

AN ORDINANCE OF THE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 SO AS TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) ZONING DISTRICT PURSUANT TO SECTION 4.1 OF THE AFOREMENTIONED TITLE 14 CHAPTER 2 WITH SAID PUD TO BE KNOWN AS "PUD 2" ON PROPERTY DESCRIBED AS TAX MAP 34I, GROUP B, PARCELS 3, 4, 7, AND 8 AND MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE ZONING PLAN AND ZONING MAP FOR PUD2; MAKING VIOLATIONS OF THE ORDINANCE UNLAWFUL AND PROVIDING FOR PENALTIES; ESTABLISHING A LIST OF PERMITTED USES; ESTABLISHING CONDITIONS FOR HOURS OF OPERATION AND MITIGATION OF NOISE AND VIBRATION; ESTABLISHING SITE PLAN REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR TRAFFIC CIRCULATION ON AND ADJACENT TO THE SITE AND PARKING, FIRE LANES, AND SERVICE AND DELIVERY VEHICLES; ESTABLISHING REQUIREMENTS FOR IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, BUFFERING, LIGHTING; ESTABLISHING REQUIREMENTS FOR GENERAL APPEARANCE, SIGNAGE AND OUTDOOR DISPLAYS; ESTABLISHING REQUIREMENTS FOR LITTER AND SOLID WASTE CONTROL AND DRAINAGE STRUCTURE MAINTNENANCE; STATING RESPONSIBILITY FOR COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS; REQUIRING PROPER SUBDIVISION AND SITE PLANNING OF OUTPARCELS; REQUIRING A PUD DEVELOPMENT PLAN AND EXECUTION OF A DEVELOPMENT ORDER BY THE DEVELOPER AND THE MAYOR; PROVIDING FOR TIME LIMITS AND POSSIBLE REVERSION TO THE FORMER ZONING CLASSIFICATION; PROVIDING FOR ERRORS AND OMISSIONS AND POSSIBLE FUTURE REVISIONS TO THE PUD; COMMUNICATING THE BINDING EFFECT OF THE ORDINANCE UPON OTHERS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

WHEREAS the City of Cleveland, Tennessee, hereinafter "City", desires orderly land development in furtherance of the public welfare and has adopted the Planned Unit Development, hereinafter "PUD", process as an alternative development standard whereby to accomplish such development; and whereas it is intended that the developers of the property described herein (Southmark, L.L.C., or Mouse Creek Properties, LLC and/or others), hereinafter "Developers", would enter into an agreement with City to be encompassed in a PUD development plan and development order for Developers to construct or cause to be constructed a shopping center with a main building or buildings containing various tenant spaces and associated commercial development on not more than three outparcels that are integrated with the main building or buildings through a common development plan; and whereas City desires to establish a unique zoning district with special use restrictions and development standards for the property described herein through the adoption of this PUD, NOW THEREFORE BE IT ORDAINED:

Section 1. ZONING PLAN AND MAP AMENDMENT. The zoning plan and map are hereby amended so as to zone the property described in Section 2 herein as "PUD2" subject to the provisions described in each section of this ordinance. The permitted uses

in the PUD2 zoning district are those uses outlined in this ordinance. There are no conditional uses within the PUD2 district. The development standards for the PUD2 district are those outlined in this ordinance, including requirements for plan approval, the development order, and compliance with applicable permitting requirements.

Section 2. VIOLATIONS UNLAWFUL AND SUBJECT TO PENALTIES. Any development or use of the property described herein in manner contrary to the terms of this ordinance is a zoning violation and is unlawful, subject to the penalties prescribed by the Cleveland Municipal Code and the laws of Tennessee.

Section 3. PROPERTY DESCRIPTION. The subject property contains 12.3 acres, more or less, and is generally located in the block defined by Paul Huff Parkway to the north, Valley Head Road to the south, Mouse Creek Road to the east, and Peerless Road to the west (the existing Stratford Village apartment complex in the southeast corner of the block is not part of the proposed PUD). The property comprises lands shown in Tax Map 34I Parcels 3, 4, 7 and 8. The property is more particularly described as follows: beginning at an iron pin at the southeast corner of the property now or formerly of Limer (D.B. 186, p.297) and running thence generally west along the north right-of-way line of Valley Head Road 830.74 feet on bearing N 87 degrees 51' 32" W to a point near the east right-of-way line of Peerless Road, thence generally north along a curve L=40.27', R=25.00', BRG=N 21 degrees 42' 46" W, C LEN 36.06', thence generally north along the east side of Peerless Road to its intersection with the Paul Huff Parkway right-of-way N 24 degrees 26' 01" E a distance of 316.88' to a concrete monument, thence generally along the south right-of-way line of Paul Huff Parkway as delineated by a fence N 88 degrees 39'44" E a distance of 42.45' to a point, thence along a curve generally east following the aforesaid fence L=99.00', R=1000.00', BRG=N 85 degrees 49'34" E, C LEN 98.96' to a point, thence generally east along the aforesaid fence N 82 degrees 59'24" E a distance of 588.19' to a point, thence generally east along the aforesaid fence following a curve L=368.47', R=875.00', BRG=S 84 degrees 56'46" E, C LEN=365.76' to a point, thence generally east along the aforesaid fence following a curve L=82.97', R=875.00', BRG=S 70 degrees 09'56" E, C LEN 82.94' to a point, thence generally east along the aforesaid fence S 67 degrees 26'57" E a distance of 134.37' to a point, thence generally east along the aforesaid fence S 57 degrees 17'38" E a distance of 63.29' to a concrete monument along aforesaid fence that is near the intersection of Mouse Creek Road with Paul Huff Parkway, thence generally southeast along the aforesaid fence S 08 degrees 44'50" E a distance of 35.93', to a point on the east line of property now or formerly of Davis (DB 279, p. 133), thence generally south with the aforesaid east line of Davis S 36 degrees 46'41" W a distance of 261.96' to an iron pin, thence generally south along a curve L=50.09', R=1009.11', BRG= S 34 degrees 03'10" W, C LEN=50.09' to an iron pin at the northeast corner of Stratford Village (P.B. 4, p. 179), thence generally west N 59 degrees 10'56" W a distance of 285.05' to an iron pin, thence generally southwest S 72 degrees 02'19" W a distance of 101.01' to an iron pin, thence generally south S 23 degrees 29'00" W a distance of 433.06' to an iron pin which is the point of beginning. The foregoing legal description is taken from a boundary survey prepared by Brown Surveying for Southmark, LLC on July 19, 2004 for a project then entitled "The Corners" and incorporated into this document as Exhibit A.

Section 4. PERMITTED USES. The following uses, described by the North American Industrial Classification System (NAICS) code numbers, are permitted with exceptions as noted:

- 4413 Automotive Parts, Accessories, and tire stores
- 442 Furniture and home furnishings stores
- 443 Electronics and appliance stores
- 444 Building material and garden equipment and supplies dealers
- 445 Food and beverage stores
- 446 Health and personal care stores
- 448 Clothing and accessories stores
- 451 Sporting goods, hobby, book, and music stores
- 452 General merchandise stores
- 453 Miscellaneous store retailers
- 511 Publishing industries (excluding manufacturing and warehousing)
- 512 Motion Picture and sound recording industries (excluding manufacturing and warehousing)
- 513 Broadcasting and telecommunications (excluding manufacturing and warehousing)
- 514 Information services and data processing services
- 52 Finance and Insurance
- 531 Real estate
- 532 Rental and Leasing services (excluding outdoor storage of vehicles and equipment for lease. NOTE: this does not exclude the leasing of tools, equipment, and vehicles incidental to a principal use upon the site)
- 54 Professional, scientific, and technical services
- 55 Management of companies and enterprises
- 561 Administrative support services (excluding 561210 facilities support services, 561710 exterminating and pest control services, 561730 landscaping services, 561740 carpet and upholstery cleaning services, 561910 packaging and labeling services NOTE: this does not exclude the "Mailboxes, Etc." type of businesses found in many shopping centers)
- 61 Educational services
- 621 Ambulatory health care services
- 7111 Performing arts companies
- 7139 Other amusements and recreational industries
- 7221 Full service restaurants
- 7222 Limited service eating places
- 72232 Caterers
- 811211 Consumer electronics repair and maintenance
- 811212 Computer and office machine repair and maintenance
- 811430 Footwear and leather goods repair
 - 8121 Personal care services
- 81292 Photofinishing
- 92 Public administration

Uses other than those described above are not permitted in the PUD2 zoning district. All of the uses described above are uses by right and there are no conditional uses within the PUD2 zoning district. Businesses described as “sex outlets” in the City’s zoning regulations, vehicle repair shops, vehicle sales or leasing establishments, and convenience stores with or without gasoline sales are expressly prohibited in the PUD2 zoning district.

Section 5. HOURS OF OPERATION AND NOISE AND VIBRATION MITIGATION.

