.
3. The "B" Multiple Family district requires only 580 square feet of lot area per family, which would permit approximately 1,450 units to be constructed on this 19.6 acre tract. It should be pointed out that there are unlimited height restrictions as long as adequate building setbacks are provided.
4. The applicants have submitted a Sketch Plat of this particular area; however, no provisions have been made for the dedication of interior public streets. It is the opinion of the staff that some provisions should be made to guarantee adequate interior traffic circulation in this area if the zoning application is approved.
5. The property lying between the south line of this tract and the north line of 21st Street is zoned "LC" Light Commercial and it is the understanding of the staff that the applicants intend to construct a shopping center on this property.
6. It would appear that the "B" zoning would be a logical buffer between the "LC" zoning to the south and the "AA" zoning to the north, if controls can be provided to assure medium density, and if excessive building heights can be controlled to maintain compatibility with existing single family residential districts.
7. Although this particular tract is not immediately adjacent to a major street, it essentially does have access to two major streets which can be exercised through platting and the proper street dedications.

Recommendation

Based upon the foregoing comments, it is the opinion of the staff that the rezoning of this tract for garden apartments appears to be logical. However, if the zoning is approved,

the recommendation of the Planning Commission should not be forwarded to the Board of City Commissioners until the final plat has been approved by the Planning Commission. It is the recommendation of the Planning Department that the plat provide for the appropriate street dedications, access control, adequate interior circulation, and that density and height controls should be assured through restrictive covenants.

SIDNEY BRICK, Attorney for the applicant and developer, spoke in support of this application. He stated that it is intended to develop the property (19 acres) into garden type apartments of low or medium density, and that the applicant would be willing to file restrictive covenants limiting the development to not more than 20 such units per acre, or a total of 392 as opposed to 1,450 allowable under the zoning requested. He stated that a preliminary plat of the area is being prepared and will be submitted to the Planning Department, and further, they would have no objection to limiting the height to 3 stories. He pointed out the 200-foot buffer along the east side of Oliver which was established at the time Light Commercial was approved to the south of subject property and noted that the application does not include what would be an extension of this buffer zone to the north line of the ownership of subject property. It was his belief that any problems associated with this proposed development could be resolved in the platting process.

RALPH LIGHTNER, SR., and RALPH S. LIGHTNER, representing the Prairie Hills Addition adjacent on the north, offered objection to the application, and pointed out that Prairie Hills Addition is platted for a single family development and it was their belief that a buffer zone should be established between the "AA" zoning and the contemplated "B" zoning.

VERNE LAING, Attorney representing residential property owners in Crestview Lakes, Willow Lakes and Cloudridge Addition, expressed concern with respect to the 200-foot buffer strip on the east side of Oliver. It was his contention that there should be some assurance to his clients that this area would remain a buffer, and if possible, establish at this time that it would not later be zoned or developed in a manner which would be detrimental to the fine homes in the area west of Oliver and north of 21st Street. MR. LAING contended that the applicant was instrumental in enforcing

restrictive covenants on the property at the southeast corner of 21st Street and Oliver to limit it to development which would be compatible with his home at the northeast corner of 21st Street and Oliver, but since that time, he has himself requested and received less restrictive zoning for portions of his own property. MR. LAING pointed out the possibility that within a few years, further requests for change of zoning on the 200-foot buffer strip would be submitted.

MR. BRICK showed an architect's development plan of the apartments proposed, which would be Early American or Colonial in architecture, and indicated that there would be 16 units to each building. He offered to dedicate a half-street right-of-way on the east side of subject property in the plat and it was his feeling that all protection of adjacent property could be resolved in the platting. He stated that in discussions with the Flood Control personnel, the drainage problem is being resolved.

The Director of Planning pointed out that the staff recommendation does not relate to the 200-foot buffer strip.

The Chairman pointed out the desirability of a Residential Community Unit Plan for the development, where adjacent areas could be protected with single family development on subject property and the density increased as higher density development occurs in the center.

MR. BRICK agreed that single family development should be buffered from the light commercial zoning and it was his feeling that multiple family development would provide that buffer. He indicated they would prefer not to develop under the Community Unit Plan at this time.

MR. LAING felt that the problem of the eventual development of the 200-foot buffer strip should be resolved at this time and that assurances should be given to the property owners on the west side of Oliver that their residences would be protected.

WINSBY indicated also that it was his feeling the 200-foot strip should receive attention at this time so far as maintaining it as a buffer, and he was also in favor of a buffer between the apartments proposed and the single family plat to the north. He thought the Community Unit Plan would permit proper development and also could provide adequate buffering for adjacent properties.

MR. BRICK indicated that he would be willing to confer with the Planning staff with respect to a Community Unit Plan and further, he had no objections to a deferral at this time.

MOTION: WINSBY moved, MOONEY seconded and it carried unanimously that this application be deferred until April 1, 1965.

-
14. Consideration of Legal Opinion with respect to whether or not surveyors, as such, are permitted to submit subdivisions for processing.

LAKIN pointed out that in the past it has been recognized that subdivisions should be signed and certified to by a registered Civil Engineer. One firm submitting plats for a number of years has lost their registered engineer through death, and they desire to continue to submit plats (several are now pending) and have suggested that hereafter the certification be written up as a Surveyor's certificate.

The matter was submitted to the Department of Law and that Department has ruled that Kansas Statutes require the approval of a Licensed Engineer to subdivision plats and that surveyors, as such, are not so licensed and any plat prepared by a surveyor would require the formal supervision and approval of a licensed engineer.

LAKIN noted that the Subdivision Rules and Regulations indicate that a "Surveyor's" certificate is required on the final plat.

WINSBY indicated that it seemed apparent that the interpretation of the Department of Law should be observed.

MOTION: WINSBY moved, KRATZER seconded and it carried unanimously that the Planning Staff be instructed to comply with the Kansas Statutes as interpreted by the Department of Law relative to certification of plats, and that the Staff communicate with the above referred to firm and attempt to formulate a plan where their plats would be acceptable under the Statutes, and further, if there are any plats in process which were prepared under

submitted, subject to the following conditions:

1. No pole or free-standing signs shall be allowed on Bleckley. Only wall signs or roof signs (not to exceed 15 feet in height) shall be permitted.
2. A solid wall, 5' to 8' in height, shall be provided along the north line of Parcel No. 2, and shall be reduced to 3 feet in height in the 20-foot front building setback area. (The wall is to be reduced to 3 feet in height for a distance of 20 feet west of Bleckley Drive inasmuch as the area to the north of Parcel No. 2 is zoned "B" Multiple Family, and the required front building setback is 20 feet.)
3. It should be indicated on the Development Plan that access control is to be exercised adjacent to the north line of Harry Street. A note should be made on the Development Plan that a definite determination will be made as far as access control is concerned on the replat which is to be submitted on this area.
4. The residential units located on each Parcel shall be removed prior to the issuance of building permits on any parcel.
5. Construction of the necessary drainage improvements concurrent with any construction on each parcel.
6. Dedication of a minimum of 10 feet of additional right-of-way (preferably 20 feet) on Bleckley, and submission of a paving petition for street construction to allow for two free-moving lanes and two parking lanes. Alternate methods other than a petition (such as a bond, prior construction, etc.,) would be acceptable.

-
18. Case NO. Z-0632 - Vern L. and Lodeska Pauley request change from "AA" to "B" for the southwest quarter of the SW $\frac{1}{4}$ of Section 1, Township 27 South, Range 1 East, except the south 570 feet thereof and except the west 250 feet thereof. Generally located at the northeast corner of

Oliver and 21st Street.

19. Case NO. DP-8 - University Gardens Residential Community Unit Plan. Generally located at the northeast corner of Oliver and 21st Street.

LAKIN pointed out the area on the map and reviewed the following staff recommendations with respect to the Zoning application and the Development Plan:

Staff Comments and Recommendations re Z-0632:

Comments

1. The Sketch Plan for Land Use and the initial work on the Land Use Plan indicates that this particular area should be developed for residential use.
2. The applicants have requested that this property be re-zoned to a "B" Multiple Family classification, which will enable them to construct the proposed garden apartments on the property.
3. The "B" Multiple Family district requires only 580 square feet of lot area per family, which would permit approximately 1,450 units to be constructed on this 19.6 acre tract. It should be pointed out that there are unlimited height restrictions as long as adequate building setbacks are provided.
4. The property lying between the south line of this tract and the north line of 21st Street is zoned "LC" Light Commercial and it is the understanding of the staff that the applicants intend to construct a shopping center on this property.
5. It would appear that the "B" zoning would be a logical buffer between the "LC" zoning to the south and the "AA" zoning to the north, if controls can be provided to assure medium density, and if excessive building heights can be controlled to maintain compatibility with existing single family residential districts.
6. Although this particular tract is not immediately adjacent to a major street, it essentially does have access to two major streets which can be exercised through platting

5-6-65

and the proper street dedications.

Recommendation

Based upon the foregoing comments, it is the opinion of the staff that the rezoning of this tract for garden apartments appears to be logical. However, if the zoning is approved, the recommendation of the Planning Commission should not be forwarded to the Board of City Commissioners until the final plat has been approved by the Planning Commission. It is the recommendation of the Planning Department that the plat provide for the appropriate street dedications, access control, adequate interior circulation, and that density and height controls should be assured through restrictive covenants.

Staff Comments and Recommendations re DP-8

Comments

1. On March 4, 1965, the Planning Commission considered a request for rezoning from "AA" Single Family to "B" Multiple Family, for an area located on the east side of Oliver and north of 21st Street North. The action of the Planning Commission at that meeting was to defer consideration of the zoning application and request that the applicant submit a residential Community Unit Plan for the apartment complex which is being planned for the property in question.
2. The plot plan submitted by the applicant has been divided into six different parcels. The proposed use on Parcels 1, 2, and 3 is for town house apartments with a maximum height of two stories and with a density of 6,000 square feet per unit. A total of 43 town house apartment units have been indicated for the three tracts.

On Tract #4, the applicants are proposing to construct two apartment buildings with a maximum height of three stories and a density of 2,000 square feet per unit. There is a total of 70 units proposed on Parcel #4.

On Parcel #5, the applicants are proposing to construct three 115 unit high rise apartments, with a maximum height of 10 stories and a maximum density of 580 square feet per unit.

On Parcel #6, the applicants are proposing to construct two 90 unit high rise apartments, with a maximum height of ten stories and a maximum density of 1,500 square feet per unit.

3. The applicants are proposing to provide a minimum of 1½ parking spaces per unit, or a total of 957 off-street parking spaces.
4. The applicants have indicated on the Community Unit Plan that they are proposing a total of 661 apartment units for this 22.07 acre tract, which would result in a density of approximately 30 units per acre. There is an east-west street containing a width of 66 feet which runs through this tract, which contains 1.88 acres. If the area of the street is subtracted from the total acreage, it would leave 20.19 acres to be considered for development which, at 30 DU's per acre would allow 606 units to be constructed on the property. When platted, there should be a paving petition for a 40-foot street submitted as a condition of the plat approval.
5. There is a north-south fire lane easement shown on the plan which ties in with Bleckley Drive. It is suggested that this fire lane easement not be indicated on the Community Unit Plan but should, rather, be shown on the plat at the time this area is subdivided.
6. The major item of concern as far as this Community Unit Plan is concerned, is the policy as to proposed densities. The applicants are proposing to construct 661 apartment units on this property, which results in a density of approximately 30 units per acre.

The area to the west of Oliver and to the north of 21st Street has been subdivided into large residential lots and has been developed into a high quality single family area. The question is whether 30 DU's per acre is, in fact, compatible with the existing development. If the type of density which is being proposed for this particular property (30 units per acre), is also allowed on other vacant and undeveloped tracts of land within the vicinity of the University, it could substantially effect the traffic carrying capacities of the major traffic streets in this vicinity; namely, Oliver and 21st Street.

7. In the new prototype zoning regulations, it is proposed that the R-5 residential district permit a density up to 14 units per acre; that the R-6 residential district permit a density of 28 units per acre. The type of densities permitted in the R-6 residential district would appear to be acceptable for this particular area.
8. It is indicated on the Community Unit Plan that there will be a 40-foot setback adjacent to Oliver and a 40-foot setback adjacent to the north property line. In all other instances, buildings would set back a minimum of 25 feet from street rights-of-way and property lines.
9. At the time of platting, appropriate home association covenants will be needed to guarantee common drives and open space and the maintenance thereof.

Recommendation

In view of the foregoing comments, it is the recommendation of the staff that the University Gardens Residential Community Unit Plan be approved, subject to the following conditions:

1. There shall be a maximum density of not to exceed 28 dwelling units per net acre. (This would allow a maximum of 565 units to be constructed on this property.)
2. Parcel boundary lines should be clearly distinguishable.
3. Fire lane easement should be deleted from the development plan. If necessary, this provision could be a condition of the plat.
4. Under the provisions for each parcel, building setbacks should be from street right-of-way lines and parcel boundary lines.
5. Under general provisions, a statement should be provided that access control will be exercised along Oliver.
6. Under Description, the net area of 20.19 acres should be listed.

7. The development of this property shall proceed in accordance with the development plan as approved by the Planning Commission, and any substantial deviation of the plan, as determined by the Superintendent of Central Inspection and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
8. Any major changes in this development plan shall be resubmitted to the Planning Commission and to the City Commission for their consideration.

SIDNEY BRICK, Attorney, represented the applicants in this case, as well as the proposed developers. He stated that there appears to be some fears as to the type of development anticipated. In this respect, he pointed out that it is a joint venture between Seldin Homes and S. & L. Engineering Company, both of whom are experienced quality developers. MR. BRICK said that Seldin Homes has received any number of national awards for design and type of developments which they have accomplished. This firm has been thoroughly checked by Wichita State University, as well as Crestview Country Club and local banks. The Attorney pointed out that this firm is now building the first of several dormitory buildings on 17th Street for use by Wichita State University students, and the Housing Committee at the University has given its overwhelming approval of the type of building, quality and uniqueness of the facility being built.

MR. BRICK stated that the S&L Engineering Company has built many shopping centers, office buildings and high rise apartments; they are well-financed and a very responsible firm.

With respect to the development proposed, MR. BRICK pointed out that the town houses proposed in the "AA" zoning along Oliver would have approximately 6,000 square feet of land area for each unit, and would be for sale at approximately \$25,000. He pointed out that the town houses would have common walls and would be in groups of 3 and 4, as would the town houses proposed to the north adjacent to the Prairie Park Addition.

The units along Oliver would face the street but access to the front entrance would be from inside the proposed

development and not from Oliver. The cost for construction of the town houses would be about \$15.00 per square foot and would contain about 1,400 square feet.

MR. BRICK said that a 40-foot setback is proposed from Oliver and from the north line of the property involved. He said that this plan has been developed after rather long and benefitting discussions with the Planning Staff and it is felt that this plan for development of the Oliver Street frontage would provide fine buffering for residences existing on the west side of Oliver.

In reviewing the plan further, MR. BRICK said that it is planned that the units in Parcel 4 would contain 2 and 3 bedroom apartments, and would have a density of 2,000 square feet per unit which is much lower than allowed in a "B" zoning (lot area required in "B" is 580 square feet).

In Parcel 5, the density is the maximum permitted in the "B" zoning, or 580 square feet per unit. In Parcel 6, the density would be based on 1,500 square feet per unit.

The Attorney referred to the northeast area and said that it is planned to relocate the two existing lakes which are in the center of subject area, to one large lake in the northeast area. The drainage would be changed to flow into this one lake through pipes, and the drainage from the lake would be developed through cooperation with the owner of the area to the north (Prairie Park Addition).

Other factors pointed out by Mr. Brick were: A swimming pool will be provided for about every 100 units, and that there would be 80 interior off-street parking spaces for each structure in Parcel 6, and 40 interior spaces for each structure in Parcel 5. The existing lodge building will be converted into a general recreation center and the area surrounding the new lake will provide areas for general recreation purposes. The Plan provides for 66% green open area, parking areas will be hard-surfaced and would amount to about 16%, parking ratio is $1\frac{1}{2}$ spaces per unit. The buildings and interior parking would occupy about 18% of the total area involved.

It was MR. BRICK'S feeling that what is provided represents good planning, will provide an attractive asset to the entire area, and will nicely buffer the "LC" to the south,

and with the precautions that have been taken in the Community Unit Plan, it will provide good buffering to the Crestview Area to the west.

MR. BRICK said that it is the developer's plan, with respect to the town house area, that they will be sold on a cooperative plan whereby each householder would own his own dwelling, but the developer will be responsible for grass cutting, landscaping, etc. and it was his feeling that the neighbors can be assured of good upkeep and maintenance of property into which their property would face.

The Attorney indicated further that they would be willing to reduce the density to 28 dwelling units per acre in view of the staff's analysis of this plan, even though it would mean the lowering of height of the three high rise structures in Parcel 5.

In discussing the traffic situation in the area, MR. BRICK said it was felt that with one access onto Oliver and one on 21st Street, this would provide the least impact on traffic in this general area. He indicated that they would be glad to reduce the density from the 638 units proposed to 565 units if that is the desire of the Planning Commission.

VERNE LAING, Attorney for the residents of Crestview Lakes, Willow Lakes and Cloudridge Addition to the west of Oliver, spoke in opposition to the plan as presented. He pointed out that when his clients withdrew their objections to the light commercial zoning to the south and east of subject area, it was only because they were assured that the 200 feet along Oliver would remain "AA" as a buffer area, and now the plan just presented indicated town house development for this property.

MR. LAING said that there are only 16 home sites in the 40 acres immediately west of this area, and that the residents of the area have attempted to retain and maintain the integrity of the area; and further, this is one area which can be preserved as an area of nice exclusive homes.

MR. LAING said that the proponents of subject development have discussed the plan with him and when he inquired of MR. BRICK what the plans were for the 200-foot buffer area to the south adjacent to the "LC" zoning, he was told that a variance would be requested on the south part to permit parking to

accommodate the needs of the shopping center which is contemplated. He stressed the need for protecting that property which he represents at this time. The Attorney indicated that while they do not think another shopping center is needed as proposed for the light commercial zoning already established on the Pauley property, they are actually arguing the density of the plan as proposed by the Community Unit Plan presented. He reported that the opposition does not think the plan would provide a proper buffer zone, and that it is their belief it does not comply with what this Commission asked the developer to submit, and further, they do not think it legal because of the language of the Community Unit Plan ordinance. The ordinance provides that any Community Unit Plan must meet certain criteria, the first being:

that the values of buildings and the character of the property adjoining the area will not be adversely affected.

MR. LAING indicated that the developer is not proposing single family residences along Oliver because he (the developer) was fearful that they could not be sold. If that is the case, what will happen to the \$60,000 and \$80,000 homes on the west side of Oliver. It was the feeling of the opposing residents that the Plan completely overlooks the valuations that have been built up through the years in Cloudridge, Willow Lakes and Crestview Lakes area.

The Attorney pointed out that the second criteria for a Community Unit Plan is:

that such plan be consistent with the intent and purpose of this Chapter (referring to the Ordinance) to promote public health, safety, morals and general welfare.

He continued that other areas in this general area have been developed in low density, high quality single family homes and that the integrity should be protected; further, there has been no demonstrated need for the commercial development proposed adjacent to subject property. The Attorney offered objection too because of the traffic which would be generated by an approximate 600 dwelling units in the area and the congestion which would be created through the use of the one exit proposed onto Oliver.

LAKIN pointed out that Oliver right-of-way will be 100 feet and that within the next five years will be a four lane major street.

MR. LAING referred to the third criteria with respect to a Community Unit Plan which is:

that the buildings shall be used only for residential purposes. . . .

and said that he did not interpret that as meaning high rise apartments.

MR. LAING pointed out that the fourth criteria is:

that the average lot area per family contained in the site, exclusive of the area occupied by streets shall be not less than the lot area per family required for the district in which the development is located.

He said that it was the belief of the opposition that nothing should be permitted on the east side of Oliver in subject area that does not provide for future single family residences on lots comparable in size to those on the west side where there is not a single lot in Willow Lakes, Crestview Lakes or Clouddridge, which is less than a full acre. It was their feeling that nothing should be permitted close to this exclusive area except low density residential development, and it was felt that it would be an error to funnel traffic out onto Oliver.

