

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**February 21, 2013**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 21, 2013 at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: David Dennis, Chair; Bob Aldrich; David Foster (in @ 1:38 p.m.); Matt Goolsby; Bill Johnson; Don Klausmeyer; John W. McKay, Jr.; M.S. Mitchell; George Sherman and Chuck Warren. Commission members absent were: Shawn Farney; Debra Miller Stevens and Don Sherman. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Jess McNeely, Senior Planner; Bill Longnecker, Senior Planner; Neil Strahl, Senior Planner; Jeff Vanzandt, Assistant City Attorney; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary.

1. Approval of the January 24, 2013 MAPC meeting minutes.

**MOTION:** To approve the January 24, 2013 meeting minutes.

**MITCHELL** moved, **ALDRICH** seconded the motion, and it carried (7-0-2).  
**KLAUSMEYER** and **MCKAY**– Abstained.

Approval of the February 7, 2013 MAPC meeting minutes.

**MOTION:** To approve the February 7, 2013 meeting minutes.

**ALDRICH** moved, **JOHNSON** seconded the motion, and it carried (7-0-2).  
**MITCHELL** and **G. SHERMAN** – Abstained.

2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2012-00040: One-Step Final Plat – MAIZE & 29TH COMMERCIAL ADDITION.**

NOTE: The site has been approved for a zone change (ZON2012-00024) from SF-5 Single-family Residential to LC Limited Commercial. The Maize & 29<sup>th</sup> Commercial Community Unit Plan (CUP2012-00021, DP-327) was also approved for this site.

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department requests the applicant extend water (transmission and distribution) and sewer (main and lateral) to serve all lots being platted.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the plat subject to additional drainage easements.
- D. In accordance with the CUP, a petition for a traffic signal is needed which will be activated when warrants are met.

- E. Access controls have been platted in accordance with the CUP approval. The plat proposes five access openings along Maize Road including one joint opening and four openings along 29th Street North including one joint opening.
- F. The applicant shall guarantee the closure of any driveway openings located in areas of complete access control or that exceed the number of allowed openings. A Driveway Closure Certificate in lieu of a guarantee may be provided.
- G. The joint access openings shall be established by separate instrument. Initial construction responsibilities and future maintenance of the driveways within the easements should also be addressed by the text of the instrument.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- K. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- L. The Notary certificate needs to include the correct name of the owner.
- M. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- N. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- O. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- P. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.

- Q. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- R. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- S. Perimeter closure computations shall be submitted with the final plat tracing.
- T. Westar Energy has requested additional utility easements to be platted on this property. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- U. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MCKAY** moved, **ALDRICH** seconded the motion, and it carried (9-0).

-----  
2-2. **SUB2013-00003: One-Step Final Plat – DAVIS MOORE 15TH ADDITION.**

Note: This is a replat of portions of East Side Center Addition, Eastridge 8<sup>th</sup> Addition, Eastridge 11<sup>th</sup> Addition, and "Replat of Block 1, Kellogg Crest Addition." A portion of the site has been approved for a zone change (ZON2012-00035) from SF-5 Single-Family Residential to LC Limited Commercial. The Davis-Moore Automotive Community Unit Plan (CUP2012-00037, DP-331) has been approved for the site.

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department advises that water and sewer services are available to serve the site. Abandonment of sewer is needed which will be handled through a private project.
- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the applicant's drainage plan.

- D. The owner's name is needed in the owner's certificate.
- E. As a commercial lot abutting non-arterial streets, the Subdivision regulations require a guarantee for a sidewalk along Armour, Orme and Longfellow. A sidewalk certificate may be provided in lieu of a guarantee.
- F. The applicant shall submit an avigational easement covering all of the subject plat and a restrictive covenant assuring that adequate construction methods will be used to minimize the effects of noise pollution in the habitable structures constructed on subject property.
- G. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- H. GIS has requested abbreviations for the street types.
- I. Applicable street names listed under "benchmarks" should correspond with plat street names.
- J. The plattor's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- K. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- L. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- M. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- N. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- O. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita,

but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

- P. Perimeter closure computations shall be submitted with the final plat tracing.
- Q. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.
- R. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MCKAY** moved, **ALDRICH** seconded the motion, and it carried (9-0).

-----  
2-3. **SUB2013-00004: One-Step Final Plat – G. LEONARD 2ND ADDITION.**

NOTE: This unplatted site is located in the County in an area designated as "Wichita 2030 Urban Growth Area" by the Wichita-Sedgwick County Comprehensive Plan.

STAFF COMMENTS:

- A. Since sanitary sewer is unavailable to serve this property, the applicant shall contact Metropolitan Area Building and Construction Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities. A memorandum shall be obtained specifying approval.
- B. The site is currently located within the Sedgwick County Rural Water District No. 4. If service is available, feasible and the property is eligible for service, Metropolitan Area Building and Construction Department recommends connection.
- C. City Public Works and Utilities Department has requested a No Protest Agreement for future sanitary sewer.
- D. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- E. County Public Works has approved the drainage plan.
- F. Complete access control has been platted along 47<sup>th</sup> Street South and one opening along 167<sup>th</sup> Street West. County Public Works has required access control except one opening along the south 75 feet of the property.
- G. Sedgwick County Fire Department advises that the plat will need to comply with the Sedgwick County Service Drive Code.

- H. In accordance with the Kansas Wetland Mapping Conventions under the Memorandum of Understanding between the United States Department of Agriculture - Natural Resources Conservation Service; United States Environmental Protection Agency; United States Army Corps of Engineer (USACE); and United States Fish and Wildlife Service, this site has been identified as one with potential wetland hydrology. The USACE should be contacted (316-322-8247) to have a wetland determination completed.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- L. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Any removal or relocation of existing equipment of utility companies will be at the applicant's expense.

Q. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**MCKAY** moved, **ALDRICH** seconded the motion, and it carried (9-0).

-----  
2-4. **SUB2013-00005: One-Step Final Plat – MAC WEST ADDITION**

NOTE: This unplatted site is located in the County adjoining Wichita's boundary and annexation is required.

STAFF COMMENTS:

- A. As this site is adjacent to Wichita's municipal boundaries, the applicant shall submit a request for annexation. The final plat shall not be scheduled for City Council review until annexation has occurred.
- B. City of Wichita Public Works and Utilities Department advises that water is available, but transmission and distribution in-lieu-of-assessment fees are needed. Sewer (main and lateral) needs to be extended to the lot being platted.
- C. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- D. City Stormwater Management has requested revisions to the applicant's drainage plan in addition to the following:
  - 1. Provide an easement for offsite drainage, if necessary.
  - 2. The site needs a minimum pad table, based on the pond elevations.
  - 3. A reserve or easement is needed adjoining the pond at the time of the development.
  - 4. A cross-lot drainage agreement or easement is needed to the south.
- E. The plat boundary needs to be a solid line.
- F. County Surveying has advised the gas line easement and the sanitary sewer easement need to be located.
- G. The plat's text references a utility easement that is not shown.
- H. Traffic Engineering has requested a corner clip.
- I. County Surveying has advised the legend on the final plat needs to include all of the symbols.
- J. County Surveying has advised that the plat shall not be recorded until all monuments have been set.

- K. County Surveying advises the plat needs to show what distances are measured, recorded and calculated.
- L. Traffic Engineering has required access controls. The applicant has agreed to include on the face of the plat the following: "The location of all access openings shall be in accordance with minimum spacing requirements of the Wichita/Sedgwick County Access Management Standards."
- M. Since the property adjoins railroad tracks, 150 feet of complete access control needs to be dedicated along MacArthur Road from the centerline of the nearest railroad track.
- N. The standard language regarding vacation statutes need to reference "K.S.A. 12-512b, as amended."
- O. This property is within a zone identified by the City Engineer's office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineer's office.
- P. GIS has requested abbreviations for the street types.
- Q. The MAPC signature block needs to reference "John L. Schlegel, Secretary."
- R. The applicant shall submit a copy of the instrument, which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements. Any relocation, lowering or encasement of the pipeline, required by this development, will not be at the expense of the appropriate governing body.
- S. The applicant's agent shall determine any setback requirements for the pipelines by researching the text of the pipeline agreements. If a setback from the pipeline easements is provided for in the pipeline easement agreements, it shall be indicated on the face of the plat.
- T. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer and unobstructed to allow for the conveyance of stormwater.
- U. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- V. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- W. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery

without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.

X. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Route 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.

Y. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

Z. Perimeter closure computations shall be submitted with the final plat tracing.

AA. Westar Energy has requested additional utility easements to be platted on this property. The easement along the west property line may be established by separate instrument. The applicant will be responsible for any relocation or removal of any Westar distribution equipment made necessary by this plat.

BB. A compact disc (CD) should be provided, which will be used by the City and County GIS Departments, detailing the final plat in digital format in AutoCAD. Please include the name of the plat on the disc. If a disc is not provided, please send the information via e-mail to Kathy Wilson (e-mail address: [kwilson@wichita.gov](mailto:kwilson@wichita.gov)).

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

MCKAY moved, ALDRICH seconded the motion, and it carried (9-0).

-----  
3. **PUBLIC HEARING – VACATION ITEMS**

3-1. **VAC2013-00001: City request to vacate a platted easement**, located west of 143rd Street East, midway between 21st Street North and 13th Street North, south of the Rails to Trails, on the north side of Summerfield Court.

**OWNER/AGENT:** Myrna K. Hudson (owner) Southwestern Remodeling, c/o Chad Bryan (agent)

**LEGAL DESCRIPTION:** The east 13 feet of the platted 25-foot street side yard setback that runs parallel to the west lot line of Lot 5, Woodchuck Villas 2<sup>nd</sup> Addition, and the east side of Woodchuck Lane, Wichita, Sedgwick County, Kansas.

**LOCATION:** Generally located midway between Tyler and Ridge Roads, south of Maple Street and southeast of the University Avenue - Woodchuck Lane intersection (WCC #V)

**REASON FOR REQUEST:** Add onto the existing single-family residence

**CURRENT ZONING:** Subject property and all abutting and adjacent northern, southern and eastern properties are zoned TF-3 Two-Family Residential (“TF-3”). Adjacent western properties, across Woodchuck Lane, are zoned SF-5 Single-Family Residential (“SF-5”).

The applicant proposes to vacate the east 13 feet of the platted 25-foot street side yard setback, on the described TF-3 zoned lot, resulting in a 12-foot street side yard setback. The UZC’s minimum street side yard setback for the TF-3 zoning district is 15 feet. If the setback was not platted the applicant could have requested an Administrative Adjustment that would reduce the TF-3 zoning district’s minimum 15-foot street side yard setback by 20%, resulting in a 12-foot street side yard setback; the applicant’s request. Reduction beyond the 12-foot street side yard setback would require a variance, which is a separate public hearing process. There is a platted easement running through the south 10 feet of the platted setback; the vacation does not allow encroachment into the platted easement or any easements dedicated by separate instruments. There are no utilities located within the described portion of the platted setback. There is platted setback located on the north side of the subject lot; the vacation does not allow encroachment into platted setback located on the north side of the subject lot. The Woodchuck Villas 2<sup>nd</sup> Addition was recorded with the Register of Deeds July 2, 1979.