Construction-related noise, vibrations, and traffic in the PUD2 zoning district shall be managed so as to not unduly interfere with the nearby school facilities and residential uses. Developer, developer’s heirs or successors or assigns, and all contractors and subcontractors will promptly comply with any directive from City to manage construction-related noise, vibrations, and or traffic. Businesses within the PUD2 zoning district shall be open for customer access only between 9:00 a.m. and 9:30 p.m., subject to the following exceptions: except for occasional special sales events that would not exceed a total of 30 days within a one year period (Developer shall document the dates and times of all such special sales events when and if requested by City); except for 10% of the gross leaseable area that is not in outparcel C or the Walgreen’s site which may be open to customers from 6:00 a.m. to 11 p.m.(Developer shall maintain on file with the City a current site map designating which store spaces are covered by this exception and the additional morning and evening hours may be divided between different store spaces); and except automatic teller machines, video rental drop boxes, and similar facilities without direct employee-to-customer interface, and business facilities not open to customers, which may be open during any hours. Developer and all businesses in the PUD2 zoning district shall mitigate potential noise or vibration problems from the site by prompt compliance with any City request to adjust volume, frequency, time, or duration of any noise or vibration that the City determines would be bothersome to a reasonable person off-site. Developer and businesses in the PUD2 zoning district shall affirmatively manage all activities on the site so as to mitigate any noise or vibration that the City determines to likely be bothersome to reasonable person off-site. If after previous requests to Developer and/or any business located in the PUD2 zoning district concerning noise or vibrations, City determines that there is a continued persistent pattern of noise or vibration emanating from the PUD2 district, Developer and/or any business in the PUD2 zoning district must undertake specific appropriate management actions requested by City to mitigate the problem including, but not limited to, the following actions if applicable: reducing or eliminating outdoor music, private security to eliminate cruising or loitering on-site, etc.

Section 6. SITE PLAN REQUIREMENTS. A site plan for Mouse Creek Marketplace was prepared by Littlejohn Engineering Associates and presented by Developer to the Cleveland Municipal Planning Commission on August 24, 2004. A detailed staff report (Exhibit B) was presented to the Planning Commission on August 24, 2004 concerning this site plan and conceptual approval was granted for the proposed PUD subject to staff comments which required submission of a revised site plan. Developer was required to submit a revised site plan that meets the various requirements of the previous staff review

including, but not limited to, reduction in the proposed impervious area, provision of a stormwater drainage plan and drainage calculations, elimination of potential site ingress directly from Paul Huff Parkway, provision of a fire lane in front of main shopping center building, and engineering detail on the proposed retaining wall especially around the stormwater detention area. A revised site plan (Exhibit C) was prepared by Littlejohn Engineering Associates entitled "P.U.D. 2 Paul Huff Parkway, Cleveland, Bradley County, Tennessee" dated September 21, 2004, project number 23230, and comprising three sheets: sheet 1 site plan, sheet 2 grading plan, sheet 3 landscape plan. The revised site plan Exhibit C was the subject of the staff report and draft PUD ordinance presented to the Cleveland Municipal Planning Commission on September 28, 2004 (minutes of Planning Commission meeting shown as Exhibit D). The revised site plan Exhibit C and the recommendations of the Planning Commission in Exhibit D are the basis for the project to be developed pursuant to this ordinance. This revised site plan Exhibit C is intended to serve as the master site plan for the PUD2 district and it shall encompass the detailed site plan for the main shopping center portion of the site as well as the external boundaries and known site development details for the outparcels A and B and the Walgreen's site (outparcel C). Similarly detailed site plans must be submitted to and approved by City staff (the site plan review committee) for the Walgreen's site (outparcel C) and outparcels A and B before those sites are developed. It is understood that additional details (including but not limited to engineering details for the proposed retaining wall, drawings of proposed signs, and an outdoor lighting plan), stormwater drainage plan and drainage calculations, engineering for the sidewalk connection, and responses to any previous staff comments not already addressed will have to be submitted to and approved by City staff (site plan review committee) prior to execution of the development order and construction.

Section 7. TRAFFIC CIRCULATION, PARKING, FIRE LANES, SERVICE AND DELIVERY VEHICLES. Direct left-turn ingress onto the site from Paul Huff Parkway is prohibited and the site's driveways shall be designed so as to prevent such a turning movement. Driveway entrances to the site shall be developed with adequate turning radii for entering and exiting vehicles, including delivery vehicles. All proposed improvements within public rights-of-way must be constructed to City standards. Developer shall provide all right-of-way and construct all improvements in public rights-of-way as indicated in the site plan Exhibit C as modified according to the comments of the City Director of Public Works. The outparcels A and B and the Walgreen's site (outparcel C) shall be accessed only from the proposed internal drive of the shopping center and shall have no direct access onto a public street. The Developer shall provide sidewalk access to the property from Peerless Road in accordance with plans to be approved by the City Engineer. A clear fire lane must be maintained in front of the proposed shopping center at all times. Developer and the City's fire department may agree from time to time upon modifications to the fire lane depending upon the arrangement of tenant spaces and occupancies within the shopping center but no modifications to the fire lane shall be made without the approval of the fire department, including areas for loading, deliveries, or customer pick-up. Developer shall not allow the fire lane to be blocked by any temporary display of merchandise or advertising. Developer shall allow a public transit stop to be placed on the site in the event that public transit service is provided to the site.

In the event that the site is served by a public transit service, stopping of transit vehicles for entering or exiting passengers shall be outside the designated fire lane unless otherwise approved by the City's fire department. Any drive-through window facilities that are developed on the site, including the outparcels A and B and the Walgreen's site (outparcel C), shall comply with City standards with respect to vehicle stacking, etc. and shall be designed so as to minimize potential conflicts with other vehicles and pedestrians. In no event shall parking spaces be approved in excess of minimum City code requirements if the result would be that the site, including the outparcels A and B and the Walgreen's site (outparcel C), would exceed an impervious area of 75%.

Section 8. IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, BUFFERING, LIGHTING. The impervious area of the site, including outparcels A and B and the Walgreen's site (outparcel C) is understood to include the foot prints for all structures on the site as well as other paved or concrete areas that do not readily absorb water. The impervious area for the site including the aforementioned outparcels shall not exceed 75% of the total site area. A drainage plan must be prepared by a professional engineer and approved by the City Engineer prior to development of the site including the outparcels. For purposes of stormwater management the site and its outparcels are regarded as an area under a common plan of development and a Notice of Intent (NOI) is required before development of any portion of the site. The landscaping for the site shall be in accordance with the landscape plan prepared by Littlejohn Engineering Associates contained in Exhibit C. Landscaping for outparcels A and B and the Walgreen's site (outparcel C) shall be of a similar amount and quality and in accordance with a landscape plan to be approved by City staff prior to the development of either of these outparcels. Landscaping shall be provided adjacent to all roadways abutting the site, including the outparcels, and internal areas within the parking lots and adjacent to buildings. Landscaping shall be professionally installed and maintained in perpetuity by the Developer and all heirs, assigns, and successors in title. Maintenance shall include irrigation, fertilization, pest and disease control, mowing, raking, replacement of dead or diseased plants, and other such activities as may be appropriate to a high quality professionally maintained landscape. Developer and all heirs, assigns, and or successors in title shall take particular care to provide and maintain a densely landscaped buffer that mitigates the intrusion of noise, light, and the view of the proposed commercial development in adjoining residential areas.

Section 9. GENERAL APPEARANCE, SIGNAGE, AND OUTDOOR DISPLAYS. Portable signs as defined in the City's zoning ordinance are prohibited on the site, including outparcels A and B and the Walgreen's site (outparcel C) except for small (10 square feet or less) non-illuminated signs at least fifty feet from any public right-of-way. Ground signs of all types (pole, monument, pylon) for the site and outparcels shall be oriented toward Paul Huff Parkway and shall not exceed in height the lesser of the highest building height on the site or 35 feet. The main shopping center parcel and the outparcels shall be allowed one ground sign each. The ground sign for the main shopping center shall be allowed 300 square feet of sign area for the shopping center. Outparcel ground signs shall not exceed 150 square feet in sign area. Wall signage for the main shopping center and the outparcels shall not exceed 30% of wall area. No back-lit wall

signs, or wall signs illuminated indirectly, or roof signs shall be located on any wall facing Peerless Road or Valley Head Road. Small entry and exit signs not exceeding two square feet in sign area two feet in height may be located at the driveway entrances of the shopping center. A signage plan must be submitted to and approved by City staff (site plan review committee), and signage plans must also be similarly submitted and approved for the outparcels when they are developed. Outdoor displays of merchandise and outdoor storage of goods and merchandise, including but not limited to materials stored in trailers or shipping containers, is prohibited within 50 feet of any right-of-way. In no event shall any sign, display, or storage of merchandise be configured so as to impede the visibility of motorists within or adjacent to the subject property. For the entire project including the outparcels, it is intended that the level of architectural amenity and detail, including quality and cost of materials and craftsmanship, will meet or exceed that found in the nearby Hickory Grove shopping center on Paul Huff Parkway. Common architectural elements and/or complementary design themes are to extend throughout the entire project and the outparcels. Outdoor lighting for parking and sidewalk areas are to be of a relatively low-mounted design so as to minimize light intrusion into the residential areas across Valley Head Road and Peerless Road; and other exterior lighting and lighted surfaces are to be designed so as to minimize shining or reflecting into the aforementioned residential areas. An exterior lighting plan is required to be submitted to and approved by City staff (site plan review committee), and such a plan will also be required for the outparcels.

