

**NORMAN PLANNING COMMISSION  
REGULAR SESSION MINUTES**

**SEPTEMBER 13, 2012**

The Planning Commission of the City of Norman, Cleveland County, State of Oklahoma, met in Regular Session in the Council Chambers of the Norman Municipal Building, 201 West Gray Street, on the 13<sup>th</sup> day of September 2012. Notice and agenda of the meeting were posted at the Norman Municipal Building and online at <http://www.normanok.gov/content/boards-commissions> at least twenty-four hours prior to the beginning of the meeting.

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

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Item No. 1, being:

**ROLL CALL**

MEMBERS PRESENT

Dave Boeck  
Jim Gasaway  
Cindy Gordon  
Tom Knotts  
Curtis McCarty  
Robertta Pailes  
Chris Lewis

MEMBERS ABSENT

Diana Hartley  
Andy Sherrer

A quorum was present.

STAFF MEMBERS PRESENT

Susan Connors, Director, Planning &  
Community Development  
Jane Hudson, Principal Planner  
Ken Danner, Subdivision Development  
Manager  
Roné Tromble, Recording Secretary  
Leah Messner, Asst. City Attorney  
Jeff Bryant, City Attorney  
Rick Hoffstatter, GIS Analyst  
Terry Floyd, Development Coordinator  
Scott Sturtz, City Engineer

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Vice Chairman Lewis noted the request for postponement submitted by the applicant for Item 11, OSOI Tecumseh Development, L.L.C. and NE Development, L.L.C. (R-1213-36, O-1213-11, and PP-1213-4).

*Curtis McCarty moved to postpone Item Nos. 11a, 11b and 11c until the October 11, 2012 Planning Commission meeting. Tom Knotts seconded the motion.*

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

Item No. 2, being:

**CONSENT DOCKET**

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

Item No. 3, being:

**APPROVAL OF THE AUGUST 9, 2012 REGULAR SESSION MINUTES**

Item No. 4, being:

**FP-1213-7 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY SHAZ INVESTMENT GROUP, L.L.C. (SMC CONSULTING ENGINEERS, P.C.) FOR WHISPERING TRAILS ADDITION, SECTION 3, A PLANNED UNIT DEVELOPMENT, FOR PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF INDIAN HILLS ROAD APPROXIMATELY 330 FEET WEST OF 48<sup>TH</sup> AVENUE N.W.**

Item No. 5, being:

**FP-1213-8 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY MIKE & CINDY MILLIGAN (MORRIS ENGINEERING) FOR MILLIGAN INDUSTRIAL TRACT ADDITION GENERALLY LOCATED ON THE NORTH SIDE OF ROCK CREEK ROAD WEST OF 12<sup>TH</sup> AVENUE N.W.**

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Vice Chairman Lewis asked if any member of the Commission wished to remove any item from the Consent Docket. There being none, he asked whether any member of the audience wished to speak regarding any item.

**AUDIENCE PARTICIPATION:**

1. Stephen Ellis, 633 Reed Avenue – What I'm requesting is that the Chair remove Item 5 from the Consent Docket and rule it out of order. And since that's a little complicated, if you're interested, I've got my comments typed up so you can follow along with the reading if you want to have a look. The reason why I'm doing this is because I think that there were some irregularities in this item in terms of Section 19-601(a), and according to Norman's parliamentary authority – Robert's Rules of Order – motions that conflict with procedural rules prescribed by local laws are out of order and if any motion of the kind is adopted it is null and void and Robert's Rules also say that there is no time limit for discovering this. It's clear that the Milligan Plat does not comply with the WQPZ regulations. I think it's also clear, if you look at the law, that the exemption granted by City Council on July 10, 2012 is at least prima facie inconsistent with the procedural regulations governing the granting of variations. I think there are sort of two reasons for that. In the first place, that procedural regulation disallows modifications of public improvement requirements, so the City Council may vary or modify such requirements of design but not of public improvements, and I believe that's what the exemption did. Further, any variations or modifications to requirements must meet certain conditions and, in particular, those conditions require – and this is a quote – "At the same time, the public welfare and interests of the City must be protected and the general intent and spirit of this chapter are preserved by granting such variance." Now, I'm not a lawyer. I am used to reading complicated texts. It seems to me that a full-blown exemption to WQPZ requirements can't possibly meet the standards laid out in Section 19-601(a). That was actually the gist of your discussion at the June meeting of the Planning Commission, I believe, having looked at it. Allowing someone to ignore a regulation doesn't do what the procedural regulation requires. The one lawyer who is on record as holding this exemption is improper is the City Attorney; he noted twice during the City Council meeting on July 10, 2012 that the City Council did not have the authority to grant the exemption that they ultimately voted for. I believe you'll see in Article 19 of the City Charter that the propriety of the variation process falls within the jurisdiction of the Planning Commission. So the Planning Commission has already rejected the substance of this proposal at your June meeting. Nothing has changed, except for a dubious City Council action, and nothing in the