Based upon information available prior to the public hearing and reserving the right to make recommendations based on subsequent comments from City Traffic, Public Works, Water & Sewer, Stormwater, Fire, franchised utility representatives and other interested parties, Planning Staff has listed the following considerations (but not limited to) associated with the request to vacate the described portion of the platted street side yard setback.

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, in the Wichita Eagle, of notice of this vacation proceeding one time January 26, 2012, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the platted street side yard setback and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner, the prayer of the petition ought to be granted.

Conditions (but not limited to) associated with the request:

- (1) Vacate the east 13 feet of the platted 25-foot street side yard setback that runs parallel to the west lot line of Lot 5, Woodchuck Villas 2<sup>nd</sup> Addition, and the west side of Woodchuck Lane, Wichita, Sedgwick County, Kansas. No encroachments allowed in

any platted easements, easements dedicated by separate instruments, or any platted setbacks, except the described street side yard setback.

- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**SUBDIVISION COMMITTEE'S RECOMMENDED ACTION:**

The Subdivision Committee recommends approval subject to the following conditions:

- (1) Vacate the east 13 feet of the platted 25-foot street side yard setback that runs parallel to the west lot line of Lot 5, Woodchuck Villas 2<sup>nd</sup> Addition, and the west side of Woodchuck Lane, Wichita, Sedgwick County, Kansas. No encroachments allowed in any platted easements, easements dedicated by separate instruments, or any platted setbacks, except the described street side yard setback.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility and at the expense of the applicant.
- (3) All improvements shall be according to City Standards and at the applicant's expense.
- (4) Per MAPC Policy Statement #7, all conditions shall be completed within one year of approval by the MAPC or the vacation request will be considered null and void. All vacation requests are not complete until the Wichita City Council or the Sedgwick County Board of County Commissioners have taken final action on the request and the vacation order and all required documents have been provided to the City, County and/or franchised utilities and the necessary documents have been recorded with the Register of Deeds.

**MOTION:** To approve subject to the recommendation of the Subdivision Committee and staff recommendation.

**G. SHERMAN** moved, **MCKAY** seconded the motion, and it carried (9-0).

**PUBLIC HEARINGS**

4. **Case No.: ZON2013-01** - Koch Real Estate Holdings, Inc. (owner); PEC c/o Rob Hartman (agent) request City zone change from SF-5 Single-family Residential and LC Limited Commercial to LI Limited Industrial on property described as:

A tract of land in the Northwest Quarter of Section 35, Township 26 South, Range 1 East, of the 6th P.M., Sedgwick County, Kansas more particularly described as the North 658 feet of the West 160 feet; together with the East 440 feet of the West 600 feet of the North 160 feet.

**BACKGROUND:** The applicants request a zone change from existing SF-5 Single-family Residential ("SF-5") and LC Limited Commercial ("LC") to LI Limited Industrial ("LI") zoning on 91 acres of un-platted property. The application area is currently vacant, with the exception of a single-family house, and is planned for expansion of the LI zoned Koch Industries office and industrial campus. The proposed campus expansion includes re-routing of 37<sup>th</sup> Street North and associated platting. The requested zone change would result in uniform LI zoning on the entire expanded Koch campus.

Property north and west of the site is SF-5 and LI zoned vacant property owned by the applicant. Further west, across Hillside Avenue, is LI zoned property developed with warehousing and a radio / television broadcasting facility. South of the site is the existing LI zoned Koch office and industrial campus. Southeast of the site, at the southwest corner of Oliver and 37<sup>th</sup> Street North, is an LC zoned medical office. East of the site is SF-5 and LC zoned vacant property owned by the applicant. Further east, across Oliver Street, is single and multi-family development in the City of Bel Aire.

**CASE HISTORY:** The property is predominantly un-platted. The remainder of the Koch campus is in the Koch Office Park Addition, the Koch Office Park 2<sup>nd</sup> Addition and the Koch Office Park 3<sup>rd</sup> Addition, platted in 1980, 1988 and 1990 respectively.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, LI	Vacant
SOUTH:	LI	Office and industrial park
EAST:	SF-5, LC, City of Bel Aire	Vacant, single and multi-family residences
WEST:	LI	Warehousing, office, radio/television broadcasting

**PUBLIC SERVICES:** The subject property has frontage along Hillside, Oliver and 37<sup>th</sup> Street North. 37<sup>th</sup> Street North will be re-routed via a plat along the curving northern edge of this application area. Hillside, Oliver and 37<sup>th</sup> Street North are recommended to meet City arterial street guidelines through the platting process. All other public utilities are available to the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as within the Wichita 2030 Urban Growth Area, and primarily designated as an Employment/Industry Center. The Employment/Industry Center category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.

**RECOMMENDATION:** Based upon the information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to platting within one year.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north and west of the site is SF-5 and LI zoned vacant property owned by the applicant. Further west, across Hillside

Avenue, is LI zoned property developed with warehousing and a radio / television broadcasting facility. South of the site is the existing LI zoned Koch office and industrial campus. Southeast of the site, at the southwest corner of Oliver and 37<sup>th</sup> Street North, is an LC zoned medical office. East of the site is SF-5 and LC zoned vacant property owned by the applicant. Further east, across Oliver Street, is single and multi-family development in the City of Bel Aire.

2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed as currently zoned, but not for the applicant's proposed uses. The applicant desires uniform zoning across their entire ownership to accommodate expansion of the existing office and industrial uses.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Most property surrounding the application area is owned by the applicant. Residential uses west of the site, in the City of Bel Aire, do not appear to have compatibility issues with the existing Koch complex. The arterial street grid system at this location, to be altered via platting, will accommodate the increased traffic generated by expansion of the existing complex.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as within the Wichita 2030 Urban Growth Area, and primarily designated as an Employment/Industry Center. The Employment/Industry Center category encompasses areas with uses that constitute centers or concentrations of employment of an industrial, manufacturing, service or non-institutional nature. The range of uses includes manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices.
5. **Impact of the proposed development on community facilities:** The proposed zone change and complex expansion will bring more daily traffic to this location. The arterial street grid system at this location, to be altered via platting, will accommodate the increased traffic generated by expansion of the existing complex.

JESS MCNEELY, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

JOHNSON moved, KLAUSMEYER seconded the motion, and it carried (9-0).

- 
5. **Case No.: CON2013-01** – Go Lake, Inc, c/o Bob Garlick (owner) Bob Bergkamp Construction (applicant) request a City Conditional Use for sand extraction in LI Limited Industrial zoning on property described as:  
Lot 1, East Robbins Addition to the City of Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow “Mining or Quarrying” on the 62.02-acre, LI Limited Industrial (“LI”) zoned Lot 1 East Robbins Addition. The Unified Zoning Code, allows consideration of mining or quarrying as a Conditional Use in the LI zoning district; UZC, Sec.III-D.6.gg. If approved, the Conditional Use would permit the excavation of sand and removal from the lake to provide fill for the eastern, adjacent City of Wichita Paving Project #427-84830. This project will replace the existing, adjacent Broadway Avenue Bridge and realign Broadway from 31<sup>st</sup> Street South to 37<sup>th</sup> Street South. The current Broadway Bridge goes over the Arkansas River, the Union

Pacific Rail Road (RR) track and land abutting the south side of the site. The new bridge will do the same.

The site is currently used as a private recreational lake (Go Lake) with some trailers and campers scattered around it, as well as a few docks. Per the 2011 aerial, a private dirt drive/road goes around most of the lake. A chain link fence appears to go around the lake.

The RR track runs parallel to the west and northwest sides of the site. The RR track separates the site from the arterial Broadway Avenue/US 81 and its development of mostly GC General Commercial (“GC”) zoned car sales lots, vacant buildings, auto repair and paint shops, self storage, auto salvage yards, a small apartment complex and a SF-5 Single-Family Residential (“SF-5”) and LI zoned spent sand pit. Some type of unimproved access/drive connects the west portion of the site’s private dirt drive/road to Broadway. This access/drive crosses the RR track, but this is not a signaled or gated crossing. This access/drive will be removed by the new Broadway Bridge. Abutting the south side of the site is GC zoned vacant land (mostly City owned), mixed with some GC and SF-5 zoned single-family residences, a duplex and a garden supply center. There are maybe a total of 12 residences in this area. The City owned GC zoned land is where the new bridge will be located. There is some non-conforming outdoor storage/salvage/junk in the area. Unimproved portions of Topeka and Galena Streets move this area’s vehicular traffic to an unimproved portion of 37<sup>th</sup> Street South and then to Broadway. Topeka, Galena and 37<sup>th</sup> Streets are local streets. The current Broadway Bridge goes over the Arkansas River, the RR track and the east side of this GC zoned area and its three streets. The Arkansas River separates the east and northeast portion of the site from SF-5 zoned single-family residential neighborhoods. The entire site and much of the abutting southern property is located within a FEMA Flood Zone.

The applicant has provided a letter summarizing the operations of the Conditional Use. As noted the Conditional Use will use the existing lake to excavate fill for the City’s Broadway Bridge construction project. The duration of the project is from March 1, 2013 to November 30, 2013. Days of operation are Monday – Saturday, 7 a.m. – 6 p.m. Trucks coming to and from the site will use unimproved Topeka, Galena and 37<sup>th</sup> Streets and the unimproved, unsignaled, private access/drive that crosses the RR track to the site from Broadway. Fill will be stockpiled on the City owned property abutting the south side of the lake and on the north side of the lake. The lake will not expand beyond its current size and configuration, but will become deeper in the areas of the excavation. The letter states that the applicant will conform to the supplemental use regulations of the UZC’s, Sec.III-D.6.gg. The applicant’s site plan needs to show stock piling areas, as well as equipment and equipment storage.

**CASE HISTORY:** The property is zoned LI and is platted as Lot 1 East Robbins Addition, recoded August 13, 1974. The site is the old Dolese sand pit. One person has complained to staff about the non-conforming outdoor storage/salvage/junk in the area.

**ADJACENT ZONING AND LAND USE:**

NORTH: SF-5, GC	Arkansas River, single-family residences, apartments
SOUTH: GC, SF-5	Single-family residences, duplex, garden supply, vacant land, non-conforming outdoor storage/salvage/junk
EAST: SF-5	Arkansas River, single-family residences
WEST: GC, LI, SF-5	RR tracks, car sales lots, vacant buildings, auto repair and paint shops, self storage, Broadway Avenue, auto salvage yards, sand pit

**PUBLIC SERVICES:** All utilities are available to this site. Unimproved portions of Topeka and Galena Streets take a portion of the site's and all of the area's vehicular traffic to an unimproved portion of 37<sup>th</sup> Street South then to Broadway Avenue/US 81. Topeka, Galena and 37<sup>th</sup> Streets are local streets. Portions of Topeka and 37<sup>th</sup> from its intersection with Topeka to Broadway will be paved after the Broadway Bridge is completed. Broadway is an arterial. An unimproved access/drive connects the west portion of the site's private dirt drive/road to Broadway. This access/drive crosses the RR track, but this is not a signaled or gated crossing. This access/drive will be wiped out by the new Broadway Bridge and it will not be reopened.