Section 10. LITTER, SOLID WASTE, AND DRAINAGE STRUCTURE MAINTENANCE. The method of solid waste disposal for each use throughout the project site shall be as approved by the City's Director of Public Works. Dumpsters shall be on a concrete pad and shall be screened by a masonry enclosure. Storage for inedible fats or greases shall likewise be enclosed and, if adjacent to a dumpster, shall be separated from the dumpster by a concrete block wall. Litter and debris shall be removed from the parking lots and grounds throughout the project site on a regular basis such that these materials do not accumulate noticeably on-site or migrate to surrounding property. Removal of litter and debris shall include the removal of such materials from drainage structures and other areas where accumulations may occur. Maintenance of drainage structures including removal of sediment, debris, and intrusive vegetation, such that these drainage structures continue to function as designed shall be the continuing responsibility of the developer, or its assigns or successors in title, and shall include effective control of algae, mosquitoes, and other such concerns as may occur with wet stormwater detention areas; such control by the developer will be monitored by the City and shall include technically appropriate means that may include mechanical aeration, application of chemicals, and/or other means. Mechanical sweeping of the parking lot and driveway areas shall be performed regularly by the Developer to control dirt, litter, and debris.

Section 11. COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS. The Developer, and its assigns or successors in title, is responsible for obtaining all federal, state, and local permits required for the construction of the proposed shopping center and for construction on the outparcels and other construction on or adjacent to the site for which the Developer is responsible. The Developer and its

assigns or successors in title shall carry out the construction on the project site in compliance with all applicable ordinances of the City of Cleveland, Tennessee, and also in compliance with applicable federal and state laws. Buildings shall be designed and constructed in accordance with adopted building codes and shall not be occupied until final inspections are complete and certificates of occupancy have been issued (permission for limited use of building after substantial completion of construction for fixture installation, furnishing, store stocking, employee training and the like may be granted by the City's Building Official and such permission shall not be unreasonably withheld). Failure to develop, use, or maintain the subject property other than in conformity with all of the requirements of this ordinance is unlawful and shall be deemed a violation of the City's zoning ordinance and a nuisance subject to the penalties described in the zoning ordinance and any increased fine as may be allowed by state law.

Section 12. SUBDIVISION AND SITE PLANNING OF OUTPARCELS. : The Developer is required to prepare a preliminary and final plat for approval by the Cleveland Municipal Planning Commission and recording. (Nothing in this ordinance is intended to prohibit approval of a plat for this property by the Cleveland Municipal Planning Commission that would change lot lines or numbers of lots as contemplated herein, nor is the Cleveland Municipal Planning Commission prohibited from approving a plat that would necessitate other minor changes in site design where the resulting design would conform to the intent of this ordinance.) The plat shall show all property lines, easements, and rights-of-way and shall otherwise conform to the requirements of the City's subdivision regulations. The preliminary plat shall have approval by the Cleveland Municipal Planning Commission prior to the start of construction. The final plat shall have been approved by the Cleveland Municipal Planning Commission and recorded with the Bradley County Register of Deeds prior to the occupancy of any building on the site other than a temporary construction office. Portions of the subject property needed for public right-of-way for transportation improvements to be built by the developer as described above are to be dedicated to the City as public streets with a plat prepared accordingly. The plat shall show all existing easements, rights-of-way, and utilities.

Section 13. PUD DEVELOPMENT PLAN AND PUD DEVELOPMENT ORDER. It is understood that the owners of the individual properties within the development, i.e. the main shopping center site, the two proposed outparcels A and B, and the Walgreens site (outparcel C), are each responsible for the compliance of their respective properties with the terms of this ordinance. The owners of the respective properties are expected to work cooperatively toward the achievement of the common development plan for this PUD. Owners of the respective properties shall ensure that any employees or tenants or contractors on the site are aware of and comply with the terms of this ordinance. Development of the property as described herein shall not commence until the execution of the PUD development order that is further described herein and in Section 16 below. The development order is to provide a more final and complete description of how the terms of this ordinance are to be carried out by the developer. The development order shall be inclusive of all permits, plats, design documents, etc. necessary to implement the project described herein.

Section 14. TIME LIMITS AND POSSIBLE REVERSION TO FORMER ZONING. The developer must have carried out a substantial development of this project within five years from the effective date of this ordinance or the City may cause the property to revert to its former zoning classification without liability for any damages. Substantial development shall in be interpreted to mean completion of construction on at least the shopping center buildings and parking areas and landscaping, other than that located on the outparcels, and all street and sidewalk improvements for which the Developer is responsible under this ordinance.

Section 15. ERRORS, OMISSIONS, AND POSSIBLE FUTURE REVISIONS TO THE PUD. After final approval of this ordinance, the Mayor and the Developer shall execute a development order, to be signed by both parties. The Development Order shall encompass the PUD Development Plan that includes the plans and drawings referenced herein as well as the requirements of this ordinance pertaining to the development of the subject property, including any additional plans, plan revisions, and permits. The Development Order shall also encompass the requirements of this ordinance as they pertain to the use and maintenance of the subject property after it is developed. This ordinance may be amended from time to time as necessary after review by the Planning Commission and approval by the City Council subsequent to a public hearing. Revisions to plans and drawings required by this ordinance that are determined by the Planning Commission to yield improved or substantially similar quality of results affecting the public, and which affect less than 20% of the site or any approved dimension or quantity by less than 20%, can be approved by majority vote of the Planning Commission without amending the PUD ordinance. Errors and omissions in the Development Order that can be corrected without conflicting with the terms of this ordinance may be corrected without amending this ordinance with the recommendation of the Cleveland Municipal Planning Commission and the signature of the Mayor and the Developer.

Section 16. BINDING UPON OTHERS. This ordinance is a law and not a contract, and as such it is generally binding upon all development and use of property in the PUD2 zoning district and is binding upon City's regulation of these activities in this location. The Development Order required by this ordinance shall be an agreement between City and Developer specifying how the terms of this ordinance are to be carried out. The Development Order shall be binding upon the Developer and its assigns, lessees, tenants, or successors in title. Compliance with this ordinance and Development Order shall be a condition of all deeds, leases, or other instruments that convey a right to own or occupy all or a portion of the subject property for commercial or business purposes. Moreover, it shall be the duty of the Developer to ensure compliance with all terms of this ordinance and the Development Order affecting construction or maintenance. Wherever this ordinance establishes a duty, responsibility, or right for the Developer, the term "Developer" is intended to encompass Southmark, L.L.C., Mouse Creek Properties, L.L.C., Sherman and John Davis, and any assigns or successors in title, or any owners of record of the subject property as of the effective date of this ordinance and their heirs, assigns, or successors in title. The term "Developer" is also intended to include any holding company or other entity established for the ongoing operation and maintenance of the development of the subject property including, but not limited to, common areas,

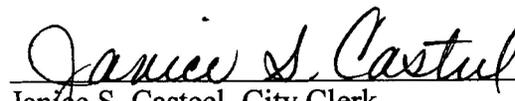
joint use or joint access areas, and undeveloped portions of the property that are intended for development.

Section 17. CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE. Where this ordinance is in conflict with existing ordinances with respect to the development of this property the terms of this ordinance shall prevail unless stated otherwise herein. In the event that any portion of this ordinance is determined to be invalid by any court of competent jurisdiction, the remaining portions of this ordinance shall remain in full force and effect. This ordinance shall take effect upon after passage and upon the execution of the development order as described above, the public convenience and necessity requiring it.

Approved as to form:


L. Harlen Painter, City Attorney


Tom Rowland, Mayor


Janice S. Casteel, City Clerk

SUMMARY OF COMMENTS CONCERNING PROPOSED MOUSE CREEK COMMONS OR THE CORNERS (PUD2)

Rezoning request by Southmark L.L.C. to rezone approximately 12.3 total acres on Paul Huff Parkway, Valley Head Road, Mouse Creek Road and Peerless Road (Tax Map 34I Group B Parcels 3,4,7 and 8) from R-3 to PUD-2.