VIRDEN MAYO, a resident of Willow Lakes Estates, said that in view of the high amount of taxes which he pays on his property, and if this application is approved, he felt it would result in a 50% drop in the valuation of his property. Also, with the high density as proposed, he visualized juvenile delinquency, larceny and associated problems in the area. He stressed the need for low cost housing in the downtown area for working people without too high an income. He also offered objection because of traffic congestion which can be expected. MR. MAYO felt that if this plan is approved, it would be jeopardizing the finest residential district in Wichita.

BETTY HENSLEY, present president of Brooks School PTA, voiced objection to the plan. She pointed out that in the area

between Grove and Hillside, 21st and 25th Streets, there are approximately 50 vacant homes now and other homes in the area that are for sale or rent. She questioned the need for the additional housing proposed.

CHARLES C. BROWNING, JR., 11 Crestview Lakes, pointed out the low density of the residential areas to the west of Oliver and north of 21st Street, and further reported that the stockholders of the Crestview Country Club have gone on record as opposed to the type of housing proposed, even though they are themselves dealing with the people involved in subject situation. He indicated that there is no question about the stability or integrity of the builder involved. MR. BROWNING doubted that there would be the demand for the high rental units proposed and pointed out that the two high rise apartments at 13th and Woodlawn and at Lincoln and Oliver are not all occupied. MR. BROWNING passed around a clipping from the Kansas City paper, which stated that a similar development to the one proposed here, had been approved by the Planning Commission and City Commission, but when appealed to the Court by owners of single family property nearby, the Court reversed the approval of the Planning Commission and City Commission.

MR. BROWNING reviewed the traffic congestion already existing in this area and the even worse situation which would be created if this application is approved. He suggested that there were other locations where the proposed development could be located where it would not affect nearby development - such as just one mile to the east. It was his feeling that subject property should be developed compatible with that in the area west of Oliver and north of 21st Street.

LABEBE FARHA, a resident of Willow Lakes, felt that it would be a shame to permit the proposed development, and thus affect the integrity and property values of the homes to the west of Oliver.

BARBARA MORGAN, 13 Crestview Lakes, offered objection. She referred to the high taxes which they pay and the fact that rental property can always be detected from the manner in which it is maintained.

SIDNEY BRICK, Attorney for the applicants, said that he had been advised by the president of the Crestview Country Club that no such action was taken as reported by Mr. Browning.

It was his feeling that the residents to the west have panicked with respect to the proposal of his clients, but he stressed the fact that it is not low grade housing or low grade rental housing which is proposed--it is something that would be compatible with the neighborhood. As far as high taxes is concerned, MR. BRICK noted that that is one reason many people are flocking to high rise apartments. He felt that a most sensible buffer has been proposed between Crestview Lakes and the high rise multiple dwellings, which buffer being the town house units adjacent to Oliver which will be sold singularly to fine members of the community.

MR. BRICK commented that no matter how proud the residents to the west are of their property, the growth of Wichita State University will force people into this general area; there will be more automobiles using 21st Street and Oliver than before in spite of anything that anyone can do. The University will attract people to this area, and he felt that the opposition would be better off with the development proposed at this time than to have cheap single family homes next door. He stated that the applicant has acceded to every suggestion that has been made to better the plan.

MR. BRICK pointed out that the original proposal did not include the 200-foot buffer strip along Oliver, but under this Community Unit Plan proposed, this "AA" strip can be developed on the basis of one family for each 6,000 square feet, and as proposed there will be no more people as far as density, than what is permitted in the "AA" zoning in Crestview Lakes and other areas west of Oliver. The "B" zoning only requires 580 square feet per unit whereas this plan provides for 1,500 square feet per unit, and the entire plan provides for much less density than originally proposed.

MR. BRICK felt strongly that the valuation of properties to the west would not be reduced and that what is proposed would be compatible and if it is permitted, it was his opinion that the residents of Crestview Lakes would wonder why they were ever opposed.

MR. BRICK said that what is being requested is the maximum--that his clients expect to build for the market, and if after constructing one high rise apartment building, there is not sufficient demand for another such building, then it will not be constructed. With respect to the example in Kansas City as submitted by Mr. Browning, MR. BRICK

pointed out that in that case dwelling units providing only 300 square feet of area per family were proposed, which does not compare with the high type of development proposed by his clients. MR. BRICK indicated that if there are any drainage problems, then this will be resolved on the plat.

LAW said he felt the four requirements in the Community Unit Plan ordinance have been met, except possibly with respect to adverse affect on adjoining properties. He pointed out that the Community Unit Plan was designed to accommodate just such a program for development as submitted, and that the plan by itself as an isolated development is an excellent plan.

He noted that the Commission has not faced before the question of whether a town house is a single family residence, but it is a generally accepted planning concept that a town house is a single family residence where it is located on ground area equal to that required for single family homes. In view of this, he did not think there would be any violation as far as locating town houses along Oliver in the "AA" zoning. He considered it possible that town house development along major thorofares might well be a solution to the question of what use to make of property along major thorofares.

LAW pointed out that he is concerned with the Prairie Park Addition to the north of subject property. In view of the lot size, it is platted for small homes, and while the opposition is opposed to the plan under consideration, it is possible that small homes in Prairie Park Addition would have a much more detrimental effect on the high valuation of the property to the west of Oliver. He pointed out also the far-reaching effect zoning has, in that if the light commercial zoning to the south and east of subject property, were not already established, it is not likely that subject property would even be considered for multiple family use.

WINSBY said he felt owners in Crestview cannot expect to control the zoning of property for considerable distance around them, but he did feel that the 200-foot buffer area should be maintained in such a manner as to not adversely affect the value of properties to the west. WINSBY indicated he was in favor of the community unit type development and the idea of large tracts being developed in a creative manner, but he did not consider it reasonable to bring such a

plan onto Oliver so close to Crestview. He continued that if the Light Commercial zoning was not already established, he would never think of subject area as being logical for multiple family. WINSBY agreed that there will be added traffic congestion with the growth of the University, but questioned whether or not the Commission should sanction the creation of even more traffic problems by the approval of this plan.

LAKIN referred to the Transportation Study and reported that it is projected that 2,300 vehicles per day will use this intersection. He stated also that it has been the view of the staff that the over-all tract would indicate the density of the combined zoning districts, and if the recommendation of 28 units per acre were involved, it would mean the rezoning of approximately 6.2 acres to "B" zoning, and the balance would stay "AA", and the Community Unit Plan would control density and location of various building types as indicated.

LAW commented that normally he would consider it bad zoning to have the light commercial zoning (already existing) without buffering an "AA" area, and suggested that if the Light Commercial zoning were not already in effect, the plat submitted would not be considered reasonable. LAW felt that there could be more hardship created so far as residential property to the west is concerned, if subject property were platted as that to the north (Prairie Park Addition which is platted into small residential lots) and a typical shopping center developed on the light commercial zoning to the north, than to allow the project as proposed.

WINSBY said he thought the development as submitted if located a mile away from the desirable residential development, would be a good plan and one that should be favored, but at subject location he thought it would have an adverse effect on adjoining property values.

LAW said he concurred in Winsby's statement--he considered it a very good plan for transition from high grade residential to commercial.

TROUT said that he would be just as concerned for the property west of Oliver if the 200-foot buffer strip along the east side of Oliver was platted for lots of 6,000 square feet with comparable houses for that size lot. It was his

opinion that the town houses suggested in this buffer area of 200 feet are not as bad as it appears on the surface, when compared with other possibilities for development of that area. He noted that the growth of Wichita State University is certain to affect the eventual development of properties in this general area.

LAW asked MR. LAING what his feelings would be with respect to the type of development which could occur on the 200-foot buffer strip without a Community Unit Plan.

MR. LAING admitted that an error was made several years ago when any of the Pauley property was zoned Light Commercial, and the agreement was made with his clients concerning the 200-foot buffer strip along Oliver. He noted that experience has shown the folly of trying to keep only 200 feet as a buffer zone; he felt they had erred in consenting to the Light Commercial granted Dr. Pauley under any circumstances. It was the feeling of Mr. Laing that the Pauley property could be developed on the same basis as that to the west of Oliver, i.e., nice one acre home sites around the existing lakes.

LAW inquired of MR. LAING if he felt that the retention of the 200 feet as "AA" zoning as it is now would satisfy his clients, and MR. LAING said he did not think it would if the small sized lots and homes were to be developed.

TROUT asked MR. LAING whether his clients would be satisfied with leaving out the 200-foot strip out of the Community Unit Plan and leave it for single family dwelling development. LAING felt that that would be preferable to what is now proposed, and said he had discussed the plan with Mr. Brick before the meeting and explained that they would be opposed to anything except single family homes along Oliver.

LAW pointed out that living on a major thoroughfare is more of a problem now than it was several years ago. He pointed out that the staff suggestion of backing homes into major thoroughfares normally has worked fairly well and that possibly some plan along this line could be developed whereby single family homes could be developed and the "AA" zoning retained.

MR. LAING said that at one time it was thought a 200-foot buffer zone was all they would need but the subject plan has

demonstrated that the 200-foot buffer area will not afford the protection desired.

LAW suggested that the property involved is certain to develop eventually--the owners thereof are paying taxes the same as those owners west of Oliver, and they cannot afford to pay taxes on bare unproductive land, and he suggested that it is possible that development which might occur on subject property without the benefit of the Community Unit Plan provisions could prove to be much more harmful to the opponents' property values.

LAING said that at one time it was planned to have an access road along Oliver and inquired about that possibility. LAKIN said that the access road program has not worked out too satisfactorily on major streets and he did not think anyone could look forward to such an access road along Oliver.

With respect to development of the 200-foot buffer strip for single family homes, LAW said it would be hoped that a plan could be developed without access to Oliver from each lot.

LAW commented that the existing commercial zoning in the area to the south and the location at the intersection of 21st Street and Oliver would not indicate that this area will remain the high type residential area that it is now.

KRATZER pointed out that the "AA" zoning of the 200-foot buffer strip could be developed with about 6 single family houses per acre.

WINSBY said he would look more favorably on the community unit plan if the 200-foot strip could be developed with single family houses backing up to Oliver.

When questioned as to the 200-foot buffer strip, MR. BRICK said they would be willing to remove all the proposed town houses and leave the 200 feet on the east side of Oliver in grass, except for parking on the inside area next to the balance of the proposed development, and would not propose any construction on the 200-foot strip. He verbally amended the application in this respect.

LAW noted that the residents in opposition are under the impression that Parcel 4 would contain two-story structures.

whereas the plan does not so indicate. LAKIN said that two-story structures were proposed originally but in discussing the plan with the developer and the attorney, it was suggested that it be changed in order to provide more open area.

With respect to the proposal to leave all of the 200-foot buffer strip as a green area, except for inside parking, MR. LAING asked if the provisions of such an agreement could be incorporated into restrictive covenants so that there would be no question in the future about whether or not it is going to remain in that condition. MR. BRICK stated that it could be made a part of the Community Unit Plan approval and they could not secure a building permit as long as the plan was effective.

WINSBY indicated that if the opposition is satisfied with the buffer strip left as a green area except for the inside parking, then it would fit into the plan and it was his feeling that regardless of how the opposition felt about the project, it was his opinion that the applicant should have the right to develop the property in accordance with what is the best from the economic standpoint. He suggested that this application be deferred and that the promoters and the opposition forces attempt to agree mutually on a plan, based on the discussion at this time--he felt the results would probably be something which would be beneficial to both factions.

LAW agreed a deferral would be desirable and said that he could not in good conscience vote a flat disapproval because he felt it might be doing a disservice to the public interest and that other development which might occur in the next few years could be much more harmful to those concerned. TROUT agreed that it would be much better if a definite plan could be agreed upon by both proponents and opponents.

BRICK indicated he is willing to cooperate in any way, but it seemed they have gone as far as they should be expected to and he asked that the the Commission approve the request with the amendment made.

It was pointed out that with respect to the green area to be maintained on the 200-foot strip, there would be no control over the quality of such greenery.

MOTION: KRATZER moved, WINSBY seconded and it carried unanimously that these applications

(both the zone case and the Development Plan) be deferred until the meeting of May 20, 1965, to allow the proponents and opponents to attempt to reach a mutual agreement as to the plan.

-
20. Case No. Z-0604 - Bertha Stackman Gouldner requests change from "A" to "BB" for the south 15 feet of Lot 18, and all of Lots 20 through 48, even, inclusive, Stackman's Replat of Part of Stackman 2nd Addition, and the east half of the vacated alley adjoining said lots on the west. Generally located on the west side of Stackman Drive between Pine and Murdock.

GALBRAITH pointed out the area on the map and reviewed the following staff report:

Comments

1. The request for "BB" Office District zoning classification is not an appropriate zoning district for this high quality low density residential area. The applicant has stated that garden apartments will be constructed on this site and the only zoning district that should be considered is "B" Multiple Family Dwelling District, which is the first district that permits the proposed use. Even then, some device, perhaps covenants, in connection with platting, should be considered to limit the total number of units on the tract.
2. The applicants had originally requested that a tract of land on the west side of Stackman and lying 125 feet north of Pine Street, be rezoned to "BB" Office District classification, and also requested that a 70' by 100' tract of land located at the northeast corner of Litchfield and Pine Street be rezoned to a "BB" Office District classification.

On December 21, 1964, the Planning Commission recommended that the request for the rezoning at the northeast corner of Litchfield and Pine Street be denied, and recommended that the request for "BB" zoning on the west side of Stackman Drive and north of Pine Street be denied but that it be approved for "B" Multiple Family zoning subject to replatting. The Planning Commission also

issuance of any building permit for Lots 29 and 30, Block 3.

(This condition also originally provided that no building permits would be issued until the oil storage tanks were removed and all oil wells were sealed for Lots 1-18, Block 3).

ZONING

Deferred

11. Case No. Z-0632 - Vern L. and Lodeska Pauley request change from "AA" to "B" for the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 1, Township 27 South, Range 1 East, except the south 570 feet thereof and except the west 250 feet thereof. Generally located at the northeast corner of Oliver and 21st Street.
12. Case No. DP-8 - University Gardens Residential Community Unit Plan. Generally located at the northeast corner of Oliver and 21st Street.

GALBRAITH pointed out that on May 6, 1965, the applicants submitted their residential Community Unit Plan showing high rise, garden and townhouse apartments; however, their revised Plan (developed with staff advice) has reduced the proposed density to 565 dwelling units. Adjacent to Oliver, the Plan now indicated four lots for single family development, two lots having direct access to Oliver.

The Chairman reminded the Commissioners that this application had been deferred on May 6, 1965, to see if the proponents and opponents could agree on a Plan satisfactory to both parties.

SIDNEY BRICK, attorney for the applicants, said that they had met with Mr. Laing, attorney for the opponents, and had made two proposals:

1. They would leave the 200-foot strip along Oliver in an open green area with the east 50 feet thereof restricted to parking; or
2. They would divide that area into the large single family dwelling lots.

BRICK continued that Mr. Laing preferred the latter. The Plan now submitted provides for four lots 167 feet wide by 150 feet deep, with 50 feet to the east reserved for parking. The townhouses have been eliminated north of the

garden apartments. BRICK said that while Mr. Laing chose the second alternate, he indicated that he was not speaking for all residents whom he represents.

In discussing the Plan further, MR. BRICK pointed out that they now plan a 100-foot setback along the north property line. The east portion of the Plan (high rise apartments) would remain the same as before.

MR. VERNE LAING agreed that Mr. Brick's statement was correct, except that his clients would not and could not consent to any plan involving the north 20 acres of the Pauley tract that did not also incorporate the property lying to the south along 21st Street. He stated that Mr. Brick's client had indicated to him that if a shopping center is established on the light commercially zoned land, they intended to ask for a variance from the Board of Zoning Appeals (Ed. note - the proper action would be an "off-street parking exception" proceeding) of the 200-foot "buffer zone" where Dr. Pauley's house is now located, to permit its use for parking in connection with the shopping center. MR. LAING indicated that a compromise was attempted but they could not agree to a Community Unit Plan which did not include the Pauley house and grounds, and the "LC" zoned area along 21st Street. He reported that in connection with the applicant's proposed eventual use of the south portion of the 200-foot buffer "AA" zoning, that the applicant had agreed to file restrictive covenants that a service station or some similar type use would not be placed on this corner.

MR. LAING continued that at the previous hearing, the Commission inquired what the opponents would propose for use of subject property. Inasmuch as they are not land planners, they engaged the services of Oblinger & Smith, Planning Consultants, and are prepared to submit to the Commission a plan for development which would take into consideration and protect the exclusive homes to the west of Oliver, the University, and the Church areas to the south.

The Chairman pointed out the deferral was to permit time for the opponents and proponents to attempt a compromise, and it would be up to the Commission whether or not they wanted to hear and discuss any alternative plan submitted by Mr. Laing.

LAING said that the compromise has been impossible because the Plan still indicates seven and ten-story high rise structures they feel would not harmonize with Crestview Lakes Estates to the west of Oliver.

LAW suggested that the opponents should have a chance to show what might be developed on a parcel of ground, since

one of the objections over the years is that an opponent normally appears in opposition but has no idea of other development which would be satisfactory to them. He indicated he was in favor of the submission of the alternate plan although it could not be made binding on the applicant.

The Chairman pointed out that the suggested plan was only submitted yesterday and he was confident it was not agreeable to everyone concerned. MR. BRICK said he had not seen the plan at all.

WINSBY thought it would be wise to review the plan in view of the many people concerned, but suggested again that the existing light commercial zoning on the Pauley tract is the turning point on whether or not the higher density of the applicant's plan is appropriate.

LAING agreed that the only matter before the Commission is the application which started out as a request for "B" zoning and which was amended to request approval of a Community Unit Plan. He stated that they followed what they thought was the suggestion of the Planning Commission that it would welcome an idea of what other development might be feasible under a Residential Community Unit Plan. When it became apparent that the 200-foot buffer area was not going to be honored, they sought the advice of experts in the field - Oblinger and Smith.

MR. BRICK pointed out that the only thing before the Commission is the Community Unit Plan, which was submitted at the request of the Commission on the area that was originally requested for "B" zoning. He did not consider it proper to try to involve the 200-foot buffer zone area as they are not now asking that anything involving that tract. He stated the area is "AA" and will remain that way. He noted, however, that his client was candid enough to tell Mr. Laing that in the future it is possible a variance (exception) would be requested on a portion of the 200-foot strip, but if and when it is requested, the opponents would be given sufficient notice to consider it at that time.

VERNE LAING called attention to the criteria set forth in the Zoning Ordinance which the Commission must find to exist before establishing a Community Unit Plan. One condition is that the valuation of buildings and character of adjoining property should not be adversely affected. It was his opinion

that the value of the exclusive fine residences to the west of Oliver would be "tremendously depressed" and valuations would be "immeasurably lessened" by the proposed plan submitted by the applicant. He did not think the applicants proposal meets the tests required of the Community Unit Plan because it does not protect the adjoining property rights.

The Chairman inquired of the Commissioners whether or not they wished to hear Mr. Laing's plan. It was decided that the Commission was more or less obligated to hear anything that either the applicant or opponents desire to submit. WINSBY commented that the plan Mr. Laing wishes to present might help the Commission in determining whether the applicant's request is a proper usage for subject area.

The Chairman asked Mr. Brick if he had any other plan to submit and Mr. Brick said he had nothing that had not already been submitted to the Commissioners.

MR. LAING submitted a brochure developed by Oblinger and Smith, Consultants, and discussed aerial photographs contained as a part of the study, with the Commission. He pointed out that one of the pictures showed the extremely low density of the residential development to the west. In all of Crestview Lakes there is less than one dwelling unit per acre, whereas subject area is being proposed for development at 28 units per net acre. MR. LAING noted that the difference in existing density to the west of Oliver and the high density proposed to the east, has caused the Consultants to conclude that the ideal way to develop the Pauley Tract as a good community unit plan would be exactly as Crestview Lakes has developed, with the lake areas remaining where they are.