**CONFORMANCE TO PLANS/POLICIES:** The "2030 Wichita Functional Land Use Guide" of the Comprehensive Plan identifies this property as "Employment/Industry Center," which is defined as centers or concentrations of employment in industrial manufacturing, service or non-institutional sectors. The range of uses include manufacturing and fabrication facilities, warehousing and shipping centers, call centers and corporate offices. The site is currently used as a private recreational lake and after this Conditional Use expires (if approved, March 1, 2013 to November 30, 2013) it will again be used as a private recreational lake. A recreational lake does not fit into the employment/industry center category.

The site is zoned LI. The UZC, allows consideration of mining or quarrying as a Conditional Use in the LI zoning district; UZC, Sec-III-D.6.gg. Sec-III-D.6.gg has 23 supplementary conditions for the mining and quarrying Conditional Use. The applicant's letter states that they will conform to the supplemental use regulations of the UZC's, Sec.III-D.6.gg. The UZC lists mining and quarrying as an "Industrial, Manufacturing and Extractive" use; UZC, Sec.III-D. The LI zoning district is generally compatible with the Comprehensive Plan's employment/industry center category; UZC, Sec.III-B.20.a.

Land Use-Industrial Strategy IV.A.1 recommends protecting industrial areas "from encroachment or expansion of residential land uses by requiring appropriate buffers for expansion of the residential use when a nuisance situation is likely to be created." The Industrial Locational Guidelines recommend:

- (1) Industrial areas should be located in close proximity to support services such as major arterials, truck routes, highways, utilities trunk lines, rail spurs, and airports and as extensions of existing industrial uses. *The site is in close proximity to Broadway Avenue, an arterial street.*
- (2) Industrial traffic not feed directly into local streets in residential areas. *The Conditional Use for sand extraction will generate industrial traffic (primarily dump trucks) through the east edge of a small residential area, of maybe 12 residences. Most of these residences were built in the 1940s – the mid 1950s. Most of these residences are located on either side of 37<sup>th</sup> Street South, a local residential street. These residences will be sharing 37<sup>th</sup> with the industrial traffic generated by the Conditional Use.*
- (3) Located away from existing or planned residential areas, and site so as not to generate industrial traffic through less intensive land use areas. *The residences located south of the site are all zoned GC or GC and SF-5. The GC zoning district permits residential uses by right. However, the GC zoning district primary intent is for regional commercial development.*

**RECOMMENDATION:** The request would permit a short term (nine months) industrial use (sand excavation and removal) to provide the greater community with a needed new Broadway Bridge over the Arkansas River and the Union Pacific Rail Road track. The site's immediate proximity to this project makes it an efficient subcontractor. Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions as required by the UZC:

1. All 23 supplementary conditions of Sec-III-D.6.gg., of the Unified Zoning Code will be met.
2. The Conditional Use will begin at the time of the final action/approval by the appropriate governing body and end nine-months later. Days and hours of operation are Monday – Saturday, 7 a.m. – 6 p.m.
3. If operations have not begun within 60 days of approval, the Conditional Use shall be null and void.
4. If the Zoning Administrator finds that there is a violation of any of the conditions of this Conditional Use, the Zoning Administrator may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

The staff's recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The character of the neighborhood is one of isolation. The LI zoned subject site's recreational lake is a dominate feature, but it is fenced off from the abutting southern area's mostly GC zoned vacant land, garden center and what appears to be some non-conforming outdoor storage/salvage/junk yards. The area's GC and SF-5 zoned 12 residences are mixed in with these non-residential uses. This area in turn is located below the current Broadway Bridge and is hemmed in by the abutting RR track on its west side and the Arkansas River on its east side. The area is poorly served by three unimproved streets, is hard to get into and appears to be in a long decline. All of these factors, plus having much of this area located in a FEMA Flood Zone, makes maintenance or redevelopment challenging.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned LI, which is meant to accommodate moderate intensity manufacturing, industrial, commercial and complementary land use. The excavation and removal of sand (mining and quarrying) for fill can be considered as a Conditional Use in the LI zoning district. At some time in the past the site's existing recreational lake was created by the excavation and removal of sand for construction projects in Wichita and Sedgwick County. The site can continue to be used as a private recreational lake.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** An increase in truck traffic, soil erosion and blowing dust are a given. However, the relatively short time of the proposed excavation and the proposed conditions of approval help mitigate anticipated negative effects on nearby property.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** See "Conformance to Plans and Policies" portion of this staff report.
5. **Impact of the proposed development on community facilities:** The primary impact of the proposed use is a needed new Broadway Bridge to replace the current bridge, which is a benefit for the greater community.

**BILL LONGNECKER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **KLAUSMEYER** seconded the motion, and it carried (9-0).

- 
6. **Case No.: CON2013-02** – Derby Unified School District No. 260 Board of Education (“USD 260”)/ Young & associates (Dustin Billingsley) request a County Conditional Use to permit a school (Oaklawn Elementary) in the LI Limited Industrial district on property described as:

Located in the East Half (E ½), of the Northwest Quarter (NW ¼) of Section 23, Township 28 South, Range 1 East of the 6th P.M., Sedgwick County, Kansas, more particularly described as follows:

Commencing at the Northwest Corner (NW Cor.), of the East Half (E ½) of the Northwest Quarter (NW ¼)

**BACKGROUND:** Oaklawn Elementary School is one of Unified School District 260’s (USD 260) facilities. Oaklawn Elementary is located on 12.63 unplatted acres that are located approximately 1,500 feet south of East 47<sup>th</sup> Street South, east of South Clifton Avenue (5000 South Clifton Avenue). The property is zoned LI Limited Industrial (“LI”). Per the *Wichita-Sedgwick County Unified Zoning Code* (“UZC”) schools are permitted in the LI district only with Conditional Use approval. The school was built prior to the adoption of County-wide zoning in 1985; therefore for zoning purposes, the school is a nonconforming use. Nonconforming uses have a limitation on how many square feet of additional gross floor area can be added to an existing nonconforming building. Sedgwick County building officials have concluded that, over the years, Oaklawn Elementary School has used up all of its nonconforming gross floor area expansion allocation. USD 260 proposes to construct an addition to the school, which triggers the need for the site to come into compliance with the UZC; thus this Conditional Use request to permit a school in the LI district. See the attached site plan that depicts the existing school and the proposed addition. The property will also contain a medical office. Medical services are permitted by-right in the LI district.

The application area has 530.98 feet of frontage along South Clifton Avenue. Further west, across South Clifton Avenue is a large area that is zoned SF-5 (County) and is developed with a single-family subdivision. The application’s eastern line abuts the Atchison Topeka & Santa Fe (“AT&SF) Railroad. East of the AT&SF Railroad right-of-way is the 240-foot wide K-15 Highway / Southeast Boulevard. East of Southeast Boulevard is property zoned County SF-5 that is developed with a single-family subdivision. The subject property and the land located north and south of the subject property are part of 30-plus acres owned by USD 260, most of which are zoned LI. The LI zoned property located to the north of the application area is developed with a community recreation center. Property to the south of the subject site is zoned LI, and is undeveloped.

**CASE HISTORY:** The subject property was most likely zoned LI when countywide zoning was adopted in 1985. Sedgwick County Board of Zoning Appeals (CoBZA) case number CoBZA 3-87 (July 6, 1987) was a variance to reduce the front yard building setback from 85 feet to 65 feet. Subdivision Case number SUB2012-00043 is the Oaklawn Elementary Addition plat that was approved by MAPC on January 24, 2013.

**ADJACENT ZONING AND LAND USE:**

NORTH: LI; community recreation center  
SOUTH: LI; vacant

EAST: SF-5; single-family residential  
WEST: SF-5; single-family residential

**PUBLIC SERVICES:** The site is served by public sewer and water (Oaklawn and the City of Wichita). South Clifton Avenue has 100 feet of right-of-way in front of the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “major institutional” uses. The “major institutional” category includes institutional facilities of a significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to platting within 1-year.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Land located west, across South Clifton Avenue is a large acreage that is zoned SF-5 (County), and is developed with a single-family subdivision. The application’s eastern line abuts the Atchison Topeka & Santa Fe Railroad. East of the AT&SF right-of-way is the 240-foot wide K-15 Highway / Southeast Boulevard. East of Southeast Boulevard is property zoned County SF-5 that is developed with a single-family subdivision. The subject property and the land located north and south of the subject property are part of 30-plus acres owned by USD 260, most of which is zoned LI. Property to the north of the application area is zoned LI, and is developed with a community recreation center. Property to the south of the subject site is zoned LI and is undeveloped.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned LI which allows many office, commercial and industrial uses. The LI district does not allow residential uses. In some respects, based upon the few uses developed on the site and in the surrounding area, the LI zoning is inappropriate. Approval of the Conditional Use to permit the school is a suitable zoning request given the land uses surrounding the site.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the Conditional Use to permit a school should not detrimentally impact adjacent property. The applicant owns the property abutting the subject site to the north and south. The school has existed in that location for many years. Approval of the request will not introduce a new use into the area.
4. Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Denial would preclude a necessary addition to a public school facility; a facility that is charged with the responsibility of educating the community’s children and has an obligation to offer the necessary services and facilities needed to meet that obligation.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide map depicts the site as appropriate for “major institutional” uses. The “major institutional” category includes institutional facilities of a

significant size and scale of operation and could include a range of such uses as government facilities, military bases, libraries, schools, cemeteries, churches, hospital and medical treatment facilities.

6. Impact of the proposed development on community facilities: Existing facilities are in place to address anticipated additional demands.

**DALE MILLER**, Planning Staff presented the Staff Report.

**MOTION:** To approve subject to staff recommendation.

**JOHNSON** moved, **KLAUSMEYER** seconded the motion, and it carried (9-0).

-----  
**FOSTER** in @ 1:38 p.m.

### **NON-PUBLIC HEARING ITEMS**

7. **Conformity of the Southfork Phase A Project Plan for the Southfork Redevelopment District with the Wichita-Sedgwick County Comprehensive Plan.**

**Background:** A tax increment finance district is a tool available under Kansas Statutes to stimulate economic redevelopment. It allows a city to finance in blighted or deteriorating areas, all or a portion of public infrastructure and redevelopment costs using captured incremental real estate tax revenues or sales tax revenues generated by the redevelopment activity.

In 2012, the Wichita City Council established the Southfork Redevelopment District. This district includes approximately 72 acres of vacant ground generally located south of 47<sup>th</sup> Street South, west of the Kansas Turnpike and east of Broadway Avenue.