The applicants have submitted a request for Planned Unit Development (PUD) approval on the subject property. The Applicants are SouthMark LLC who have submitted letters from the current owners of the various properties in the PUD that request the rezoning (Herbert Benton and Jeanette Benton who own parcel 3, Shirley Marie Leamon Liner who owns parcel 4, Sherman Davis and John Davis who own parcel 7, and Steve A. Mckenzie who owns parcel 8). The proposed project would consist of various retail commercial uses that the applicant has described by NAICS code. The applicant has list a number of potential uses by NAICS code description but verbally has suggested that major tenants of the strip center would be clothing and home goods retailers with a bank and/or pharmacy on the outparcels. The conceptual site plan is being reviewed with a view toward these limited uses and some others in the longer list of possible uses below could require modifications to the site (e.g. dumpster and grease storage separation requirements for restaurants); so, designing the detailed site plan so that it can be retrofitted for such needs would be advisable. The proposed uses to be allowed on the site follows the list for PUD1 (Home Depot) and includes these NAICS categories with exceptions as noted:

- 4413 Automotive Parts, Accessories, and tire stores**
- 442 Furniture and home furnishings stores**
- 443 Electronics and appliance stores**
- 444 Building material and garden equipment and supplies dealers**
- 445 Food and beverage stores**
- 446 Health and personal care stores**
- 448 Clothing and accessories stores**
- 451 Sporting goods, hobby, book, and music stores**
- 452 General merchandise stores**
- 453 Miscellaneous store retailers**
- 511 Publishing industries (excluding manufacturing and warehousing)**
- 512 Motion Picture and sound recording industries (excluding manufacturing and warehousing)**
- 513 Broadcasting and telecommunications (excluding manufacturing and warehousing)**
- 514 Information services and data processing services**
- 52 Finance and Insurance**

- 531 Real estate
- 532 Rental and Leasing services (excluding outdoor storage of vehicles and equipment for lease. NOTE: this does not exclude the leasing of tools, equipment and vehicles related to a principal use upon the site)
- 54 Professional, scientific, and technical services
- 55 Management of companies and enterprises
- 561 Administrative support services (excluding 561210 Facilities support services, 561710 exterminating and pest control services, 561730 landscaping services, 561740 carpet and upholstery cleaning services, 561910 packaging and labeling services
NOTE: this does not exclude the "Mailboxes, Etc."-type of businesses found in many shopping centers)
- 61 Educational services
- 621 Ambulatory health care services
- 7111 Performing arts companies
- 7139 Other amusements and recreational industries
- 7221 Full service restaurants
- 7222 Limited service eating places (including fast food with or without drive through)
- 72232 Caterers
- 811211 Consumer electronics repair and maintenance
- 811212 Computer and office machine repair and maintenance
- 811430 Footwear and leather goods repair
 - 8121 Personal care services
 - 81292 Photofinishing
- 92 Public Administration

The property is presently zoned R3 Multi-family. The R3 zoning would allow for the development of residential uses ranging from single-family homes to traditional apartment buildings. It would also allow for the development of a limited range of other uses such as churches, nursing homes and schools. It allows for the development of apartments with a density computed by requiring 7500 square feet of land area for the first unit and 2500 square feet for each unit thereafter. The impervious surface area may be up to 65%. If the land were developed at a moderate gross density of 11 units per acre, it could hold 135 apartment units (the theoretical maximum is about 15.5 units per acre). Using data from *Trip Generation, 6th Edition* (Institute of Traffic Engineers, 1997), average weekday trip ends were 6.59 per occupied dwelling unit in low-rise apartments (land-use code 221). This trip generation rate appears to be conservative and could be nearer the top of the observed range, or 9.24 trips, depending upon household size, number of vehicles, and travel behavior. The ITE data show an average rate of 0.47 trips per occupied low-rise apartment unit for one hour in the weekday a.m. peak of the adjacent roadway (between 7:00 and 9:00 a.m.) with a range up 0.98 trips. The ITE data show an average rate of 0.58 trips per occupied low-rise apartment unit for one hour in the p.m. peak for the adjacent roadway (between 4:00 and 6:00 p.m.) with a range up to 0.93 trips. Assuming that there are 120 occupied units at any given time,

average daily weekday trip ends for the apartments would be about 790, and possibly up to about 1110. For the a.m. peak hour of the adjacent roadway on a weekday, the 120 occupied apartments would generate from 56 to 118 trips. For the p.m. peak hour of the adjacent roadway, the 120 occupied apartment units would generate 70 to 112 trips. It is likely that the morning peak traffic for such an apartment development would coincide with the peak traffic time for the nearby school and neighborhoods.

Expected trip generation for the proposed commercial development should be considered in comparison with potential traffic from apartments that would be allowed under the current R3 zoning. The proposed development appears to contemplate about 100,000 square feet of shopping center space (ITE land use code 820), about 4000 square feet in bank space (ITE land use code 912), and about 14,000 square feet in pharmacy space (ITE land use code 881). Data from the ITE manual cited above show an average weekday trip ends of 42.92 per 1000 square feet for a shopping center (however, the cited studies on 100,000 square foot centers seemed to cluster closer to 70 trip ends per 1000 square feet), 88.16 per 1000 square feet for a drive-through pharmacy, and 72.79 per employee for a drive-in bank (16 employees average). Calculated average weekday trip ends would be 4292 for the shopping center (7000 if the rate is 70 trips per 1000 square feet), 1234 for the pharmacy, and 1165 for the bank. Data from the ITE manual show average weekday trip ends for one hour in the p.m. peak of the adjacent roadway facility of 3.76 per 1000 square feet for the shopping center, 10.4 per 1000 square feet for the pharmacy, and 9.37 per employee with an average of 14 employees for the bank. This would equate to p.m. peak hour traffic of 376 for the shopping center, 146 for the pharmacy, and 131 for the bank. Based upon the statements of the applicants, the pharmacy will not be a 24-hour operation and the shopping center tenants will not be opening until 10:00 a.m.

The March 2004 Traffic Impact Study prepared by RPM Transportation Consultants, LLC was predicated on a 98,300 square foot shopping center and a 3900 square foot bank and showed 6716 trip ends for the shopping center (about 68 trip ends per 1000 square feet) and 968 trip ends for the bank. The RPM study notes that the typical pass-by rate for shopping centers is 34% and for banks is 47% but their study uses more conservative rates of 25% and 35% respectively. The pass-by rates are important because they indicate that one-fourth to more than one-third of the traffic associated with the proposed development would not be new traffic on the adjacent roadway; however, the residential trips calculated by staff for the hypothetical apartments would not require such a downward adjustment because residential properties are the origin of most of their associated trips.

TRIP GENERATION CONCLUSION: It seems that the total trip ends associated with the proposed development would could range from about 7000 to about 9400 but about one-third would be from existing pass-by traffic; i.e. about 4600 to 6200 new trips compared with about 1100 trips from 120 occupied apartments. Total entering and exiting traffic is likely to be substantially more for the proposed

commercial development than for apartments throughout the day and in the p.m. peak, but the apartments would likely generate more traffic in the a.m. peak.

The property consists of a little over 12 acres in an irregular block formed by Mouse Creek Road to the east, Valley Head Road to the south, Peerless Road to the west, and Paul Huff Parkway to the north. The proposed site occupies the entire block except for an apartment complex in the southeast corner of the block. East of the site across Mouse Creek Road is the Ross-Yates Elementary School and Cleveland City Schools administrative complex. South of the proposed project site across Valley Head Road are single family homes and duplexes, and these same uses exist west of the site across Peerless Road. North of the site across Paul Huff Parkway is a Cleveland Utilities substation and vacant land. The site is within the Paul Huff Parkway corridor between I-75 and South Mouse Creek where there has been an intense interest in changing the overall pattern of land use to commercial. Property to northeast on the opposite side of the Paul Huff Parkway/Mouse Creek Road intersection is presently being developed with a Home Depot store and restaurants, a pharmacy, etc.

The 1995 Cleveland Land Use Plan by Mauldin Parnell indicated an existing and possible future residential land use for this site BUT, by means of an overlay map indicated the site to be within the general location of a future commercial corridor along Paul Huff Parkway. This corridor extends along Paul Huff Parkway. Staff recommends that any transition to commercial in this area be through the assemblage of large tracts to be developed in a planned and coordinated fashion through the PUD process. The 1995 plan recommends that commercial rezoning be considered only where the rezoning would be an extension of a contiguous commercial area and this proposed commercial area could not meet that requirement. However, the proposed rezoning could not be contiguous to anything except what is within the same block, and the proposal would change the block's land use to a mixture of high-density multi-family residential and commercial. The present use of the site includes two houses and some outbuildings and vacant land—it was agricultural land on the outskirts of town prior to the construction of Paul Huff Parkway. Topography seems to have dictated this location for an extension of a multi-lane road and utilities west of I-75 and an I-75 interchange; hence, vacant land seems to have been held and assembled in this general area in anticipation of its eventual commercial development, or other uses that would command a significant price per square foot. The current zoning appears to anticipate significant apartment development on this site, and the issue before the planning commission is whether the zoning plan should be amended to make this site commercial based upon the proposed PUD.

No extraordinary environmental conditions are anticipated in the potential development of this site. The site is shown on FIRM Panel 470015 0001D dated April 2, 1993 and it is in Zone X outside the 500-year flood plain. The U.S. Department of the Interior's National Wetlands Inventory Maps do not indicate any wetlands on the site. No blue line streams exist on the site. The site is partially

wooded, though isolated from other forested areas, and it probably provides habitat for some common plant and animal species but not important habitat for any threatened species. The house on parcel 7 was built in 1920 but it is entirely surrounded by more modern development and is not part of any historic district. The State Archaeologist has not been consulted in this project but developers are required to comply with state and federal law should any burial sites be encountered during construction.

Section 4.1 of the zoning ordinance sets forth the process for PUD approval. It is a two-step process for approval of a PUD Conceptual Plan and a PUD Development Plan, the latter being a "final plan" that would include the rezoning of the property. These steps can be combined but they do not have to be combined. The PUD Conceptual Plan approval is intended to provide an appropriately detailed description of what could be approved in the PUD Development Plan. The PUD applicant has a duty to provide his or her best and most persuasive argument for the PUD at the conceptual stage, describing the project as fully and truthfully as possible while addressing any reasonably anticipated concerns. If the Planning Commission cannot support the land use changes proposed by the PUD applicant, it is incumbent upon the Planning Commission to say so at the conceptual stage. If the Planning Commission can support the proposed PUD with certain conditions, stipulations, limitations, etc., it should say so at the conceptual stage.