LAING called attention to the general recommendations of the Consultants as follows:

"In order to preserve the values and character established by the Country Club, the residential estates and the existing churches, it is recommended that all commercial zoning in this vicinity be eliminated. There appears to be great quantities of undeveloped commercially zoned land within one mile of this site and in all four directions. No commercial development exists in this immediate area and we believe it to be in the public's best interest to avoid commercial development of this intersection and all land in this vicinity."

"It is the opinion of this consultant that the most appropriate use for this parcel of land would be single family residential of the type identical to Crestview Lakes as the site characteristics are identical. This parcel and Crestview Lakes are twin tracts of land."

MR. LAING also pointed out that the Consultants have indicated in the report that in their opinion it would be tragic to permit the destruction of the natural beauty and amenities of this site, and that regardless of what type of development is ultimately permitted, the preservation of these natural values should be provided for in the plan.

MR. LAING read additional recommendations of their consultants, suggesting that development provide for:

1. The preservation of the natural drainage pattern.
2. The preservation of the lakes and the protection they afford downstream.
3. The preservation of the natural topography and existing trees.
4. The utilization of the lakes, trees and drainage-way as the focal point of this development and as community open space and buffer area between uses.
5. Nineteen single family lots of a size that is transitional between the lots on the north and those on the east.
6. One hundred and fifty to two hundred units of multi-family development in garden apartments and townhouses.
7. Space for at least a ratio of 1-1/2 parking spaces to each dwelling unit for the multi-family development."

It was MR. LAING'S observation that there is no reason why subject property cannot be developed in line with the surrounding area without jeopardizing the beautiful homes already in the area.

CHARLES BROWNING, JR. said that an error had been made at the last meeting with respect to the action of the Crestview Country Club in connection with this application. He pointed out that a special meeting of the Club's Board of Directors was called to consider another subject. Although the Board had expressed opposition to the development individually, an official vote could not be taken in this respect. MR. BROWNING pointed out that at the previous meeting MR. BRICK had stated that he had been assured by the President of the Club that no action was taken, and what was meant was that no legal action was taken by the Club, which was true.

MR. BROWNING pointed out that actually what is being considered is the development of the entire 40 acres, inasmuch as the south 20 acres which is already established as "IC" is so closely related to any development occurring on the north 20 acres, which is the subject of this application. It is a well known fact that residential density must be established to assure any degree of success for development of light commercial areas.

MR. BROWNING questioned whether or not there would be the demand for residential units such as proposed, which would rent from \$150 to \$300, and it was his opinion that it was doubtful that in the foreseeable future the economy would support such a development. It was his feeling that the applicant is attempting to build a profitable situation at the expense of the adjoining community.

DR. MORGAN, a property owner in Crestview Lakes, said that the Plan under consideration at this time is better than the original plan. He reported that when it was suggested to Mr. Brick that homes comparable to those in Crestview Lakes be constructed in the 200-foot strip on the east side of Oliver, Mr. Brick said he didn't think they would sell with high rise apartments directly to the rear.

MRS. BARBARA MORGAN, 13 Crestview Lakes, said that everyone in the Crestview Lakes area is opposed to the type of plan submitted and all are in favor of subject property being developed to the type of residential that would be comparable with Crestview Lakes development. She pointed out that there is already traffic congestion on Oliver and with the proposed residential development and the proposed shopping center, the volume of traffic would increase at this intersection. She reported that after discussing the matter

with several real estate firms, she has ascertained that other high rise apartments in this area are not completely occupied, and she pointed out that if the first apartment built under this proposal is not successful then it is possible that lower priced apartments of the tenement type could be built.

DR. SETTERS, an owner in Crestview Lakes, and BEN BROCK, an owner in Willow Lakes Estates, objected to the proposals on the basis that a shopping center would spoil the natural beauty of the entire area.

SIDNEY BRICK, attorney for the applicants, pointed out that often planners differ as to plans, and the one submitted by Mr. Laing is predicated on the elimination of the existing "LC" zoning, which is already in existence in spite of the analysis of the consultants. He said that it is the developer's opinion that the shopping center will be built and that it will be a benefit and credit to the area. MR. BRICK pointed out that a small tract just to the east of the Pauley Tract was approved by the City Commission for light commercial within the past few months, and there certainly has not been any great change in that area which would indicate that such zoning was a mistake, or that the "LC" on the Pauley Tract was a mistake in 1960.

MR. BRICK said that his clients are building for the future and not just for this year or next year. He pointed out that this area is going to change whether his clients are involved or not. The principal reason for such change is the growth of the University, which is growing beyond the fondest expectations of anyone connected with the University. He pointed out that two years ago enrollment was less than 6,000 and in 1965 it was 9,200. Official estimates indicate that within five years an enrollment of 22,000 is expected. He noted that it is only reasonable to expect that that growth in and of itself will act as a magnet to draw people into this area, if there were no other reason for growth.

MR. BRICK pointed out that the University is a cultural center for any community and that many fine people and good citizens of a community desire to live around the University to take advantage of, not only sporting attractions, but cultural activities which the University brings to a neighborhood. With respect to Crestview Country Club, MR. BRICK pointed out that the Club recognizes that it must move on to make way for expansion of Wichita State University, and

therefore, has signed papers for acquisition of a new location.

MR. BRICK pointed out that apartments are being constructed on the south and north sides of 17th Street not too far from Oliver, and that there is a great deal of real estate activity in this entire area. It was his feeling that in spite of the desire of the people who live on the west side of Oliver to preserve the whole area as a sylvan glen, progress will make it impossible for them to do so.

MR. BRICK continued that what is proposed by the applicant is an excellent transition between the existing "LC" zoning and the apparent development of single family homes on the smaller lots (7,500 square feet) in Prairie Park Addition to the north of subject property. He noted also that they have acceded to the desires of the residents west of Oliver in providing the 200-foot buffer strip between the area that was originally asked to be zoned "B" and their homes, and they they (the applicants) are not asking for any change in that buffer strip.

In discussing the plan, MR. BRICK pointed out that it was his opinion the high rise apartments contemplated would do more to hold the value of properties in the area than any other type of construction that is feasible for the area. Under the revised plan, it provides for 68% of the net acreage in the area to be green open space. In respect to the relocation of the lakes, MR. BRICK said that the one in the "LC" area must be moved to make way for "LC" development, and he felt that the combining of the other two lakes as proposed would satisfy the drainage and be more attractive to the neighborhood.

MR. BRICK pointed out that subject tract is in the heart of an area which the Planning Department has designated as a non-industrial growth area. All planners seem to agree that there will be a push of growth in this general area whether studying transportation, zoning or any other related matters.

The Attorney pointed out that the revised plan has reduced the average density of the development to 28 units per acre in keeping with the thinking and recommendation of the Planning Department, with higher density planned adjacent to the "LC" area. He felt that the Commission should not be swayed in its consideration of the progress of the community by the desires and fears of a few citizens who live to the west of Oliver.

The Chairman pointed out that the "LC" area referred to by Mr. Brick was recommended by the Planning Commission for denial, but was approved by the City Commission.

MR. BRICK referred again to apartment house construction now taking place on 17th Street, and said that he considered it in the public interest that such growth be permitted in all directions from the University.

BEBE FARHA said he was in favor of dormitories or apartments for the growth of the University, but not where they would adversely affect property which has been developed for years. FARHA asked that the Commission preserve the character of the homes west of Oliver. He observed also that there are many other places where the project proposed could take place.

BROWNING said they were all in favor of the expansion of the University and that it would add to the neighborhood. However, he asked that the adjacent properties around them be developed similar to the way that their area is developed. He observed that there is plenty of other ground for further development not far from subject tract which would not adversely affect anyone.

WINSBY said that he felt that the applicant's plan was good, in view of the existing light commercial zoning to the south, but he questioned the desirability of retaining the light commercial zoning along 21st Street in this area. He asked if the removal of the light commercial zoning could be contested in court due to any vested rights. He felt that people who live in high rise apartments could be just as good character-wise as those who live in other types of residences.

WINSBY discussed the use of the 200-foot buffer strip and questioned whether or not the opponents would have any legal basis on which to protest any type of "AA" development, noting that it is possible that development (such as 7,500 square foot single family lots) permitted under the "AA" zoning could have a worse effect on the residences west of Oliver than what is proposed by subject plan. WINSBY indicated a desire to protect the opponents and their property values, but questioned the assumption that because high rise apartments are proposed that it will be harmful. It was his feeling that the entire 40 acres should be considered as a whole possibly under a Community Unit Plan.

TROUT pointed out that the Comprehensive plan is based on the assumption that the natural growth pattern would be to the northeast, and felt that whatever is done in this case will dictate, to some degree, the pattern that will continue. It was his feeling that rather than be overly concerned with those people within or without 200 feet, a general

view should be taken of the overall effect.

MERRILL noted that the basic problem seems to be a matter of density, and asked the staff how they could recommend density of 28 dwelling units per acre as originally approved and how other planners (Oblinger & Smith) take the opposite view and suggest low density residential.

LAKIN pointed out that Oblinger & Smith's recommendation is based on the premise that the existing light commercial would be removed and development of the entire 40 acres as residential, while the staff's suggestion was based on the existence of the light commercial zoning. He stated that in view of the City Commission's recent reversal of the Planning Commission and staff on the small tract of light commercial east of the Pauley Tract, the staff felt that it is the "public policy" that such light commercial is proper and should continue to exist. It was his feeling that should the light commercial zoning be removed, then the staff would probably concur with the report of the consultants inasmuch as the only justification for multiple family or high density in this particular area is based on the existing light commercial zoning.

LAW stated that he did not doubt that the light commercial zoning could be removed and considered it an obligation of the Commission to determine whether or not the particular zoning that is being applied for is compatible with the general area and is in keeping with the public interest. It was his belief the entire 40 acres probably should be retained in single family zoning and the light commercial eliminated. He observed also that it would appear unreasonable to oppose the Community Unit Plan as presented for density as long as the light commercial zoning is in existence. The Commission in general concurred in this last observation.

MOTION: WINSBY moved, and MERRILL seconded that the Planning Commission recommend to the City Commission that this application for "B" zoning and the Community Unit Plan be denied, but that it not be forwarded to the City Commission until after consideration by the Planning Commission of a change of the light commercial zoning in this vicinity back to "AA" zoning, in accordance with the following motion.

MOTION: WINSBY moved, and KRATZER seconded that the staff be directed to advertise for a public hearing to change the light commercial zoning to "AA" on the north side of 21st Street and in the area to the east of Oliver, this motion to include the Pauley ownership

and the tract to the east of the Pauley Tract which is zoned "LC".

RALPH GILCHRIST, attorney for Dr. Pauley, reviewed the circumstances with respect to zoning of the Pauley property at the northeast corner of 21st Street and Oliver, beginning with the original zoning when the area was under County Zoning Resolution, and later when it was annexed. He pointed out that they have previously agreed to a compromise with the residents of the Crestview area with respect to zoning of this corner, and as a result the 200-foot strip along the east side of Oliver has been retained as "AA" zoning. At this time, the proposal is for "B" zoning and multiple family development on the property beyond the 200 feet and nothing is proposed on the 200-foot strip which is not permitted in the "AA" zoning. With respect to the possibility of eliminating the existing light commercial zoning on the Dr. Pauley property, MR. GILCHRIST pointed out that it has been commercial for a number of years and is a part of the overall planning of the entire city. He pointed out that in this case the 200-foot buffer has been provided whereas the Commission has approved light commercial zoning in some instances where there was no buffer provided between the light commercial and residential development.

MR. GILCHRIST pointed out that the plan submitted is in line with the suggestions of the Planning Commission after the first hearing, and the 200-foot strip is shown for lots comparable with those in Crestview Lakes, as opposed to the small lots in the small plat adjacent to subject property on the north. He suggested that if the "LC" on the north side of 21st Street is not logical, then that to the south is not logical either.

LAW commented that the Planning Commission is apparently taking the position that the best use of the 40 acres is for residential, but if the light commercial is to remain, then the plan as submitted under the Community Unit Plan is reasonable. He noted also that just because the area is zoned "LC" does not necessarily mean it is correct zoning.

VOTE ON MOTION: Carried by a vote of 4
in favor (LAW, WINSBY, MERRILL and KRATZER)
and 1 (DUGAN) opposed.

-
13. Case No. Z-0646 - Corda A. Bollhorst, et al. request change from "AA" to "B" for lots 15, 16, 17, 32, 33 and 34, Block 4, Eureka Gardens Addition, and lots 15, 16, 17, 18, 19 and 20, Block 5, Eureka Gardens Addition. Generally located on the north side of McCormick between Kessler and Leonine.

this time he has a contract for sale for commercial use if the zoning is approved.

JAMES R. POMODORO, a property owner in the area, spoke in opposition. He pointed out that there are many vacant commercially zoned lots already in this area, and felt that to encourage residential development in the area would serve to stimulate business for commercial enterprises already existing.

ARTHUR AUCELLA and BILL LOEPP, residential property owners in the area, also spoke in opposition, and said that it is their understanding a drive-in type use will be placed on subject property, which use always creates a nuisance in a residential area. MR. AUCELLA commented that the applicants in the past have had opportunities to sell subject property for residential use but have turned down these opportunities.

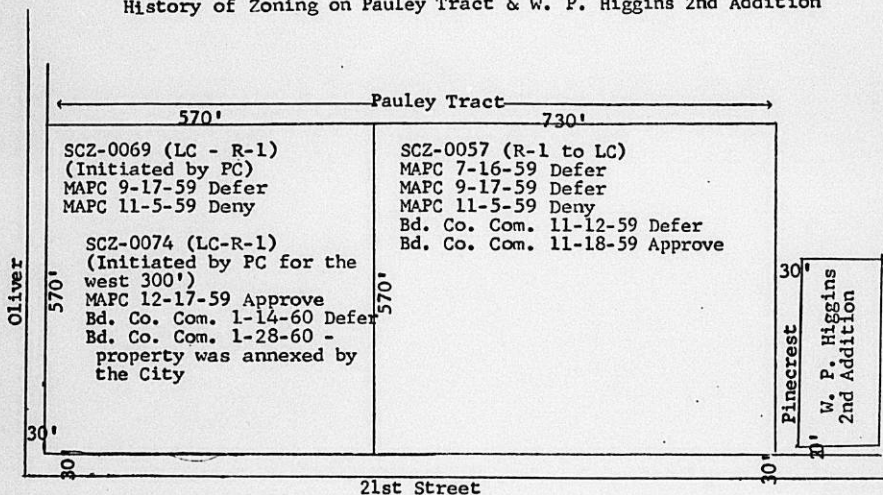
MRS. MARTHA DUNHAM pointed out that Mr. Aucella and Mr. Loepf were aware of restrictions in the area and that there was commercial development in the area when Mr. Loepf purchased his residence.

MOTION: WINSBY moved, DUGAN seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this application be approved, but that the recommendation not be forwarded to the City Commission until the property has been replatted in line with the recommendation of the Planning Department.

-
35. Case No. 2-0665 - Change from "LC" to "AA" initiated by the Planning Commission for the following described property: Beginning at a point 30 feet north and 250 feet east of the southwest corner of the SW $\frac{1}{4}$, Section 1, Township 27 South, Range 1 East; thence north 570 feet; thence east to the east line of the W $\frac{1}{2}$ of the SW $\frac{1}{4}$ of said Section; thence south along said east line to a point 30 feet north of the south line of the SW $\frac{1}{4}$ of Section 1, Township 27 South, Range 1 East; thence west parallel to said south line of the SW $\frac{1}{4}$ to the point of beginning; and all of Lot 1, W. P. Higgins Second Addition. Generally located on the north side of 21st Street in an area east of Oliver.

GALBRAITH pointed out the area on the map and submitted the following history of previous zoning actions with respect to zoning at the northeast corner of Oliver and 21st Street:

History of Zoning on Pauley Tract & W. P. Higgins 2nd Addition



Z-0609 (AA to LC)
MAPC 1-7-65 Deny
BCC 1-26-65 Defer
BCC 2-9-65 Approve subject to platting. The zoning was published upon approval of the plat.

NOTE: On January 22, 1960, the Pauley Tract was annexed by the City of Wichita and because of a provision in the ordinance at that time, the zoning reverted to an "AA" Single Family classification. On April 25, 1960, the Planning Commission directed the staff to advertise for a public hearing for a change of zoning from "AA" Single Family to "LC" Light Commercial for the Pauley Tract. The history of that case is as follows:

MAPC 6-16-60 Approve except west 250'
BCC 6-28-60 Approve except west 250'

On May 20, 1965, the Planning Commission directed the staff to advertise for a public hearing for change of zoning from "LC" Light Commercial to "AA" Single family for all the property now zoned light commercial on the north side of 21st Street and east of Oliver. This case has been assigned Case No. Z-0665.

VERNE LAING, Attorney for residents and property owners in Crestview Lakes Estates, Willow Lakes Estates and Cloudridge Addition to the west of Oliver and north of 21st Street, spoke in support of this proposed change. He pointed out that it is not their purpose to prevent the owner from utilizing the land, providing the development of such land would be compatible and preserve the integrity of the Crestview Lakes area.

MR. LAING referred to the discussion on May 20, 1965, when a Community Unit Plan was considered for the north 20 acres of the Pauley Tract at the northeast corner of 21st and Oliver, and pointed out that that plan actually includes the entire 40 acres which includes most of subject property, and that in order to construct a shopping center on the light commercial zoning, they have developed a plan for high rise and multi-family apartments on the north 20 acres. It was his feeling that the light commercial was an error from the very beginning and should never have been established. With respect to the 200-foot buffer area along the east side of Oliver, he said the proposed developers had indicated to him they were going to ask for a variance to use the south portion as parking area in connection with the light commercial development. He did not consider that this would provide for preservation of the extra fine residential area to the west.

With respect to whether or not the Planning and City Commissions could legally change the zoning as initiated, it was his feeling that such a change was legal and constitutional; he has done considerable research and a Supreme Court decision in Kansas has approved a change from commercial to residential over objection of the property owner. MR. LAING felt that in addition to preserving the valuation of the fine residences if this zoning is changed as proposed, it would also retain the natural lakes and beauty of the Pauley Tract. It was his feeling that the Pauley property is ideal for development of fine residences of similar caliber as those in Crestview Lakes Estates.

MR. LAING referred to the high traffic hazard which would exist on Oliver if the high density development is allowed on the north 20 acres, which development is hinged on the ultimate development of subject area as a shopping center. It was his feeling, on behalf of his clients, that the general welfare of the entire area will be improved if the light commercial zoning is removed. He pointed out the proximity of other shopping centers in the northeast area - 13th and Oliver, 13th and Woodlawn, 21st and Grove, etc. The Attorney suggested that development of subject shopping center would tend to depress not only the residential area which he represents, but would have a tendency to depress other shopping centers which are already suffering from lack

of a sufficient trade area, and probably even affect downtown values.

MR. LAING showed colored slides of the area under discussion.

BARBARA MORGAN, a resident of Crestview Lakes, said that they are unanimously opposed to the light commercial zoning being discussed. It was her feeling that whatever is developed on subject property will set the pace of all development east and northeast, and commercial area will not draw quality homes next to it. She pointed out also that because of the uncertainty with respect to development of the Pauley Tract, it has delayed the sale of property in Crestview Lakes, especially the lots facing Oliver.

MRS. MORGAN said she had talked with merchants in Kenmar Shopping Center and found they were suffering from lack of business, which would lead one to believe a shopping center on subject property so near to Kenmar Shopping Center, would be unsuccessful.

MRS. BROWNING, a resident at the northwest corner of 21st and Oliver, voiced objection to the possibility of increased traffic congestion at this intersection if the shopping center and related high rise and multiple density residential units are constructed.

W. P. HIGGINS, representing the owner of the light commercial tract adjoining Dr. Pauley's property on the east, and which area is included within the subject application, spoke in opposition to the proposed change. He pointed out that zoning on this property was granted only this year (2-0609), after they had complied with platting requirements of the City Commission, which included the dedication of a half-street right-of-way between the Pauley property and that which he represents.

MR. HIGGINS pointed out that there is a telephone substation adjacent to his client's property which is actually a commercial use but which, by special permit from the City Commission, is allowed to locate in any zoning district, and the location of this substation was a factor and one of the arguments used to obtain a light commercial zoning for the property which he represents. MR. HIGGINS reported that a building permit has been issued and construction commenced on a new building.