The overall project has been divided for planning purposes into three phases. Phase 'A' will commence first, but Phases 'B' and 'C' may start at any time and in any order depending on market demand. It is anticipated that total build-out will include big box, strip center and free standing retail along with restaurants, hotels, entertainment, medical services and office space (see Attachment 1).

Phase 'A' of the Southfork Development Project contains approximately 16 acres and is situated in the north portion of the 50-acre site located adjacent to the Kansas Turnpike and fronting on 47<sup>th</sup> Street (see Attachment 2). The Phase 'A' Project Area is divided into 6-8 outparcel pad sites along the Turnpike and 47<sup>th</sup> Street. This area anticipates new development of restaurants, branch banks and highway-related commercial uses. Larger interior tracts are suitable for multi-tenant retail and hotel use. Phase 'A' project costs (sanitary sewer, water, paving, drainage, financing costs) are estimated to be \$4,888,838. It is estimated that project construction will begin in 2014 and be completed before the end of 2018.

Tax increment financing will be used on a pay-as-you-go basis to reimburse special assessment taxes levied on the project property for public infrastructure improvements, including street paving, utility extensions and relocations and drainage improvements. The amount of reimbursement will be limited to the amount of TIF revenue received. The original assessed valuation of the Redevelopment District as of January 2012 for taxes payable in 2012-2013 is \$78,051. The projected total assessed valuation for the Project Area as of January 1, 2019 is estimated to be \$6,619,259. Therefore, the captured assessed

valuation for the Redevelopment District is estimated at \$6,541,208 with a property tax increment of \$479,386 by 2019. TIF revenues are estimated at \$11,332,667.

**Analysis:** The MAPC is advised that the Southfork Phase ‘A’ Project Plan for the Southfork Redevelopment District falls within the *South Wichita/Haysville Area Plan* (adopted as an element of the Wichita-Sedgwick County Comprehensive Plan in 2002). This Plan has identified the Southfork Redevelopment District area for future commercial retail redevelopment.

More specifically, the Phase ‘A’ Project Plan is consistent with the following elements of the *South Wichita/Haysville Area Plan*:

**Goal 6. Improve the area’s opportunities for additional commercial growth and development.**

***Objective 6.B.*** Support new commercial development at key locations and the redevelopment of commercial centers within the planning area.

**Strategy 6.B.1.** Support the development of the regional commercial center to the southwest of the 47<sup>th</sup> Street and the I-135 interchange.

**Strategy 6.B.4.** Provide incentives such as tax increment financing, tax abatements or other special programs to encourage commercial investment in the planning area.

**Legal Considerations:** Pursuant to K.S.A. 12-1772, each redevelopment project plan undertaken as part of a tax increment finance district must be prepared in consultation with the planning commission. Accordingly, the MAPC has a responsibility to review the proposed Southfork Phase ‘A’ Project Plan for the Southfork Redevelopment District, and make a determination of its consistency with the Wichita-Sedgwick County Comprehensive Plan.

**Recommended Action:** That the Metropolitan Area Planning Commission pass a resolution finding the proposed Southfork Phase ‘A’ Project Plan for the Southfork Redevelopment District to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**Attachments:**

1. Exhibit - Southfork TIF District Master Plan
2. Exhibit - Southfork Phase ‘A’ Project Area Map
3. Southfork Phase ‘A’ Project Plan for the Southfork Redevelopment District, March 5, 2013
4. MAPC Resolution

**DAVE BARBER**, Planning Staff presented the Staff Report.

**FOSTER** referred to page 1, item #5 under Overview which referenced a “detailed description of all buildings”. He then mentioned Section 1 under Purpose which said buildings would be described in a general manner. He asked staff if they felt sufficient information had been provided on the buildings that would satisfy item #5.

**BARBER** said staff feels sufficient information has been provided and that the proposal is consistent with the intent of the Wichita-Sedgwick County Comprehensive Plan.

**FOSTER** requested clarification of the relocation assistance plan which he felt was confusing.

**BARBER** referred the question to Mark Elder.

**MARK ELDER, OFFICE OF ECONOMIC DEVELOPMENT** said he used “boiler plate” language and clarified that there were no relocations associated with Phase A of the plan because there are no existing tenants or buildings in the area. He apologized for the confusion.

**MOTION:** That the Metropolitan Area Planning Commission pass a resolution finding the proposed Southfork Phase ‘A’ Project Plan for the Southfork Redevelopment District to be consistent with the adopted Wichita-Sedgwick County Comprehensive Plan.

**ALDRICH** moved, **DENNIS** seconded the motion.

**WARREN** asked how the plan fits into the Comprehensive Plan in light of special financing.

**DIRECTOR SCHLEGEL** explained that the Planning Commission was not being asked to pass the Tax Increment Finance (TIF) or any other financing method. He said the Commission is being asked if the Plan conforms to the intent of the Comprehensive Plan.

**WARREN** asked if the Plan could go forward without the financing being proposed.

**ELDER** clarified that the project would not go forward without the special financing (TIF).

**WARREN** clarified that these are the same types of businesses that are already in operation in other parts of the City.

**ELDER** said yes and added that this fits within the area of general retail and commercial development. He said additional phases of the plan will contain more anchor type tenants, but that the first phase along the corridor will contain retail and commercial development.

The **MOTION** passed (9-0-1). **WARREN** – No.

- 
8. **Case No.: DER2013-02** - David Gittrich, Kansans for Life request for MAPC to initiate the rezoning of the property located in the City at the southeast corner of South Bleckley Street and East Kellogg Drive (5107 and 5101 East Kellogg Drive) to one of the following zoning districts: SF-5 Single-Family Residential (“SF-5”), TF-3 Two-Family Residential (“TF-3”), MF-18 Multi-Family Residential (“MF-18”), MF-29 Multi-Family Residential (“MF-29”), OW Office Warehouse (“OW”) or IP Industrial Park (“IP”) on property described as:

**MOTION:** To not consider hearing Item #8 - DER2013-02 per staff recommendation.

**MITCHELL** moved, **G. SHERMAN** seconded the motion.

**ALDRICH** commented that this meeting is a public forum and he feels the public has a right to speak.

**SUBSTITUTE MOTION:** To hear Item #8 – DER2013-02.

**ALDRICH** moved, **GOOLSBY** seconded the motion.

**G. SHERMAN** mentioned that this is not a public hearing on this item so the Commission was not going to hear from the public.

**CHAIRMAN DENNIS** clarified that if the substitute motion passes the Commission will hear the Staff Report from Planning staff, a ten minute presentation from the requester, and a ten minute presentation from the property owner. He said after that the Commission will decide whether to schedule the item for a public hearing. He said today was not a public hearing on the item.

**G. SHERMAN** said he has received written information from the requester and property owners so he personally didn't see any reason to hear the item.

**ALDRICH** said he believes the Commission has an obligation to allow the public to speak at any time they want to have a voice. He added that it is his understanding that a request for a zoning change does not have to be generated by the property owner by statute. He said the Planning Commission can review zoning to see if it is still compatible at any time.

**JEFF VANZANDT, ASSISTANT CITY ATTORNEY** clarified that the requestor was asking the Planning Commission to look into whether the zoning should be changed at the location. He said in accordance with the Unified Zoning Code (UZC) property rezoning can be initiated by the property owner, the Planning Commission or in this case a third party. He said the purpose of today's meeting was to decide whether to go forward with the request and schedule a public hearing where public comments would be heard at that time.

**MITCHELL** clarified so this was not a public hearing?

**CHAIRMAN DENNIS** said it was not a public hearing.

**VANZANDT** explained that this was not a formal application for rezoning; it was a request for an application to be initiated by the Planning Commission.

**DIRECTOR SCHLEGEL** added that this item was not advertised as a public hearing.

**G. SHERMAN** clarified that the applicant was requesting that the Planning Commission initiate a zone change request.

**VANZANDT** said there was no "applicant"; this was a request from a third party to initiate rezoning.

**JOHNSON** asked if anything like this has happened before.

**DIRECTOR SCHLEGEL** replied staff cannot recall that a third party has made a request. He added that the City Council has initiated area-wide rezoning to implement neighborhood plans that have been adopted; however, he mentioned that in those cases property owners were given the opportunity to "opt out" of the plan by declaring that they did not want their property rezoned.

**JOHNSON** mentioned his concern about setting a precedent if the Commission proceeds to hear the case. He said suppose someone doesn't like their neighbors does this mean that they will file a petition to rezone their property.

**DIRECTOR SCHLEGEL** commented that his observation was correct that this could set a precedent that other groups or people who object to your business could come in and attempt to rezone your property.

**ALDRICH** said he thinks the Commission should consider hearing the case so the public's voice can be heard. He said the governing body or the Planning Commission may initiate action without the permission of the property owner. He said the opening dialogue of each Planning Commission meeting states that the Commission would like to hear all views. He said he understands that this meeting is to determine if there is going to be a public hearing on the item.

**DIRECTOR SCHLEGEL** clarified that the question before the Planning Commission today was whether or not to initiate rezoning of this property; not whether or not to rezone the property.

**WARREN** commented that a precedent has been established because the rules have been set up so that this action can happen. He said this is the beginning point of a process that has been set forth. He said he feels making a judgment without hearing the case is not treating the public very fairly. He said it doesn't hurt the Planning Commission to give the two parties ten minutes each to make their pitch.

**FOSTER** mentioned that he had missed 50% of the discussion so he didn't feel comfortable voting and that he should disqualify himself from the vote. He asked for a legal opinion on that and also asked that the motion be restated.

**VANZANDT** said if Commissioner Foster feels like he has heard enough to make an informed decision on the motion, then he can proceed to vote.

**CHAIRMAN DENNIS** said the substitute motion being considered by the Planning Commission was to hear item #8.

**G. SHERMAN** explained that the original motion was not to hear item #8.

The question was called on the Substitute Motion.

**CHAIRMAN DENNIS** commented that most of the Commissioners have received ex-parte communication on the item. Commissioners Warren, Goolsby, Foster and Johnson indicated that they had received no communication.

The Substitute Motion failed 5-5. **G. SHERMAN, MCKAY, MITCHELL, JOHNSON** and **FOSTER** – No.

**CHAIRMAN DENNIS** said he believed it was premature at this point not to hear the item so he would be voting to hear it.

**GOOLSBY** commented that he was new and asked for clarification whether the Planning Commission takes votes on whether or not to hear items.

**CHAIRMAN DENNIS** explained that motions to approve or disapprove items are taken on consent unless the items are pulled for hearing. He said he did not ask the public because this is not a public hearing item.

**VANZANDT** commented that although it was a very fine technical point, there was no “case” for public discussion that is why this is not a public agenda item.

**GOOLSBY** commented that in today’s litigious society we often have to fit items into boxes. He said although he is new he believes this meets the rules and requirements to be heard by the Commission and it behooves them not to at least hear the 10 minute presentations by the requester, staff, the property owner. He said he was in favor of hearing the presentations.