The PUD ordinance provides that the PUD Conceptual Plan must show "proposed property lines, proposed rights-of-way, proposed easements, proposed utilities and other infrastructure including the approximate size and location of anticipated site features such as stormwater treatment facilities, decorative outdoor plazas and entranceways, parking lots, landscape buffer areas, etc." The applicant presented on August 19, 2004 a revised site plan based upon feedback from staff who reviewed a previous submittal. The initial site plan was not based upon a survey and therefore lacked dimensions and existing and proposed property lines with bearings and distances. A survey of boundary and topographic conditions was conducted prior resubmittal of the site plan which now includes bearings and distances, adjacent roads and utilities, and dimensions for proposed buildings. Dimensions are needed for proposed driveways, parking stalls, parking aisles, curb islands, etc. Setback distances are needed for all proposed structures. Radii need to be provided for all proposed driveways. In addition to parking lot detail, drive-through lane radius and stacking capacity will need to be provided for the proposed Walgreens (any other end user who proposes a drive-through facility will also need to provide this information). Typical detail on handicapped parking, signage, markings, curbs, wheel stops should be provided as well as engineering detail on the proposed retaining wall including detention basin area. Fire lane requirements and location of parking in front of buildings needs to be reviewed with the fire department prior to approval. No dimensions or building footprints are provided for outparcels A and B since the end use of each outparcel and the exact location of the dividing line between these outparcels is not known at this time; however these outparcels will be limited to one shared driveway accessing the internal drive and will have no direct

access to Paul Huff Parkway. The Walgreens site will likewise have no direct access on Paul Huff Parkway or Mouse Creek Road.

The impervious surface limit in the CH zone, where such development would typically locate, is 75% and the impervious surface limit in the existing R3 zone is 65%. The amount of impervious area within the total site has been shown on the site plan as approximately 78%. This calculation is based upon a gross acreage of 12.24 acres and a net acreage of 10.55 acres that excludes the outparcels A and B (the Walgreens site was not included in the acreage). Drainage calculations will have to be provided along with detention pond detail including engineering detail for the proposed retaining wall around the detention area. Impervious area calculations will have to be provided for the outparcels and the Walgreens site and a stormwater plan and drainage calculations will have to be provided for these areas. The impervious area in the proposed site plan is too high; it can be reduced by removing parking (exceeds code minimum by 36 spaces according to site plan) and the associated drive area, and/or reducing the amount of building footprint. It needs to be reduced by about 16,000 square feet of impervious area in order to achieve 75% which is the minimum for CH. Documentation of an approved stormwater plan and NOI is required for the entire site including Walgreens and the outparcels. A maintenance plan is needed is required for all drainage facilities areas including the detention pond; this plan should include regular sweeping and cleaning of the parking lot and keeping drainage facilities free of debris, invasive vegetation, and pests. Drainage facilities should be designed such that mowing around them is possible and such that they do not present an attractive nuisance for area children. Full responsibility for continued maintenance will be with the developer and/or owner.

A landscaping plan has been submitted with the August 19, 2004 submittal and this will need to be reviewed by the City's urban forester prior to approval. Important goals for landscaping on this project should include enhancing the visual quality of the Paul Huff Parkway corridor in this location which serves as a gateway to Cleveland and mitigating impacts on surrounding uses, especially the residential ones (the apartments within the block and the residences just across Valley Head Road are especially in need of buffering). The landscape plan indicates preservation of existing vegetation at the corner of Valley Head Road and Peerless Road; if these trees and under story are preserved it will buffer the view from the subdivision directly west across Peerless (Tomahawk Drive). This should be done whether through existing or new vegetation—the view of the shopping center from Peerless Road should be minimal except to southbound traffic approaching the proposed shopping center driveway on Peerless.

The applicant is proposing a left-in turning movement from Paul Huff Parkway and this is opposed by the Public Works Director who is responsible for traffic engineering in the City of Cleveland. Additional comments on the site plan are being provided by the City Engineer, the Transportation Manager, and the Fire Inspector.

The PUD Conceptual Plan "must contain the most recent Bradley County Property Appraiser's aerial photograph with the boundaries of the proposed PUD area drawn in." This photo has been provided by city staff during the review process.

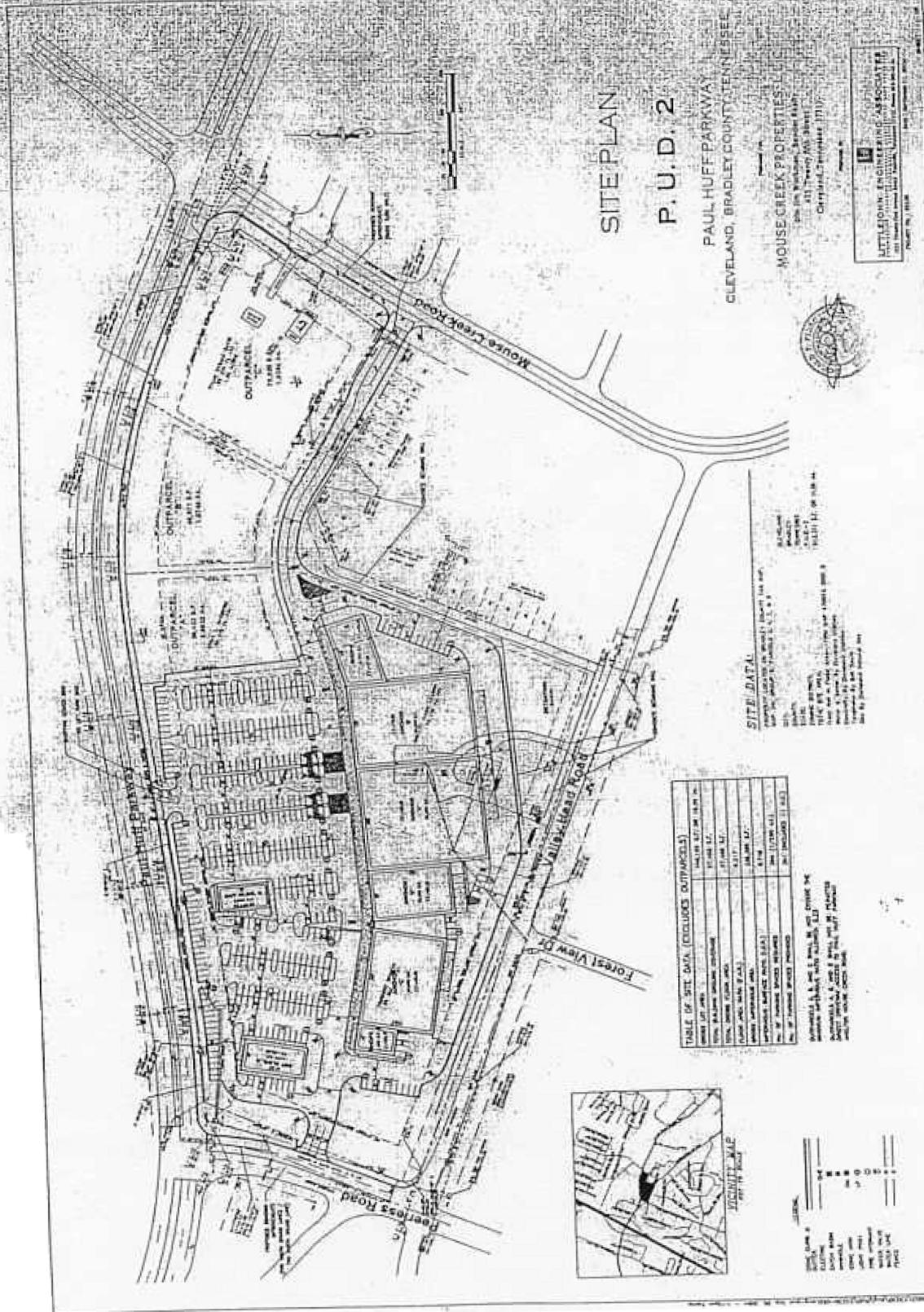
The PUD Conceptual Plan must show any floodway or floodplain areas with reference to the appropriate FIRM panel. As noted above, there are no such flood areas on the proposed site.

The PUD Conceptual Plan must show "existing right-of-way improvements, traffic control devices, driveway connections, utilities, fire hydrants, and drainage systems on-site and within 200 feet of the proposed PUD". Most of these items appear to have been included in the August 19, 2004 submittal.