record requires you to change your mind either about the substance or to go along with the problematic exemption, because it's within your authority to make a judgment about that. I believe that the Milligan Plat is out of order as a matter of Robert's Rules of Order. The City Council made a mistake in completely exempting the Milligan Tract from the WQPZ regulations. It was an innocent mistake, no doubt, but one made in haste and probably motivated by the best of intentions, but it was a mistake. Now that that mistake has been caught, I don't think that any City authority can continue without neglecting its duty, or at least its moral duty to make sure that they uphold the point of the laws that we've adopted. So I think it's within your authority, and I believe that the Planning Commission should declare that plat out of order, which, of course, would require taking it off the Consent Docket.

2. Harold Heiple, 218 E. Eufaula – I do not represent Mr. Milligan, the applicant, who has presented this plat. As a matter of fact, at the Planning Commission meeting I appeared and opposed his plat subject to fences being built. I am amazed that the conversation of Mr. Ellis has gotten this far, because it is so far out of order with respect to the purview and the power and the authority of the Planning Commission. But let me give you just a little historical background. In Norman for many, many years the rule was that preliminary plats stopped at the Planning Commission. Final plats went on to the City Council. But the Planning Commission had the final authority over preliminary plats. Because there was a great deal of objection – and for good reason – that ordinance was changed several years ago to provide that now preliminary plats must be approved by the City Council. This preliminary plat has been approved by the City Council. The old law, which said that they stopped with the Planning Commission, also required that if a majority of the Planning Commission caused a plat that was in compliance with all applicable rules and regulations to be rejected by the Planning Commission, that the Chair of the Planning Commission had to list the specific violations of law that it did not meet and sign his name to it. Well, that has been removed since the preliminary plat is now within the final authority of the City Council. But what it goes back to is the existing law says once that preliminary plat has been approved, the actions of the Planning Commission to approve a final plat are ministerial – purely administrative. You don't have the authority to reject it. If there is somebody on the Planning Commission who is inclined to make a motion to the contrary with respect to the approval of this plat, and somebody who seconds that motion, then I'll respectfully and sincerely urge each and every one of you to take a break, call your own personal attorneys, and find out what your personal exposure is if a majority of the Council fails to approve a final plat that is in total compliance with a preliminary that has been previously approved by the City Council. Thank you.

3. Ross Morris, Morris Engineering, representing Mr. Milligan – I just wanted to reiterate what you already know. We've been through the process. We came through and we've actually come through twice now. We've followed the procedures. Everything that's been approved on it through this body or through the Council was by procedure and we haven't circumvented anything and it's all been above-board. It's been discussed in open meetings and been approved in open meetings so that there shouldn't be – what we're bringing to you today is exactly in line with what was previously discussed, approved, and has gone through the process. We don't feel like there's anything other to do with this other than to just keep it moving. We appreciate your vote on that. Thank you.

4. Mike Milligan, Milligan Trucking – We do have an SWP3 in place for the property for the storm water pollution prevention plan. If you want to take a look at that, we have it.

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

Vice Chair Lewis stated it is the opinion of the Chair, after speaking with the City Attorney, that this is neither the venue nor does the Commission have the authority to make any ruling, as the Commission is a recommending body.

*Jim Gasaway moved to place approval of Item Nos. 3 through 5 on the Consent Docket and approve by one unanimous vote. Cindy Gordon seconded the motion.*

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

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

Ms. Tromble announced that the motion, to place approval of Item Nos. 3 through 5 on the Consent Docket and approve by one unanimous vote, passed by a vote of 7-0.

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Item No. 5, being:

**FP-1213-8 – CONSIDERATION OF A FINAL PLAT SUBMITTED BY MIKE & CINDY MILLIGAN (MORRIS ENGINEERING) FOR MILLIGAN INDUSTRIAL TRACT ADDITION GENERALLY LOCATED ON THE NORTH SIDE OF ROCK CREEK ROAD WEST OF 12<sup>TH</sup> AVENUE N.W.**

**ITEMS SUBMITTED FOR THE RECORD:**

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

The Final Plat for MILLIGAN INDUSTRIAL TRACT ADDITION was approved on the Consent Docket by a vote of 7-0.

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