The question was called on the Original Motion.

The Original Motion failed 5-5. **DENNIS, ALDRICH, GOOLSBY, KLAUSMEYER and WARREN** – No.

**VANZANDT** suggested discussing the matter further to try to sway the vote.

**G. SHERMAN** commented that the Commission has already discussed this more than it would have taken for the presenters to speak. He said he would make a motion to hear the item to end the argument.

**MOTION:** To hear items #8 – DER2013-03.

**G. SHERMAN** moved, **DENNIS** seconded the motion, and it carried (9-0-1).  
**MITCHELL** – No.

**BACKGROUND:** David Gittrich, State Development Director, Kansans for Life, has made a request of the Metropolitan Area Planning Commission (“MAPC”) to initiate the rezoning of the business located at the southeast corner of South Bleckley Street and East Kellogg (5101 and 5107 East Kellogg) from LC Limited Commercial (“LC”) to one of the following zoning districts: SF-5 Single-family Residential (“SF-5”), TF-3 Two-family Residential (“TF-3”), MF-18 Multi-family Residential (“MF-18”), MF-29 Multi-family Residential (“MF-29”), OW Office Warehouse (“OW”) or IP Industrial Park (“IP”). The business that is the subject of this request is not owned by the requestor or the organization he represents.

Attached is the requestor’s e-mail wherein he states, in part: “On behalf of these citizens [Sedgwick County citizens], we would like the Planning Commission to reconsider the zoning for that business. Our primary reason for making this request concerns issues of safety for people in the neighborhood. When the business was open, there was a significant increase in calls to the police, and calls for an ambulance. There were large crowds of people. There was an increase in noise and traffic. All these created safety issues that should not be part of a residential neighborhood. The last three years, while the business was closed, the neighborhood has been peaceful, quiet and safe for pedestrian and vehicular traffic. We believe the current atmosphere should be preserved through a zoning change.” The requestor states that by rezoning the property to one of the zoning districts suggested above, the current peaceful atmosphere of the neighborhood could continue.

Authority To Hear The Request

Article V, Section V-A.1 of the *Wichita-Sedgwick County Unified Zoning Code*, July 9, 2009 Edition (“UZC”), under the heading “Authority to file applications” states, “The Planning Commission or the Governing Body may initiate any action under this Code with or without an application from the property owner. All notice, hearing

and other procedural requirements of this Code shall apply to applications initiated by a public entity, except that written (mailed) notice to individual property owners shall not be required for general revisions.” Per the previously identified section of the UZC, the MAPC has the authority to establish a date to hold a public hearing to consider if the zoning on the subject property is appropriate; however, the MAPC is under no obligation or requirement to agree to even hear the requestor’s request. The MAPC has the authority to decline to even hear the request.

The MAPC has the following potential actions from which to choose. 1) Decline to hear the request without additional information. 2) Hear the requestor’s and staff’s presentations and, after hearing the presentations, make a determination whether to deny or approve the request. If the request is denied no additional action is required. 3) If the request is approved, the MAPC should establish a public hearing date for the rezoning request to be considered, and request staff to prepare an appropriate staff report for a future MAPC meeting date. (Available meeting dates are: March 21, 2013, April 4, or April 18, 2013, depending on how quickly the requestor can obtain a certified ownership list.)

Again, if the MAPC agrees to hear the request at today’s hearing, the action of the MAPC is limited to the question - is the MAPC willing to establish a public hearing date to consider changing the existing zoning on the property in question?

#### Site Details

The property is owned by the Trust Women Foundation, Incorporated. The property is a .91-acre lot that has nearly 120 feet of frontage along East Kellogg Drive South. The site is currently developed with a 9,529-square-foot office building and associated parking (GeoZone data). The *1957 Wichita City Directory* indicates that in 1957 a medical office was located at 5101 East Kellogg. It appears that some portion of the current property has been used as a medical office at least since that time. It is staffs’ understanding that there was a medical office located close to East Kellogg Drive and then later, in 1994, the building was expanded to the south to its present configuration. The building is located on the site so as to block off substantial portions of the north and west property lines; wooden fencing encloses the remainder of the property’s perimeter except for the driveway.

The property is zoned LC, which permits “medical service” as a use by-right, as well as approximately 66 other by-right land uses, including: eight residential, 18 public and civic, 36 commercial, one industrial and three agricultural uses. A November 24, 1974, zoning map indicates the subject property was at that time zoned B, RB Multi-family Dwelling district (today’s MF-18 Multi-family Residential) and A Two-family Dwelling district (today’s TF-3 district). The clinic was expanded sometime after 1994. *The Wichita Eagle*, January 9, 2013, reported that active use of the building ceased about June 2009. At some point after June 2009, the property was offered for sale as a medical office (see Loopnet at <http://www.loopnet.com/Listing/17134039/5107-E-Kellogg-Wichita-KS/>). Staff has been advised by a local real estate company representative that the property was offered for sale from approximately April 10, 2011, through October 9, 2011, and after that time another realtor then marketed the property for an unknown period of time. *The Wichita Eagle*, January 9, 2013, and January 23, 2013, reported the property was purchased by the Trust Women Foundation in September of 2012, with the intention of re-opening a medical clinic that specializes in reproductive medical services, including procedures to end pregnancies. A National Public Radio broadcast of January 22, 2013, reported the facility is to have the services of three doctors and expects to open within two months. At the time this report was prepared the clinic had not been re-opened; however, the Metropolitan Area Building and Construction Department had received building remodeling plans.

Access to the site is provided from the South Oliver Street-Kellogg/U.S. 54/400 intersection located 960 feet west of Bleckley Street via the one-way east-bound East Kellogg Drive South to South Bleckley Street and then south on Bleckley to the property’s single drive located approximately 280 feet south of East Kellogg Drive South. Another route to the facility is from the south, via East Orme Street, from east from South Oliver Street or west from South Edgemoor Drive, then north on Bleckley to the property’s driveway.

### Surrounding Area

All of the properties located for the one mile long segment of Kellogg / U. S. 54/400 or East Kellogg Drive South, between South Oliver and South Woodlawn, are zoned LC. There are not any properties having frontage on the south side of Kellogg / U. S. 54/400 between South Oliver and South Woodlawn that are zoned with a zoning district less intense than the LC district. The land with Kellogg frontage located to the east of the subject site (5119 East Kellogg), across an approximate 27-foot wide drainage ditch, is zoned LC, and is developed with a two-story office building (with an estimated gross floor area of 7,500 square feet) currently housing a chiropractic clinic. Land located to the west (5025 East Kellogg), across the 60-foot wide Bleckley Street, is zoned LC, and is developed with a vacant commercial building (with an estimated gross floor area of 13,744) that has been used for vehicle sales and repair. The vacant auto sale lot (5025 East Kellogg Drive) has two driveways onto Bleckley Street. Properties located immediately to the southeast (south of the chiropractic clinic and east of the drainage ditch) are zoned MF-29, and are developed with single-family residences that front South Pinecrest Avenue. South Pinecrest Avenue connects directly to East Kellogg Drive on the north and East Orme Street on the south. Land located immediately south of the site is zoned GO (Case number Z-3118, approved 1994), and is developed with the Choices Medical Clinic (538 South Bleckley). Based upon the website <http://www.choicesmcwichita.org/>, the Choices Clinic provides medical consultation for unplanned pregnancies. South of the Choices Clinic there are three lots zoned TF-3 that are developed with single-family residences. Land located southwest from the subject tract, across Bleckley Street, is developed with *four* single-family residences that are zoned TF-3. Two of these homes front Bleckley, the other two homes front S. Elpyco Avenue, which has direct connections to East Kellogg Drive and East Orme Street. There is not any direct cross-lot circulation between the subject property and any abutting lots.

Land located immediately north of the subject site is developed with the approximately 320-foot wide, six lanes plus two frontage roads, Kellogg / U. S. 54/400 freeway. North beyond Kellogg are properties that are zoned SF-5, TF-3, GO and LC. On the north side of Kellogg, between Woodlawn and Oliver, is approximately 3,530 feet of the frontage that is zoned SF-5 or TF-3 and developed with residences. The residences located north of Kellogg are shielded from Kellogg by a masonry wall which prohibits direct access to East Kellogg Drive North. Properties located at the northwest and northeast corner of the intersection of South Oliver Avenue and Kellogg are zoned LC as is land located north and east of Edgemoor. The GO zoned property located northeast of the subject site is developed with the Veterans Hospital.

### Analysis

Prior to, during, and since the summer of 1991, this location has been the site of numerous public protests by people objecting to certain medical procedures offered by the clinic, as reported by the media.

The requestor's e-mail states: "It is our understanding that there are several zoning options that would allow the current peaceful neighborhood to continue: SF5, TF3, MF18, MF29, office warehouse, and industrial park." "We believe the current atmosphere should be preserved through a zoning change."

After reviewing the zoning districts recommended by the requestor it could be concluded that those districts are suggested because those zoning districts do not allow the land uses "medical service" (Article II, Section II-B.8.h) or "hospital" (Article II, Section II-B.6.f) as defined by, and listed in the "use regulations schedule" (Article III, Section III-D) of, the UZC. Rezoning the property to the zoning districts recommended by the requestor would eliminate "medical service" or "hospital" as legal by-right land uses on the subject tract.

Per the UZC, a "Medical Service means an establishment providing therapeutic, preventive, or corrective personal treatment services on an out-patient basis by physicians, dentists, and other practitioners of the medical or healing arts, as well as the provision of medical testing and analysis services. Typical uses include medical and dental offices and clinics, blood banks and medical laboratories." "Hospital" is defined as "an institution that: (1) offers services more intensive than those required for room, board, personal services and general nursing care; (2) offers facilities and beds for use beyond 24 hours by individuals requiring diagnosis, treatment, or care for illness, injury, deformity, infirmity, abnormality, disease or pregnancy; and (3) regularly makes available at least clinical

laboratory services; diagnostic X-ray services and treatment facilities for surgery or obstetrical care, or other definitive medical treatment of similar extent. Hospitals may include offices for medical and dental personnel, central service facilities such as pharmacies, medical laboratories and other related uses.” The UZC does not regulate individual medical procedures.

The request states that while the business was open “There was an increase in noise and traffic.” The Trip Generation manual, 6<sup>th</sup> Edition, reports the following trip generation rates for the following uses:

A “clinic” generates an average trip generation rate of 4.4 to 4.44 during the p.m. weekday peak hour per doctor;  
A single-family residence on a weekday generates 9.57 average trips per day;  
A low-rise apartment generates 6.6 average trips per unit per day;  
An office building generates 11.01 trips per 1,000 square feet of gross floor area;  
A shopping center generates 42.92 average trips per day per 1,000 square feet of floor area; and  
New car sales generate 37.50 average trips per day per 1,000 square feet of gross floor area.