The PUD Conceptual Plan must identify "general appearance standards that would be adhered to in the development for building facades, exterior lighting, landscaping, etc." The PUD Conceptual Plan must also identify "all buffering at the project boundaries to include landscaping, walls, fences, berms, water features, etc." These items need to be identified in the plan. The developer should be cognizant of this area as a community gateway, the relatively higher degree of landscaping in the Paul Huff Parkway corridor east of I-75, and mitigation of impacts on surrounding residences. The landscape plan should incorporate plant materials of varying heights and sufficient opacity to buffer surrounding residences. Landscaped and walls can be incorporated into the landscape plan and may be an effective means to enhance buffering where horizontal distances are affected by other site considerations. It will be the responsibility of the developer/owner to have in place an irrigation system and regular maintenance program for the landscaping such that it is maintained throughout the life of the project. Parking lot sweeping and removal of trash from grounds will have to be performed on a regular basis along with routine maintenance of on-site stormwater systems (this would include removal of trash and debris, excess vegetation, and mosquito control). On-site lighting for this site should be of a low-mount variety and contained on the site to avoid impacts on surrounding residences. Ground signage for the site and the outparcels should be oriented toward Paul Huff Parkway and not exceed the lesser of building heights on the site for the main shopping center or 35 feet. No back-lit wall signs or ground signs or high levels wall lighting or highly reflective building surfaces should face toward Peerless Road or Valley Head Road. Corporate colors and logos should be incorporated in a way that is sensitive to the overall design. Common architectural element should exist between the main shopping center site and the outparcels. Though style may differ, the overall level of architectural detail and amenity should not be less than that which is found in the Hickory Grove shopping center further to the east along Paul Huff Parkway. *A signage plan should be prepared and submitted with the PUD. A signage plan and exterior lighting plan were not included with the August 19, 2004 submittal and these are still needed. An elevation sheet has been provided for the proposed shopping center, but not for the Walgreens or the outparcels.*

The Public Works Director Tom Grant has reviewed the Traffic Impact Study with the developer's consultant, RPM Transportation Consultants, LLC. His comments are included in an August 15, 2004 memo that is included with the staff report. These comments do not reflect the August 19, 2004 revised site plan submittal that allows for a left turn from Paul Huff Parkway into the site. Mr. Grant opposes this turn movement. Delivery, garbage pick-up, and emergency access to the site need to be evaluated in conjunction with the proposed driveways, and these things will likewise need to be evaluated for Walgreens and the outparcels.

CONCLUSION: Planning staff is not opposed to a PUD in this location that contains some commercial uses if the Planning Commission and the City Council support the necessary change in the zoning plan from R3-multi-family residential. The plan as submitted will need to be revised as indicated by the comments above and a PUD ordinance will need to be drafted for approval. Subject to a conditional approval from the Planning Commission and submission of revisions from the applicant, staff will prepare the PUD ordinance.



SITE PLAN
P. U. D. 2

PAUL HUFF PARKWAY
CLEVELAND, BRADLEY COUNTY, TENNESSEE

MOUSE CREEK PROPERTIES, LLC
311 Twenty-Ninth Street
Cleveland, Tennessee 37317

ACTING ENGINEER-ASSOCIATE
Professional Seal
Project No. 19188



SITE DATA:
 PROPERTY ADDRESS: Paul Huff Parkway, P.U.D. 2
 COUNTY: Bradley County, Tennessee
 ZONING: Commercial
 PROJECT AREA: 100.00 Acres
 TOTAL AREA: 100.00 Acres
 TOTAL IMPROVEMENTS: 100.00 Acres
 TOTAL IMPROVEMENTS: 100.00 Acres

TABLE OF SITE DATA (EXCLUDES OUTPARCELS)

TOTAL SITE AREA	100.00 ACRES
TOTAL IMPROVEMENTS	100.00 ACRES
TOTAL PARKING SPACES	1,000 SPACES
TOTAL SERVICE AREAS	10,000 SQ. FT.
TOTAL OFFICE AREAS	100,000 SQ. FT.
TOTAL RETAIL AREAS	100,000 SQ. FT.
TOTAL INDUSTRIAL AREAS	100,000 SQ. FT.
TOTAL STORAGE AREAS	100,000 SQ. FT.
TOTAL UTILITIES AREAS	100,000 SQ. FT.
TOTAL OTHER AREAS	100,000 SQ. FT.

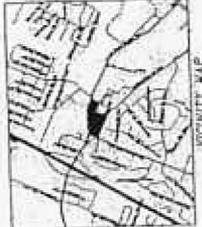
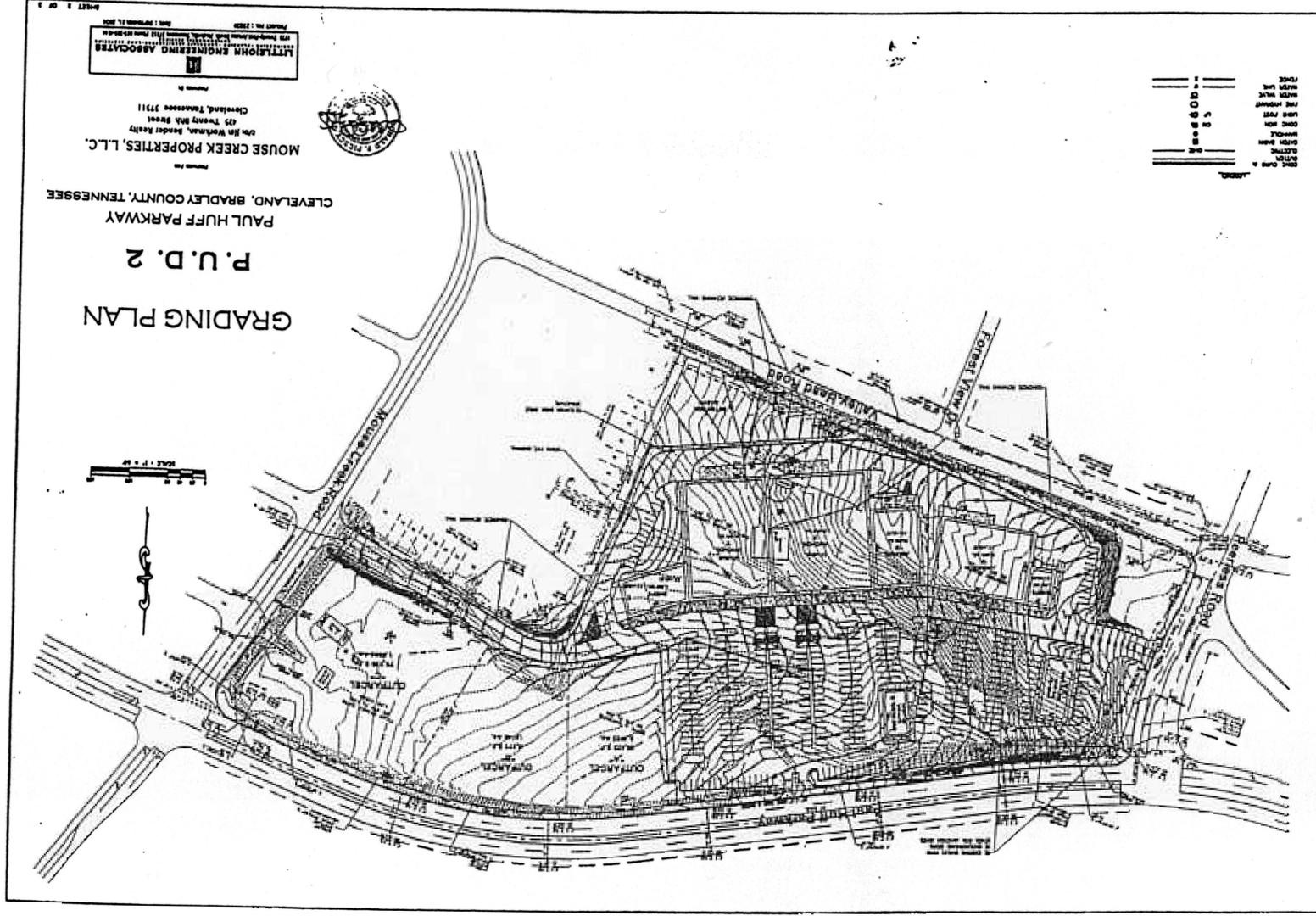
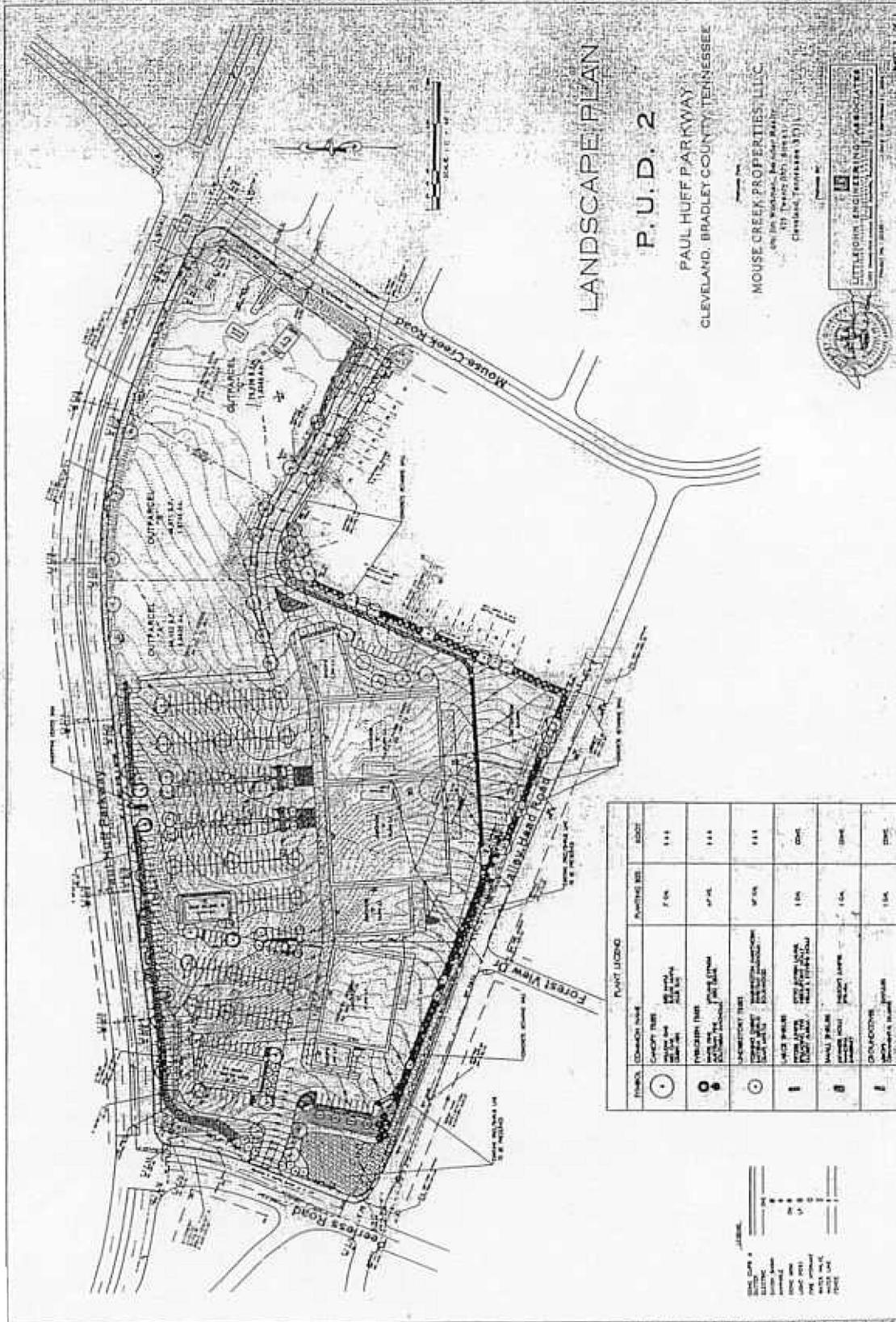


EXHIBIT "C"





LANDSCAPE PLAN

P. U. D. 2

PAUL HUFF PARKWAY
CLEVELAND, BRADLEY COUNTY, TENNESSEE

MOUSE CREEK PROPERTIES, LLC
c/o J. H. WOODS, ARCHITECT
100 DAVIS DRIVE
CLEVELAND, TENNESSEE 37311



SYMBOL	DESIGN NAME	PLANT LISTING	QUANTITY	DATE
1	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
2	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
3	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
4	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
5	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
6	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
7	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
8	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
9	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11
10	ORANGE BLOSSOM SHRUB	ORANGE BLOSSOM SHRUB	200	11/11



**MINUTES
CLEVELAND MUNICIPAL PLANNING COMMISSION
TUESDAY, SEPTEMBER 28, 2004**

The meeting was held at 6:00 p.m. in the City Council Chambers, Municipal Building, 190 Church Street N.E., Cleveland, Tennessee.

MEMBERS PRESENT: Tim Henderson, Maryl Elliott, Larry Presswood, Roy Guthrie, Dee Burris, Yvonne Cannon and David May, Jr.

MEMBERS ABSENT: Kevin Brooks and Thomas Barber

LEGAL COUNSEL: Harlen Painter, Attorney for the City of Cleveland

**STAFF PRESENT: Greg Thomas, Secretary of the Planning Commission
Donna McMinn, Administrative Assistant
Anthony Casteel, Planner**

OTHERS PRESENT: See attached sign in sheet.

CALL TO ORDER: The meeting was called to order by Chairman, Tim Henderson.

- 1. Approval of the minutes for the August 24, 2004, Planning Commission Meeting. The Chairman, Tim Henderson asked if everyone present had received the minutes, and if anyone had any comments or changes.**

Motion was made by David May, Jr. to approve the minutes as presented. It was seconded by Yvonne Cannon and the Board agreed unanimously.

- 2. Public Hearings - None**

- 3. Old Business**

- a. Plan approval and rezoning request by Southmark L.L.C. for the Mouse Creek Market Place Planned Unit Development. Site plan is approximately 12.3 total acres on Paul Huff Parkway, Valley Head Road, Mouse Creek Road and Peerless Road (Tax Map 34I Group B Parcels 3, 4, 7 and 8). The rezoning request is from Multi-family Residential R-3 to PUD-2.**

Jim Workman was present to represent the property owners.

Dick Davis was present to represent the South Mark LLC.

Greg Thomas presented a Draft ordinance dated 9/27/04 for the Mouse Creek Commons PUD. He said that a revised plan had been received on September 22, 2004 (drawing 23320 dated 9/21/04 from Littlejohn Engineering consisting of a site plan, grading plan, and landscaping plan) and that staff had not had time to fully review the revised plan but that the

revisions generally appeared to address staff comments. He said that the ordinance would create the PUD zoning district and establish requirements for the project. Mr. Thomas said that since the last Planning Commission meeting, staff had a good and productive meeting with Indian Hills neighborhood representatives, Mr. and Mrs. Bender and Mr. Boone. A letter from Mr. Boone on behalf of the neighborhood was included in the packet. Mr. Thomas said that he wanted to go through the draft ordinance and Mr. Boone's letter together—some of the letter's points are addressed in the ordinance and others are ROW issues addressed in the comments from Tom Grant.

Greg Thomas described the contents of each section of the draft ordinance. Concerning section 3, the property description, he noted that it still needs to be verified that it closes. Concerning section 4, the permitted uses, he noted that these were patterned after what was in the Home Depot PUD and that certain uses were specifically prohibited (sex outlets, vehicle repair, convenience stores with or without gas pumps). Concerning section 5, he said that it addressed hours of operation, noise and vibration, etc., requiring owners and operators to construct and maintain the project in a way that the project did not become a problem, and that it allowed the City to require certain measures if it determined that there were problems (e.g. eliminating outdoor music, private security to stop loitering or cruising, etc.). He noted that Mr. Workman and Mr. Davis had concerns about the restrictions that had been put on the hours of operation. He explained that neighbors were concerned about the hours of operation and that Mr. Boone's letter had requested that hours be limited from 8:00 a.m. to 9:00 p.m., and that the draft ordinance generally prohibited operation between 11:00 p.m. and 9:00 a.m. except for things like ATM machines, and video rental return boxes. Concerning the site plan requirements in section 6, he again noted that the revised plans had just been received and that more review would be required. Concerning section 7, he noted that the traffic circulation and fire lane issues appeared to have been addressed in the revisions. Concerning section 8, impervious area and landscaping, etc., an NOI will be needed for stormwater. He noted that item 1 in Mr. Boone's letter requested a 6-foot landscaped berm all around the site and that the proposed landscaping and the lowering of the building area on the west end of the project would result in a similar effect on that end near Indian Hills.

Greg Thomas went on to address other items in Mr. Boone's letter. He said that the second item was the outdoor lighting on the project which was addressed in the original staff report and which would need to be incorporated into the ordinance. Item 3, a traffic signal at Valley Head Road and Peerless Road was a ROW issue and it was not recommended by Tom Grant. Item 4, business hours had already been discussed. Item 5, a request that signage be restricted to Paul Huff Parkway, it was noted that the developer's plan did this (NOTE: these restrictions were part of original staff comments and will need to be in the ordinance). Item 6, speed limit on Paul Huff Parkway, it was noted that Tom Grant is studying the speed limit issue in conjunction with signal coordination for

reasons independent of this project and that may result in a reduction in the speed limit to conform with Stuart Road. Item 7, a request that no left turn ingress to the project be allowed from Peerless Road; Tom Grant has reviewed this and recommends that such ingress be allowed. Tom Grant has recommended against item 8, a restriction of the left turn from Paul Huff Parkway to Peerless Road to a fully protected left. Item 9 was a request that sidewalks be provided around the entire perimeter of the property. Staff has recommended that the site have sidewalk and bicycle access by connecting to the Peerless Road sidewalk but that sidewalks not be required all the way around the property. Littlejohn Engineering will need to work with the City Engineer to resolve design difficulties with the sidewalk access.

Mr. Thomas then returned to a discussion of the remaining sections of the ordinance. Section 9 concerns the general appearance of the shopping center, sign limitation, outdoor lighting etc., and this was addressed in the previous staff report. Section 10 addresses sweeping of the parking lots, maintenance of drainage compliance, and compliance with other laws and permitting requirements (ordinance erroneously refers to Home Depot and this needs to be corrected). Section 12 stated that the outparcels would not have direct access to Paul Huff Parkway or Mouse Creek Road. Section 13 describes and requires the PUD development order. Section 14 addresses time limits for development and potential reversion to the former zoning. Section 15 addresses errors and omissions and amendments to the PUD ordinance; the provisions concerning whether an amendment would be needed or not were read from the draft ordinance including the section allowing changes to be approved by the Planning Commission without amending the ordinance.