MR. HIGGINS pointed out that the McEwen Shopping Center and high rise apartments have been completed and he did not believe there was any degree of trouble in renting the apartments. He noted that there has been no trouble with respect to the surrounding homes near the McEwen Shopping Center and

that they are just as nice as those homes involved in this case.

He pointed out that it is not for the Commissioners to decide the economics of development - that is for the investor.

HIGGINS pointed out that while he did not know how long people in Crestview Lakes have owned their homes, Dr. Pauley's zoning has been in existence since 1959. He told the Commission that that property which he represents was zoned "LC" because it was adjacent to Dr. Pauley's light commercial area. He felt that this matter has progressed too far for it to be "reasonable" to rezone the properties.

RALPH GILCHRIST, Attorney for Dr. Pauley, owner of the largest part of the property under discussion in this application, spoke in opposition to the change. He reviewed past actions and agreements with respect to zoning of Dr. Pauley's property, and stated that the west 250 feet (including Oliver Street right-of-way), was left as "AA" as a compromise with the people living to the west of Oliver, and the "LC" now in question was established with their concurrence. Since then, 21st Street has been widened and the property assessed therefore on the basis of "LC" zoning. He pointed out that his client has done everything that has been asked: a buffer on the west 250 feet as "AA" zoning and the utilization of this area as green open space. They have never applied for any "exception" for off-street parking for the buffer area and have no such action in mind at this time. He observed that of course, Dr. Pauley would have no control over what a future purchaser of the property might ask for, but in the agreement with the property owners to the west, it was stipulated that the west 250 feet would be preserved in accordance with the agreement, regardless of the ownership. MR. GILCHRIST said that no plan has been submitted to them for the use of the 200 feet except something permitted in the "AA" zoning, and if later an exception is requested, that is a matter for the City (Board of Zoning Appeals) to decide at that time. But he did not consider it reasonable, after having the light commercial zoning for these many years, for the City Commission or Planning Commission to remove it.

MR. GILCHRIST submitted protest petitions signed by all abutters except the church. He noted that those appearing in support of retaining the "LC" are asking a reversal of action previously taken by the City Commission, twice by the Metropolitan Planning Commission and once by the County Commission.

SIDNEY BRICK, representing the developer of the Pauley Tract, spoke in opposition to the application. He pointed out that Dr. Pauley would suffer a substantial economic

loss if the "LC" zoning is eliminated. He has entered into a contract on the 40 acres, based on the "LC" zoning as it now exists and subject to the approval of the Community Unit Plan. MR. BRICK said that a tremendous loss would result if he is forced to develop his property in accordance with the wishes of the neighbors to the west. MR. BRICK pointed out that there does not seem to be a big market for one and two acre lots in this area, inasmuch as about 40% of the lots on the west side of Oliver in Crestview Lakes are undeveloped and this was the situation long before there was any activity with respect to the Pauley property.

MR. BRICK continued that he has looked in the same books as Mr. Laing with respect to changing light commercial zoning back to residential and he did not interpret the law the same as Mr. Laing. It was his opinion that zoning, once granted cannot be removed unless there is the strongest kind of evidence that a "mistake or error" was made in the original zoning or there has been a change of conditions. It was his feeling that any change in conditions in this area tend to support the continuance of the light commercial zoning. MR. BRICK observed, as Mr. Higgins has pointed out, that property zoned and where construction started is not likely to be deprived of the continuance of the light commercial zoning by any Court.

MR. BRICK submitted traffic counts taken on Oliver and 21st Street (ranging from 1961 to the last count taken in 1964), which indicated a 30% increase on 21st Street just east of Oliver, a 40% increase on Oliver just north of 21st Street. These counts are comparable with those taken at the intersection of 13th Street and Woodlawn. He noted that the two intersections are not unlike. The residential development in Spring Acres at the northwest corner of 13th and Woodlawn is very similar to that in Crestview Lakes. MR. BRICK pointed out that the above referred to traffic counts were all taken during the summer months and it is assumed that Wichita State University students did not contribute measurably to the count.

MR. BRICK pointed out that the Transportation Study and other planning studies have indicated the potential growth to the northeast, and further, the growth of the University can do nothing but draw people to the area and a greater density than one per acre will occur in spite of the protests in this case.

It was Mr. Brick's feeling that to eliminate this light commercial zoning on Dr. Pauley's property after it has been there five years, will not only be discriminatory but it will be completely unconstitutional and subject to attack in court. He continued that he has been advised that in only two previous cases in Wichita has zoning, once granted, been

changed to a more restrictive classification on a parcel basis, and in both instances were at the request of the owner. Other rezonings involved large areas and were based on long range planning considerations.

ROBERT BLAES, on behalf of the property owner on the south side of 21st Street, which is zoned "LC", said they definitely were opposed to a change as suggested by this application, and concurred wholeheartedly with Mr. Brick and Mr. Higgins. He noted that plans are being formulated for commercial development of the area which he represents.

MR. LAING said that the proposed developer of the Dr. Pauley Tract had told him they might ask for a variance of a portion of the "AA" strip to be used for off-street parking, which Mr. Laing considered would be a violation of the spirit of the agreement entered into and if Dr. Pauley and his proposed purchaser, are not bound by the agreement, then neither he (Mr. Laing) or his clients should be bound to the previous "buffer" arrangement. MR. LAING noted that his clients also have paid their portion for paving of 21st Street, and said that it was his understanding that light commercially zoned land is not assessed as such unless there is light commercial development thereon, although he was not certain of this. (NOTE: This is the general assessment policy for general property taxes, however, special assessment projects are normally assessed on the basis of some size factor, frontage, square footage, etc. plus existing zoning. "LC" normally is considered several times more valuable for assessment purposes than residential zoning.)

MR. LAING said he did not question that there would be economic loss to Dr. Pauley, but on the other hand, those he represents will also suffer an economic loss if the shopping center and development density proposed materializes.

MRS. BROWNING suggested that if the light commercial has been in existence five years, then it should have been used by this time, and that the neighborhood has changed since that time and apparently they do not intend to honor the 200-foot buffer on Oliver inasmuch as they admit they intend to ask for a variance (exception).

W. P. HIGGINS, representing the light commercial zoning to the east of that in the Pauley Tract, pointed out that their zoning and platting was approved in February of this year, and that there were no objections by property owners (Planning Commission recommended denial). The request was approved unanimously by the City Commission. He commented that a building is under construction and that they have complied with all legal requirements by the City.

GLEN MILLBURN suggested that there would be no economic

loss by Dr. Pauley if it was developed in line with the suggestions made by Oblinger and Smith, whereas as proposed, the only loss taken will be by home owners in the Crestview Lakes and Willow Lakes area.

VERN LAMBERTZ said that he made the sale of subject property to an out of town investor. He reported that from information he has received only 15% of the people in America are capable financially of living in low density areas such as Crestview Lakes. He pointed out that obviously the Lightner plat (Prairie Park Addition) to the north of Pauley's property will develop into small moderate homes, judging from the small lot sizes; further, area to the west of the Crestview area has developed on smaller lots and has not seemed to affect the Crestview properties. With respect to the downtown area and shopping centers, MR. LAMBERTZ pointed out that retail sales have increased tremendously over the years and that, in his opinion, shopping centers have contributed largely to that increase. He pointed out that the shopping center proposed in this case will have an airconditioned mall and will certainly be an added advantage to the Crestview Lakes area if it is permitted.

MR. LAMBERTZ noted that Westlink Shopping Center does not seem to adversely affect the homes in that area, which he considered compared favorably with those in Crestview Lakes; also, Eastgate Shopping Center was developed after the homes in Bonnie Brae without any apparent adverse affects.

LAW pointed out that Mr. Brick had referred to the fact that he (Law) had stated he was opposed to high rise development. LAW continued that he had made that remark in jest, and that he has no opposition to high rise or multiple family development and felt that more are needed in this community. Inasmuch as Mr. Brick had inferred Mr. Law might have a conflict of interest because of that statement, Mr. Law asked the Chairman to rule on whether or not he should be considered as having a conflict of interest. LAW continued that he has served on the Commission a number of years and has always acted in a manner that he considered to be the best interest of the public.

The Chairman concurred and ruled that Law had no conflict of interest in this case.

LAW pointed out that at one time when subject property was outside the city limits, the Planning Commission attempted to remove the light commercial zoning; however, it subsequently was approved for "LC" by the Planning Commission after it became a part of the City. It was his feeling that there is reasonable doubt as to whether light commercial zoning and development is appropriate at this intersection. LAW noted that Mr. Higgins made one of the more prevailing points, i.e.,

that construction has started. He commented that from planning literature which he reads, it is generally conceded that where development has started on a parcel of ground, it is highly unlikely that a change of zoning would be justified.

In answer to a question of when the construction was started on Higgins 2nd Addition, Mr. Higgins said it was started about ten days ago, but that he had not been notified of this hearing. A check of the abstractor's certificate showed the property still in the name of Lucille Brown. MR. HIGGINS said the land was purchased under contract. He noted that when platting was discussed with the Planning Commission, there was a problem of how much should come from this tract as right-of-way for Pinecrest.

LAW suggested that after the City Commission has zoned a parcel of ground over the recommendation for denial of the Planning Commission, the Planning Commission is not going to fail to cooperate in working out a plat that carries out the desire of the governing body. LAW observed that Planning Commission action on the plat had nothing to do with zoning. He felt the Planning Commission would be remiss if it did not work with an applicant on platting in accordance with the zoning established by the City Commission.

A review of the previous actions indicated that "LC" zoning in this area was originally established by the County Commission and later re-established by the City Commission after annexation. (The zoning ordinance in force at that time provided that all annexed property came into the City as "AA" Single family.)

WINSBY reviewed the present problem and the fact that it is apparently the feeling of the Commission that the Community Unit Plan for high density residential development to the north of the light commercial area is reasonable only if the light commercial zoning is retained, but that there is a legitimate question as to whether or not the light commercial zoning should be retained. He suggested that the question of legality as to whether or not the light commercial could be eliminated is something the attorneys will have to decide, but that the Planning Commission should consider this matter from the standpoint of whether or not it is good planning to have light commercial in this area.

WINSBY said that strictly from a planning point of view, it would seem logical that the subject area should be single family, but the light commercial zoning does exist, and the protestors are far enough away from the property involved that it would seem their property has been buffered sufficiently by the 200-foot strip along the east side of Oliver. He suggested that if the area was undeveloped, then he would be in

favor of it all being "AA". However, the fact that the "LC" is there, and has been for several years, even though perhaps in error, is of much concern to him. He did not think as Planning Commissioners they should oppose high rise and high density development. This form of housing is an acceptable form as a way of life. All of these factors are involved and have to be considered in making a decision. WINSBY noted that the intersection of 13th and Woodlawn does have high rise apartments and commercial development across the street from the fine homes in Spring Acres.

DUGAN asked if the application is approved and light commercial eliminated on the north side, should it also be eliminated on the south side. WINSBY thought it might be just as reasonable. LAW pointed out that one of the greatest problems is "AA" zoning along major thoroughfares. He said the original plan of town houses along the east side of Oliver north of 21st Street in the 200-foot buffer strip seemed like a good idea to him and was in keeping, generally, with what the Commission has considered would be appropriate development along major thoroughfares.

LAW commented that he did not think there is anything in planning that supports the theory that light commercial zoning once established can be removed, no matter how it was established, when there is existing commercial development thereon.

LAKIN agreed that this is true as a general rule; however, each development creates a different set of circumstances, and thus each case must be analyzed on its own merits, e.g. "original error, changed conditions, adopted comprehensive plans, etc." It is difficult, if not impossible, to anticipate just how a court of law would evaluate a case.

LAW commented that lack of development over a long period does indicate there is apparently no need for the zoning, and this line of rezoning has apparently been followed rather closely by the courts in the matter of rezoning.

Chairman Trout said he was concerned with how the change proposed fits in with the Commission's previous policy, and he noted that during his term on the Commission he could not recall a case, on a parcel basis, where a light commercial zoning has been changed back to residential. He indicated he would not be opposed to consider rezoning on a neighborhood basis or city at large, but that he was not in favor of picking out one parcel, unless there is something involved which would drastically affect the neighborhood. He suggested that if the Commission wanted to correct past mistakes, there were several others which might be brought up also. He doubted that there was any logic in rezoning just a spot and felt that there would have to be very good grounds to justify it.

WINSBY noted that the construction on the small tract under consideration affects action on the larger tract, if it is decided it should revert to residential zoning. TROUT said he was not so concerned about construction having started as with the general policy and approach to such matters by the Commission.

LAW observed that the crux of the situation is determination as to which values are the most affected by the elimination or retention of the light commercial zoning.

MERRILL suggested that the duty of the Planning Commission is to recommend that which is proper and in the best interest of planning regardless of appearances made by proponents or opponents and regardless of whether the City Commission might reverse their recommendation. He did not consider it a matter of the residents in Crestview Lakes deciding what should be done, but rather, the question is what is best for the city at large. MERRILL continued that he can appreciate the fact that what is done here affects land values, but did not think that argument should be the governing factor in how a specific piece of land is zoned.

WINSBY said he was just as much concerned about development of small homes on small lots to the north, which he felt would be just as detrimental, but with "AA" zoning such development can take place.

MOTION: DUGAN moved, KRATZER seconded and it carried by a vote of 3 in favor (Dugan, Kratzer and Law) and two opposed (Merrill and Winsby) that this application be denied.

LAW said he felt light commercial could be removed, and should be in some cases, but when development has proceeded as it has in this case, he did not consider it a wise move for the Planning Commission to make.

LAKIN pointed out that in previous cases of a similar nature where they have been initiated by the Planning Commission, and denied by the Planning Commission at the public hearing, the Planning Commission has always withdrawn their own case. Thus, they have not been forwarded to the City Commission. He inquired how the Commission desired to handle this case.

LAW said he thought the governing body should have the opportunity to consider this case; that it should be acted upon by the governing body because they are the elected officials charged with the final decision.

The staff was instructed to forward this case with the one for "B" Multiple Family and CUP for the 20 acres to the

north (Z-0632), which has previously been acted upon by the Planning Commission.

LAW observed that the Planning Commission position has not changed, i.e., if "LC" is to remain, then the CUP and zone change to the north to implement the CUP is logical and should be approved.

LAW inquired whether or not two recommendations might be forwarded by the Planning Commission, depending on the outcome of subject case before the City Commission, it being the general feeling of the Commission that if the "LC" zoning is to remain, then the "B" zoning (Z-0632) and CUP would be reasonable development, and if the "LC" zoning is to be removed, then Z-0632 providing for "B" zoning and the CUP should be denied.

LAKIN pointed out that the minutes would cover the Commission's feeling on this matter. In answer to a question by Mr. Brick as to having the Planning Commission reconsider Z-0632 and provide an alternate recommendation of approval if the "LC" is to be retained, LAKIN advised that no such motion or action be taken as Z-0632 had not been advertised for this meeting nor have notices been sent out in that case. Failure to strictly adhere to statutory and local policy on notice procedure might unnecessarily complicate issues should litigation occur.

No formal action was taken with respect to recommendations of Z-0632 and the CUP application.

-
36. Case Z-0635 - Reconsideration of the motion made on May 6, 1965, that the Planning Commission direct the staff to advertise for a change of zoning from "LC" to "AA" for the southeast corner and southwest corner of Hydraulic and MacArthur Road.

MOTION: WINSBY moved, DUGAN seconded and it carried unanimously that consideration of this matter be deferred until July 1, 1965.

-
37. DR 65-10 - Consideration of an amendment to the zoning ordinance relative to signs in the "LC" district, Section 28.04.090 - Light Commercial district regulations.

MOTION: WINSBY moved, DUGAN seconded and it carried unanimously that consideration of this matter be deferred until July 1, 1965.

July 6, 1965

Final Plat of
John H. West Addn.

Final Plat of John H. West Addition (C/O No. 65-18), located on the northeast corner of 21st Street and Madison Avenue, presented. Planning Commission recommended that the plat be approved, subject to being recorded within 30 days after approval by the City Commission.

Assistant Planning Director pointed out the area in question on the map and reviewed the circumstances of the request. No one appeared in opposition to the request.

Stevens moved that the plat be approved as recommended by the Metropolitan Area Planning Commission, the Mayor authorized to sign, subject to the posting of a concrete surety bond in an amount approved by the City Engineer, guaranteeing the construction of sidewalks to City specifications within a period of two years. Motion carried unanimously.

approved 6 bond
guaranteeing con-
struction of side-
walks within 2
years to be sub-
mitted

Final Plat of
Remollet 7th
Addn.

Final Plat of Remollet 7th Addition (C/O No. 65-29), located on the west side of Seneca in an area north of Washelli, presented. Planning Commission recommended that the plat be approved, subject to being recorded within 30 days after approval by the City Commission.

Assistant Planning Director pointed out the area on the map and reviewed the circumstances of the request. No one appeared in opposition to the request.

Stevens moved that the plat be approved as recommended by the Metropolitan Area Planning Commission, the Mayor authorized to sign, subject to the posting of a concrete surety bond in an amount approved by the City Engineer, guaranteeing the construction of sidewalks to City specifications within a period of two years. Motion carried unanimously.

approved 6 bond
guaranteeing con-
struction of side-
walks within 2
years to be sub-
mitted

Petition to change
from "AA" to "BB"
tract of land
generally at SW
corner of 21st
street & Oliver

Report from the Metropolitan Area Planning Commission (Case No. Z-9632 and Case No. 99-8) in regard to petition to change from "AA" to "BB" a tract of land in the Southwest Quarter of the Southwest Quarter of Section 1, Township 27 South, Range 1 East, except the south 570 feet thereof and except the west 250 feet thereof, generally located at the northeast corner of 21st Street and Oliver, presented. Planning Commission recommended that this application be denied and the Community Unit Plan be denied, but that it not be forwarded to the City Commission until after consideration by the Planning Commission of a change of the light commercial zoning in the area back to "AA" zoning.

B. A. Jadin --

Assistant Planning Director pointed out that Case No. Z-9632 was an application for multiple family zoning for an area commonly known as the Dr. Pauler Tract, and that the same had picked up the additional designation of Case No. 99-8 as a result of it being submitted as a residential Community Unit Plan. He further pointed out that the next item, being Case No. 12-955 was the related zoning application. He pointed out that the City Commission had the right to exercise a residential Community Unit Plan (CUP) provided that the following four conditions were established:

1. That the value of the buildings and the character of the property adjoining the area included in such plan would not be adversely affected;
2. That the plan be consistent with the future use and development of the area as shown on the Comprehensive Zoning Ordinance, and that the plan be consistent with the future use and development of the area as shown on the Comprehensive Zoning Ordinance.



July 6, 1965

3. That the building shall be used only for residential purposes plus accessory uses; and
4. That the average lot area per family contained on the site shall not exceed the density allowed for the combination of zoning for the area that is involved.

Mr. Lakin stated that the staff had recommended that "B" zoning be recommended for granting in such amounts as to allow for the density of use as proposed in the CUP and that the planned unit development be approved. This recommendation was based on the fact that "LC" zoning is in existence and it does appear that it is the Commission's public policy that zoning should stay there, as evidenced by recent change in zoning in nearby areas.

Stevens --

Commissioner Stevens stated that he believed that portions of the area in question had been zoned "LC" prior to the development of the residential area to the northwest and these residents should have been aware of the plans for the eventual commercial development of the Paulay tract.

Sidney Brick --

Sidney Brick, Attorney for the applicants, appeared before the Commission and reviewed in considerable detail the planned development of the area in question. He pointed out the proposed development of the area in question. He pointed out that the proposed developers enjoyed a national reputation as quality builders and that the development would be for general housing and not a student housing project. Mr. Brick spoke of the original plans for the development which had evolved to the current proposal which would divide the 750' buffer zone into four single family residential lots, with density increasing as the project developed to the east. In answer to question by Mayor Tarrant, he stated the development would eventually contain two 3-story apartments, three 7-story apartments, and two 10-story apartments, with the construction to be phased starting with the larger apartment buildings, and the other units constructed according to demand. (COMMISSIONER ROBERT EXCUSED FOR A SMALL PORTION OF THIS PRESENTATION). Mr. Brick further stated that the density of the development would be 286 families to the acre; would allow 58% of the area to remain in green space; and in his opinion would be an attractive development and a credit to the area. Mr. Brick displayed an artist's conception of the proposed development.

C. Robert Bell--

C. Robert Bell, Attorney representing the protestors, appeared in opposition to the request. Mr. Bell stated that their concern was that the proposed development bordered on one of the finest residential areas in the city of Wichita, and that he believed the problem of density to be all important in this area. Mr. Bell presented photographs of the area in question, pointing out that the residential areas were of extremely low density which he contrasted with the high density proposed for the development. He further pointed out that the disparity in density would be extremely radical, and detrimental not only to the property values of the nearby residential areas, but also to the area of the proposed development. Mr. Bell contended that for a proper CUP DEVELOPMENT, the entire 83 acres of the Paulay Tract should be included within the plan and should provide for a more gradual density use

MICROFILMED
FROM THE BEST
AVAILABLE COPY

July 6, 1965

as it developed to the east. He further contended that the proposed development was appropriate for student housing and regardless of the rental range of the apartment units, it was within the reach of the students who frequently doubled and tripled up in renting living quarters. Mr. Bell further stated that his clients had engaged the services of R. S. Delamater, Consulting Engineer, who had made a study of the area in question and who found the proposed development did not provide for the property and safe removal of runoff storm water, and in Mr. Delamater's opinion the entire area would require massive earth reconstruction to relocate the 3 existing lakes in the area. Mr. Bell further spoke of the present traffic problem in the area, pointing out that even more traffic would be generated by this development. Speaking of the great interest of his clients, Mr. Bell stated that they had gone to the expense of engaging a landscape architectural firm to draw up a proposal for a CUP, utilizing the entire 40 acres of the tract. He displayed the architect's drawing of this proposal, stating that such a development would adhere to good planning principles, and still remain harmonious to the surrounding areas.

Mr. Sidney Brick--

Mr. Sidney Brick again appeared, and speaking to the matter of drainage, stated that while he respected Mr. Delamater's opinion, he would guarantee that no plat would be granted until the proper drainage was provided for the area. Mr. Brick stated that he did not feel (COMMISSIONER BOGART EXCUSED FOR A SHORT PERIOD) that it behooved the neighbors to the west to try to dictate how this area should be used, and that while he understood they would like to preserve their "Silvon Glenn", progress does not make this possible.

Mr. Lakin --

In answer to question by Mayor Tarrant, Mr. Lakin stated that all nine requirements for Case 67-8 had been complied with and that further comment would be made at the time the plat is considered.

Considerable discussion was had on the most desirable method by which the property could be rezoned and still control the density of development. (COMMISSIONERS ANDERSON AND VOLLMER EXCUSED DURING A SHORT PERIOD OF THIS DISCUSSION). Commissioner Beasart stated that he could foresee the possibility of litigation in this matter if it were not clear as to CUP development on "A1" zoned land. Both Mr. Lakin and Mr. Brick stated that they could see no objection or legal difficulty for CUP development in such zoning.

Mr. Charles C. Browning, Jr.--

Mr. Charles C. Browning, Jr., 11 Crestview Lakes, appeared before the Commission in opposition to the petition. Mr. Browning stated that he was representing 16 property owners who formed the Crestview Lakes Association, and that while they were not trying to dictate the use of Dr. Pauley's property, they did oppose such a great disparity in the proposed development and the adjoining residential neighborhoods. Mr. Browning spoke to the traffic congestion in the area at the present time, pointing out that motorists had even driven over his yard in order to bypass barricades which had been in the street at one time. He further related a similar zoning case in Kansas City where a decision to grant such a zoning change by both the Planning Commission and City Commission had been overturned by a ruling of the

MICROFILMED
FROM THE BEST
AVAILABLE COPY

July 6, 1965

court, because of the infringement upon the rights of the adjacent property owners. Mr. Browning further pointed out that it had been publicly stated that at some later date the "AA" zoning on the 250' buffer strip would also be petitioned for change.

Mrs. Glen
Milburn --

Mrs. Glen Milburn, 3 Crestview Lakes, appeared in opposition to the requested zoning. Mrs. Milburn stated that she would like to emphasize the intent of the petitioners to request rezoning of the "AA" buffer strip, for use as parking at some future date. She also stated that the residents feared as much as a 50% depreciation in their property values if the proposed development took place.

Mr. Lakin --

In answer to question by Commissioner Bogart, Mr. Lakin pointed out that a variance would be required for use of the 250' buffer zone for parking purposes and that under new State law, appeals from rulings of the Board of Zoning Appeals are heard by the District Court.

Mr. Glen
Milburn --

Mr. Glen Milburn, 3 Crestview Lakes, appeared before the Commission and pointed out, contrary to previous statements, that the Willow Lake development had started in 1954, some 4 or 5 years before the Pauley tract was granted commercial zoning. Mr. Milburn stated that he felt the residential areas around the proposed development should at least have the protection of having the 250' buffer zone established in perpetuity.

Mr. Brick --

In answer to question by Mayor Tarrant, Mr. Brick stated that some discussion had been had on using the 250' buffer zone for parking purposes. Mr. Ralph Gilchrist, Attorney also representing the applicants, appeared and stated that the area would remain "AA" zoning and this was a matter of record at the Metropolitan Area Planning Commission. In answer to question by Mayor Tarrant, Mr. Gilchrist stated that his client was not prepared to offer covenants to the effect that the buffer strip would remain zoned "AA" in perpetuity.

Tarrant --

In answer to question by Commissioner Bogart, Mr. Brick stated that a variance would not be requested on the 250' buffer zone.

Mayor Tarrant stated that the history of the area showed that certain gentlemen's agreements had been made regarding the use of this land, and it appeared that the best solution would be for the owner of the property proposed for development to offer covenants as to retaining the 250' buffer strip as "AA" in perpetuity.

Stevens --

Commissioner Stevens stated that he could see no violation in any gentlemen's agreement since the 250' area was still zoned "AA", its planned use was for a buffer; and Mr. Brick had stated that no change would be requested for this particular strip.

Mr. Bell --

Mr. Bell again appeared and reiterated the position of his clients in the matter, again pointing out that it was felt that the only way the problem could be properly dealt with would be to develop the entire 40 acres under the Community Unit Plan.

Discussed.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

July 8, 1965

Bogart --

Commissioner Bogart stated that the protesters did at one time agree to the "LC" zoning in the area; that the CMP would provide for a uniform development; Counsel for the applicants had stated they would not request a variance on the 250' buffer zone; and further he would point out that any request which might come before the Commission for any use other than "AA" residential for this 250' would not receive his favorable vote.

Zoning change approved from "AA" to "M" for SW 1/4 of SE 1/4 of Sec. 1, Twp. 27S, R1E, exc. S. 570' x 2' exca. N. 250' there-of & CMP adopted for area

Stevens moved that the resolution effecting the change in zoning from "AA" to "B" for the SW 1/4 of SW 1/4, Sec. 1, Township 27S, R1E, except the south 570 feet thereof and except the west 250 feet thereof, be adopted, and the Community Unit Plan as presented to the City Commission be adopted for the area. (Motion later carried.)

Tarrant - substitute motion - later withdrawn

Tarrant moved as a substitute motion that the north 20 acres and 250 feet on the immediate west be involved in the Community Unit Plan. (Motion later withdrawn.)

Lakin --

Mr. Lakin pointed out that this area had not been involved in public hearing and therefore he did not believe it could be included in the plan at this point.

Tarrant --

Mayor Tarrant withdrew his substitute motion on the basis that it did not comply with policy.

Bogart -- substitute motion - later withdrawn

Bogart stated that in view of the "AA" and "B" division of the property, he would move as a substitute motion that the Community Unit Plan be adopted for the area requested, and "B" zoning approved for the 7.43 acres.

Discussed. Commissioner Bogart withdrew his substitute motion.

Bogart --

Commissioner Bogart brought out that the intent of Commissioner Stevens' motion would be to exclude the 250-foot buffer strip from "B" zoning, but to include it within the Community Unit Plan.

Commissioner Stevens' motion carried 4 to 1. Tarrant voting "No".

RESOLUTION

No. 254 - Zoning Changes

Resol. No. 254 - Zoning Changes - adopted

A resolution changing the zoning classifications or districts of certain lands located in the City of Wichita, Kansas, under the authority granted by Section 28.04.210 the Code of the City of Wichita, Kansas, read: Stevens moved that the resolution be adopted. Motion carried. Yeas: Anderson, Bogart, Stevens, Vallmer. Nays: Tarrant.

Tarrant --

Tarrant moved that all items presented in connection with this case be received and filed. (Extract HAVC Minutes, March 4, 1965, April 1, 1965, May 6, 1965, May 20, 1965; letter, dated July 6, 1965 from R. S. Delanater, Consulting Engineer; and series of 3 aerial photographs of the area). Motion carried unanimously.

LC to AA

Petition to change from "LC" to "AA" tract of land at NE corner of 21st Street & Oliver

Report from the Metropolitan Area Planning Commission (Case No. 6-3685) in regard to petition to change from "LC" to "AA" a tract of land described as beginning at a point 33 feet north and 250 feet east of the southwest corner of the SW 1/4, Section 1, Township 27 South, Range 1 East; thence north 570 feet; thence east to the east line of the W 1/2 of the SW 1/4 of said Section; thence south along said east line to a point 30 feet north of the south line of the SW 1/4 of Section 1, Township 27 South, Range 1 East; thence west parallel to said south line of the SW 1/4 to the point of



JULY 9, 1965

<p>Stevens - motion to strike item from agenda</p> <p>Mr. Dekker --</p> <p>Matter reconsidered</p> <p>Application denied as recommended by HAPC</p> <p>Petition to change from "A" to "C" Lots 50 thru 64 even, incl. on Arkansas Ave. in McTaggart's Adm.</p> <p>application denied for "C" but approved for "LC" zoning</p> <p>Resol. No. 255 - Zoning Changes --adopted</p> <p>Final Plat of Ramsey's Replat of Part of McTaggart's Adm. A</p> <p>approved subject to posting bond guaranteeing construction of sidewalks within period of 2 years</p> <p>Petition to change from "LC" to "C" and from "A" to "LC" area on east side of Broadway between I-235 & 43rd St. in G. R. Higgs Adm.</p>	<p>beginning; and all of lot 1, M. N. Higgins Second Addition, generally located on the northeast corner of 21st Street and Oliver, presented. Planning Commission recommended that the application be denied.</p> <p>Stevens moved that the item be stricken from the agenda. Motion carried unanimously.</p> <p>Director of Law pointed out that the proper action on this item would be to deny the application.</p> <p>Bogart moved that the matter be reconsidered. Motion carried 4 to 1. Tarrant voting "No".</p> <p>Bogart moved that the application be denied as recommended by the Metropolitan Area Planning Commission. Motion carried unanimously.</p> <p>Report from the Metropolitan Area Planning Commission re: Z-0653 in regard to petition to change from "A" to "C" Lots 50 through 64, even, inclusive, on Arkansas Avenue, in McTaggart's Addition, located at the southeast corner of 26th Street North and Arkansas, presented. Planning Commission recommended that the application be denied for "C" zoning and that "LC" zoning be approved, but that the recommendation not be forwarded to the City Commission until a final plat of the area is approved.</p> <p>Stevens moved that application for "C" zoning be denied and that "LC" zoning be approved, as recommended by the Metropolitan Area Planning Commission, and that the resolution effecting the change in zoning be adopted. Motion carried unanimously.</p> <p style="text-align: center;">RESOLUTION No. 255 - Zoning Changes</p> <p>A resolution changing the zoning classifications of districts of certain lands located in the City of Wichita, Kansas, under the authority granted by Section 28,04.210 the Code of the City of Wichita, Kansas, read. Stevens moved that the resolution be adopted. Motion carried unanimously. Yeas: Anderson, Bogart, Stevens, Vollmer, Tarrant.</p> <p>Final Plat of Ramsey's Replat of Part of McTaggart's Addition (S/D No. 65-10), located at the southeast corner of 26th Street North and Arkansas Avenue, presented. Planning Commission recommended that the plat be approved, subject to being recorded within a 30 days after approval by the City Commission.</p> <p>Stevens moved that the plat be approved as recommended by the Metropolitan Area Planning Commission and the Mayor authorized to sign for the City, subject to the posting of a corporate surety bond in an amount approved by the City Engineer, guaranteeing the construction of sidewalks to City specifications within a period of two years. Motion carried unanimously.</p> <p>Report from the Metropolitan Area Planning Commission (Case No. Z-0654) in regard to petition to change from "LC" to "C" the south 118 feet of Lot 2 and all of Lots 3 and 4, G. R. Higgs Addition, and to change from "AA" to "LC" the east 25 feet of Lot 6, G. R. Higgs Addition, located on the east side of Broadway between I-235 and 43rd Street South, presented. Planning Commission recommended that the application be approved.</p>
--	---

MICROFILMED
 FROM THE BEST
 AVAILABLE COPY

ordinance effectuating the change not be published until the plat has been recorded with the Register of Deeds and if the plat is not recorded within one year from this date, that the application be denied.

CHAIRMAN GOEBEL declared a 5 minute recess after which the Commission reconvened with the same members present.

- 20.a. Case No. Z-1022 - University Mall, Inc. requests change from "B" to "LC" for an area beginning 250 feet east and 600 feet north of the southwest corner of the Southwest quarter of Section 1, Township 27, Range 1 East, thence north 100 feet, thence east 1043.7 feet more or less to a point on the east line of the southwest quarter of southwest quarter of Section 1, thence south 100 feet, thence west to point of beginning. Generally located on the east side of Oliver in an area north of 21st Street.
- 20.b. Case No. DR-9 - University Mall, Inc. requests approval of an amendment to DR-8 on property described as the Southwest quarter of southwest quarter of Section 1, Township 27 South, Range 1 East. Generally located on the northeast corner of Oliver and 21st Street.

WILKINSON said that Hennessy and Jackson (when the Zoning Committee viewed subject property) had expressed a desire to be present when this application was considered (they are not at this meeting) and he suggested a deferral of this application.

WM. P. HIGGINS, attorney for the applicant, on behalf of his client, was opposed. WILKINSON indicated he had no opposition to hearing the case.

CALBRAITH pointed out the area on the map and reviewed the following staff report:

Comments

1. The applicant presently has 9.8 acres of "LC" zoning and is requesting additional "LC" in order to have an adequate site for a shopping center complex and service station. The existing "LC" to the south was established by the City Commission subsequent to annexation by the City in 1960.

2. It would appear that, inasmuch as there is existing "LC" at this location bounded on the north by "B" zoning all of which is under the same ownership, this would be a logical extension of the existing "LC" zoning if it can be justified on a desirable CUP.
3. The original University Gardens Development Plan which was comprised of 20 acres of land has not been developed. The applicants have now submitted an amended CUP which includes an additional 20 acres.
4. This amendment and addition to the University Gardens Development Plan has been submitted as a requirement under the CUP provisions of the zoning ordinance and is in general agreement with the comments made by the staff in the original review with the applicant.
5. The amendment to the residential part of the plan is generally as follows:
 - a. A decrease in the area proposed for development of apartments from approximately 17 acres to 15 acres.
 - b. Reduction of the proposed density from 563 units to 300 units.
 - c. Reduction in maximum heights from 10 stories to 7 stories.
 - d. Proposed uses include garden apartments, high-rise and associated club house.
6. The Commercial Development Plan is proposed on approximately 13 acres and proposes a service station and shopping center, including a department store, grocery and miscellaneous shops. The Development Plan also includes information on maximum gross floor area, building setbacks, parking ratio, building heights, maximum building coverage, and location of required wall and planting screen.
7. If the Planning Commission determines that the request for additional "LC" is proper and the CUP is satisfactory, then the following conditions would be consistent with other approved CUP's:

MICROFILMED
FROM THE BEST
AVAILABLE COPY

- a. Add to General Note #2, "no billboards shall be permitted".
- b. Platting within one year and the plat recorded with the Register of Deeds prior to the publishing of the ordinance effectuating the zone change.
- c. The development of this property shall proceed in accordance with the development plan as recommended for approval by the Planning Commission and approved by the governing body, and any substantial deviation of the plan, as determined by the Superintendent of Central Inspection and the Director of Planning, shall constitute a violation of the building permit authorizing construction of the proposed development.
- d. Any major changes in this development plan shall be resubmitted to the Planning Commission and to the City Commission for its consideration.
- e. The transfer of title of all or any portion of the land included within the Community Unit Plan does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land for development and be binding upon the present owners, their successors and assigns, unless amended.

MR. P. HIGGINS submitted a rendering of the proposed development and in his presentation pointed out that the southern portion of the 200-foot "AA" buffer strip along the east side of Oliver north of 21st Street will remain as a buffer and that they are requesting no change of zoning; however, he indicated that if the CUP is approved it is possible that at some future time they may apply to the Board of Zoning Appeals for an exception to permit parking in that area. MR. HIGGINS said that in submitting the requested amendment to the CUP, they have reviewed the plan with all City Departments to determine any objections and have tried to comply with all suggestions made. MR. HIGGINS said that while the ordinance requires a 5-8 foot wall to separate residentially zoned property (the 200-foot buffer strip) from commercial development, they are requesting a waiver of the wall unless the buffer strip is developed residentially, as they envision that at some future time it may be used for parking in connection with adjacent development, such parking to be approved by the Board of Zoning Appeals. He indicated that they do not intend to build single-family houses on this south portion of the buffer and to require

a wall along the east line of the buffer strip would leave it as a "no man's land". He indicated that the northern portion of the buffer strip will be platted and developed for single-family. MR. HIGGINS said that if they are permitted to utilize the southern portion of the buffer strip for parking, it will be developed to harmonize with the other development in the area.

ROBERT SOUDERS objected to violation of the requirement of having a wall separating the buffer zone from the light commercial development.

MRS. BARBARA MORGAN, 4722 E. Looman, was opposed to the use of the southern portion of the 200-foot buffer strip for parking as she felt it would not beautify the parcel and would tend to downgrade the area and that if it is so used, it was her hope evergreens or some other shrubbery that would be suitable the year around would be planted. MRS. MORGAN also voiced opposition to the construction of another service station in the area.

The Chairman pointed out that this hearing is not for consideration of a change of zoning or use of the southern portion of the 200-foot buffer strip and that any use of this area for off-street parking would have to be considered by the Board of Zoning Appeals. It was his feeling that if the Board did grant an exception for such use that it would be properly screened.

GALBRAITH said that the Board has granted such parking exceptions and have generally required a 5 to 8 foot wood fence as well as shrubbery, but the ordinance actually states the Board can require any screening they deem necessary to protect adjacent residential areas.

MRS. MORGAN felt that there should be more than the one opening onto Oliver from the proposed Residential portion of the CUP, pointing out that Oliver is a very busy street. She also suggested the possibility of the developers utilizing the additional "L" area which they are requesting for parking and thus not locating it on the buffer strip. MRS. MORGAN said she was opposed to the zoning request also, although she was in favor of the reduction of density on the apartments and of maintaining the lakes in the area as they are now.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

MRS. BETTY HENSLEY, 4707 Looman, asked if the "LC" request is granted, could it be applied later to another location in this development. GALBRAITH pointed out the additional area requested and said that if it is approved, that it would be only for the legal area for which the request is made.

MRS. HENSLEY inquired why the residents were not notified of the request for additional zoning as they were on the CUP amendment. GALBRAITH explained that the requested zoning area was not within 200 feet of any property owner other than the applicant's. MRS. HENSLEY felt there should be another access point to the Residential CUP area and pointed out that vacation of 23rd Street was denied at one time because the Fire Department felt there should be more than one access point into the Crestview Lakes area. She wondered how Mr. Higgins could feel that Parcel #6 could not possibly be developed for single-family and yet he indicates that parcels #3 and #4 will be (these three parcels being the buffer strip east of Oliver). She resented the fact that they were not notified of the possibility of a change in the buffer zone.

MR. HIGGINS pointed out that they are not asking for any change of zoning for any part of the buffer strip; that he has indicated the upper portion of the buffer strip will be platted for single-family development. On Parcel #6, however, they do not contemplate homes on that busy corner and noted that in plating, 75 feet will be required for street right of way. He pointed out that the only thing they are requesting now, so far as the buffer strip is concerned, is the waiving of the requirement for a wall between the residential and commercial areas until such time as residential development might take place. He said that they are not attempting and have agreed not to do anything that would affect the aesthetic value of the property to the west.

CHARLES F. MC AFEE, 3122 Maplewood, spoke of the desirability of retaining the trees along Oliver and also voiced opposition to the one opening onto Oliver and the fact that the Fire Department does have two means of getting in and out of the Crestview Lakes area and should have two in this proposed development. MR. MC AFEE spoke generally in terms of retaining as many trees throughout the city as possible for their aesthetic value and suggested that if it is not possible to require that trees be maintained under the zoning ordinance then the ordinance should be amended.

General agreement was expressed by the Commissioners so far as the desirability of retaining as many trees as was possible.

BLEDSENE did some computing related to leaseable floor area in the various parcels and it was generally agreed that the request in this respect is reasonable and actually does not represent too dense a development.

Further discussion with regard to the trees brought out the fact that they are probably located on what will be public right of way when proper dedications are made for Oliver Street. MR. HIGGINS said it would be his desire and that of the developer to retain them if possible. GALBRAITH suggested that proper wording could be added to the CUP to provide that the existing hedge row shall be retained.

WILKINSON said that while Hennessey and Jackson had expressed a desire to be present when this application was heard, their concern was related to Parcel #6 and the suggestion that it was desired to utilize it for parking. It was Mr. Wilkinson's feeling that since the actual use of this property is not before this Commission (since it will be a matter for the Board of Zoning Appeals at some future time), he did not think Hennessey and Jackson would have any objections.

BLEDSENE pointed out that the original CUP proposed for Parcel #5 has been reduced in density from 560 units to 300 which lessens the density tremendously and the additional "LC" requested only represents about 50,000 more square feet of building.

MOTION: BLEDSENE moved, WILKINSON seconded and it carried unanimously that the Planning Commission recommend to the City Commission that Case Z-1099 be approved.

BLEDSENE commented that the requested density is not high for the CUP; however, in regard to the one entrance to Oliver in Parcel #5, he noted that there would be 300 units in the CUP and he felt that when the Subdivision Committee considers the plat some revision will be required as to an additional entrance to satisfy the Traffic Division and the Fire Department.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

property to the west which the Committee was uncertain whether or not would involve properties not yet acquired.

- Mr. Mitchell indicated that he and the County Engineer had discussed the right-of-way for Windmill Road and both were uncertain if that shown on the preliminary plat was sufficient to accommodate the reimprovement of the road together with adequate roadside drainage ditches and maintenance access to the adjacent Wichita-Valley Center Flood Control right-of-way. Prior to the preparation of the final plat, the applicant's engineer should contact Mr. Mitchell and Mr. G. C. McLure, County Engineer, on this matter.
- Guy Moorefield of the Soil Conservation Service inquired of the applicant's plans regarding the planting of permanent vegetation in the new zoo. Mr. Moorefield indicated he would work with the applicant, and it was suggested that the project engineer and/or architect contact him on this matter.
- Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

-
7. S/d 69-102 - Preliminary Plat of UNIVERSITY GARDENS, generally located on the northeast corner of 21st Street and Oliver.

GIST outlined the area on the map and reviewed the staff comments.

DICK LINN, City Engineering, stated that a sewer extension would be necessary. He said that the most serious problem with the plat would be the drainage. He pointed out an alignment through the center of the site which could be used for drainage; adding however, that the developer preferred to take the drainage around the site which would then be at the expense of the applicant, and that a benefit district would have to be initiated to accomplish this needed drainage improvement. It was recommended that no site development be permitted on Lot 2 until the drainage and elevations were established and constructed.

W. P. HIGGINS, attorney for the applicant, pointed out Lots 3 and 4, which are shown on the associated CUP as parcels 3 and 4. He also outlined Lot 6 and said that these lots were left "AA" Single Family as a buffer and that they planned to request

an exception to allow parking on Lot 6.

DISCUSSION followed during which it was pointed out that if the "AA" lots along Oliver were platted into single family lots, each lot would have an access point. BLEDSOE pointed out that if the Board of Zoning Appeals allowed the "AA" lots to be used for parking there might be too many curb cuts along Oliver. GALBRAITH pointed out comments on the associated Community Unit Plan which brought about the situation of the "AA" lots adjacent to the west side of the proposed commercial development. It was the general consensus of opinion that Lot 6 should be left as is, with no comments as to further lotting or access control until after the Board of Zoning Appeals had heard the exception for parking referred to by Mr. Higgins. It was also pointed out that the BZA could establish access control along Oliver in their consideration of an off-street parking lot.

BILL OTTEN, Water Department, stated that water was available from 21st and Oliver, but the applicant should understand that a distribution and extension of lines would have to be worked out at the time of development for Lot 5.

LINN pointed out that there was an overlapping easement on the north side of the plat for utilities and drainage just west of Pincrest. He also pointed out that the cost of drainage improvements would be greater if taken around the plat rather than through it, and that the applicant would be responsible for the additional cost in addition to the regular assessed portion of the storm sewer benefit district.

HAROLD DAVIS, Kansas Gas and Electric Company, requested a 10-foot easement centered along the north and west lines of Lot 1. He requested the easement on the north side of Lot 5 be increased to 12 feet, and pointed out that if Lot 6 was to be for residential, he would need an easement along its east boundary. He also requested that the east-west easement between Lots 4 and 6 be continued to Oliver.

HIGGINS said that they would prefer that the easement between Lot 3 and 5, and 4 and 5 be placed on the west side of the lot line and that they would prefer not to extend the easement between Lots 4 and 6 to Oliver.

DAVIS pointed out that they would probably need the easement between Lots 4 and 6 to serve at least a portion of this development from a future line in Oliver.

MICROFILMED
FROM THE BEST
AVAILABLE COPY

R. L. NICHOLAS, Southwestern Bell Telephone Company, stated that his company had a tower on property they owned to the east of Pincrest. He said the site was purchased in May, 1963, along with an associated ingress, egress and public utility easement which accommodate existing aerial utility lines and an access drive to the site from 21st Street. He added further that the easement was in the alignment of Pincrest and the warranty deed for same was recorded in Deed Book 1314 on page 428.

MRS. BARBARA MORGAN, 13 Crestview Lakes, stated that she was an interested property owner who lived on the west side of Oliver. She said that she had followed this development from the original Community Unit Plan stage and had voiced her objection all along. She said she again wanted to express she felt the development would draw too much traffic and eventually destroy the value of her home.

NOTION: It was moved, seconded and carried unanimously that the Subdivision Committee approve the preliminary and authorize preparation of the final plat, subject to:

1. Lots 3 and 4 are zoned "AA" Single Family, and the associated CUP indicates that each are to be used for 2 single family residences. Therefore, said lots shall be adjusted to create 2 lots each.
2. Indicate "complete access control" adjacent to the west and south 40 feet of the south and west lines respectively, of that area designated as Lot 6.
3. Indicate on the east side of Oliver and adjacent to the west line of the areas labeled as Lots 3, 4 and 5, the following: "access control except 1 opening per lot".
4. Indicate access controls along the north side of 21st Street adjacent to Lots 1 and 2 as approved on the associated CUP. Said controls being 2 openings to Lot 1 and 3 openings to Lot 2.
5. The applicant shall review the approved CUP and their proposed development plans for Lot 5 with F. E. Hobbs of the Wichita Fire Department. Firelane easements determined necessary for said lot should then be indicated on the final plat.
6. Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.

7. The 20-foot utility easement along the north line of Lot 2 shall be extended west to Oliver Avenue.
8. The easements along the north side of Lot 5 east of Blackley Drive shall be adequately labeled as a utility easement for the north 12 feet, and a drainage easement for the south 20 of the north 32 feet.
9. The utility easement along the north side of Lot 5 west of Blackley Drive shall be increased to 12 feet in width and extended west across Lot 3 to Oliver Avenue.
10. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pincrest.
11. The applicant shall install or guarantee the extension of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.
12. The applicant will need to contact the Water Department and make satisfactory arrangements for the distribution of water to serve Lot 5.
13. The applicant shall contact the Engineering Division and make satisfactory arrangements for an appropriate guarantee for the paving of Pincrest Avenue.
14. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.
15. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2, until said storm sewer has been constructed.
16. A Home Association Agreement providing for the maintenance of non-public common areas, parking areas, community facilities, lake, fence, etc. involved in the development of Lot 5, shall be submitted to the Planning Department, approved as to content by said department and as to form by the Department of Law. Said executed agreement shall be forwarded with the final plat to the Board of City Commissioners.
17. Requirements for a final plat (see pages 20-25, Part 4, Article 5 of the MAPC Subdivision Regulations).

MICROFILMED
FROM THE BEST
AVAILABLE COPY

6. Case No. BZA 2-70 - University Mall, Inc., 313 First National Bank Building, Wichita, Kansas, requests an exception to permit the installation or construction of an off-street parking lot, pursuant to Section 2.12.590.C, Code of the City of Wichita, on property zoned "AA"-Single Family, and legally described as:

Beginning 75 feet north and 75 feet east of the southwest corner of Section 1, Township 27 South, Range 1 East, thence north 275 feet, thence west 25 feet, thence north 350 feet, thence east 200 feet, thence south 625 feet, thence west 175 feet to beginning. Generally located at the northeast corner of 21st and Oliver Streets.

GALBRAITH pointed out the area on the map and reviewed the following Secretary's Report:

JURISDICTION:

The Board has jurisdiction to consider this request under the provisions outlined under Section 2.12.590.C, Code of the City of Wichita. The Board may grant the exception to permit the installation or construction of an off-street parking lot providing the conditions under Section 28.04.145, Code of the City of Wichita, can be complied with.

COMMENTS BY THE SECRETARY

The applicant is requesting an "exception", as permitted in the Zoning Ordinance, to allow the construction of an off-street parking lot on property zoned "AA"-Single Family and which will be utilized by a shopping center which is proposed to be constructed adjacent to the east of the application area. It should be pointed out that the property this off-street parking lot is intended to serve is being developed under the Community Unit Plan provisions of the Zoning Ordinance. The amended plan DP-8 was approved by the Board of City Commissioners on June 6, 1969.

Since 1959, there has been a total of 11 various applications filed on subject property and that area held under the same ownership to the north and east. These include 3 county zone change requests, 4 city zone change requests, 2 Community Unit Plans, 1 plat and subject BZA request. In 1960, a request

was filed for "LC"-Light Commercial zoning for the south 600 feet of the SW $\frac{1}{4}$ of the Section in which this application is located. The application was approved except the west 250 feet measured from the section line, which was retained as a buffer to protect the residences on the west side of Oliver from the adverse affects of a shopping center directly to the east.

A general layout of parking spaces has been submitted to and approved by the Traffic Engineer. The plan provides for approximately 196 parking spaces and indicates that 35 feet adjacent to Oliver and 21st Street will be utilized for plantings and screenings. This parking would be in addition to the required off-street parking spaces on the shopping center site. It should be noted that, although the Traffic Engineer has given tentative approval to the parking plan, he has pointed out that it will be necessary to redesign the plan at such time as an off-street parking plan is submitted for the shopping center. The Traffic Engineer has also stated he is of the opinion that the plat should provide 60 feet of half-street right-of-way for Oliver and 21st where 50 feet has been indicated and that the applicant should be required to guarantee the construction of acceleration-deceleration lanes at the proposed points of ingress and egress. The number of access points and the additional right-of-way will be discussed at the time of platting.

It is the opinion of the Secretary that subject property (the original established 200 foot buffer) cannot realistically be developed for single family homes. The owners of such homes would not enjoy facing Oliver, a major street, or backing into a shopping center. Therefore, it would appear reasonable to expect the area to be developed for higher density residential uses, two or four family units, if the proper zoning could be obtained. This type of development would offer the best protection for the existing residences west of Oliver. The Secretary is also of the opinion that to permit the area to be utilized as an off-street parking lot, in essence, is practically the same as extending "LC"-Light Commercial zoning to Oliver. This parking lot will act in the same manner as most of the parking areas in front of the major shopping centers in Wichita. The openings to Oliver will provide major approaches to the center the same as those on 21st Street and the truck entrance will most likely be the northern most point of ingress. The landscaped 35 foot setback area, as proposed, will offer an aesthetic approach to the center, however, this will have to be done with care so as not to present sight conflicts for approaching vehicles to Oliver.

RECOMMENDATION

In the event the Board determines that parking should be permitted on subject property, the request should be approved subject to the following conditions:

1. In no event shall any portion of the area contained in this application be utilized to satisfy the off-street parking requirements associated with the Community Unit Plan to the east (DP-8 as amended).
2. A five to eight foot solid fence constructed of masonry, architectural tile, staggered or louvered redwood or rough sawed cedar shall be erected along the north property line of the application area and shall not extend closer to Oliver than the front setback line of 35 feet from the required half street right-of-way line.
3. The Board should consider requiring a four foot solid fence constructed of either masonry, architectural tile, staggered or louvered redwood or rough sawed cedar along the west and south 35 foot setback lines except at the approved points of ingress and egress.
4. The required front yard setbacks on Oliver and 21st Streets, except for points of ingress and egress shall remain unpaved and they shall be landscaped with grass, trees and shrubs which shall be maintained and replaced when necessary.
5. A detailed landscape plan for the setback areas on 21st and Oliver Streets showing the existing trees, proposed location and type of new trees and shrubs prepared by a licensed landscape architect shall be submitted to the Secretary of the Board for approval prior to the resolution being forwarded to the Office of Central Inspection.
6. Prior to the occupancy of any portion of the application area for an off-street parking lot, the applicant shall remove the existing buildings.
7. The parking area shall be used for passenger vehicles only and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicle.
8. Only such signs as are necessary for the proper operation of the parking lot shall be permitted.

9. In no case shall a fee be charged for parking facilities provided hereunder.
10. The off-street parking lot and driveways providing ingress and egress to the parking lot shall be paved with concrete asphaltic concrete, or asphalt, and shall be maintained in good condition and free of all weeds, dust, trash, and debris.
11. All parking spaces abutting property lines shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces. The parking area shall have adequate markings for channelization and movement of vehicles.
12. If lighting facilities are provided, they shall be so arranged as to reflect or direct light away from adjacent properties.
13. All improvements as outlined above shall be installed prior to the occupancy of the site for an off-street parking lot.

WILLIAM P. HIGGINS, attorney for the applicant, addressed the Board to clarify matters in this case. He stated that when the Planning Commission considered the Community Unit Plan it was stated that subject area was proposed for off-street parking subject to the approval of the Board of Zoning Appeals. MR. HIGGINS stated he was not asking for "LC" zoning because the present zoning can be used for parking. He felt that the use for off-street parking is the best method of utilizing the property and protecting residences to the west. MR. HIGGINS stated that he was absolutely agreeable with all the requirements set out by the Secretary except Condition No. 3 requiring screening of the properties to the south which are occupied by a church and a nursing home. In reference to the requirement that a registered landscape architect be employed, MR. HIGGINS stated that he knew of only one such person in the City of Wichita. He also stated that any landscape architect service provided by a competent nursery should be adequate. MR. HIGGINS commented that there are existing trees in this area and that they would be retained with more added where necessary. He pointed out that the planting area would be 35 feet in depth.

In regard to signs in this area, MR. HIGGINS stated that traffic control signs would be the only ones necessary and that no advertising signs would be placed in the parking area. He stated that as the overall parking plan is not available at this time, he would be perfectly willing to accept whatever changes are later required by the Traffic Engineer and the City. He stated that, of course, the off-street parking plan would have to be intermeshed and made a part of the total traffic plan. MR. HIGGINS again stated that he was willing to accept all requirements set out by the Secretary but requested a change in the stipulation that a registered landscape architect be changed to a qualified nursery and that a screening wall not be required to the south.

CURTIS TERFLINGER, representing Northeast Heights Residence Association, addressed the Board and distributed mimeographed copies of the conditions he felt must be met by University Mall. He stated that he and several others concerned in the area had thought this matter had been settled in 1965; that they had received a commitment from the Planning and the City Commission that the 200 foot strip would be left as residential, but that these matters were continually being reopened. He then reviewed the material he distributed to the Board. He stated that he felt that those he represented could concur in Conditions No. 1, 4-13 of the Secretary's Report.

In reference to Condition 2, GALBRAITH clarified setback requirements and right-of-way requirements. In regard to both conditions 2 and 3, it was agreed that the screening wall would be constructed of masonry, brick, stone, or architectural tile only.

In reference to Condition No. 10, MR. TERFLINGER used this opportunity to present a modification in the site plan to provide only 2 ingress-egress drives serving the shopping center from Oliver, deleting the 3rd southernmost entrance.

There then followed some discussion of the apartment complex to the north of the shopping center, over which the Board has no jurisdiction in this case. It was agreed, however, that the Secretary of the Board would point out these areas of concern to the Planning Commission.

MRS. CLINE HENSLEY, Willow Lakes Association, then addressed the Board, reviewing the statements made by Mr. Terflinger and again bringing out the traffic problem related to the apartment complex to the north of the shopping center. GALBRAITH pointed out

that the Board does not have jurisdiction in the matter of the apartments to the north.

MRS. HENSLEY stated that she and the others concerned felt that it was necessary to voice the total problem to get the overall view of the community.

CHARLES McAFEE, architect, stressed the fact that in order to move ahead with this proposal, the total overall development must be considered, rather than continuing to deal with parts. He then reviewed the traffic problem and the problems with creating a buffer zone for the residences in the area.

MRS. BARBARA MORGAN, representing Crestview Lakes Association, then addressed the Board expressing her concern in the development of the area. She requested that the ownership list for the case be modified since Mr. Ablah and Mr. Browning were both deceased. She reviewed the statements made by the others concerned in this area in regard to the parking lot itself and the apartment complex to the rear of the shopping center. She also requested that the lighting be kept out of the buffer zone. MRS. MORGAN then pointed out that there was much support to their suggestions to better the community. Mr. Landron and Mr. Beuttel were introduced as being present and concerned with the proposed development.

MR. HIGGINS mentioned that he already has agreed to many of the items which were being reviewed.

KRATZER then asked if Mr. Higgins and those representing the surrounding area could reach some satisfactory agreements if they were to get together outside the meeting. Mr. Higgins agreed to this but stated that anything regarding the apartment site project cannot be discussed as it does not pertain to the case at hand.

MR. BILL BEUTTEL, also representing Crestview Lakes Association, addressed the Board, again stating that he and the others thought this matter had been settled in 1965 by a gentlemen's agreement. He stressed the considerable investment residents have in this area and expressed concern that in the future more changes would be made in the original agreement infringing on the rights of the property owners in the area. He stated that the residents of the area would like to be reasonable, but would also like to be protected, and requested a written guarantee that this matter would not come up again in another 5 or 10 years.

KRATZER pointed out that the Board is empowered to provide specific exceptions to conditions in land use; and that specific recommendations made by this Board have the force of law. He also pointed out that the MAPC does not have this power, but can only refer their recommendations to the City Commission. MR. BEUTTEL then stated that Mr. Grant, Mr. Brock and Mr. Brooks were also present at this meeting as representing residents in the area.

MR. HIGGINS explained to MRS. BARBARA MORGAN that the parking lot lighting must be placed in the buffer zone to direct the light away from the residences. To place the lights in the light commercial area would direct them toward the houses. He then stated again that he agreed to conditions set out in the Secretary's report and additional stipulations presented by those who have spoken on this matter as to screening, etc.

MR. MCAFEE again brought out the point that this area must be considered as a total unit and stressed the importance of reaching final decisions.

KRATZER asked Mr. Terflinger if he felt he might be able to sit down with Mr. Higgins and his clients and come to an agreement; and if Mr. Higgins had any objections to this.

MR. HIGGINS stated that he cannot submit the plat for this property until the parking situation is resolved by this Board and since a month would hurt the development he would like to meet with Mr. Terflinger and others immediately. MR. TERFLINGER stated that he thought he and his group representatives were in a position to sit down and discuss the matter if they could get together with Traffic Engineering and work things out.

MR. HIGGINS again stated that he could sit down with these people and talk to them but could not discuss items pertaining to the apartment site project as this is not a part of this case.

KRATZER suggested that the meeting be recessed until the applicant and those people from the area could reach some decisions.

OROPESA said that it seemed that many points of controversy brought out here could have been settled if they had been aware of them before the meeting.

HIGGINS suggested that he and those interested recess to another room to discuss this matter and come to some conclusions.

The meeting recessed for a period of 15 minutes and reconvened with the same members present.

MR. HIGGINS and MR. TERFLINGER stated that they had come to an agreement on this case. It was decided that JACK GALBRAITH the Secretary of the Board, would determine the approval of the landscape plan submitted by a registered landscape architect and if agreement could not be reached, then the plan would be discussed by the Board.

MR. C. BICKLEY FOSTER suggested that those involved in this case get together before the plat is submitted to the Planning Commission to save time and misunderstanding in the matter and to aid in developing a plan.

MOTION: CUSICK moved, KRATZER seconded and it carried unanimously that this exception be approved subject to the conditions set out in the following Resolution.

RESOLUTION 2-70

WHEREAS, University Mall, Inc., 313 First National Bank Building, Wichita, Kansas, by William P. Higgins, 313 First National Bank Building, Wichita, Kansas requests an exception as provided in Section 2.12.590.C, Code of the City of Wichita to permit the installation or construction of an off-street parking lot, on property zoned "AA"-Single Family, and legally described as follows:

Beginning 75 feet north and 75 feet east of the southwest corner of Section 1, Township 27 south, Range 1 east, thence north 275 feet, thence west 25 feet, thence north 350 feet, thence east 200 feet, thence south 625 feet, thence west 175 feet to beginning. Generally located at the northeast corner of 21st and Oliver Streets.

WHEREAS, proper notice as required by ordinance and by the rules of the Board of Zoning Appeals has been given; and

4. The required front yard setbacks on Oliver and 21st Streets except for points of ingress and egress shall remain unpaved and they shall be landscaped with grass, trees and shrubs which shall be maintained and replaced when necessary.
5. A detailed landscape plan for the setback areas on 21st and Oliver Streets showing the required walls on the west and north, existing trees and those proposed to be retained, proposed location and type of new trees and shrubs prepared by a registered landscape architect shall be submitted to the Secretary of the Board for approval prior to the resolution being forwarded to the Office of Central Inspection. In the event the Secretary is unable to approve the plan, the applicant has the right of appeal to the Board.
6. Prior to the occupancy of any portion of the application area for an off-street parking lot, the applicant shall remove the existing buildings.
7. The parking area shall be used for passenger vehicles only and in no case shall it be used for sales, repair work, storage, dismantling or servicing of any vehicle.
8. Only such signs as are necessary for the proper operation of the parking lot shall be permitted.
9. In no case shall a fee be charged for parking facilities provided hereunder.
10. The off-street parking lot and driveways providing ingress and egress to the parking lot shall be paved with concrete, asphaltic concrete, or asphalt, and shall be maintained in good condition and free of all weeds, dust, trash, and debris.
11. All parking spaces abutting property lines shall have adequate guards to prevent the extension or overhanging of vehicles beyond property lines or parking spaces. The parking area shall have adequate markings for channelization and movement of vehicles.
12. If lighting facilities are provided, they shall be so arranged as to reflect or direct light away from adjacent residential properties to the west.

WHEREAS, the Board of Zoning Appeals did, at the meeting of February 24, 1970, consider said application; and

WHEREAS, the Board of Zoning Appeals has proper jurisdiction to consider said request for an exception under the provisions of Section 2.12.590.C, Code of the City of Wichita; and

WHEREAS, the Board of Zoning Appeals has authority to permit the installation or construction of an off-street parking lot, on property zoned "AA"-Single Family, subject to the conditions outlined in Section 28.04.145, Code of the City of Wichita.

NOW, THEREFORE, BE IT RESOLVED by the Board of Zoning Appeals of the City of Wichita, that this application be approved to permit the installation or construction of an off-street parking lot, on property zoned "AA"-Single Family, and legally described as follows:

Beginning 75 feet north and 75 feet east of the southwest corner of Section 1, Township 27 south, Range 1 east, thence north 275 feet, thence west 25 feet, thence north 350 feet, thence east 200 feet, thence south 625 feet, thence west 175 feet to beginning. Generally located at the northeast corner of 21st and Oliver Streets.

subject to the following conditions:

1. In no event shall any portion of the area contained in this application be utilized to satisfy the off-street parking requirements associated with the Community Unit Plan to the east (DP-8 as amended)
2. A five to eight foot solid wall constructed of either brick, stone, masonry, or architectural tile, shall be erected along the north property line of the application area and shall not extend closer to Oliver than the front setback line of 35 feet from the required half street right-of-way.
3. A four foot solid wall constructed of either brick, stone, masonry, or architectural tile shall be erected along the west 35 foot setback line, except at the approved points of ingress and egress, from the required half street right-of-way line.

13. All improvements as outlined above shall be installed prior to the occupancy of the site for an off-street parking lot.

ADOPTED AT WICHITA, KANSAS, this 24th day of
February, 1970.

SS/Norman N. Doke
NORMAN N. DOKE, Chairman

ATTEST:

SS/Jack H. Galbraith
JACK H. GALBRAITH, Secretary

The meeting adjourned about 3:45 p.m.

JACK H. GALBRAITH
SECRETARY

In further discussion, HENNESSY said he would consider the name Garvey Place more appropriate than Clinger Way, if it is to be changed to something other than Civic Center Place.

No further action was taken on this matter.

-
12. S/D 69-102 - Final Plat of UNIVERSITY GARDENS, generally located on the northeast corner of 21st Street and Oliver.

GALBRAITH pointed out the area on the map and the fact that the Commission had recently approved deepening of "LC" in the area and approved a CUP, and for the residential portion, one entrance was proposed to Oliver from the residential area through the 200-foot buffer of "AA" zoning which has been maintained on the east side of Oliver for many years. He continued that at the last Board of Zoning Appeals meeting an exception was granted for this 200-foot buffer to be utilized for off-street parking in association with the proposed shopping center. At the last Subdivision Committee when this plat was considered an additional 10 feet of right of way was required for both streets (Oliver and 21st Street) and the applicant was required to guarantee construction of a deceleration lane. He continued to point out that three points of access to Oliver are provided on the parking lot area, and that the only requirement the applicant is opposed to is condition #16 as suggested by the Subdivision Committee which concerns the submission of restrictive covenants which would set forth the development and maintenance responsibilities of the developer pertinent to the common open areas, parking areas, lake, etc., which are proposed for Lot 3.

GALBRAITH said that this requirement has been standard policy on residential CUP's, and recommended approval of the plat subject to 15 other requirements, which related primarily to guarantees for development, sewer, water, sidewalk, paving, etc.

GALBRAITH said that at the Subdivision Committee, adjacent property owners expressed concern about only one point of access to Oliver from the residential CUP area and the fact that there would tend to be considerable congestion at this point in view of the present traffic on Oliver and the fact that all occupants of the proposed CUP area would have to exit from the complex onto Oliver. GALBRAITH reported that at the Subdivision Committee meeting, the Traffic Engineer indicated he was not convinced that

there would be sufficient congestion to require another exit point to Pinecrest to the east.

WM. P. HIGGINS, attorney for the applicant, said the only point they are opposed to is item #16 relating to restrictive covenants guaranteeing maintenance of the common open space in the complex. HIGGINS stated that the only objection to item #16 as suggested by the Subdivision Committee, was that financing has already been agreed to on the CUP residential area and in view of the difficulty in obtaining financing, they do not want to risk the loss of this financing by submitting this covenant requirement to the mortgagee. He continued that so far as maintenance of the open space, the City presently has ordinances which would require the cutting of grass and weeds on private areas which they enforce where necessary by cutting the areas and charging back the cost thereof to the property owner. He did not feel that a homeowners association was absolutely necessary, noting that their development will have to be acceptable to the public that leases from them and they are aware the premises must be maintained in order to attract tenants. Further, any mortgagee has the right to require proper repair and maintenance of property on which they hold a mortgage.

HIGGINS pointed out further that there is no City ordinance making such requirement as suggested and that such was not required for Rockborough or Eastborough Arms, however, those developments are not under a CUP. He pointed out that they are paving the streets and parking area, providing a swimming pool area and Club House and that this requirement is not normal in a platting situation and would create difficulty in developing the property as planned. He commented that the legal ramifications would create a cloud on the title which might not be accepted by the lending agency.

HIGGINS referred to the sample agreement provided by the Planning Staff, noting that therein is the provision that the City must be given the prior right to purchase the common areas at any time that it is proposed to offer same for sale. He considered this a restraint on the right to sell, although the sample agreement does provide that if the total project is sold it would not be necessary to offer it to the City first, but if only the open space, streets, etc. are proposed to be sold, then the City must be given the first chance to purchase.

GALBRAITH said the sample restrictive covenant was one applicable to another project and that it was not proposed by the staff that the terms thereof be made applicable in subject

case, and that all similar restrictive covenants received on other CUP's have been different. The sample furnished is one that the City legal counsel has considered proper and similar covenants have been required on Queen's Lake, New Hope, Chisholm Terrace, Marina Lakes, etc.

HENNESSY asked Higgins who would take care of the open area and HIGGINS said the developers would have to and that it would be the same as on Kingsborough or Eastborough Arms, where they own the area and would be required to maintain it, both open space and streets.

WILKINSON said that the Subdivision Committee had asked Mr. Higgins to do some research of the law to ascertain if the Planning Commission or City has authority to make such a requirement.

HIGGINS said there appeared to be no case that covered this type of restriction; he found cases which required 10% of the value of a project be set aside for development of parks, but the court has determined that such a requirement is a gross extension of the power of platting and a step beyond the realm of reason. As far as the welfare of the public is concerned, HIGGINS commented that this is a private development of 300 apartment units and would not have any effect on the public as a whole, yet the requirement suggested would have a detrimental affect on the project.

HENNESSY asked Higgins if it was his feeling that such a requirement was unconstitutional. HIGGINS said he didn't think it would hold up in the Supreme Court, although he did not wish to infer that he would submit such to the Supreme Court.

CURTIS TERFLINGER, 2250 North Roosevelt, president of the Northeast Heights Residents Association, spoke, pointing out that the area he represents is that north of 21st Street and between Oliver and Hillside. (About 10 or 12 people from this area were present.) TERFLINGER said they are directly west of the area in question and are concerned with that happens to the community in terms of congestion and potential blight; and are also concerned as people who travel on Oliver and as general members of the public.

TERFLINGER said their first concern is what they consider a violation of the commitment with respect to maintenance of the 200-foot buffer on the east side of Oliver north of 21st Street, in that the purpose of the requirement of the 200-foot buffer by the Planning Commission was to prevent blight of the adjacent

residential areas. Now, however, apparently the Board of Zoning Appeals has permitted an exception so that a portion of this 200-foot buffer can be used for off-street parking, which he considered overriding the commitment which was previously made.

He said they were also concerned because the applicant now proposes to cut up the buffer area with three entrances, and the possibility of future turn bays which will have to be constructed which will interfere with the plantings and general appearance of the buffer area. TERFLINGER indicated their concern also that only one entrance-exit is planned into the residential area from Oliver. He continued that the plans indicate parking facilities for about 600 cars and yet only one entrance from the apartment complex to Oliver. He continued that cars exiting from the CUP area onto Oliver will make almost 100% left turns and at certain times of the day, in view of the present traffic on Oliver, he anticipated severe congestion and safety problems. He pointed out that there are no streets from the east onto Oliver for several miles to the north, and since no exit from subject area is planned to the east, there is no other way to exit onto 21st Street.

TERFLINGER said that in studying the plans, they considered it possible and highly feasible and desirable that there be another exit from the residential units which would permit an alternate way out, at least to 21st Street, which would give residents the option as to which way they might go and a right turn situation (onto 21st Street) rather than a left turn situation on Oliver. He suggested an exit to Pinocrest as a means of alleviating the potential congestion on Oliver, noting that the developers have already been required to have some fire access from Pinocrest. It was his suggestion that the alternate traffic situation be taken into account and planned to prevent the kind of traffic congestion on Oliver which they anticipate.

JACKSON asked Terflinger whether or not the traffic problem was considered at the Subdivision Committee meeting. TERFLINGER said there was no direct recognition made of the impact of all left hand turns onto Oliver. He said the Traffic Engineer did indicate that there were places in town that would have a similar amount of traffic flow, and he continued that they considered it unusual that the use of some other situations in the City which are bad are considered a standard for a new development which can be planned so as to prevent traffic problems in the future. He said they felt that the very essence of planning is the anticipation and prevention of unsuitable consequences and that is what

they are seeking in subject area. It was his hope that proper adjustments could be made in this case so as to prevent future problems.

KRATZER said he was confused as to what occurred in the Subdivision Committee meeting and asked Mr. Terflinger if he was not in agreement with the Traffic Engineer's recommendation in this case. TERFLINGER said it was not a matter of disagreement because no one asked the Traffic Engineer what would be the desirable approach to present a traffic problem; however, he (the Traffic Engineer) did indicate there were circumstances in other parts of town which were similar, but no direct comment was made on the matter of left hand turns onto Oliver.

TROUT observed that this is an unusual situation in that it is just the reverse of what is usually requested of the Planning Commission, in that usually a developer is asking three or four access points and the Commission attempts to keep points of conflicts at a minimum, and questioned whether or not the opposition had given the matter really serious thought.

TROUT continued that any problem which might materialize with the one exit from the residential area could be handled by installation of a signal light, but such would not be reasonable if there were several exits onto Oliver. He commented that this would be cross traffic and as far as people in adjoining areas, this is a point of conflict to them. The reason a developer usually wants more access is because of the stacking up of cars trying to make turns out of a complex.

TERFLINGER said they were very much interested and concerned with what was likely to happen on Oliver as a result of a single access point, and he referred to the fact that Marina Lakes, for instance, has been considered and reconsidered several times to resolve problems as they develop and he felt sure expenditure of public funds had been involved. He indicated the hope that an overall plan in subject case could be developed which would be satisfactory to all interested parties and the public in general, taking into consideration the traffic situation, and it was his belief that such was the purpose of the Planning Commission.

MRS. CLINE HENSLEY, 4707 Looman, felt the Commissioners did not understand the concern of the protestants in that they do not wish any additional entrance along Oliver; however, they do feel there is the need for another point of exit and entrance which could be provided on Pinocrest and which would provide for right

hand turns onto 21st Street for most of the traffic exiting from the apartment units. MRS. HENSLEY continued that the applicant has requested, because they were hoping to make this an exclusive development, that there not be public access from other directions, but it was her suggestion that such could be attained by installing a one way traffic sign at the exit on Pincrest showing that all traffic was outbound from the development, which would eliminate the necessity for everyone from the apartments exiting on Oliver and then making left turns. She said the streets to the west of Oliver are either private drives not open to the public, or not fully paved, and if one wants to go as far north as 25th street, they still have to make a left turn to go west on 25th to Hillside which is almost a blind intersection. MRS. HENSLEY said that in the mornings it is a steady flow of traffic from Bel Aire and with the one exit from subject apartment complex, most trying to make a left turn onto Oliver, she envisioned a back up of traffic to 25th Street as it slowly funnels through.

TROUT suggested that the real inconvenience is going to be within the development which is why most developers desire more access points to a major street such as Oliver. MRS. HENSLEY said they saw the traffic problems not in the development, but in the street.

MRS. BARBARA MORGAN, 13 Crestview Lakes, said they were interested in the public good and that what Mr. Terflinger and MRS. Hensley have said is not from a selfish point of view, but for the good of the public in general. She could not see how 600 cars would not congest the street from the one opening and stated that it was necessary that another opening point be made to Pincrest. MRS. MORGAN was concerned too as to why it was necessary to have three access points from the parking area to Oliver, especially since one is directly opposite her own driveway. She suggested an exit from the parking lot be made onto 21st Street.

JACKSON said it was his feeling that the objections of the people in the area were considered at the Subdivision Committee meeting, but apparently the Committee action was not acceptable to them.

LAKIN said that with respect to requirement #16, (the submission of restrictive covenants), there has been some concern on larger projects such as this in that there has not been a great deal of experience to determine just how they will operate, and it is possible that once constructed they could become investments and ownerships transferred, and the thinking is that

some device is needed to provide protection of the plan in trying to use it as a trade-off to achieve greater open space area and internal circulation without a lot of public streets through the area. It is considered necessary to have something which will assure the development taking place in a certain manner and will be maintained in a certain manner. LAKIN continued that as matter of assuring protection, it is considered appropriate to make this requirement in the public interest. He stated that it is Eugene Pirtle's (city attorney) opinion that these devices as applied to a CUP are within the jurisdiction and capabilities of the Planning Commission to require.

TROUT asked what must be done under a CUP to sell off a portion. LAKIN said that is a point that is not clear. The City cannot stop the selling off but can stop the issuance of additional building permits at some point in time. He stated that once the project is built and completed, then it could become an investment and subject to sell-offs.

TROUT felt there should be no problem in one lot plat unless a sell-off involved a portion of both commercial development and residential development.

LAKIN said it would be desirable if large developments such as proposed could be dealt with the same as on smaller developments. LAKIN said there has been no difficulty in reaching agreements on other previous developments of a nature similar to the subject case in that the financing people have not seemed to impede the projects.

CHARLES MC AFEE spoke as a resident of the area to the west, and stressed the importance of proper planning concepts being applied in the initial development of property to prevent development of problems rather than the technique of corrective measures once the problems have occurred. He stated that as an architect it is obvious to him that within certain conditions certain things are possible and in this particular case he questioned the traffic pattern which would be created and said he did not understand how a decision could be rendered without seeing the total overall planning concept and taking into consideration how the traffic situation will be handled. He could not understand why the potential traffic problem should not be handled on the private property involved rather than on Oliver where most of the traffic will be turning left.

MC AFEE said he realized that if an outlet from the area is provided on Pincrest some of the traffic would have to make left turns on to 21st Street, but suggested that someplace along the

line the Commission will have to make a practical decision for developments of this kind. He did not understand the criteria used in determining the need for only one entrance into the apartment complex when there are three entrances proposed to Oliver from the light commercial development and three proposed onto to 21st Street from the light commercial area. If it is valid reasoning that six exits are needed to serve the commercial development, then it would seem reasonable that more than one would be needed to serve the residential complex. He continued that there will not be the peak traffic point on the commercial as will be the case on the residential area. It was also his opinion that the total overall development is in conflict with other uses in the area, and he was concerned about the inability of property owners in his area to ever win an intelligent battle based on the fact that they were there first. He pointed out that there have been many desirable single-family developments on major thoroughfares in other cities, such as Denver and Oklahoma City, and he doubted the validity of any claim that major streets are not proper for single-family developments, and felt that the proper usage of the 200-foot strip which heretofore has been considered a buffer, should be developed for single-family homes and screening provided to shield it from the light commercial to the east. He continued that it is the desire of people already in the area that the standards already established in the area be maintained, and that all it takes is one undesirable breakthrough and an area begins to deteriorate.

MC AFEE repeated that he could not understand the validity of the ratio of one exit for the apartment complex and six for the commercial area, and asked the Commission to seriously consider this factor and the total overall concept in making its decision.

JACKSON referred to the one exit from the apartment complex to Oliver and suggested that if the developers receive enough complaints from the tenants of the apartments about the possible congestion, then it would be to their advantage to provide another means of exit onto Pinecrest perhaps. He did not know whether the Commission could demand such, but he felt that he would like to see more than one entrance from the residential complex. He suggested that since item #16 is the only point of difference with the applicant, that the Commission concentrate on that particular point.

EUGENE PIRTLE, Assistant City Attorney, stated with respect to restrictive covenant that it is indicated by Mr. Higgins that there is a question of whether or not it is reasonable, and indicated that it may be appropriate to give a little more background

in arriving at that judicial test of approval of the restrictive covenant.

He continued that there is very little case history on this point, but that there are some cases. He pointed out that there is statutory authority for the creation of planning and zoning boards and the functional relationship to the judicial concept that legislative enactments must meet the test of reasonableness taking into consideration prior owners as weighed against both change in zoning and constitutionality and validity of public requirements which must be reasonably related to the requirements that would protect the public interest. PIRTLE pointed out that Mr. Higgins has referred to a previous set of restrictive covenants submitted on another development, and he was not sure that the Commission is confronted with definite covenants on this particular case.

PIRTLE said he could only assume from general discussion with the staff that the public interest needs assurance that the private maintenance of open area, mowing, plantings, aesthetics in general, as well as sanitation and public safety will be maintained. In a case in the Kansas court sometime ago, it was determined that the word "aesthetics" should be considered in determining the public interest and is a factor upon which planning and zoning requirements could be based.

PIRTLE stated that he thought the Planning Department's principal concern is that restrictive covenants are what some lawyers call "paper satisfaction" in that they constitute a promise, but in the last analysis they are difficult to enforce, especially through judicial process and sometimes takes more time than will conveniently serve the needs of the neighbors or public. He continued that if the statement of the developer is sincere that they intend to maintain the open spaces, etc. then there should be no reason why they wouldn't consent to a definitive method of saying that such will be performed under terms of a covenant.

PIRTLE continued that in other words, it was his opinion the Commission has authority to require the restrictive covenants and such has been exercised in other areas and from additional requirements suggested by the staff, he saw nothing unconstitutional about them except there is one reference to a restriction on the alienation of property. He considered that there were some constitutional problems which he did not want to try to answer at this time without having a particular set of covenants to apply the law to.

JACKSON pointed out that then generally speaking it is Mr. Pirtle's opinion that covenants in this case as suggested would be a legal requirement.

HENNESSY referred to the term "paper satisfaction" used earlier by Mr. Pirtle and asked what recourse is provided if the applicant does not maintain the open spaces, lake area, etc.

PIRTLE said he did not know that the public would have a remedy under a straight set of restrictive covenants, but if the covenant ran from the owner to the City, if the terms of the covenant were not kept by the owner, then the City would have the right of file suit in court to enforce the terms of the covenant, which all takes time. He felt that wouldn't serve the public necessarily for enforcement of such things as sanitation, street maintenance and even the aesthetics of the garden plaza which is proposed.

PIRTLE pointed out that part of the conditions of a CUP relates to the fact that the developer desires to obtain certain exceptions to the rules, and it is not unreasonable to request some assurance that in exchange for such exceptions, they be required to execute a set of reasonable restrictive covenants.

MR. HIGGINS spoke again and referred to the sample covenants provided him by the Planning Department, and although acknowledging that any set developed for subject area would be different, did point out that certain items covered in the sample appear to be of a legislative nature, which he felt was the responsibility of the City Commission which is the body which has legislative authority. He pointed out again that there is already an ordinance with respect to cutting grass and proper maintenance of private premises so far as health, sanitation, etc. He agreed that the concern about the possibility of sell-offs of portions of subject property might be resolved through an agreement.

TROUT commented that in some other similar developments, portions of the original tracts have been sold off, and he considered it a public responsibility to see that in the future in case of sell-offs open areas will be maintained. HIGGINS agreed that if that is the problem something could be worked out.

MOTION: HENNESSY moved, WILKINSON seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this plat be approved, subject to the following:

1. The applicant's surveyor shall change all notarization and approval dates on the final plat to refer to the year 1970.
2. The proper angles shall be indicated at corners of the plat.
3. A north arrow, scale and iron designation shall be indicated on the face of the plat.
4. Dimensions for the north and south lines of Lot 3 shall be indicated on the face of the plat.
5. The utility easement on the north side of Lots 3 and 4 shall be properly labeled as a 12-foot utility easement.
6. Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.
7. At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.
8. The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.
9. The applicant shall install or guarantee the extension of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.
10. The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue.
11. The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.
12. The applicant shall join in the necessary petition or overall benefit district for the construction of the storm water sewer system to serve the general area. It is also

necessary that no building permits be issued on Lot 2 until said storm sewer has been constructed.

13. The 50 feet of half-street right of way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.
14. The applicant and/or the surveyor shall contact the Engineering Division relative to a change in the geometrics of the drainage easement across the Northeast corner of Lot 3.
15. Amend the access controls along the north side of 21st Street to reflect "complete access control" adjacent to the south side of Lot 8. The access control to Oliver adjacent to the west side of Lot 8 may be amended to provide 3 openings.
16. The applicant shall submit a restrictive covenant which sets forth the development and maintenance responsibilities of the developer pertinent to the common areas, park areas, lake, etc. which are proposed for Lot 3, such covenant to be approved by the Department of Law, and such covenant to provide for the developer retaining legal title to the common properties and facilities, and any change in fee title to include all property, living units and other facilities as an integrated and common ownership.
17. Recording within 30 days after approval by the Board of City Commissioners.

-
13. S/D 7-13 - Final Plat of KIRKPATRICK AND SPRECKER ADDITION, generally located on the west side of Hillside in an area south of Watorman.

CHAIRMAN JACKSON said that the attorney for the applicant on this plat had requested that it be deferred indefinitely. No opposition to such deferral was expressed by anyone.

CHAIRMAN JACKSON declared the plat deferred indefinitely.

line road. It had been felt that inasmuch as Webb street was only one block in length, it would be more feasible to change its name rather than Webb Road. A letter had been received from Mrs. Olive W. Garvey, owner of adjacent property requesting that the name be changed to Clinger Way. He further added that notices had been mailed to adjacent property owners and two replies had been received, both agreeing with the change as recommended by the Department of Public Works (Civic Center Place).

MELVIN GRADERT, attorney for Garvey Enterprises, stated that his client concurred in the recommendation that the street name be changed. He emphasized, however, that Mrs. Garvey had requested that the street be renamed Clinger Way in honor of Jim Clinger, whose works were instrumental in developing Lot 1, Block 1, Civic Center Addition. He said that due to Mr. Clinger's untimely death, he was unable to see the completion of the Garvey complex and that the Garvey Enterprises earnestly solicit the Commission's cooperation in naming this street Clinger Way rather than Civic Center Place.

MOTION: It was moved, seconded and carried unanimously that the Subdivision Committee recommend to the Planning Commission that this street name change be approved, as recommended by the Department of Public Works (Civic Center Place).

WILKINSON ARRIVED.

3. **S/D 69-102 - Final Plat of UNIVERSITY GARDENS**, generally located on the northeast corner of 21st Street and Oliver. (DEFERRED 1/8/70 AND 2/5/70)

GIST outlined the area on the map and reviewed the staff comments, pointing out previous deferrals and the associated zoning and Board of Zoning Appeals cases. He also pointed out that several neighborhood associations in the general vicinity of the plat had written the Chairman of the Subdivision Committee protesting the development and certain aspects of the plat.

BLEDSOE asked if the BZA had set out any conditions of approval for the parking lot on Lot 8, that would give the adjacent property owners any protection. GIST answered that the Board established a list of twelve or thirteen conditions.

PAUL GRAVES, Traffic Engineer, stated that in talking with members of the various neighborhood associations, a request was made for his Division to make a plan or proposal for medians, curb cuts, etc. along Oliver and 21st Street, and he was prepared to present such a sketch plan to the Committee.

W. P. HIGGINS, attorney for the applicant, stated that there had been some changes on the plat since it had been presented in preliminary form. The utility easements had been extended as requested with the exception of that along the north line of Lot 8, due to its proposed use for parking. He said he had talked with Dick Linn regarding drainage and no determination had been made as to the cost difference in running the storm water sewer around rather than through the site. He assumed, however, that this figure would be available in the near future and he saw no problem in this regard or in the placement of the sewer.

DICK LINN, City Engineering, requested that his office be contacted regarding a change in geometrics of the drainage easement to run diagonally across the northeast corner of Lot 2. He added that a rough estimate on the storm sewer cost differential was approximately \$25,000. HIGGINS asked if this cost would be assessed to Lot 2. LINN advised that he was not certain at this time but it would probably depend on how the petition for the improvement project was worded.

HIGGINS pointed out that they were requesting three openings on Oliver and no access on 21st Street adjacent to the corner Lot 8. He explained that one of the openings on Oliver would be restricted to delivery trucks.

BLEDSOE questioned the reasoning in deleting the access point on 21st Street to Lot 8. He pointed out the mechanics of the community unit plan and that if a time ever came when they needed this opening, they might have a hard time getting it in the future. HIGGINS said that they did not have a need for an opening at this location, and that with the other conflicts with the neighborhoods, they felt they should not make any unnecessary curb cuts.

HIGGINS requested that the requirement of submission of covenants be deleted. He pointed out that the mortgagor had the right to maintain the streets and charge the cost back to the mortgagee if proper maintenance was not carried out. It was his feeling that the requirement of placing covenants of record would jeopardize their financing possibilities, and would cloud title to the property and would serve no legal value to the City.

DISCUSSION FOLLOWED concerning the requirement of covenants. GIST stated that this requirement was recommended by the Planning Department staff and is a means of protecting the City and public. HENNESSY felt that the decision should be left up to the legal department. It was generally agreed that the Department of Law would make the final decision and then if required, the possibility of covenants being incorporated into the CUP should be investigated.

M. S. MITCHELL, Maintenance-Flood Control, questioned the method of draining Lot 3, stating that as long as this lot remained

in single ownership there would appear to be no problem or need for an easement. He added that the ultimate method designed to drain the lot into the storm sewer would be at the expense of the applicant, but that the City would have the right to review and approve the method selected by the developer.

HAROLD DAVIS, Kansas Gas and Electric Company, requested that the applicant contact his firm when the location of the needed service had been determined for the development of Lot 3, and that the applicant would need to prepare and submit the appropriate easements for same.

CURTIS D. TERFLINGER, 2250 North Roosevelt, stated that he was affiliated with the Northeast Heights Residents' Association which felt that there was a lack of consideration being given to the matter of a traffic control plan. He pointed out that as many as six hundred vehicles per day could be exiting from one opening on Oliver to Lot 3. He said that they were concerned about safety and traffic congestion which would appear to occur at Oliver and 21st Street.

TERFLINGER went on to point out the problem, as his organization saw it, in that most of the cars leaving from the apartment complex would make left hand turns onto Oliver. He felt that the developer should be required to provide access along the east side of the property to funnel traffic out on Pinecrest as an alternative to using Oliver. He reiterated his feeling that the crucial point was the left turn situation which would be forced on the users of this 600-space parking area; adding that there should be some method of alleviating this problem as it would be in the interests of the public welfare.

BLEDSE pointed out that all these things had been taken into consideration when this matter was heard before the Planning Commission and the Board of City Commissioners, and that both bodies had already approved the CUP.

MRS. CLIVE HENSLEY stated that she was present at the meetings referred to by Bledsoe and had always opposed this development. She felt that the problem as they viewed it was not being understood. She pointed out on the map that in order to travel downtown, to the university or to about any place else, one must travel south. She said that in most places where you might not wish to make a left turn, usually you could just go around the block but in this area you would have to go a mile around. She pointed out the method by which they felt an entrance and exit could be provided along Pinecrest. She added that as the previous hearings had progressed on this

development, they had been told that these things would be worked out at the time of platting.

GALBRAITH agreed that sometimes protestors and other interested parties are told that various problems would be worked out at a later date when the plat is considered.

BARBARA MORGAN stated that she had been present at most of the meetings concerning this development and that she too was in opposition and concerned about the limited access to the proposed apartments. She said she would like to know if future improvements on Oliver and 21st Street would alleviate the traffic problems.

BLEDSE asked if the Department of Public Works planned to open Pinecrest. LINN answered that it would probably be opened when the land to the east was developed. HIGGINS pointed out that they were being required to guarantee the paving of Pinecrest.

BLEDSE called for comments from the Traffic Engineering Division and to see the proposed sketch plan earlier referred to by Mr. Graves.

PAUL GRAVES, Traffic Engineer, said that they had approached the problem from the viewpoint of providing a channelized traffic plan. He presented sketches of the intersection with proposed use of medials and accel-decel lanes. He indicated that currently there was no plan to reconstruct this intersection and that the sketches he was presenting were only to show what the road plan might look like upon reconstruction. In explaining the sketches he said that there would be two through lanes going north on Oliver with right and left turn lanes being provided south of 21st Street. Along 21st Street he showed a medial from Oliver to Pinecrest with two breaks at access points to the proposed shopping center. He pointed out that when this was constructed there should be no access to Lot 8 from 21st Street. He indicated that this plan would be set up so that medial breaks coincided with major entrance and exit locations to the shopping center.

GRAVES continued stating that there were areas in the City where residential streets carried more than 600 vehicles and many major centers where the traffic count was much higher with not as sufficient ingress and egress as proposed for Lot 3. He pointed out that there would be peak hours for this traffic as with any other situation. He then pointed out other aspects of the proposed plan; such as the left turn storage lanes and that the truck entrance would not have a medial break for left turns but that there would be one for the apartment complex. He added that in order to provide the accel-decel lanes there should be an additional 10 feet of right of way for each street (60 feet half right-of-way).

BLEDSE asked if the applicant would have any objection to giving the additional right of way. HIGGINS indicated that there would be no objection.

BLEDSOE pointed out the value of being able to see a drawing such as this in that the Committee would be able to more properly assess right of way and access needs when the remaining three corners of this intersection were platted.

NOTICE: It was moved, seconded and carried unanimously that the Subdivision Committee recommend to the Planning Commission that this plat be approved, subject to:

The applicant's surveyor shall change all notarization and approval dates on the final plat to refer to the year 1970.

The proper angles shall be indicated at corners of the plat.

A north arrow, scale and iron designation shall be indicated on the face of the plat.

Dimensions for the north and south lines of Lot 3 shall be indicated on the face of the plat.

The utility easement on the north side of Lots 3 and 4 shall be properly labeled as a 12-foot utility easement.

Indicate a 10-foot utility easement centered on the north and west lines of Lot 1.

At the time of development, the applicant shall contact each needed utility regarding location of their respective facilities, and shall prepare the appropriate easements to accommodate the placement of such facilities which the applicant will need to record with the Register of Deeds.

The applicant shall install or guarantee the installation of sidewalks on Oliver, 21st Street and Pinecrest.

The applicant shall install or guarantee the extension of sanitary sewer to serve subject property. The Engineering Division of the Department of Public Works should be contacted regarding this matter.

The applicant shall contact the Engineering Division and make satisfactory arrangements for the submission of an appropriate guarantee for the paving of Pinecrest Avenue.

The applicant shall provide or guarantee the cost difference of going around, rather than through the site, with the proposed storm water sewer system.

The applicant shall join in the necessary petition or over-all benefit district for the construction of the storm water sewer system to serve the general area. It is also necessary that no building permits be issued on Lot 2 until said storm sewer has been constructed.

13. The 50 feet of half-street right of way for Oliver and 21st Street shall be increased to 60 feet, and the applicant shall contact the Engineering Division regarding the submission of a satisfactory guarantee for the paving of a full deceleration lane on the east and north sides of said streets, respectively.
14. The applicant and/or the surveyor shall contact the Engineering Division relative to a change in the geometrics of the drainage easement across the Northeast corner of Lot 3.
15. Amend the access controls along the north side of 21st Street to reflect "complete access control" adjacent to the south side of Lot 8. The access control to Oliver adjacent to the west side of Lot 8 may be amended to provide 3 openings.
16. Prior to the Planning Commission meeting on March 12, 1970, the applicant shall meet with the Planning and Law Departments relative to the need for submission of restrictive covenants which would set forth the development and maintenance responsibilities of the developer pertinent to the common open areas, parking areas, lake, etc., which are proposed for Lot 3.
17. Recording within 30 days after approval by the Board of City Commissioners.

"CHAIR" TURNED OVER TO WILKINSON.

4. S/D 69-108 - Final Plat of MILTON CHASE ADDITION, generally located on the southeast corner of Cromwell and 31st Street North.

GIST outlined the area on the map and reviewed the staff comments, pointing out that subject plat was submitted in final form only and questioned the existence of sewer and water.

BILL OTTEN, Water Department, stated that it would be necessary that the applicant arrange for an extension of water to serve Lots 1 and 2.

DICK LINN, City Engineering, stated that it would be necessary to extend sanitary sewer to serve Lots 1 and 2 and requested a 10-foot easement along the north side of Lots 1, 2 and 3.

M. S. MITCHELL, Maintenance-Flood Control, requested that the applicant's engineer furnish evidence that the tie distance shown on the plat was a measured distance.

3. The application for a Federal grant be recommended for approval with the understanding that no additional development beyond the population equivalent of 600 be approved until a satisfactory sewer plan is submitted by the owner.

SUBDIVISION COMMITTEE

Referred back by City Commission

10. S/D 69-102 - Final Plat of UNIVERSITY GARDENS, generally located at the northeast corner of 21st Street and Oliver.

GALBRAITH pointed out that while the Planning Commission in its previous approval of this plat had required guarantee of construction of decel and accel lanes on 21st Street and on Oliver, the City Commission did not require the guarantee, but approved the plat as recommended with this exception. He stated that the plat is back before the Planning Commission for reconsideration.

BLEDSEOE asked who would be assessed for the improvement at the time of construction and LAKIN said this was mentioned at the City Commission meeting and it was the decision that such would be decided when the plans were reviewed and that they gave no indication of what might be established as the benefit district at this time.

BARBARA MORGAN, property owner in the residential area west of Oliver and just north of 21st Street did not consider it fair for the residential properties to have to pay any part of the cost of construction of the deceleration lanes and was concerned that the dedication on Oliver might encroach onto the buffer zone which has always been maintained on the east side of Oliver to protect the residences west of Oliver.

SOULDERS pointed out that as stated above, the City Commission will determine the benefit district at the time of ordering in improvement of the deceleration lanes.

BLAKEY asked if property owners in the benefit district would be notified in time that they could protest if they so desired.

LAKIN said that individual notices are not usually given; just the required legal publication in the newspaper which provides so many days in which interested persons can make an appearance or submit comments. He thought it would depend on the City Commission in office at the time whether or not individual notices would be sent to property owners determined to be in the benefit district. It was pointed out that the present Commission has been making an effort to notify people of major street improvements or sidewalk petitions.

MOTION: BLEDSEOE moved that in view of the City Commission action, the Planning Commission approve the plat as originally approved, except that the

guarantee for installation of the decel/accel lanes on Oliver and 21st Street not be required. JACKSON seconded the motion.

HENNESSY was concerned for the residential properties which might be included in the district and asked if there was some way to assure their notification in advance of the actual assessment if their property is included in the benefit district.

AMENDED MOTION: BLEDSOE moved, BLAKEY seconded and it carried unanimously that the Planning Commission reapprove the plat, subject to the original conditions, except to concur with the City Commission that the required guarantee for the construction of the deceleration lanes not be required at this time, and that at such time as a project for paving the lanes is proposed, all adjacent property owners involved in a benefit district be advised prior to the discussion of the matter by the Board of City Commissioners.

-
11. V-0546 - Bill E. Mesker and Bud White request vacation of a portion of a plat, legally described as Lots 1, 2, and 6, Block E and Lots 16 and 17, Block D, all in Floyd Bailey Third Addition. Also Tourmaline Lane as platted in said Floyd Bailey Third Addition, except that part of said Tourmaline Lane described as follows: Beginning at the intersection of the west line of Evergreen Lane and the south line of said Tourmaline Lane as platted in said Addition; thence east on the south line of said Tourmaline Lane 617.7 feet; thence north at right angles 60 feet; thence west on the north line of said Tourmaline Lane 617.1 feet; thence south 60 feet to the point of beginning. Generally located in an area west of Woodchuck and north of U.S. 54 Highway.

MOTION: BLEDSOE moved, HENNESSY seconded and it carried unanimously that the Planning Commission recommend to the City Commission that this application be approved, subject to:

1. The approval of the associated plat S/D 70-74, Carriage House Plaza.
2. Any relocation or reconstruction of utilities necessitated by this vacation being at the sole expense of the applicant.
3. All proceedings being without cost to the City, County or any public utility company.

-
12. S/D 70-74 - Final Plat of CARRIAGE HOUSE PLAZA, generally located at the northwest corner of Woodchuck and U. S. 54 Highway.