Using the trip generation rates cited above, it is estimated that a three doctor clinic on the subject site could generate between 105.6 to 106.56 trips per eight-hour day. (Assuming the clinic was utilizing three doctors at the same time.) The Dopps Chiropractic Clinic located to the east of the subject site has five full-time doctors, and could generate 177.6 average trips per day. If the Dopps Clinic building were used just as an office, it could generate 82.5 trips per day. If the site’s building were re-developed into an 11 unit apartment building, it could generate 73.98 trips per day. The vacant vehicle sales facility located west of the site could generate up to 515.4 trips per day if it were in operation. That same site, if it were converted to a retail sales center could generate 589 trips per day, and it has two driveways onto Bleckley. So even if the subject property were to be rezoned, there is enough other intense zoning in the area to potentially generate significant volumes of traffic in the larger neighborhood.

#### Non-Conforming Status of the Business

Article VII, Section A-VII.3, No Non-Conformities created by adoption of this Code states, in part, “Any use of a Building, Structure or property and any Building, Structure or property that complied with the zoning ordinance or zoning resolution in effect prior to March 25, 1996, may be rebuilt, repaired or otherwise re-established to the extent that it existed prior to March 25, 1996, subject to the limitations in Sec. VII-I. Therefore, even if the property is rezoned, the owner would have non-conforming use rights to continue the medical service use of the building. There is also not any evidence that the property owner intended to abandon the right to use the facility as a medical service. As indicated above, there is information that indicates the property was being offered for sale as a medical office after June 2009.

With respect to increased ambulance calls and police calls cited by the requestor, the requestor did not supply any data to support that claim. However, any increased calls to the property when the clinic was open could be due simply to the number of people who congregated outside the facility.

**CASE HISTORY:** The application area was annexed into the City of Wichita in distinct tracts during the 1930’s and 1940’s. In 1937, the portion of the property fronting East Kellogg Drive was zoned “B” Residence District, which permitted: all uses permitted in the “A” district, single-family dwellings, two-family dwellings, multi-family dwellings, hotels and hospitals, as well as some other uses. The portion of the ownership located immediately south of the land having frontage on Kellogg Drive was, in 1937, zoned the “A” Residence district, which permitted: single-family dwellings, two-family dwellings and home occupations that include personal services provided by a physician. At some point part of the property was also zoned RB Four-family Dwelling district. On July 28, 1950, a portion of the site was recorded with the Register of Deeds as Lots 1-4, Fallon’s 2<sup>nd</sup> Addition. Another portion of the site was platted as the Fordyce Addition, which was recorded on May 5, 1952. Zoning case Z-3116 was a request to rezone: Lot 1, Fordyce Addition; Lots 1, 2, 3 and 4 of Fallon’s Second Addition; and an unplatted tract (the east half of the northwest quarter of the northwest quarter of Section 25,

Township 27, Range 1 East of the 6<sup>th</sup> Principal Meridian, described as beginning 180 feet west and 40 feet south of the northeast corner of the northwest quarter of the northwest quarter of said Section 25, on the south line of Kellogg Street; thence south 140 feet; thence west 120 feet; then north 140 feet; thence east 120 feet to the place of beginning, except the west 50 feet thereof, which appears to be the previously noted Fordyce Addition) from the “A Two-Family dwelling district” (TF-3, Two-family Residential (“TF-3”) of today’s code); “RB Four-family Dwelling district” (MF-18 Multi-family Residential (MF-18”) of today’s code) and “B Multiple-family Dwelling district” (B Multi-family Residential (“B”) of today’s code) to the LC Light Commercial district (LC Limited Commercial (“LC”) of today’s code). Zone case Z-3116 was approved by the Wichita City Council on March 1, 1994, subject to platting within one year (Ordinance No. 42-437). The J & G Addition was a re-plat of Fallon’s 2<sup>nd</sup> Addition, the Fordyce Addition and the unplatted property described above, and was recorded with the register of deeds on June 8, 1994, which perfected the 1994 LC zone change (Z-3116). The January 27, 1994, MAPC staff report for case number Z-3116 indicates the property was already developed with a medical clinic and the zone change was filed to allow for an expansion of the then existing medical facility. Case number BZA 6-75 (March 25, 1975) allowed an exception to permit off-street parking on property zoned RB Four-family Dwelling District (today’s “MF-18 district). Case number BZA 11-79 (April 24, 1979) permitted a 32-square-foot identification sign.

**ADJACENT ZONING AND LAND USE:**

NORTH: GO and TF-3; Veterans Hospital and single-family residences  
SOUTH: GO and MF-29; medical clinic and single-family residences  
EAST: LC; office building  
WEST: LC and TF-3; commercial building and single-family residences

**PUBLIC SERVICES:** All normally supplied public services are available. Kellogg Street is a nationally significant connecting link U. S. Highway with six lanes plus frontage roads. Bleckley Street is a two-lane paved local street with 60 feet of right-of-way. Orme is a two-lane facility with 60 feet of right-of-way.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide map (updated in 2005) depicts the site as being appropriate for “Regional Commercial” uses. The “Regional Commercial” category encompasses major destination areas (centers and corridors) containing concentrations of commercial, office and personal service uses that have predominately regional market area and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses include: major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas.

The 1999 update of the *Wichita-Sedgwick County Comprehensive Plan* (“Comprehensive Plan”) adopted in 2000, office location guidelines 1, 3 and 4 (page 35) indicate office uses should be generally located adjacent to arterial streets; local, service-oriented offices should be incorporated within or adjacent to neighborhood and community scale, commercial development; and low density office use can serve as a transitional land use between residential uses and higher intensity uses. The “Comprehensive Plan’s” applicable commercial location guidelines 1-5 state commercial sites should be: located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion; coordinated with mass transit routes, high-density residential, employment and other intensive uses; have required site design features that limit noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses; located in compact clusters or nodes versus extended strip developments; commercially generated traffic should not feed directly onto local residential streets.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be denied, based upon the following findings:

- 1) The request is being made without the consent of the property owner.

- 2) Rezoning the property as suggested would eliminate the property owner's intended principal use, medical clinic and would also eliminate 52 uses by-right when LC is compared to the MF-29 district. In this case rezoning the property as requested would leave the existing Choices Clinic as the sole public women's reproductive health medical facility in the immediate area. When compared to LC, rezoning the site to OW would eliminate 37 LC uses and add ten more intense uses, such as "manufacturing, limited," "research services," "warehousing" and "wholesale or business services" that could also introduce truck and semi-truck traffic in the area.
- 3) Spot zoning has been defined by the Supreme Court of Montana (*Greater Yellowstone Coalition, Inc. v. Board of County Commissioners of Gallatin County*) as being zoning that would permit a use that differs significantly from prevailing uses in the area; that the change would benefit a single owner; and that the change would benefit that owner at the expense of surrounding owners and the general public. The requestor request to initiate a hearing to change the zoning on the subject property appears to be an attempt at spot zoning in reverse. The requestor did not submit any data at the time this request was made to show that the current zoning is inappropriate.
- 4) Further, when recognized and/or adopted land use and zoning principals are applied to the subject property, rezoning of the property does not appear to be something that can be supported by current policies. As indicated above, since 1937 the northern portion of the site has been zoned "B" Residence District, which permitted: all uses permitted in the "A" district, single-family dwellings, two-family dwellings, multi-family dwellings, hotels and hospitals, as well as some other uses. The portion of the ownership located immediately south of the B zoned land having frontage on Kellogg Drive was, in 1937, zoned the "A" Residence district, which permitted: single-family dwellings, two-family dwellings and home occupations that include personal services provided by a physician. The 1957 *Wichita City Directory* indicates a medical office was located at 5101 East Kellogg, and it appears that some portion of the current property has been used as a medical office since that time. It is staffs' understanding that there was an original building located closer to East Kellogg Drive and then later, in 1994, the building was expanded to the south to its present configuration. The property was continuously used as a medical clinic until June of 2009. Information has been provided that shows that the property owner marketed the property as a medical office after June of 2009, and has done nothing to indicate an intent to abandon the ability to use the site as a medical office, which, at a minimum requires B zoning. The 2030 *Wichita Functional Land Use Guide* map (updated in 2005) depicts the site as being appropriate for "Regional Commercial" uses. The "Regional Commercial" category encompasses major destination areas (centers and corridors) containing concentrations of commercial, office and personal service uses that have predominately regional market area and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses include: major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The site's existing LC zoning is consistent with the zoning and uses found in "Regional Commercial" areas. The SF-5, TF-3, MF-18, MF-29, OW or IP uses would not permit the current owner's stated intent of providing medical services. Rezoning the site to one of the requestor's recommended districts is inconsistent with the land use principal that similarly situated property should be treated similarly. There is B zoning located immediately to the south that is used for a medical clinic. There is LC zoning to the east and west of the site for nearly a half-mile in either direction. The applicant did not supply any data to back up the claims that the zoning of this property has caused an unacceptable burden on community facilities or the neighborhood. It could be argued that most of the concerns expressed by the applicant are generated not by the property in question or its patrons, but by those who congregate outside.
- 5) Finally, if the property were to be rezoned as suggested, the property owner could still continue to operate a medical service as a legal non-conforming use. Rezoning the property would not achieve the end sought by the requestor.

**DALE MILLER**, Planning Staff presented the Staff Report.

**ALDRICH** asked if the Planning Commission has ever put Protective Overlays or restrictions on properties without changing the zoning.

**MILLER** replied yes

**ALDRICH** clarified that according to the UZC, the governing body or the Planning Commission may initiate zoning with or without an application from the property owners.

**MILLER** said yes.

**ALDRICH** commented that the building has been vacant since June, 2009 until January, 2013. He referenced other cases such as nightclubs and other types of uses that are allowed but when neighbors, other property owners and the public have spoken against it, the Planning Commission has heard the cases and also heard cases and put restrictions on the properties.

**MILLER** stated but not after the fact. He said with a new application the Planning Commission and governing body have the authority to establish whatever restrictions or conditions they feel are reasonable.

**ALDRICH** asked if there was a timetable on vacant property that can require or trigger changes in zoning.

**MILLER** said there is no time limit.

**DIRECTOR SCHLEGEL** asked if Commissioner Aldrich was referring to the rules that govern when a property loses its legal non-conforming status.

**MILLER** said there is a 2-year time period; however, he referred to the final paragraph of the Staff Report which indicates the property owner has to do something affirmative to indicate that they have given up their non-conforming use rights. He added that the property has been marketed as a medical office and the current owners have submitted building plans to continue to use the facility as a medical office. He said he believed it would be hard to win the argument that the owner does not have any non-conforming use rights as a medical service.

**ALDRICH** asked at what point, if any, do character changes in the neighborhood have any effect on making changes of zoning on property. He mentioned the Golden Rules.

**MILLER** indicated that with a new application, character of the neighborhood is taken into account, but with something that is already zoned, he said he wasn't sure.