Mr. Thomas noted that City Attorney Harlen Painter's comments were needed on the ordinance and, if it pleases the Planning Commission, that staff will amend the ordinance as has been discussed and move on to City Council.

Chairman Tim Henderson then recognized Dick Davis.

Dick Davis explained that their main request was that 20% of the center be allowed to open at 6:00 a.m. and that they had no problem with closing at 11:00 p.m. He explained that the early opening would be for something like a Starbucks Coffee and maybe a dry cleaner that would operate mostly on existing traffic. Their only other issue had been the left-in turn from Paul Huff Parkway into the center and they had agreed to remove it.

Jerome Boone then asked if traffic was going to increase 800% based upon previous staff report. Greg Thomas read the previous staff report section that compared projected traffic for the proposed development with traffic that could be anticipated from an apartment development. In summary, the traffic from the proposed development would generate 4600 to 6200 new trips as opposed to 1100 new trips from 120 occupied apartment units. The apartments would generate more traffic in the morning peak

EXHIBIT D

hour but the proposed commercial development would generate more traffic throughout the day and in the evening peak.

Mr. Boone reviewed the points made in his letter to the Planning Commission. He believes that the development is contrary to the 1995 land use plan. He believes that it is warranted to put a berm all the way around the development. He requested that the hours of operation be limited to between 8:00 a.m. and 9:00 p.m. He wants there to be no fast food restaurants because of their potential to draw traffic off of the interstate.

Jim Workman disagreed that there would be an 800% increase in traffic and he asked about the existing traffic. During discussion Tom grant said that the count was between 23,000 and 30,000 vehicles per day depending on where the count is taken.

Tim Henderson said that the hours of operation needed to be addressed and Larry Presswood said that this needed to be explained.

Greg Thomas said that the neighbors' request was understandable, not wanting late night activity or activity that would interfere with the school. Mr. Thomas said that he had understood that the businesses would not open until late morning but later learned of the developer's concern that some tenants might want to be open during early morning or breakfast hours. That is why the developer's are asking for an exception for 20% of the development.

Larry Presswood asked what the opening hours would be. Dick Davis said that they were asking to open at 8:00 but 20% could be open at 6:00.

Dick Davis said to answer Mr. Boone's questions about restaurants that they are not trying to create an hangout but having a place on-site to eat would be beneficial with 240 people working in the center.

Larry Presswood asked 20% of what and Dick Davis replied gross leaseable area---really to allow 14,000 square feet for Walgreens and that would only leave another 5000 square feet that could be open early, enough for a Starbucks and a dry cleaner.

Yvonne Cannon asked for clarification on the berm issue. Greg Thomas explained that staff did not support this idea and that it could present drainage issues.

Larry Presswood asked if there were changes in the site plan that would address the same concerns as the berm. Greg Thomas said it would create a buffer with the site grading and landscaping. Dick Davis commented that creation of a berm would require removal of the mature landscaping.

Unknown speaker asked what about restaurants?

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Tim Henderson said it would be addressed in section 4 permitted uses and Larry Presswood asked if that would cover it. Greg Thomas clarified that the letter from neighbors asked for no full service or limited service restaurants. Responding to a question from Larry Presswood, Mr. Thomas said that the ordinance did not distinguish between restaurants and coffee shops. He explained that the coffee shop would be some kind of restaurant under the NAICS definitions. Maryl Elliott asked if that use was being denied and Greg Thomas said "no", they are specifically permitted.

Tim Henderson asked if someone else wanted to speak.

Emmett Marks said that he agreed with Mr. Boone's letter and asked about the staff recommendation on sidewalks. Greg Thomas said it was to connect the Peerless Road sidewalk to the project site. Mr. Marks said that a sidewalk was needed on Valley Head Road especially for kids walking to school.

Mr. Marks said with respect to the berm, not to get hung up on the drainage issue. It can be engineered, or how about a wall? Where is the drainage. Greg Thomas said it was basically to a detention pond near Valley Head Road.

Larry Presswood asked Mr. Marks if he did not think that retaining the 30-40 year-old trees would address his concern. Mr. marks said that he did not think that they were 30-40 years old but that they were only 3-4 inches in diameter. Greg Thomas suggested that the revised landscape plan be reviewed with the developer to help address these concerns.

Dick Davis reviewed the landscape plan drawing, pointing out the existing and proposed vegetation and indicating that the existing trees were 30-40 feet tall though maybe not 30-40 years old.

Maryl Elliott asked about fast growing varieties like Leland Cypress:

Dick Davis pointed out where such varieties were being indicated on the plan. He then went on to say that the landscaping would be about 100 feet in depth, about 50% existing and 50% new. He said that the view from across Peerless Road would be pretty much what is seen now with a more landscaped appearance.

Kelley Bender asked about hours of operations. Tim Henderson and Greg Thomas recapped what had been said to that point.

Kelley Bender suggested that something else be considered for hours. After discussion Greg Thomas explained what had been proposed in the ordinance (9:00 to 11:00) and that the developer was asking for 8:00 to 11:00 p.m. with 20% able to open at 6:00 a.m. She said she was concerned about what would be open late. Greg Thomas replied that he thought that a sit-down restaurant might be. She then asked about the difference

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between a Starbucks and something like a Burger King and Greg Thomas said that there would be no difference under the ordinance. She suggested that the traffic would be higher with a fast food restaurant. She then asked about later uses and it was explained by Greg Thomas that only things specifically permitted by the ordinance are allowed. She then made a point about the traffic at the school with parents in car line---traffic backed up 30 to 45 minutes before and 15 to 20 minutes after. She said that some parent was likely to park across street and have their child go through the traffic. Greg Thomas said that Ms. Bender raises a point that needs to be addressed---the community would be better served if the Walgreens site were not open until after school was in session. If this part of the site were not included, 20% would not need to open early.

After more discussion about opening hours and traffic, Roy Guthrie asked about the Walgreens site access and it was explained that they would access only from the internal drive.

Jerome Boone said he was concerned about opening at 6:00 a.m.

Maryl Elliott suggested that 20% could open early and 20% stay open late.

David May said "Jerome, we are talking about 9 to 11 except for 20% that we would allow to open at 6"

Dick Davis said that this is down to 10% now (Walgreens site had been excluded from being open early or being open late).

After much more discussion a motion was made by Dee Burris that the operating hours be 9:00 a.m. to 9:30 p.m. except that 10% of the gross leaseable area that is not in outparcel C can be open from 6:00 a.m. to 11:00 p.m. The motion was seconded by David May. Larry Presswood called the question and the motion was approved unanimously.

After further discussion, Roy Guthrie made a motion that the draft ordinance for PUD2 be approved subject to staff comments and the changes made by the Planning Commission on hours of operation. It was seconded by Yvonne Cannon and it was approved unanimously.

Jim Workman said they had an issue with the hours. He requested to open at 8:00 a. m. in the morning to 11 p.m. at night which would not add extra traffic. The company had agreed to eliminate the left turn off of Paul Huff Parkway.

Dick Davis said he wanted a quality time for the operation hours.

Jerome Boone said he was concerned about the traffic increase which would be eight times more, sidewalks, and what time the stores would be opened. He requested that the stores would be open from 8:00 a.m. to 9:00 p.m.

Jim Workman said there might be 3 times more traffic but not 8 times more traffic in the area.

Yvonne Cannon asked if a berm would be needed.

Greg Thomas said Staff did not want one.

Emett Morris said sidewalks were needed for safety and landscaping project for the property.

Dick Davis said there was a need for adding a 50 to 50 mix more to the landscaping appearance along the entrance.

Kelly Bender asked what would the hours of business be.

Greg Thomas said that Staff asked for 9:00 a.m. to 11:00 p.m. The developer was asking for 8:00 a.m. to 11:00 p.m. except for 20% of it could be opened at 6:00 a.m. in the morning.

Kelly Bender said that the 11:00 p.m. closing of businesses concerned her. She was also concerned about the children's safety at the E.L. Ross School.

Greg Thomas said we should be concerned for the children's safety. The operating hours could be from 9:00 a.m. to 11:00 p.m.

Jerome Boone said he was very concerned about the hours being from 6:00 a.m. to 11:00 p.m. He thought this was too long of time to be opened.

Motion was made by Dee Burris to approve the hours operation would be limited to 9:00 a.m. to 9:30 p.m. except for 10 % of the site which would be open for 6:00 a.m. and to 11 p.m. and parcel c would not be included in the 10 %. It was seconded by David May, Jr. and the Board agreed unanimously.

Motion was made by Roy Guthrie to approve the Draft proposal as a whole with amendments and subject to Staff comments. It was seconded by Yvonne Cannon and the Board agreed unanimously.

4. New Business

- b. Conditional Use request by Oscar E. Wilson Jr. DVM for a veterinary office and outdoor exercise areas for dogs on part of the approximate 8.8 acres located on Stuart Road and addressed as 1625 Hardman Lane (Tax Map 42 Parcel 15-3) and zoned IL Light Industrial.**

Oscar E. Wilson, Jr. was present for the request.

Anthony Casteel presented the Staff Report. Staff recommended approval for the request subject to staff comments.