**ALDRICH** asked when an establishment gets to a point where they are not good neighbors or there are other issues going on, does that ever generate any type of action for a zone change.

**MILLER** said typically concerns about property uses are referred to the Office of Central Inspection (OCI) or Metropolitan Area Building and Construction Department (MABCD) who would evaluate any

activity and determine if it was a violation. He said they would then go through an enforcement procedure. He said the City does downzone or rezone to address nuisance issues.

**ALDRICH** said so there have never been any ordinance changes for nuisance issues.

**MILLER** said he wouldn't say that.

**ALDRICH** said there were issues such as nightclub shootings and stuff like that that initiated ordinance changes governing nightclubs.

**MILLER** said the City Code was amended; however, the changes did not affect any existing zoned property. He said the changes did not close or affect any of the existing businesses, even sexually oriented businesses. He said it only impacted new requests. He said he felt that was a distinction on a request such as this item.

**FOSTER** asked staff to further explain the option to "opt out" of an area or community-wide rezoning.

**MILLER** referred to the Delano Overlay District and briefly explained that it has been a policy of the City to allow property owners who do not wish to participate to "opt out" of any area-wide rezoning. He said after the City goes through the neighborhood planning process and makes recommendations on how areas and land uses within certain areas are best addressed, an example he gave was the elimination of car sales by right as a use in the Limited Commercial (LC) zoning district, it has been a practice of the City to recognize any property owners who submitted letters stating that they did not want their property to be affected.

**DAVID GITTRICH, STATE DEVELOPMENT DIRECTOR, KANSANS FOR LIFE, 6220 EAST 8<sup>TH</sup> STREET, REQUESTER** said he appreciated the time to visit with the Commission this afternoon about this issue. He said the girls were passing out samples of a petition with 14,126 names of citizens in the Wichita and Wichita metropolitan area who have signed the petition. He said this could be the largest petition drive ever conducted in Wichita and the metropolitan area, and that thousands of people have joined together with elected legislators, various women's assistance organizations, members of the clergy, area leaders and families from the community in signing a petition to the Wichita City Council and Wichita Sedgwick County metropolitan Planning Commission to express that: we do not want a new abortion clinic in our residential neighborhoods. He said they want to keep the peace and protect the safety of the citizens of our family friendly city. He said the citizens who signed the petition are requesting that the City Council and Planning Commission take a long, hard look at the zoning for the business at 5107 E. Kellogg. He said it should be noted that even though the business has a Kellogg address, the only entrances for cars and pedestrians are a half block down on Bleckley – in a residential neighborhood.

**GITTRICH** said the business has a history that goes way back. He said in 1991, literally thousands and thousands of people were in the neighborhood for days and weeks on end. He said hundreds of police, federal marshals, sheriff officers, city buses, etc. were involved in the "summer of Mercy" and the whole world came to refer to Wichita as the abortion capitol of the world. He said over the years there have been very large crowds in the neighborhood that included many families with children and infants in strollers. He said US 54 (Kellogg) is just a few yards away and cars are speeding by at 60 miles per hour. He said there are no barriers to restrain any child that may wander off from a crowd on his or her own. He said there have been hundreds of prayer vigils as well. He said nearly every day there were

people in front of the business offering materials and assistance to potential patients. He said they faced obscenities and crude language from those on the clinic property. He said many times this led to a call to police because sidewalk counselors feared for their safety. He said there have been serious parking problems for several blocks around the neighborhood. He said there were problems with noise and even graphic images were displayed in the neighborhood. He said there were also many ambulance calls with injuries and even documented deaths from this facility.

**GITTRICH** said but in 2009 when the business closed, the neighborhood changed significantly. He said City officials can compare the years before 2009 against the years after 2009 because it is matter of public record. He said in the years before 2009, there were numerous calls to the police. He said often a police officer or officers were assigned to the neighborhood, even though there were no complaints, simply because of the size of the crowd warranted having a police presence. He referenced a report from the Wichita Police Department in the hand out packet that shows that in 2007 and 2008 there were 12 official reports made by the police at 5107 E. Kellogg. He said in 2010 and 2011, there were only 2 official reports made by the police. He said so they know what it was like in the 500 block of south Bleckley in the years before 2009. He said the City must have invested a significant amount of money in that neighborhood through police calls and having a police presence. He said they just looked at a couple of years (2007 and 2008) but added the history goes back into the 80's and 90's. He said as an example he brought some newspaper articles that said the city had spent over \$250,000 in 1991 and he was sure much more has been spent in the years following. He said proper zoning of the business would prevent most of the expenses to taxpayers. He said since the business closed in 2009, the crowds, parking, police calls and ambulance calls have disappeared. He said it is now a normal, quiet, peaceful neighborhood. He said since 2009, the cost to the city is the same as it is in any other normal residential neighborhood. He said this block and this business have a history. He said it is because of this substantial difference between then and now that they request the City and the Planning Commission study and reconsider the zoning in this neighborhood.

**GITTRICH** said the reason that 14,126 people signed the petition is because they are aware of the problems in the neighborhood when the business is open. He said now, while it is closed, the City Council and Planning Commission should study this situation in depth and on behalf of the citizens of Wichita to see what should be the proper zoning for the neighborhood. He said the business should not be allowed to open until this request for a zoning change is resolved.

**GITTRICH** said in addition to the reasons previously stated, he would like to call the Commissioner's attention to the Golden Rules of zoning. He said Golden Rule Number 5 states, "The protection of public health, safety and welfare is the basis for zoning." He said it is also the basis for their request. He said there are obvious threats to public health, safety and welfare when this businesses operating versus when it is not operating. He said normally, businesses with this high level of vehicular and pedestrian traffic are zoned commercial so that there is reduced threat to public health, safety and welfare. He said the health of the public should be a primary concern of the Planning Commission. He said having hundreds, even thousands of people crowding a residential neighborhood is going to cause a variety of problems. He said the number of policy officers needed to protect the public health and keep order should be evidence of the threat to public health when this business is open. He said having thousands of people, cars, police cars, ambulances all at once in a residential neighborhood can be hazardous to citizens. He said safety is our primary concern for all involved including the most innocent and most helpless. He said their concern is for the welfare of all involved. He said they are concerned for the families and citizens that may peacefully and prayerfully protest in front of this business. He said they are concerned for the women who may be facing difficult situations and are looking for

assistance. He said they are concerned for their welfare. He said they are concerned for the welfare of those who may be employed at this business, as well as the peace, safety and welfare of all those in the neighborhood.

**GITTRICH** said the city has a responsibility to its citizens and their safety which must be weighed in addition to the property owner's rights. He said in some cases, this is a best guess scenario but the history of this property leaves little to the guessing process. He mentioned that Number 6, 7 and 8 of the Golden Rules should also be taken into consideration concerning this particular situation. He said they also have signed petitions and documents from some of the neighbors. He said they conducted surveys of numerous homeowners in the area and the vast majority strongly support the zoning change. He said several of the survey interviews are included in the handout packet as well as letters from the neighbors requesting the zoning change. He said the business directly to the east of 5107 E. Kellogg has also signed a letter that is in the handout packet.

**GITTRICH** said they believe the business should be rezoned and that the Planning Commission, if they check into this business, will agree. He said rezoning could save the city hundreds of thousands of dollars in taxpayer money, ensure the peace and tranquility of a residential neighborhood, relieve a strain on the police department and law enforcement in general as well as the ambulance service, eliminate the need for thousands of Wichita citizens to place their lives and safety in danger when participating in huge, free-speech demonstrations in this mainly residential neighborhood. He mentioned staff's presentation and said in 1937 Kellogg was a two-lane street but is far from a two-lane street now consisting of up to 8 lanes including on and off ramps. He added that he believed hospitals took house calls in 1937. He said things are significantly different now. He said the history of this property from 1991 on is there and there are volumes of materials for Commissioners to study.

**JULIE BURKHART, 5107 EAST KELLOGG, PROPERTY OWNER** thanked the Commission for letting her address them. She said she comes before the Commission today on behalf of Trust Women Foundation, Inc. the owner of the property in question at 5101-5107 E. Kellogg, Wichita, KS 67218. She said Trust Women purchased the property in August, 2012, and are now in the process of renovating to open up a full-spectrum OBGYN facility, which they also own. She said she wanted to assure the Commission that neither Trust Women nor Southwind requested the rezoning of their property. She said to her knowledge, the property has been used as a medical facility since at least the 1950's and long before Kellogg Drive was converted into a freeway. She said when they were looking for a property, they looked specifically at properties marketed as such; she said this one was marketed as a medical facility by J.P. Weigand and Sons. She said they purchased the property with the sole intent of using it for a medical practice. She added that the vast majority of the properties south of Kellogg, off of the Frontage Road, are zoned for commercial use.

**BURKHART** said if the MAPC treads into the rezoning of their property, which they would view as "spot" zoning based solely on ideological differences, then the Commission will be setting a dangerous precedent for City and County residents. She said the Commission could potentially deepen ideological divides instead of measuring policies based on the principles of democratic fairness and reverence for long standing codes and ordinances. She said she hopes that the Commission will carefully consider the implications of rezoning their property based on ideological differences. She said this is a metropolitan area of approximately 650,000 residents and with a population that large there will be differences in belief systems. She said what is important here is ensuring that those ideologies will be respected without infringing on the rights of others; which includes property rights.

**BURKHART** said to clear something up, they are not re-opening “Women’s Health Care Services” owned by Dr. George Tiller who was murdered in this community on May 31, 2009. She said they are opening the Southwind Women’s Center, which is a different type of facility. She said they will be providing OBGYN services to women from the community and the region. She commented that in terms of “nuisance” it is not those inside the medical facility causing the nuisance, they are not even open yet. She said when Women’s Health Care Services was open, it was people outside the medical facility coming to the facility with bullhorns yelling at patients, blocking driveways and trying to block access for women who were seeking medical services at that facility that caused the nuisance.

**CHAIRMAN DENNIS** reminded the Commission that they were deciding whether to establish a public hearing date to consider changing the existing zoning on the property.

**G. SHERMAN** commented that this was easily the most inappropriate request he has ever seen before the Planning Commission. He said this has nothing to do with zoning and 100% an argument of ideology. He said he kind of resents their asking this body to get into the middle of it. He said the argument that this is not appropriate for LC zoning is ridiculous on its face. He referred to the map with red squares indicating LC zoning all along Kellogg. He said this request goes against everything he has ever learned about zoning. He said the fact that the Planning Commission can initiate a zoning change on an unwilling owner’s property doesn’t make it right and he won’t be any part of it.

**ALDRICH** said he can understand where some of Commissioner Sherman’s comments are coming from but again the Commission does have the authority to review zoning changes from time to time. He said even though apparently it hasn’t been done. He said he thinks the Planning Commission has the ability to review how any business affects surrounding properties, residents and citizens including tax payers. He said in his opinion it doesn’t matter who has initiated any kind of protest or demonstration. He said this property has a long, lengthy record and he thinks he knows why. He referred to the Golden Rules and how this property affects the public health, safety and welfare and whether there is neighborhood opposition or support. He said certain things that fit and can be approved under a zoning classification doesn’t mean they are good neighbors. He said the Commission has had this argument before when it comes to scrap yards and impound lot. He said he believes this is one of those situations that the Planning Commission or the governing body needs to look at and determine if current zoning is a good fit or ever has been a good fit with the surrounding neighborhood. He said he hopes this body does that.

**WARREN** said this is one of those issues that pits various entities against each other. He mentioned the sanctity of private property rights and protecting property rights and as a Planning Commission do they put certain business next to certain neighborhoods and are those compatible. He said in this case there is obvious conflict. He said if this was a new zoning case, there is no way the Commission would allow this kind of facility so close to a residential neighborhood. He said he is not an attorney or a judge and doesn’t know how they would view this in terms of whether or not this is spot zoning. He asked where do you draw the line on how the facility affects the neighborhood versus protecting private property rights. He said that is what he is struggling with and because he does not have a clear answer, he feels it would be worthy to go ahead and have a public hearing to explore the options that are out there. He said if the Commission were to make a decision today he is not sure how he would vote. He said if this was a dentist office there would be no question because a dentist office would not generate the kind of neighborhood problems that this facility has and will. He said they know what is going to happen unfortunately. He mentioned that a Wal-Mart wanted to build a store not too far from this location and he said you would think it was the end of the world to put a Wal-Mart in a neighborhood because of the

traffic and other issues. He said he believed that zoning request was denied. He asked staff if the motion should be to request a public hearing on the item.

**DIRECTOR SCHLEGEL** said it would be to initiate a rezoning of the property to a specific zoning classification and staff would set up a public hearing.

**WARREN** said he was not prepared to know what that alternate zoning should be. He said he thinks there is enough to warrant a hearing.

**G. SHERMAN** said he agrees with a lot of what Commissioner Warren said about nuisances in neighborhoods; however, when the Planning Commission hears zoning cases, they don't generally zone for a specific business. He said if this particular piece of property is residential and a new owner came in and said they would like LC zoning on the property, there is no question that the Planning Commission would say that is 100% appropriate because there is LC zoning all up and down the street. He added that the Wichita-Sedgwick County Comprehensive Plan also indicates that this zoning is okay. He said a part bothers him the most is that the Planning Commission would be the one initiating the zoning change. He said they are being asked to be the applicant on the case which goes against his thinking on what a Planning Commission should do and what the action does to people's private property rights.

**MITCHELL** said he goes back to his original motion. He referred to page 6 of the Staff Report and reiterated that the request be denied for the 5 reasons listed in the Staff Report. He said he would like to draw the Commissions attention to the last item on page 7 which states, "Finally, if the property were to be rezoned as suggested, the property owner could still continue to operate a medical service as a legal non-conforming use. Rezoning the property would not achieve the end sought by the requestor."

**MOTION:** To deny the request per staff recommendation.

**MITCHELL** moved, **MCKAY** seconded the motion.

**ALDRICH** asked if it would be appropriate to make a motion to leave the zoning the same, as LC, but with a Protective Overlay (PO) limiting certain uses.

**DIRECTOR SCHLEGEL** said that was allowed under the UZC. He said it was a common practice to use PO's to restrict the types of uses on property.

**G. SHERMAN** asked if that action would be appropriate at this meeting.

**DIRECTOR SCHLEGEL** commented that what Commission Aldrich was getting at was could he initiate an amendment to this property to put up a PO on it. He said this board could initiate that amendment. He said if it is the will of the Board they would initiate the process by which the zoning on the property is amended.

**SUBSTITUTE MOTION:** To initiate rezoning of the property from Limited Commercial to Limited Commercial with a Protective Overlay to eliminate tattoo shops, sexually oriented businesses, and medical services.

**ALDRICH** moved, **GOOLSBY** seconded the motion.

**ALDRICH** said he could come up with a couple more uses, but this is just to initiate the process and see if staff can come up with additions based on his thought pattern. He said the Commission will still have to vote to make a change. He said all this is going to do is initiate another step in the process.

**G. SHERMAN** said he can't believe the Planning Commission would even consider hearing a request to change the zoning on a property against the owner's will. He said this request is totally ideological and totally against the purpose of the Planning Commission.

**KLAUSMEYER** said this is a volatile issue as it always is but he agrees with Commissioner Sherman. He said sitting here listening to everything he has done a lot of soul searching of what is right thing to do. He said that is what the Commissioners have to look at and what is the purpose as a Planning Commission regardless of our personal feelings and what do we accomplish by the decisions we make. He asked do we accomplish what we set out to do or we create another problem either now or down the road. He reiterated that this is a very volatile issue and it would have been easy for him to stay home because he was snowed in but he dug himself out. He said he was in favor of listening to the request, whether he agreed or disagreed with either side either side. He said that is not what is at issue. He said what is at issue is their function as a Planning Commission.

**CHAIRMAN DENNIS** said the owner stated there is going to be disagreement and he agrees. He said this is a very volatile issue. He said there is a huge disagreement on the issue of abortion in the City of Wichita and the State of Kansas. He said if an abortion clinic opens again they know from 20/20 hindsight that there are going to be protests because of the disagreement and the strong opinions people hold one way or the other. He said the protests won't go away. He said he read something in the newspaper that if people don't protest the situation will be resolved, but that's not going to happen. He said he didn't believe zoning is the issue but possibly he agrees with Commissioner Aldrich that an overlay may be required. He said changing the zoning from LC may not be the correct thing to do. He said the nice thing they have 20/20 hindsight to know what is going to happen. He said they know for a fact that there are going to be protests if an abortion clinic is re-opened. He asked with that knowledge how does the Planning make sure that those protestors and everyone involved on both sides of the issue are safe. He asked is this the proper location. He said they put overlays on zoning all the time requiring sufficient parking and other items to insure safety. He said they would not allow a mechanics garage in the middle of a residential neighborhood or car washes with mechanical doors that open towards neighborhoods. He said there are a lot of requirements to insure that neighbors are protected. He said if this business were put in another location perhaps there should be requirements to insure that there is adequate parking and sidewalks for protestors. He asked how does the Planning Commission insure that there is a way for everyone, whether they are a protestor or a worker at the business, can do what they believe in their hearts is right and do it safely. He said he is not making a decision on whether abortion is correct or not; he is saying maybe this is not the right location for this type of business. He said he was going to support Commissioner Aldrich's motion because he feels the Planning Commission does have a requirement to hear the issue to find out whether or not this location meets the needs of the community.

**GOOLSBY** asked what happens if this fails today and what are the options for the Commission to bring it back up for a PO; and what does the Commission have to do today to hear from the surrounding property owners in the affected area.

**DIRECTOR SCHLEGEL** explained that if the Planning Commission fails to initiate the amendment process staff is not going to move forward until they have clear direction from either the Planning Commission or the City Council. He said there will be no public hearing without the initiation of the zoning amendment.

**GOOLSBY** clarified if the Commission moves forward on the PO they become the applicant.

**DIRECTOR SCHLEGEL** said staff would prepare a zoning amendment application for review, advertisement and public hearing by the Planning Commission for a recommendation that would eventually go on to City Council.

**GOOLSBY** verified that the Commission can only hear public comment from the surrounding property owners if the application moves forward.

**VANZANDT** said initiation of the application is the only way for the Commission to invite public comment at this time.

**MCKAY** said he doesn't believe there is a spot in Sedgwick County or the State of Kansas where you can put a facility like this that there won't be the same group of people protesting. He said he believes this is a philosophical difference of opinion in this case. He said people keep talking about the neighborhood and although he did not see all 14,000 signatures on the petition, on the 2 pages that he got he didn't see anyone who lives within 2 miles of the application area. He said the Planning Commission is a zoning board; they are not a group of people to say what is morally right, wrong or what. He said they need to decide if the use that is there today can still do business. He said in the past the Commission has heard a lot of complaints about the government taking over individual rights. He said to him this is nothing more than another case of eminent domain because the governing body is initiating this. He said the people who own the property don't want this. He said this is being requested by people who don't even live near there. He said this is a philosophical difference of opinion. He said he was going to support Commissioner Mitchell's motion because the property owner does not want this and it's like we are going to stick it down your throat and he has a real problem with that. He said he would hate for someone to come up who doesn't like his business in his location and say they don't like what he is doing even though they don't live in the neighborhood.

**JOHNSON** commented that this is a tough decision but that he needs to look at it strictly from a zoning standpoint. He said he has never seen a case like this in the 16-18 years he has been on the Planning Commission. He said he feels like this isn't a solution if the zoning was changed. He said the property owners could move across the street, then move over and get a piece of the Veterans Administration property and then the Commission will have to zone against the VA so they can't have medical facilities and this could be a no ending deal. He said he can't see where this request is going to help anything and would rather see the efforts go to addressing the problem and solving that as opposed to going through the rezoning procedure. He said he was going to support Commissioner Mitchell's motion.

**G. SHERMAN** said certainly the Planning Commission would not approve an auto shop in a residential neighborhood; however, they don't go around town and find auto shops that are next to or near neighborhoods and initiate a request to change their zoning. He said as distasteful as this use might be to some of them, this use is appropriate for LC zoning.

**ALDRICH** said he still thinks the public needs to be able to have a forum whether someone is in favor or opposition of it.

**DENNIS** said he agrees with Commissioner McKay that there is no place in Sedgwick County or the State of Kansas where there would not be protests but the fact is there are going to be protests. He asked why wouldn't there be certain requirements on where a facility of this type is located so the public can come and exercise their rights to protest. He said he believes that is what the underlying question is. He asked shouldn't they have some place that is safe and not disturbing the neighborhood where the clinic and the protestors can do things in a safe manner. He said he believes the Planning Commission has a responsibility to hold a public hearing.

**G. SHERMAN** said the person who owns the property and plans on opening a business there is not coming to the Planning Commission asking if they can put the business there. He said if that were the case he would feel totally different about it. He said this smacks a little of blackmail to him that you have other people saying if you let this guy open, we are going to come in and disrupt this whole neighborhood so you'd better go along with what we want and not let them go there. He said he is not going to do that to someone's private property.

**MOTION:** To call the question and end the debate.

**WARREN** moved, **KLAUSMEYER** seconded the motion, and it carried (10-0).

The Substitute Motion failed 4-6. **SHERMAN, KLAUSMEYER, MCKAY, MITCHELL, JOHNSON** and **FOSTER** – No.

The Original Motion passed 6-4. **ALDRICH, DENNIS, GOOLSBY** and **WARREN** – No.

-----

The Metropolitan Area Planning Commission adjourned at 3:12 p.m.

State of Kansas            )  
Sedgwick County        ) <sup>ss</sup>

I, John L. Schlegel, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

(SEAL)

\_\_\_\_\_  
John L. Schlegel, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission