

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

January 5, 2012

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, January 5, 2012, at 1:30 p.m., in the Planning Department Conference Room, 10th floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Shawn Farney, Chair; David Dennis, Vice Chair; Bob Aldrich; Darrell Downing; David Foster; Bill Johnson; Don Klausmeyer; John W. McKay, Jr. (Out at 2:45 p.m.); M.S. Mitchell; George Sherman and Debra Miller Stevens. Ron Marnell; Morrie Sheets and Don Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Neil Strahl, Senior Planner; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Kelly Rundell, Deputy City Attorney; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary

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1. Approval of the December 22, 2011 Planning Commission meeting minutes.

MOTION: To approve the December 22, 2011 minutes, as amended.

DENNIS moved, **MCKAY** seconded the motion, and it carried (8-0-3). **FARNEY, JOHNSON** and **SHERMAN** – Abstained.

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS** –There were no Subdivision Items.

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3. **PUBLIC HEARING – VACATION ITEMS**

- 3-1. **VAC2011-31: City request to vacate a portion of platted complete access control.**

APPLICANT/AGENT: Gold Key Real Corporation (owners) Spangles Inc., c/o Mark Savoy (applicant/agent)

LEGAL DESCRIPTION: Generally described as vacating the south 32 feet of the platted complete access control located parallel to the east side of the Rock Road right-of-way and the west property line of Lot 5, the Triple J Addition, Wichita, Sedgwick County, Kansas

LOCATION: Generally located north of Harry Street, on the east side of Rock Road (WCC #II)

REASON FOR REQUEST: To allow the existing drive

CURRENT ZONING: The site and all abutting and adjacent northern, southern and western properties are zoned LC Limited Commercial (“LC”). Abutting eastern properties are zoned B Multi-Family Residential (“B”).

The applicant’s request would allow the existing drive onto the subject site from Rock Road to remain; the vacation request corrects an oversight resulting from the placement of the drive at a location subject to access control. It would seem that public and franchise utilities would not be impacted by the request,

as the existing drive is not moving. The fast food restaurant located on the subject site was built in 1974 and the Triple J Addition was recorded with the Register of Deeds November 1, 1973.

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/Storm Water, 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 platted complete access control.

- 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 December 15, 2011, 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 complete access control 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) The applicant shall provide a dedication of complete access control by separate instrument that would reflect the one (1) permitted/existing drive. This must be provided to Planning prior to the case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. The applicant shall provide an approved (by Public Works) project or guarantee(s) as needed. This must be provided to Planning prior to the case going to City Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including any needed improvements to the existing drive. Provide an approved (by Traffic Engineer) project or guarantees as needed. This must be provided to Planning prior to the case going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to 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) The applicant shall provide a dedication of complete access control by separate instrument that would reflect the one (1) permitted/existing drive. This must be provided to Planning prior to the case going to City Council for final action.
- (2) Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicants and at the applicants' expense. The applicant shall provide an approved (by Public Works) project or guarantee(s) as needed. This must be provided to Planning prior to the case going to City Council for final action.
- (3) All improvements shall be according to City Standards and at the applicant's expense, including any needed improvements to the existing drive. Provide an approved (by Traffic Engineer) project or guarantees as needed. This must be provided to Planning prior to the case going to City Council for final action.
- (4) Per MAPC Policy Statement #7, all conditions are to 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.

ALDRICH moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

3-2. VAC2011-32: City request to vacate portions of platted utility easements.

APPLICANT/AGENT: USD 259 (owner) Baughman Company, c/o Phil Meyer (agent)

LEGAL DESCRIPTION: Generally described as vacating portions of a two (2) platted 20-foot wide utility easements and a portion of platted complete access control along the site's Lincoln Street frontage, all in Lot 1, Block A, West High School Addition, Wichita, Sedgwick County, Kansas (see attached legal)

LOCATION: Generally located midway between McLean Boulevard and Seneca Street on the northeast side of Lincoln and Osage Streets (WCC #IV)

REASON FOR REQUEST: Expansion of current school building on the site

CURRENT ZONING: The site is zoned MF-29 Multi-Family Residential ("MF-29"). Adjacent northern, western and southern properties are zoned MF-29 and B Multi-Family Residential ("B"). Adjacent eastern properties are zoned LI Limited Industrial ("LI").

The applicant proposes to vacate portions of the described platted utility easements. Per the City's GeoZone there are public sewer lines and manholes located in portions of the platted 20-foot wide utility easements. Comments from Stormwater, franchised utilities have not been received and are needed to determine if they have utilities located within the described easements. The site currently has a platted 50-foot wide point of access onto Lincoln Street. The applicant's request would allow two more 30-foot wide points of access onto Lincoln. The proposed points of access would be located on either side of the platted access onto Lincoln. There is no raised median in this portion of Lincoln, so these would be full movement drives. West High School playing fields are located opposite, across Lincoln, of the proposed drives. The West High School Addition was recorded with the Register of Deeds July 19, 2004.

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 portions of platted utility easements and platted complete access control.

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 December 15, 2011, 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 platted utility easements and the platted complete access control 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) Provide Public Works/Water and Sewer with a project plan for the abandonment or relocation of the sewer lines and manholes for review and approval. Abandonment or relocation/reconstruction of the sewer lines and manholes and all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Provide an approved project number to Planning prior to the case going to City Council for final action.
- (2) Provide a dedication of any needed utility easements by separate instrument(s) that would cover any relocated utilities. This must be provided to Planning prior to the case going to City Council for final action.
- (3) Provide a dedication of complete access control by separate instrument that would reflect the two additional drives and the existing drive, as approved by the Traffic Engineer. This must be provided to Planning prior to the case going to City Council for final action.

- (4) Provide Planning with a legal description of the vacated portions of the platted easements and the platted complete access control, on a Word document, via e-mail. This must be provided prior to the case going to City Council for final action.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including the construction of the new drives from the site onto Lincoln Street, which includes the continuation of the curb and gutter. Provide Public Works with a guarantee to ensure that these and any other associated improvements will be made. If the drive is not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to City Council for final action.
- (6) Per MAPC Policy Statement #7, all conditions are to 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) Provide Public Works/Water and Sewer with a project plan for the abandonment or relocation of the sewer lines and manholes for review and approval. Abandonment or relocation/reconstruction of the sewer lines and manholes and all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicant. Provide an approved project number to Planning prior to the case going to City Council for final action.
- (2) Provide a dedication of any needed utility easements by separate instrument(s) that would cover any relocated utilities. This must be provided to Planning prior to the case going to City Council for final action.
- (3) Provide a dedication of complete access control by separate instrument that would reflect the two additional drives and the existing drive, as approved by the Traffic Engineer. This must be provided to Planning prior to the case going to City Council for final action.
- (4) Provide Planning with a legal description of the vacated portions of the platted easements and the platted complete access control, on a Word document, via e-mail. This must be provided prior to the case going to City Council for final action.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including the construction of the new drives from the site onto Lincoln Street, which includes the continuation of the curb and gutter. Provide Public Works with a guarantee to ensure that these and any other associated improvements will be made. If the drive is not being immediately constructed, provide a drive approach certificate, which will be recorded with the Register of

Deeds. Either the guarantee(s) and/or the drive approach certificate must be provided to Public Works (guarantee) or Planning (drive approach certificate) prior to the case going to City Council for final action.

- (6) Per MAPC Policy Statement #7, all conditions are to 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.

ALDRICH moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

PUBLIC HEARINGS

4. **Case No.: ZON2011-28** - Yale Investments, LLC (owner) Tonya Ridpath (agent) request a City zone change from SF 5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

Lot 13 on Oliver Street, Edgetown Park Addition to Wichita, Sedgwick County, Kansas

NOTE: At the MAPC meeting held October 20, 2011, the MAPC voted (12-0) to recommend approval of the requested TF-3 zoning. The case was approved through a consent vote since no one was present to voice concerns. At the District III Advisory Board meeting held on Monday, November 2, 2011, the DAB voted 6-0 to deny the rezone request. Several people spoke against the requested TF-3 zoning at the DAB meeting. No valid protests were received during the two week protest period, ending November 3, 2011. However, because of DAB III's unanimous (6-0) recommendation for denial the request was sent to the December 6, 2012, City Council meeting as a non-consent item. The action of the City Council was to have the MAPD staff re-advertise the request for the January 5, 2012, MAPC meeting, for reconsideration by the MAPC. This case will not go back to DAB III. The MAPD staff's report and recommendation has not changed; recommend approval, based the findings in the report.

BACKGROUND: The applicant requests a zone change from SF-5 Single-Family Residential ("SF-5") to TF-3 Two-Family Residential ("TF-3") on Lot 13 (Oliver Street), Edgetown Park Addition, 2033 S. Oliver Avenue. The subject site has a duplex on it and the zone change is needed to make the use conform to the Unified Zoning Code (UZC); a duplex is not permitted in the SF-5 zoning district. Geozone shows a residence on the site to have been built in 1941. The Office of Central Inspection (OCI) has filed against the SF-5 zoned site for having a non compliant duplex.

The site is located south of the Mt. Vernon – Oliver Avenue intersection, with its front yard facing Oliver. Properties abutting and adjacent to the site on its south, west, north and east (across Oliver) sides are zoned SF-5 and are part of established single-family residential neighborhoods. There are also some TF-3 zoned properties located a block east and north of the site (across Oliver and Mt. Vernon) that are developed as USD 259's Allen Elementary school, single-family residences and duplexes. The SF-5 zoned L.W. Clap Public Golf Course is the largest development in the area. The property abutting

the north side of the site is zoned LC Limited Commercial (“LC”) and has a small, older, vacant retail store on it, with vacant LC land between it and an LC zoned small, older barber shop. Other properties located north and northeast of the site, around the Mt. Vernon – Oliver intersection, are zoned LC, and are developed as a convenience store, a vacant auto repair garage, a vacant retail strip, an auto repair garage, an office, a combination billiard hall – billiard/arcade supply sales building and a sit down restaurant.

CASE HISTORY: The Edgetown Park Addition was recorded with the Sedgwick County Register of Deeds February 17, 1937; see opening **NOTE**.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Vacant retail, vacant land, barber shop, convenience store
SOUTH:	SF-5	Single-family residences
EAST:	SF-5, LC	Single-family residences, vacant auto repair garage, vacant retail strip, vehicle auto garage
WEST:	SF-5	Single-family residences

PUBLIC SERVICES: The subject site is located on Oliver Avenue, a paved, four-lane arterial street. The 2030 Transportation Plan shows no change to this portion of Oliver. Public water, sewer and all other utilities are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan (2030 Plan) designates this area as appropriate for “Urban Residential” development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as a tool to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed TF-3 zoning brings an already built duplex into compliance with the UZC. There are existing TF-3 zoned single-family residences and duplexes in the area, but they are located a block east (or further) of the site, across Oliver. In fact, all of the existing TF-3 zoning in the area south of Mt. Vernon is located along residential streets, making the proposed TF-3 zoning the first in this area to be located along the arterial street, Oliver. The requested TF-3 zoning conforms to the 2030 Plan, although it is slightly (as noted above) out of character with the zoning in this area.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the requested TF-3 Two-Family Residential zoning be **APPROVED**; see opening **NOTE**.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The site is located south of the Mt. Vernon – Oliver Avenue intersection, with its front yard facing Oliver. Properties abutting and adjacent to the site on its south, west, north and east (across Oliver) sides are zoned SF-5, and are part of established single-family residential neighborhoods. There are also some TF-3 zoned properties located a block east and north of the site (across Oliver and Mt. Vernon) that are developed as USD 259’s Allen Elementary school, single-family residences and duplexes. The SF-5 zoned

L.W. Clap Public Golf Course is the largest development in the area. The property abutting the north side of the site is zoned LC Limited Commercial (“LC”) and has a small, older, vacant retail store on it, with vacant LC land between it and an LC zoned small, older barber shop. Other properties located north and northeast of the site, around the Mt. Vernon – Oliver intersection, are zoned LC, and are developed as a convenience store, a vacant auto repair garage, a vacant retail strip, an auto repair garage, an office, a combination billiard hall – billiard/arcade supply sales building and a sit down restaurant.

2. The suitability of the subject property for the uses to which it has been restricted: The site has a duplex on it and the zone change is needed to make the use conform to the UZC. Geozone shows a residence on the site to have been built in 1941. The zoning change can be granted or the duplex could be converted into a single-family residence.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Typical concerns expressed by neighbors in regards to duplex development is declining property values of the neighborhood brought on by poor maintenance of what is typically rental housing, i.e., the duplexes. Poor maintenance of rental property is not an absolute, nor is there any guarantee that a single-family residence will be maintained by its owner.
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 designates this area as appropriate for “Urban Residential” development. The Urban Residential category includes all housing types found in the municipality, including duplexes. The Comprehensive Plan contains the following objective: encourage residential redevelopment, infill and higher density residential development, which maximize the public investment in existing and planned facilities and services. The objective is intended to be achieved through several strategies, including using zoning as a tool to promote mixed-use development, higher density residential environments, and appropriate buffering. The proposed TF-3 zoning brings an already built duplex into compliance with the UZC. There are existing TF-3 zoned single-family residences and duplexes in the area, but they are located a block east (or further) of the site, across Oliver. In fact all of the existing TF-3 zoning in the area, south of Mt. Vernon, is located along residential streets, making the proposed TF-3 zoning the first in the area, south of Mt. Vernon, to be located along the arterial street, Oliver. The requested TF-3 zoning conforms to the 2030 Plan, although it is slightly (as noted above) out of character with the zoning in this area.
5. Impact of the proposed development on community facilities: The impact on community facilities will be minimal.

BILL LONGNECKER, Planning Staff presented the Staff Report.

ALDRICH asked if the case was before the Commission because it was a single-family residence converted to a duplex and that is not in compliance with regulations.

LONGNECKER said it is currently not in compliance with the Unified Zoning Code (UZC). He said the Office of Central Inspection (OCI) instructed the current owner to change it back to single-family or apply for duplex zoning.

ALDRICH stated that this was passed by consent at the October 20, 2011, Planning Commission hearing so the case wasn't heard. He said he had questions for the owner/applicant.

LONGNECKER stated that the agent for applicant was present.

TONYA RIDPATH, AGENT FOR THE APPLICANT, YALE INVESTMENTS, LLC, 1500 E. 86TH ST. SOUTH, HAYSVILLE, KS stated that when they took over the property in June they realized it was not in compliance with the zoning code. She said they then got with City Staff to find out how to correct the situation. She said the prior owner had other complaints. She said Yale Investments purchased the property under foreclosure and they were just trying to make it right. She said they have not had anyone in the upstairs unit and served a 30 day eviction notice to the previous occupants so they could comply with the zoning.

ALDRICH asked in the event the application was not approved, would they have any issues going to single-family residential.

RIDPATH said they have had a licensed contractor in to upgrade the unit to code and make it safe. She said if they don't get the requested zoning, they will put a staircase in and turn the residence into a larger single-family home instead of a duplex.

FOSTER clarified that when they bought the property the upper unit was in place.

RIDPATH said yes, the property was purchased as a duplex.

SHERMAN asked when the residence became used as a duplex.

RIDPATH said the OCI told them it had been over eight to nine years or more. She reiterated that the residence was purchased as a foreclosed property and the realtor did not disclose that it was not zoned properly. She said they were doing everything to make it right.

JEFF SPAHN, 3601 E. MT. VERNON, WICHITA, KS, PRESIDENT MEADOWLARK NEIGHBORHOOD ASSOCIATION (NA) said this has been a problem property for the neighborhood for many years. He said neighbors have filed numerous complaints and there is a long history including environmental and maintenance issues with the property. He said they have filed at least three complaints regarding the structure being converted into a duplex, especially when two mailboxes were put out in front. He said in response to the complaints, the former owner told OCI staff that the property was not being used as a duplex so there was no enforcement action. He said in all fairness to the current situation, if an investment company is going to buy rental property for investment purposes, it would behoove the purchaser to make sure there is clear title to the property and no mechanical liens and that the property is indeed zoned for the intended use. He said 1 or 2 things happened, the agent or owner did not inquire about zoning or they inquired about zoning and chose to ignore it. He said neither option is acceptable. He said this was done, now the Planning Commission is being asked to affirm the actions after the fact. He said a simple phone call to the County Clerk can tell you what a property is zoned for. He said the neighborhood is being asked to pay the price for inefficiency in management and it is not fair. He admitted that there were some businesses to the north of the area but added that the homes along south Oliver are nice homes. He said the former owner was well aware of what was going on. He said this is a failure on the part of the investment company and their inefficiency. He said they feel very strongly about this; that it has been a major concern to the

neighborhood for many years; that neighbors have worked very hard to maintain the neighborhood and have had real success.

MOTION: To give the speaker one additional minute.

MCKAY moved, **MILLER STEVENS** seconded the motion, and it carried (11-0).

He said since the City Council referred the matter back to the Planning Commission for reconsideration, he requested that the Commission deny the zoning request.

ALDRICH asked if the neighborhood received notification from Planning Staff regarding the case.

SPAHN responded they did not.

SHERMAN asked Mr. Spahn to explain his primary concern about duplex zoning.

SPAHN said this case is a proverbial camel's nose under the tent flap. He said there are good substantial houses in the area. He said if the Commission brings this in, it will open the door to further duplexes in the neighborhood and they are adamantly opposed to that.

KLAUSMEYER asked if the neighborhood has seen improvement to the condition of the property itself since the change of ownership.

SPAHN said the exterior has been brought up from what it was 15 years ago, but they had not seen any immediate improvement, except for the two mailboxes out front.

ALDRICH recommended that the neighborhood contact staff to be put on a notification list in the future.

DIRECTOR SCHLEGEL said just for the record the reason Mr. Spahn did not receive notification was because the previous NA President was listed in the City records. He said the NA has now notified City staff that Mr. Spahn is now the President. He said notification went to the NA, but it was to a prior President.

KERIN SMITH, 2240 SOUTH CRESTWAY said she is the former President of the Meadowlark Neighborhood Association during the time that this property came to the notice of the neighbors. She said the property had deteriorated for some years before the renovations were done and one of the neighbors went over to see what was happening. She said they reported that there were complete living quarters both upstairs and downstairs; that is when they called OCI. She said OCI went out and talked to the owners who said they had no intention of creating a duplex, but would keep it single family. She said now the new owner is proposing rezoning it to bring it into compliance with the zoning code. She said they oppose this slippery slope into multi-family housing because they feel it will have a detrimental effect on the neighborhood. She mentioned that the next door neighbor is an elderly person and when he passes and the home is right next to a duplex, the attitude may be why not turn that into apartment buildings and it could move right down the block into apartment areas. She said historically the neighborhood has consisted of single family dwellings. She said they have not had good experience with multiple family units in the neighborhood and don't welcome the idea of more of these coming in.

She said the neighbors work hard to maintain the neighborhood. She asked the Commission to deny the request and keep this and the rest of the block single family.

DOWNING asked if Ms. Smith had a time frame when the NA talked to OCI.

SMITH indicated it was several years ago, probably around 5 years.

ALDRICH commented that he failed to disclose that he had ex parte communication on the application at the beginning of the discussion.

RIDPATH stated that they did do title work on the property; however, they were not made aware of OCI issues or zoning because the property was sold as a duplex and purchased as a duplex.

FOSTER asked staff if there was any concerns regarding parking if the application is approved.

LONGNECKER said the minimum standard for a duplex is 1 parking space per living unit and he didn't see any issue with that because the drive goes behind the house.

ALDRICH voiced his concerns about the long time battle with the neighborhood and the previous owner. He cited the Staff Report which referred to the neighborhood as an established residential area and that this was slightly out of character with the zoning in the area. He said he understands the issues with the current owner but said he was opposed to the rezoning.

MOTION: To deny the application

ALDRICH moved, **DENNIS** seconded the motion, and it failed (8-3). **DOWNING, FARNEY, FOSTER, JOHNSON, KLAUSMEYER, MCKAY, MILLER STEVENS, SHERMAN** – No.

SUBSTITUTE MOTION: To approve subject to staff recommendation.

DOWNING moved, **JOHNSON** seconded the motion, and it carried (8-3).
ALDRICH, DENNIS, MITCHELL – No.

5. **Case No.: CUP2011-24** - Cherry Creek Shopping Center, LLC (owner) and Savoy Company, c/o Mark Savoy (agent) request City CUP Amendment #1 to DP-98 to add Nightclub and Entertainment to Parcel 1, at Cherry Creek Shopping Center on property described as:

Center Addition, Wichita, Sedgwick County, Kansas and beginning at the N.E. Corner of Lot 1, Block 1, Levitt Industrial Park Addition, Wichita, Sedgwick County, Kansas; thence South, 275 feet; thence East, 10 feet; thence South, 25 feet; thence West, 143.33 feet; thence North 300 feet; thence East, 133.33 feet to beginning.

BACKGROUND: Cherry Creek Shopping Center Community Unit Plan DP-98 is located at the southwest corner of the intersection of South Rock Road and East Harry Street. The applicant requests an amendment (#1) to CUP DP-98 to allow a proposed “nightclub in the city” on Parcel 1. Parcel 1 and the CUP itself is currently zoned LC Limited Commercial (“LC”). DP-98 currently contains four parcels, and currently Parcel 1 allows as follows:

Parcel 1 (Light Commercial)

Proposed Uses: Shopping Center, including possible Restaurants and Offices

Existing Area: 7.54 +/- Acres

Net Area: After right-of-way dedication and vacation at time of replatting will be 7.52 +/- acres or 327,270.8 +/- Square Feet.

Maximum Building Coverage: 30 Percent, or 98,301.2

Floor Area Ratio: 0.35

Maximum Gross Floor Area: 114,684.8 +/- Square Feet

Maximum Building Height: 35 Feet

Number of Buildings: 2

Should it later be determined that more than two buildings are desirable, specific site plans shall be submitted to the Planning Department for review and approval, prior to the issuance of building permits in excess of two main buildings on this parcel.

As defined in the Unified Zoning Code (UZC), “nightclub in the city” is an establishment that provides entertainment, which may include the provision of dancing and where cereal malt beverage or alcoholic liquor are offered to the public or its members, and which may or may not serve food. Since “night club in the city” is not a listed use permitted by the CUP on Parcel 1, the CUP needs an amendment to allow the use. Also, east of the building where the nightclub is proposed, but within 300 feet, is a garden apartment complex. The apartment complex is zoned SF-5 Single-family Residential (SF-5). When located on LC zoned property that is located within 300 feet of residential zoning, nightclubs in the city are subject to UZC Supplementary Use Regulation D.6.w, which specifies additional development standards dealing with outdoor food and drink service. For this site, the SF-5 zoning is developed with residential uses. The site appears to have enough parking spaces or the ability to provide enough spaces. Signage is to be provided per the sign ordinance. Nightclubs are allowed to be open until 2:00 a.m., which is later hours of operation than most commercial and office uses have.

Property north of the subject site is zoned LC, and is developed with retail uses and a neighborhood shopping center. Property south of the subject site is zoned LI Limited Industrial (“LI”), and is developed with retail and medical offices. Property east of the subject site is zoned LC, and is developed with retail uses, a bank and a restaurant. Property west of the subject site is zoned LI, and is developed with a bank, retail uses and warehousing.

CASE HISTORY: The application area is platted as Lot 1 of the Cherry Creek Shopping Center Addition (recorded August 27, 1979). The Cherry Creek Shopping Center Community Unit Plan DP-98 was approved on June 19, 1979. There has been one administrative adjustment to this CUP in regards to a setback reduction and this request is the first amendment for the CUP.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Strip Store Center
SOUTH:	LI	Strip Store and Medical Office
EAST:	LC	Strip Store and Fast Food Restaurant
WEST:	LI	Warehouse/Storage, Retail and Bank Branch

PUBLIC SERVICES: Parcel 1 is accessible from both East Harry Street and South Rock Road, both of which are designated as principal arterials, and used as points of access for other uses in the CUP. East Harry Street is a paved, five-lane arterial with a traffic count of 46,800 ADT’s (Average Daily

Trips). South Rock Road is a paved, five-lane arterial with a traffic count of 52,400 ADT's (Average Daily Trips). Municipal water and sewer services are currently provided to this site.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this site as appropriate for local commercial types of use. This category of use encompasses areas that contain concentrations of predominantly commercial, office, and personal service uses that do not have a predominantly regional market draw. The range of uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. The commercial locational guidelines of the Comprehensive Plan recommends that commercial uses should be located adjacent to arterial streets; in compact clusters; and to have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas.

RECOMMENDATION: Based on the information provided prior to the public hearing, staff recommends the request for Amendment #1 to DP-98 to allow "nightclub in the city" in Parcel 1 be **APPROVED.**

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property north of the subject site is zoned LC, and is developed with retail uses and a neighborhood shopping center. Property south of the subject site is zoned LI Limited Industrial ("LI"), and is developed with retail and medical offices. Property east of the subject site is zoned LC, and is developed with retail uses, a bank and a restaurant. Property west of the subject site is zoned LI and is developed with a bank, retail uses and warehousing.
2. **The suitability of the subject property for the uses to which it has been restricted:** Uses permitted on the site today are shopping center and restaurant and office uses. The shopping center use permits a wide range of retail sales uses. The site could continue to be used as restricted.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of this request will introduce a use that is not currently permitted, and that typically has hours of operation that are significantly different than most office or retail uses in the immediate area. Based upon other nightclub uses, the potential exists for nuisance type activities to be associated with a nightclub use. Staff is not aware of any other nightclub uses in the immediate area.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies:** The Land Use Guide of the Comprehensive Plan identifies this site as appropriate for local commercial types of use. This category of use encompasses areas that contain concentrations of predominantly commercial, office, and personal service uses that do not have a predominantly regional market draw. The range of uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. The commercial locational guidelines of the Comprehensive Plan recommends that commercial uses should be located adjacent to arterial streets; in compact clusters; and to have site design features that limit noise, lighting, and other aspects of commercial activity that may adversely impact surrounding residential areas.

5. **Impact of the proposed development on community facilities:** Rock Road and Harry Street are fully developed arterial streets capable of accommodating any traffic impacts generated by this proposed use. There could be an increased demand for public safety services.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

FOSTER said he felt it was incumbent for the Commission to hear the case as requested by the two individuals who were present at the last meeting.

CHAIR FARNEY again asked if anyone was present to hear the application. No one from the audience responded.

MOTION: To approve subject to staff recommendation.

DENNIS moved, **DOWNING** seconded the motion, and it carried (11-0).

6. **Case No.: ZON2011-42** - Opal Fay Smith and the Veterans Administration (owner) and George M. Bell (applicant/contract purchaser request a City zone change from TF-3 Two-Family Residential to GC General Commercial on property described as:

Lots 34 and 36, Humboldt, now Poplar Avenue, Rose Hill Addition, Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting GC General Commercial (“GC”) zoning for the TF-3 Two-Family Residential (“TF-3”) zoned Lots 34 and 36, Rose Hill Addition. The subject site located at 1416 N. Poplar Street (with its single-family residence, built 1945) and abuts the north side of the applicant’s GC zoned automobile repair garage located on the northeast corner of Poplar Avenue and 13th Street North. If the zoning is approved, the applicant proposes to redevelop the site as a parking area for cars and light trucks waiting for repair at his auto repair garage. The Unified Zoning Code (“UZC”) permits an automobile repair garage (“Vehicle Repair, Limited and General,” UZC, Sec. II-B.14.h. and i.), as well as an accessory parking area for those vehicles waiting for repair at the garage (UZC, “Commercial Parking”, Sec. II-B.10.c) in the GC zoning district.

The UZC, Section IV-A.2.b, states all parking areas, loading areas and driveways on all developments other than low-density residential developments shall be surfaced with concrete, asphaltic concrete, asphalt, or other comparable surfacing and shall be maintained in good condition and free of weeds, dust, trash and other debris. The UZC’s Screening and Lighting standards (Sec. IV-B, 3.d.) states in part: screening of all nonresidential uses shall be provided along all side or rear lot lines abutting or across an alley from a residential zoning district. Screening can be provided in the form of fencing, berms, solid landscaping or a combination of the three.

The Landscape Ordinance also requires landscape buffers along the rear and side boundaries of nonresidential developments when adjacent to residential districts. Where there is a screening fence separating residential zoning from nonresidential zoning, the Landscape Ordinance requires one shade tree or two ornamental trees per forty lineal feet of property line abutting the residential area. The trees must be located within 15 feet of the common property line. Where there is not any zoning screening, as described above, a landscape buffer of 15 feet in width with one shade tree or two ornamentals and five shrubs are required for each thirty feet in length of the buffer. Existing landscaping may count towards the code required minimums. The applicant may submit, for consideration, an alternate landscape plan that does not meet code minimums along with an explanation why code minimums cannot be provided is included. Because Poplar is not an arterial street, a collector street, an at-grade expressway, or freeway road and the site is not located across the street from residential zoning, there is no

required landscaped street yard. If the requested GC is approved Compatibility setbacks will also be applied to the redevelopment of the site.

The site is part of a mostly TF-3 zoned single-family residential neighborhood that is located north, east and northwest and west of the site. There is a 25-foot wide, concrete paved with a full curb alley abutting the north side of the site. TF-3 zoned residences are adjacent to the site on its north, west and east sides. This residential neighborhood is broken up by some GC, LC Limited Commercial (“LC”), GO General Office (“GO”) zoned businesses located along both sides of 13th Street North, between Spruce (west) and Estelle (east) Avenues. The LC and GC zoned Save-A-Lot grocery store is located west of the site, across Poplar Avenue, on the northeast corner of 13th and Grove Avenue. West of the grocery is a LC zoned church. Southeast of the site, across an alley, is a GC zoned lawn care contractor’s business. South of the site, across 13th is a GC zoned single-family residence, and LC zoned liquor store, a small strip retail, a carryout restaurant and an auto repair-detail shop. An LC zoned Family Dollar retail store is located further west. Another two blocks west of the site is a GC zoned property, which advertises itself as auto repair but looks more like a vehicle storage yard or a non-conforming wrecking and salvage yard.

CASE HISTORY: The Rose Hill Addition (Lots 34 and 36) was recorded in December 1909. The site is located in the Northeast Local Investment Area.

ADJACENT ZONING AND LAND USE:

NORTH:	TF-3	Single-family residences
SOUTH:	GC	Auto repair garage, lawn care contractor
EAST:	TF-3	Single-family residences
WEST:	LC, GC, TF-3	Grocery store, single-family residences

PUBLIC SERVICES: Poplar Avenue is a paved residential street. 13th Street North is a paved four-lane, (with a center turn lane at Grove Avenue, a block west), minor arterial that carries 15,100 – 15,329 average daily trips per day. A CIP for improvements to 13th Street from Hydraulic to Oliver Avenues may begin as early as 2012. All utilities are available to the site.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide” (Guide) categorizes the site as “Urban Residential.” The Urban Residential category encompasses the full diversity of residential development densities and types typically found in a large urban municipality. The site’s current TF-3 zoning and its development as a single-family residence complies with the Guide’s Urban Residential category. The proposed GC zoning does not comply with the Guide’s Urban Residential category, however it does match the applicant’s abutting GC zoned auto repair business as well as several other small GC zoned businesses in this area. In the past the MAPC has considered supporting expansion of existing businesses by rezoning on a case by case basis.

Many of the uses permitted in the GC zoning district, more closely resemble the Guide’s “Regional Commercial” category. The Regional Commercial category encompasses major destination areas that contain concentrations of commercial, office and personal services that have predominately regional market areas and high volumes of regional traffic. Typically they are located in close proximity to freeways or major arterials and include such uses as major retail malls, major car dealerships and big box retail. The small GC zoned sites in this area are located along a minor arterial (13th Street North) and appear to serve a local market area.

RECOMMENDATION: Staff recommends support of the proposed GC zoning with the following provisions of a PO Protective Overlay (“PO”):

- (1) All vehicle parking on the site will be accessory to the abutting vehicle repair garage abutting the south side of the site; Lot 1, Block 2, Hays and Bell Addition.
- (2) Permitted uses are Vehicle Repair, Limited and General and those uses permitted by right in the LC Limited Commercial (“LC”) zoning district.

(3) Dedication of complete access control onto the abutting alley right-of-way.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The site is part of a mostly TF-3 zoned single-family residential neighborhood that is located north, east and northwest and west of the site. There is a 25-foot wide, concrete paved, with a full curb alley abutting the north side of the site. TF-3 zoned residences are adjacent to the site on its north, west and east sides. This residential neighborhood is broken up by some GC, LC Limited Commercial (“LC”), GO General Office (“GO”) zoned businesses located along both sides of 13th Street North, between Spruce (west) and Estelle (east) Avenues. The LC and GC zoned Save-A-Lot grocery store is located west of the site, across Poplar Avenue, on the northeast corner of 13th and Grove Avenue. West of the grocery is a LC zoned church. Southeast of the site, across an alley, is a GC zoned lawn care contractor’s business. South of the site, across 13th, is a GC zoned single-family residence, and LC zoned liquor store, a small strip retail, a carryout restaurant and an auto repair-detail shop. An LC zoned Family Dollar retail store is located further west. Another two blocks west of the site a GC zoned property, which advertises itself as auto repair but looks more like vehicle storage yard or a non-conforming wrecking and salvage yard.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned TF-3 which permits low to moderate density residential development; the site’s current development as a single-family residence is appropriate for the zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The proposed PO attempts to address detrimental impacts by limiting the types of uses to the existing auto repair garage and those uses permitted by right in the LC zoning district. The existing GC zoned small businesses in the area which more closely resembles uses permitted in the LC zoning district; the exception may be the development which advertises itself as auto repair but it looks more like vehicle storage yard or a non-conforming wrecking and salvage yard.
4. Length of time the property has been vacant: The property has a single-family residence on it.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The “2030 Wichita Functional Land Use Guide” (Guide) categorizes the site as “Urban Residential.” The Urban Residential category encompasses the full diversity of residential development densities and types typically found in a large urban municipality. The site’s current TF-3 zoning and its development as a single-family residence complies with the Guide’s Urban Residential category. The proposed GC zoning does not comply with the Guide’s Urban Residential category, however it does match the applicant’s abutting GC zoned auto repair business as well as several other small GC zoned businesses in this area. In the past the MAPC has considered supporting expansion of existing businesses by rezoning on a case by case basis.

The uses permitted in the GC zoning district, more closely resemble the Guide’s “Regional Commercial” category. The Regional Commercial category encompasses major destination areas that contain concentrations of commercial, office and personal services that have predominately regional market areas and high volumes of regional traffic. Typically they are located in close proximity to freeways or major arterials and include such uses as major retail malls, major car dealerships and big box retail. The small GC zoned sites in this area are located along a minor arterial (13th Street North) and appear to serve a local market area.

6. Impact of the proposed development on community facilities: Impact will be minimal.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **FOSTER** seconded the motion, and it carried (11-0).

7. **Case No.: CUP2011-41** - Price Transportation, Inc. (owner); First Student Inc. (applicant); and Patrick Hughes, Adam Jones Law Firm, PA (agent) request a City DP-86 Minor Amendment to add parking and storage of operational buses while not in service during school breaks on property described as:

Beginning at the Northeast corner of Lot 1, thence South 310.29 feet, thence Southwesterly 82.22 feet, thence West 349.66 feet, thence North 235.50 feet, thence West 409.20 feet, thence Northwest 106.68 feet, thence Southwest 56.82 feet, thence West 77.84 feet, thence North 156.50 feet, thence East 978.76 feet to the beginning, Dukes Diamonds Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant proposes Amendment #2 to the GC General Commercial (“GC”) zoned CUP DP-86, Duke’s Diamonds Community Unit Plan’s Parcel C, “...to add as permitted uses (in addition to and not in substitution of the parking use currently permitted) the storage of operable school buses while not in use, including during nights, weekends, holiday breaks, teacher in-service days and summer breaks; and including storage of such buses in a space efficient configuration during summer breaks, as opposed to a typical parking configuration.”; see attached applicant’s request. The Zoning Administrator has identified the parking of operable buses over the summer break as “vehicle storage.” See the attached December 1, 2010, Zoning Administrator’s letter; also see the Unified Zoning Code, UZC, “Commercial Parking,” Sec. II-B.10.c and “Vehicle Storage Yard”, Sec. II-B.14.j. This letter also identifies some types of parking over 72 hours as “incidental and subordinate” to the primary office and vehicle parking uses on the site as permitted by “Accessory Structure and Accessory Use”, UZC, Sec. II-B.1.b. Although the GC zoning district is the first that allows Vehicle Storage Yards, Parcel C of DP-86 specifically prohibits vehicle storage.

The applicant’s site plan shows approximately 387 spaces for buses marked off for the storage yard. The subject site and the abutting northern site (First Student site) are currently used for the parking, some maintenance and regular dispersal of First Student’s school buses during USD 259’s school year, which runs from mid-August to the last part of May. The number of buses currently using the First Student site has not been provided, however the Zoning Administrator’s letter notes approximately 60 – 70 percent of the anticipated 276 buses currently dispersing off the First Student site will be using the subject site for storage during the summer months; late May to mid-August, when school is out for the summer. The site is paved and marked.

Access to the site and the area it is located in is by Seneca Street, which is classified as a local street at this location. Seneca is a paved two-lane street with a 70-foot right of way at this location. Seneca ends at its north end at the old SF-5 Single-Family Residential (“SF-5”) zoned 52-acre Ripley Power Plant site, located approximately ¼-mile north of the site. The south portion Seneca intersects with 37th Street North, a minor arterial, approximately ¼ mile south of the site, after it crosses over the I-235 and K-96 highways. This portion of Seneca is in poor condition.

The applicant’s GC (ZON2009-00022/PO-235) zoned bus parking and staging area/offices abut the north side of the subject site. Also abutting the north side of the site is an SF-5 zoned non-conforming

practice driving track, that was once associated with the USD 259 and the Wichita Area Technical College (USD 259 Addition, recorded May 10, 1979). Further north are a LI Limited Industrial (“LI”) zoned warehouse-office combination, a vacant single-family residence, LC Limited Commercial (“LC”) land that was used for a commercial television dish, undeveloped SF-5 land as well as the already mentioned SF-5 zoned Ripley site. The Ripley site has not been used as a power plant for decades, but still has power plant infrastructure. It is now used as a Westar training facility. The Ripley site also has a 300-foot tall wireless tower/facility (CON2009-00017). Beyond the Ripley site are SF-5 zoned oil/gas storage tanks. There are four (4) large lot, SF-5 zoned single-family residences (1994-2001) built around a retired sand pit as well as undeveloped land, located east of the site across Seneca. A GC zoned church related outdoor recreation abuts the west side of the site. The GC zoned site also has a wireless communication tower/facility. Further west there is undeveloped SF-5 and SF-20 Single-Family Residential (“SF-20”) land. There are multiple CUP and Conditional Use overlays in the area. The Big Ditch marks the north and east boundary of the area. I-235 and K-96 highways mark the south side of the area. Mostly SF-5 and a few MF-29 and MF-18 Multi-Family Residential zoned urban density residential developments are located south of the highways along 37th Street North.

CASE HISTORY: CUP DP-86, Duke’s Diamond Community Unit Plan was approved May 9, 1978. The companion zoning case to DP-86, Z-2028, was also approved at this date; a change from “AA” One-Family Residential (now SF-5 zoning) to “C” General Commercial (now GC zoning). The property was platted as the Duke’s Diamond Addition and recorded October 18, 1978. Amendment #1 approved a change to the signage provisions on January 8, 2004. A Commercial Lot Split, SUB2010-00043, was approved October 10, 2010, and created the subject site; Parcel C out of Parcel A. The Lot Split was a requirement of CUP2010-00019, an Administrative Adjustment request to: (1) alter the parcel boundaries of Parcel A, and; (2) permit vehicle parking for longer than 72 hours, with conditions, and; (3) increase the maximum light level. The request for the increase in the maximum light level was denied as was the request for vehicle parking for longer than 72 hours. Subsequent appeals to the Wichita Board of Zoning Appeals (BZA2010-64) and the Sedgwick County Eighteenth Judicial District Court have ended with the applicant’s current request to amend DP-86 to allow vehicle storage on Parcel C.

ADJACENT ZONING AND LAND USE:

NORTH:	GC, SF-5, LC, LI	School bus parking, non-conforming practice driving track, KPTS broadcasting dish, warehouse- office combination, single-family residence, Westar training facility, wireless tower/facility
SOUTH:	K-96/I-235, SF-5, TF-3, MF-29, MF-18	Multi-lane raised highway right-of-way, residential uses
EAST:	SF-5, GC	Single-family residences, small motor repair, vacant land
WEST:	GC, SF-5, SF-20	Church related outdoor recreation, wireless tower/facility

PUBLIC SERVICES: The site’s only access is Seneca Street, which is classified as a local street at this location. Seneca is a paved two-lane street with a 70-foot right of way at this location, which ends at the Westar Ripley Power plant site. Seneca intersects with 37th Street North, a minor arterial, approximately ¼ mile south of the site, after it crosses over the I-235 and K-96 highways. Seneca also intersects the dirt road 40th Street North, which provides no access to other streets/roads, dead ending in the west and not extending east beyond Seneca. There is no water or sewer available to the site, but the applicant’s have petitioned for both utilities. All other utilities are available.

CONFORMANCE TO PLANS/POLICIES: The “2030 Wichita Functional Land Use Guide Map,” identifies the application area as “Major Institutional.” This category includes institutional facilities of a significant size and scale or operation and could include a range of uses such as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals and medical treatment facilities. The site had originally been developed as a playing field complex, including parking; CUP DP-86. DP-86’s uses are not easily identified as Major Institutional, perhaps its past affiliation with a church, Word of Life Ministries, led to this categorization. A Vehicle Storage Yard does not fit the Major Institutional category. The GC zoning district permits parking and vehicle storage by right, however DP-86 does not permit vehicle storage.

The area’s LI, GC and LC zoned properties and their corresponding non-residential developments as well as the area’s non-conforming industrial uses on SF-5 zoned land all have access only through a local road, Seneca Street, which they share with four (4) SF-5 zoned single-family residences (1994-2001) and undeveloped land. By locational criteria none of the non-residential uses and zoning should be located along this portion of Seneca. However, with the exception of ZON2009-00022, CON2009-0001 and a small GC zoned portion of a platted single-family lot, it appears all of the non residential zoning and commercial/industrial uses in the area were in place prior to 1979. These commercial and industrial uses should be: located in close proximity to and provide good access to major arterials; should not feed directly into local streets and into residential areas, and; should be located away from existing or planned residential areas and sited so as not to generate commercial/industrial traffic through less intensive land use areas. Seneca provides access to one road, the minor arterial 37th Street North. 37th is a paved two lane arterial that begins a sharp bend and raise at its intersection with Seneca going over the Big Ditch. 37th also provides access to and from mostly single-family residential neighborhoods. The site’s area’s commercial and industrial uses are located within close proximity to each other and all must use Seneca for access in and out of the area.

RECOMMENDATION: Non-residential zoning and development patterns established prior to 1979 then recently continued by ZON2009-0022 and CON2009-00017 has established commercial/industrial traffic in the area, which is served by a local road and is also used by four single-family residences, which were established 1994 – 2001. This is an area of incompatible uses living side by side. The most recent commercial use introduced into the area is First Students’ (applicant) parking, some maintenance and regular dispersal of school buses during USD 259’s school year. The First Student site’s dispersal of an anticipated 276 buses onto Seneca during USD 259’s school year is by far the highest traffic generator using this portion of Seneca. Per the applicant’s site plan as many as 387 school buses could be stored on the subject site. This site could also allow as many as 387 school buses to be dispersed during the school year, as permitted in DP-86. This number could swell to many more based on the number of buses using the abutting northern site, per the applicant’s site plan. The current and possible future traffic volume (and the commercial vehicles/school buses) does not match the ability of Seneca to handle it, vehicle storage or no vehicle storage. Without vehicle storage during the summer months of the school year there would be fewer buses using the First Student site and subsequently Seneca Street, thus reducing the wear of commercial traffic on the local road. Based on these factors, plus the information available prior to the public hearing, staff recommends the request be DENIED.

This recommendation is based on the following findings:

- (1) The zoning, uses and character of the neighborhood: The applicant’s GC (ZON2009-00022/PO-235) zoned bus parking and staging area/offices abut the north side of the GC zoned subject site. Also abutting the north side of the site is an SF-5 zoned non-conforming practice driving track,

that was once associated with the USD 259 and the Wichita Area Technical College (USD 259 Addition, recorded May 10, 1979). Further north are a LI Limited Industrial (“LI”) zoned warehouse-office combination, a vacant single-family residence, LC Limited Commercial (“LC”) land that was used for a commercial television dish, undeveloped SF-5 land as well the SF-5 zoned Ripley power plant site. The Ripley site has not been used as a power plant for decades, but still has power plant infrastructure. It is now used as a Westar training facility. The Ripley site also has a 300-foot tall wireless tower/facility (CON2009-00017). Beyond the Ripley site are SF-5 zoned oil/gas storage tanks. There are four (4) large lot, SF-5 zoned single-family residences (1994-2001) built around a retired sand pit as well as undeveloped land, located east of the site across Seneca. A GC zoned church related outdoor recreation abuts the west side of the site. This GC zoned site also has a wireless communication tower/facility. Further west there is undeveloped SF-5 and SF-20 Single-Family Residential (“SF-20”) land. There are multiple CUP and Conditional Use overlays in the area. The Big Ditch marks the north and east boundary of the area. I-235 and K-96 highways mark the south side of the area. Mostly SF-5 and a few MF-29 and MF-18 Multi-Family Residential zoned urban density residential development is located south of the highways along 37th Street North.

- (2) The suitability of the subject property for the uses to which it has been restricted: The uses allowed by the GC zoned Community Unit Plan (approved in 1978) are not out of character with the area’s non-residential zoning and development. However the area’s non-residential zoning and development is in close proximity to the more recently developed (1994-2001) SF-5 zoned single-family residences. This is an area of incompatible uses living side by side.
- (3) Extent to which removal of the restrictions will detrimentally affect nearby property: Allowing the storage of a possible 387 school buses (per the applicant’s sit plan) on the site during the summer months increases the possibility of having more than 387 buses using the site and the local road Seneca Street year round. By limiting the site’s use to the permitted parking by right during the school year, a possible reduction of traffic on a road not built for that volume of commercial traffic may be achieved.
- (4) Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide Map,” identifies the application area as “Major Institutional.” This category includes institutional facilities of a significant size and scale or operation and could include a range of uses such as government facilities, military bases, libraries, schools, cemeteries, churches, hospitals and medical treatment facilities. The site had originally been developed as a playing field complex, including parking; CUP DP-86. DP-86’s uses are not easily identified as Major Institutional, perhaps its past affiliation with a church, Word of Life Ministries, led to this categorization. A Vehicle Storage Yard does not fit the Major Institutional category. The GC zoning district permits parking and vehicle storage by right, however DP-86 does not permit vehicle storage.

The area’s LI, GC and LC zoned properties and their corresponding non-residential developments as well as the area’s non-conforming industrial uses on SF-5 zoned land all have access only through a local road, Seneca Street, which they share with four (4) SF-5 zoned single-family residences (1994-2001) and undeveloped land. By locational criteria none of the non-residential uses and zoning should be located along this portion of Seneca. However, with the exception of ZON2009-00022, CON2009-0001 and a small GC zoned portion of a platted single-family lot, it appears all of the non residential zoning and commercial/industrial uses in

the area were in place prior to 1979. These commercial and industrial uses should be: located in close proximity to and provide good access to major arterials; should not feed directly into local streets and into residential areas, and; should be located away from existing or planned residential areas and sited so as not to generate commercial/industrial traffic through less intensive land use areas. Seneca provides access to one road, the minor arterial 37th Street North. 37th is a paved two lane arterial that begins a sharp bend and raise at its intersection with Seneca going over the Big Ditch. 37th provides access to and from mostly single-family residential neighborhoods. The area's commercial and industrial uses are located within close proximity to each other and all must use Seneca as the only access in and out of the area.

- (5) Impact of the proposed development on community facilities: The commercial traffic on this portion of Seneca Street, which is classified as a local street, exceeds what Seneca was built for. The chance to increase that commercial traffic year round by allowing 387 additional buses to be stored when school is out during the summer months could become vehicle parking if the buses are moved before 72 hours. Vehicle parking is permitted by right in DP-86.

However, if the MAPC feels this is an appropriate use staff recommends the following provisions to the Amendment #2 to the GC zoned CUP DP-86, Duke's Diamonds Community Unit Plan's Parcel C:

- (1) Vehicle/school bus storage from late May to mid August (as it most closely reflects USD 259's summer months) shall be limited to 60 to 70 percent of a total of 276 buses in a typical parking configuration.

BILL LONGNECKER, Planning Staff presented the Staff Report.

ALDRICH asked what was the distance from the south side of Seneca Street to the sharp turn at 37th Street.

LONGNECKER responded he did not know.

ALDRICH asked what was the estimated daily traffic count on 37th Street.

LONGNECKER responded he did not know.

SHERMAN said from a neighborhood standpoint the detrimental effect would be more related to the buses going in and out every day rather than the buses sitting parked for three months during the summer. He said he would like more explanation as to why staff was opposed to the parking.

LONGNECKER said staff was looking at offering some relief to Seneca Street and the neighborhood regarding vehicle storage. He said the Unified Zoning Code (UZC) defined vehicle storage as an operable vehicle not moving after 72 hours. He said parking is allowed under the Community Unit Plan (CUP) so the applicant can park the buses even during the summer months, as long as they are moved every 72 hours.

FOSTER asked how many buses are allowed on the north parcel.

LONGNECKER said the Zoning Administrator's letter refers to 276 buses, but added that there are well over 300 spaces on the Dukes Diamonds site.

FOSTER asked what is going to happen to the buses that are stored on the site the other nine months of the year.

LONGNECKER said as it stands now parking of the buses is allowed during the school year for longer than 72 hours as accessory and/or incidental in support of the primary use as defined by the Zoning Administrator. He mentioned for example parking anytime during the school year such as Christmas and Spring breaks, teacher in-service days, etc., but not during the summer months.

MILLER STEVENS asked if this application was approved, would it be for buses only or would other vehicle storage be allowed at the site.

LONGNECKER responded that if the Commission wanted to be more specific, they could say the parking would be for school buses employed by USD 259 and limit it to that which is what it is being used for now.

MILLER STEVENS said she didn't know if it could be buses from other districts or maintenance vehicles because she is not sure what other vehicles First Student owns.

SHERMAN referred to the proposed language in the Staff Report. He asked about the 60% – 70% recommendation of staff on the number of buses to be stored at the site.

LONGNECKER responded that those numbers were based on the Zoning Administrator's letter which he believes was based on dialogue with the applicant. He said the applicant did not request a specific number of buses, but they submitted a site plan that shows over 300 parking spaces.

PATRICK HUGHES, ADAMS JONES LAW FIRM, AGENT FOR PRICE TRANSPORTATION INC. PROPERTY OWNER AND APPLICANT mentioned that representatives from First Student were also present to answer any specific questions about land use. He said he was here to discuss three issues. He said the first was what the current use of the property is; the second was what they are really asking for in terms of change to the CUP and the effect of that; and third he said he wanted to talk about the Staff Report and staff's recommendation and how it misses the mark at least in part because of some confusion. He said his central point is that the proposed amendment will not increase traffic along Seneca St.; it decreases traffic and prevents an unintended and ridiculous result of the current zoning restrictions on the property.

HUGHES said the Sedgwick County District Court has determined that this is appropriate use of the property even though leaving vehicles parked more than 72 hours is vehicle storage; even though vehicle storage is not a permitted use; and even though buses are stored on the property on long weekends and on holiday breaks for more than 72 hours. The District Court has determined that during the school year that is an accessory use and; therefore, appropriate. He said the District Court case did not deal with the summer. He said this amendment will get that issue resolved.

HUGHES said during the school year approximately 250 buses use Seneca St. from this facility. He said Seneca St. is classified as a collector street and staff has noted that it has some deferred maintenance. He said presumably Public Works will be taking care of those issues at some point and

restoring the road to its design conditions. He said regardless of what is decided here, First Student will be running approximately 100 buses in the summer for summer school from this facility. He said the other buses that can't be stored have to be moved every 72 hours. He said what is being requested is not a vehicle storage yard. He said their application was specific to insure this was not a change that would allow some other sort of "vehicle storage yard" at some future point in time. He said they asked specifically for an amendment to allow "parking and storage of operable school buses when not in use during nights, weekends, holiday breaks, teacher in-service days and summer breaks including storage of such buses in a space-efficient configuration during summer breaks, as opposed to a typical parking configuration." He reiterated that they are not asking for a vehicle storage yard. He said allowing buses to be stored at the facility in the summer does not increase the number of buses that will be driving on Seneca Street. He said as things stand the buses need to be started and moved every 72 hours during the summer. He said the requested amendment would be a "win/win" because it would allow some buses to stay in place without having to move them until they are needed again. He said every bus that First Student is allowed to store would be one less bus they would be taking out onto Seneca Street every 72 hours to comply with the CUP.

HUGHES referred to the Staff Report and quoted excerpts from page five regarding limiting the site's use to the permitted parking by right during the school year and possible reduction of traffic may be achieved. He said that simply is not true. He said he has a problem with the conclusion that allowing buses to be stored would somehow increase traffic. He said it is based on the assumption that the site plan shows parking for 387 buses which is more buses than is allowed at the site now, but the plan shows car parking for bus drivers, not bus parking spaces. He said approximately 140 buses will not be used for transportation of students during the summer. He said the inference that if there was storage for 387 buses you would have an increase in the number of buses that are running year-round. He said the number of buses running routes from the facility does not depend on how many buses can be stored at the site in the summer. He said storing buses does not cause more bus routes. He said First Student is not planning on bringing in extra buses to store at the site during the summer. He said every bus that is stored is a bus that will not be driven out onto Seneca Street to comply with the CUP or require a bus driver to drive to and from the site to move the bus. He said denial of the requested amendment will result in increased traffic on Seneca St. during the summer. He said First Student will win by not having to do the utterly ridiculous and wasteful thing of shuffling buses around every 72 hours to comply with the zoning restrictions and the public will win because Seneca Street will not see as much traffic that shuffling the buses requires.

HUGHES mentioned two unfortunate facts that the Planning Commission's decision today cannot change, which were the property was developed and the planning occurred at two different paces. He said this is an industrial area where roadway access is something less than a planner might designate if this were a blank slate. He mentioned the four residential homes that were dropped into an industrial type area. He said those facts don't give any reason to leave the CUP the way it is written as a set of rules regulating outdoor athletic fields. He said the parcel's primary use is no longer for that purpose. He said there should be rules that are logical for the land use that is going on at the site. He said the land use maps classification of this site as major institutional is not very relevant.

MOTION: To give the speaker two additional minutes.

ALDRICH moved, **FARNEY** seconded the motion, and it carried (11-0).

HUGHES said that classification was based on the fact that at the time the map was developed it looked like the property would be used for that purpose. He said First Student is doing the same thing a major institution would do (the school district) if it didn't contract out the services to First Student. He said denying the request does not relieve the neighborhood of anything. He said there isn't any impact on the neighbors from storing the buses during the summer. He said the nearby residences are to the north of this parcel and are screened by trees and a solid masonry wall. He said the nearest subdivision is separated from the property by I-235. He said there is also truck traffic from Westar and the tree trimming service along Seneca Street.

HUGHES concluded by saying that there was no rational or benefit to anyone of staff's alternative recommendation of 60% to 70% and the requirement of a typical parking configuration. He said this would limit the number of buses that don't need to be shuffled around which will cause more traffic along Seneca Street. He added that there was no reason to require the typical parking configuration instead of the applicant's proposed nose-to-nose and side-to-side plan.

MILLER STEVENS clarified that the only buses that would be parked on the south property would be those buses normally stored in the north parking area; that no additional buses will be stored on the south lot.

HUGHES said that is right. They will only be storing a segment of those buses used during the regular school year, the buses that will not be used to provide transportation for summer school.

ALDRICH mentioned the comments Mr. Hughes made regarding no increased traffic and cited the temporary First Student lot previously located on Ohio Street between 29th and 37th Streets. He said businesses in the area had major issues during that time because their employees could not get in and out of job sites because of the traffic. He said there were so many complaints that First Student relocated to this area. He said he has concerns about the traffic in this location because of the buses, private vehicles driven by the bus drivers and support staff at the facility. He said the only access into the area is off of Seneca Street which is a two-lane roadway. He also mentioned the blind corner to the west when buses were pulling out of Seneca Street. He said he has some major concerns regarding safety in the area. He concluded by mentioning that Westar does have vehicles in the area but not 276 bucket trucks.

HUGHES stated that there was about a 4 minute delay coming into or leaving homes because of the bus traffic. He admitted that traffic at the 37th Street intersection was as Commissioner Aldrich described. He said they are not discussing if First Student will continue to run bus routes from the facility but allowing First Student to store buses at the facility over the summer rather than not being able to store the buses and moving them every 72 hours. He said the difficulties Commissioner Aldrich cited can't be solved by a decision in this case. He said this decision can remove the need for First Student to be moving buses around that don't need to be moved in the summer.

MITCHELL clarified that Mr. Hughes referred to industrial zoning during his presentation. He asked where that zoning was located on the map.

HUGHES said he referred to an industrial type area. He mentioned the previous sand pit area, previous truck driving school, power plant, and the buses which were uses that cause compatibility problems but that are entrenched there now.

MITCHELL commented that the uses haven't been entrenched east of Seneca except the Ripley Plant. He said the area west of Seneca and north of Dukes Diamonds was all zoned SF-5 Single-Family Residential. He said he did not think the area was blighted with industrial uses until this operation became a traffic problem. He said the agent also indicated that if the use of Seneca Street and the increased traffic causes that road to deteriorate was the City's problem and up to the City to repair it. He said he believes that is shortsighted. He asked if the applicant had any intention of making application for standard pavement improvement for this area.

HUGHES said he was present on behalf of the owner of the property, Price Transportation. He said he has not been given any direction to submit that sort of request. He said they were here to see if they can do something to reduce the amount of impact, but the use is there and it does impact the street.

MITCHELL clarified that the owner was not willing to make any effort to improve the access for either the residents or the buses.

HUGHES said he did not have any authority to address that topic because his client is the property owner not the operator.

MITCHELL commented that the owner would be the one to petition for improvement.

DOWNING said he had a question relative to shuffling the buses to meet the 72 hour requirement. He asked if they currently move buses from one parking space to another to comply or do they take the buses off site and drive them some distance, and if they take them off site how far do they drive them.

HUGHES said he would let representatives from First Student address the question.

DENNIS asked for clarification as to exactly what they are asking for and repeated the previous statement made by the agent. He said that doesn't limit the applicant to the number of buses and mentioned the possibility of contracting with another school district to park additional buses at the site.

HUGHES replied that the area already has as many buses as the area is allowed to operate.

DENNIS asked if the applicant would be willing to amend the request to limit how many buses can be stored at the site.

HUGHES responded yes.

DENNIS asked if the area was for operable school buses only or would other vehicles be stored there such as mobile maintenance vehicles.

HUGHES said he believed only school buses would be parked on the site, but he suggested First Student answer that question concerning mobile maintenance vehicles. He said they have already effectively limited the total number of buses they can put in the space.

DENNIS responded but that is not what the paperwork says.

HUGHES clarified that they believe they will get not quite 140 buses on the property. He said they will continue to move and shuffle buses in order to comply with the zoning. He said every bus they can get

into storage instead of having to shuffle means less wasted fuel, traffic, and people and coming and going from the facility.

DENNIS again asked if the applicant would be willing to limit the total number of buses at this facility so it won't keep growing.

HUGHES responded yes.

CHAIR FARNEY asked if anyone on the Commission would like to hear from the representatives of First Student.

DENNIS said yes.

ROBERT KAPLAN, 301 NORTH MAIN, STE 1600 asked about the 10 minute rule for agent(s) and all other representatives of the applicant.

CHAIR FARNEY explained that the Commission had questions for the First Student representatives.

JOHN BILLINGMEIER, SENIOR LOCATION MANAGER OF FIRST STUDENT, INC., 4141 N. SENECA AND PHIL O'DONNELL introduced themselves.

DENNIS commented that the request as written does not limit the total number of buses that can be parked at the site.

BILLINGMEIER said they would be willing to talk about limits. He said the capacity is limited by the amount of space which can accommodate approximately 140 buses.

DENNIS clarified that they would be willing to limit the storage to 140 buses.

BILLINGMEIER responded yes.

DENNIS asked about storage of mobile maintenance vehicles and other vehicles that might be stored at the site.

BILLINGMEIER said they would store no other vehicles and added that they have 2 mobile maintenance vehicles at that location that are mobile year-round.

ALDRICH asked why the company went through the expense of paving and striping the parking lot and before they had zoning in place.

MCKAY (Out at 2:45 p.m.)

BILLINGMEIER asked for clarification of the question and added that they have zoning approval for the day-to-day operation of the facility. He said the amendment being requested has no effect on their daily operations. He said they currently use the parking lot for the day-to-day operation of the facility and employee parking.

ALDRICH mentioned 300 employees with an additional approximately 200 vehicles and that he still has issues with traffic safety. He mentioned when the facility was located on Ohio Street and how the traffic severely impacted businesses in the area. He also mentioned possible signalization on 37th and Seneca Streets. He said this request doesn't do anything to alleviate some of his safety concerns.

O'DONNELL acknowledged the traffic issues at the temporary facility located at 37th and Ohio Streets. He said with the current zoning, they are operating off of both lots. He said he is confused and although he understands Commissioner Aldrich's concerns with traffic on the road; he pointed out that the operation is already located there and that part is not being addressed with this amendment. He said the amendment they are requesting addresses parking during the summer on the piece of property they are already operating off of.

ALDRICH commented that things are done a certain way and he feels this is putting the cart in front of the horse and should have been addressed before the applicant got the current zoning, in his opinion.

SHERMAN requested clarification that the lot is striped now to accommodate school year operations, which includes parking for employee's cars and buses and that there are about 250 buses.

BILLINGMEIER said they currently operate 276 buses from the lot. He said 250 operate routes and the other 26 are spare buses in case of preventative maintenance on regular buses. He said all other parking is for employees.

SHERMAN clarified that in the summer they only operate about 100 buses so they won't need all the employee parking. He also said they want to park buses in the designated area, but stack them in closer rather than using the parking configuration. He added that they didn't do this for no reason or assuming they would get the required zoning.

BILLINGMEIER referred to the aerial of the site and indicated the area for employee car parking and the secured area to the west for bus parking.

DOWNING asked for details about the bus shuffle every 72 hours to comply with the zoning. He asked do they move buses from space to space, or do they in fact take the buses off site and drive on streets, and if so, how far.

BILLINGMEIER said under their current operations, they have 250 bus routes and 276 buses. He said they have moved the 26 spare buses into run routes to stay in compliance with the 72 hour rule.

DOWNING asked about the summer time.

BILLINGMEIER said the plan is to start the buses and take them off the lot, run them down the road for a couple of miles. He said it is not good for the engine to start the bus up and shuffle it from one parking space to another, so they would be taken out on the road and onto Seneca Street.

DOWNING clarified that if the requested amendment is approved, 140 bus trips would be taken off the streets by leaving them parked in the parking lot.

BILLINGMEIER said that is correct.

ROBERT KAPLAN, 301 NORTH MAIN, STE 1600 commented that Commissioner Downing picked up on one of the absolute issues of the case and that was if the Commission makes a decision on this case based on the premise that this is not a vehicle storage yard that would be totally erroneous. He said that is exactly what this is by the Unified Zoning Code (UZC) and statute. He said when a bus is left parked for more than 72 hours, that bus is being stored. He said shuffling the buses or taking them off site every 72 hours is not the intent of the ordinance which was written to define a vehicle storage yard. He said it was not written with the intent that a vehicle can be moved 2 feet and that would comply with the 72 hour requirement. He said that position is an “end run” around the ordinance. He said if that were the case, he could have a vehicle storage yard any place. He said staff’s report explained the issue. He asked the Commission not to make a decision based on the fact that the applicant has parking privileges for more than 72 hours because that matter is still in litigation. He said the Zoning Administrator granted the applicant an administrative adjustment so they would not have to amend a Community Unit Plan (CUP) which specifically prohibits vehicle storage, a fact of which they were aware of when they acquired the property. The Zoning Administrator ruled that parking was an incidental and accessory use to the principle use, like a church van or a dry cleaner’s truck that stayed parked for more than 72 hours. He said the principle use for this site is storage of buses and there is no getting around that. He said after the Zoning Administrator made that determination the neighbors appealed the decision to the Board of Zoning Appeals (BZA). He said the BZA did not buy the interpretation, said that the use was storage and reversed the Zoning Administrator’s decision. He said the applicant then appealed the BZA decision to the District Court, who approved the original decision made by the Zoning Administrator. He said Mr. Hughes did not; however, explain that the District Court’s decision has been appealed to the Kansas Court of Appeals where it is pending and awaiting argument. He said the parking decision is not finalized by a long shot and suggested that the Planning Commission may want to defer the case until the final decision of the Court of Appeals.

He commented that there were plenty of citizens present to explain all of the burdens and problems in the neighborhood because of the one way in and out ingress/egress from the area. He said one of his clients changed her work schedule because she could not get out of the area to get to work. He added that the wait to get out of the area is longer than four minutes.

He said he was going to give the Commission three very good land use and legal reasons not to approve the request. Number one the applicant is seeking an amendment to the CUP specifically to provide vehicle storage and this can’t be called anything but a vehicle storage yard.

CHAIR FARNEY told Mr. Kaplan that his time to speak had expired and asked him if he needed additional time.

KAPLAN requested another five minutes and mentioned that he had a letter from a Mr. Philip Giovani requesting that his five minutes be given to Mr. Kaplan.

MOTION: To give the speaker five more minutes.

DENNIS moved, **ALDRICH** seconded, and the motion carried (9-1). **MILLER STEVENS** – No.

KAPLAN said the 2030 Functional Land Use Guide, like the Comprehensive Plan, sets standards and patterns and that this request does not comply with that document. He said this is not a major institutional use. Number 3 he said he does not believe anyone can suggest that allowing this amount of

traffic on a two-lane residential street adjacent to a residential subdivision is good planning. He said it is being presented as an issue that is going to eliminate traffic on Seneca Street, but it is also acknowledged that buses are going to be running during the summer time. He said the applicant also wants storage during the school year and three months during the summer time. He said storage would then become the principal use of the property. He said he would defer to the folks present so they can talk about the problems they have had with the site.

KAPLAN concluded by reiterating that the issue of the parking is not finalized, and is still a matter for the Court to decide. He said the applicant can park at the site while the appeal is pending, but if the Court of Appeals reverses the District Court's opinion, who reversed the BZA's opinion, and the BZA reversed the Zoning Administrator's interpretation, the Commission can see that there is quite a bit of controversy on this issue of what is parking and what is storage. He said the UZC states that parking in excess of 72 hours is considered storage. He reminded the Commission that they are talking about 276 buses and bus drivers that come and go along Seneca Street not just a church or dry cleaner's van. He said he would hate to live in the neighborhood or on the street with that kind of traffic. He said the Commission may not believe that is germane to this application; however, he said if the buses are allowed to remain at this location, they are going to be used which will put traffic on Seneca Street. He said there are three very substantial legal and planning issues why this request should be denied. He added that Mr. Longnecker wrote an excellent staff report and got it exactly right. He said this use would be in violation of the CUP provisions and that the applicant could have sought an amendment; however, they didn't do that instead they tried to do an "end run" around the ordinance with an administrative adjustment.

JOHNSON asked if the applicant used 100 buses each day during the summer months and alternated use of them, would that meet the 72 hour rule and would they be in compliance.

KAPLAN responded no, not in his opinion. He mentioned that the buses will be stacked together to maximize use of the space, not in a regular parking type configuration. He said he believes this is a case of UZC interpretation and that is how he appealed the decision to the Court of Appeals.

JOHNSON asked if he thought the applicant would be in compliance if they moved the buses every other day.

KAPLAN said he still believes it is a violation of the ordinance.

JOHNSON said he disagreed.

SHERMAN said he understood the concerns about the traffic and all the problems it causes with the neighborhood and he personally feels having this operation run out of this site was a mistake. However, he didn't see how storing buses at the site impacts the neighborhood at all. He mentioned Commissioner Johnson's proposal regarding using 100 buses during the summer and he would assume they can take the other 150 buses and move them somewhere else for the summer.

KAPLAN commented that this was a land use case and the applicant is seeking permission for vehicle storage yard in what is clearly a residential neighborhood. He said forget the facts and sense of practicalities of the use, they are saying that the Commission should not approve a vehicle storage yard adjacent to a residential neighborhood and across the street from residential zoning. He said if he came in with a proposal to put a vehicle storage yard in a residential subdivision that would be silly and the

Commission would not do that. He said the applicant is doing just that and asking the Commission to approve it after the fact and he doesn't like it.

SHERMAN said if the code was written perfectly there would be no need for a Planning Commission. He repeated that he does not see how storing the buses impacts the neighborhood.

KAPLAN said there is a clear tie to allowing storage of vehicles and use of those vehicles. He said it would have been better if the applicant disclosed what they wanted to use the site for before they obtained the amendments because it probably would not have gone through in the first place.

DOWNING asked if the Court of Appeals reverses the District Courts opinion, will there be buses at the location from September through May overnight.

KAPLAN said yes; however, they cannot remain at the site on non-school periods in excess of 72 hours. He said he was trying to eliminate this location.

ALEX CAVGALAR, 3702 NORTH COOLIDGE commented that when this case was heard in 2011 and 2010, neighbors said this was going to have an impact on the neighborhood because it's cause and effect. He said having the buses stored or moved every 72 hours is going to have a dramatic effect on the neighborhood. He talked about the possible number of buses estimated at 50% which could be anywhere from 83 to 138 buses operating out of the facility during the summer, the number of trips per day per bus being at least twice, the fact that Seneca was a single lane street that is in poor condition, and employees driving to and from the site in their own private vehicles. He said EMS and fire trucks come into the neighborhood and they are concerned about access for emergency vehicles into the area. He said it averages him 20.7 minutes to leave the neighborhood every morning to go to work. He said the City should not have approved this use without looking at the cause and effect principle. He said one way or another every single resident is impacted.

DON MAXEY, 3810 GARLAND said he lived at the corner of 37th Street and Garland, one block west of the intersection of Seneca and 37th Streets. He said the street infrastructure in this area is not adequate to funnel the number of buses in and out or the number of employee cars. He urged the Commission to deny any amendment to the CUP that would allow buses to be stored for more than 72 hours. He said the actual moving of the buses may not impact the neighborhood, but if moving them is denied it might make First Student deem it not worth the hassle to move the buses. He said the neighborhood would like to see them relocate to another location suitable for this kind of traffic. He said the traffic in this area is a public safety issue above being a nuisance.

JOHN DWYER, 1341 NORTH GENTRY said 30 years ago his father bought this property with two other attorneys and affectionately named it Sharks Nest. He said it has been his lifelong work and project to improve the original mud pit with landscaping, etc. and they are heavily invested with their lives and money. He said it is his dream to build a house at the location but across the street from him every day will be those buses. He mentioned the impact if five buses were parked across the street from the Planning Commissioners homes for the whole summer. He said he is opposed to the current situation and gets the feeling from some of the Planning Commissioners that it never should have happened in the first place. He said he does not believe the Commission should move forward with an expansion but go back and fix the problem where it started. He said he has heard a bunch of different numbers as far as buses are concerned, the number of employees, etc. He asked the Commission if they knew what it sounds like when they start up 200 buses across the street. He said that is across the street

from his house. He mentioned privacy, trees, walls, highway and said he has none of that between his house and the parking lot. He said he is also concerned about trespassing onto the lake, theft and damage to his property. He concluded by asking the Commission to fix the initial problem and said this facility should not be here in the first place.

MIKE PATTERSON, 4254 NORTH SENECA said he lives across the street from this mess. He said the bus company has indicated they would only have a certain amount of buses there and it won't get any bigger. He said they have led the neighborhood astray on everything that started this whole thing so he thinks that is a bunch of "bull." He said he lives across the street from this facility and there is not supposed to be any storage/parking throughout the summer but they stored a whole stack of buses last summer and it didn't make any difference. He asked who is going to enforce this because OCI couldn't do it last year. He said if the applicant is allowed this request, it just keeps coming one item after another. He suggested going back to the root of this thing which he knows is not the issue before the Commission today but he said the applicant is not doing what they are supposed to do and no one is enforcing it. He suggested waiting until the matter is decided in the courts before the Commission approves any other changes. He commented that the BZA voted unanimously against the interpretation of the Zoning Administrator. He requested that the Commission wait until that is cleared up before they approve any other changes.

GREG PILAND, 4320 NORTH SENECA referred to a PowerPoint presentation and said he lives next door to Mr. Patterson across the street from the First Student facility. He gave a brief history of the property beginning with the purchase by Price Trucking back 2009/2010. He said at that time all 600 buses owned by First Student were moved onto the property, which was zoned SF-5 Single-Family Residential. He said they called the City at that time to find out what was going on. He said after the City came out, they relocated the buses to Ohio and 37th Street. He said what has happened is an individual bought a piece of ground (5 acres) and hired a real estate agent (Don Arnold) to find a tenant. He said the agent negotiated a long-term lease agreement with First Student even though the property was still zoned SF-5 at the time. He said there was an application for GC General Commercial with a protective overlay PO; however, the PO did not allow vehicle storage so they called it parking. He said when you drive by this location every day and there are 270 buses in the same configuration going back and forth, call it what you want, it is storage. He referred to an article from the Wichita Business Journal from August, 2010 where Don Arnold brokered the deal with First Student. He said the property was still zoned SF-5 at that time. He said this is a good example of someone who does not follow the UZC. He said the trick for First Student was to find enough acreage to store their buses. He referred to the district calendar and bus schedule. He said over 1/2 half the time the buses are not moving. He asked when is it okay to break the law 37 percent of the time. He said he just doesn't get it. He referred to several pictures of his home and the surrounding property. He said there has been some mention of industrial property but the pictures don't indicate that. He said this is all about making money.

MOTION: To give the speaker three more minutes

FOSTER moved, **FARNEY** seconded the motion, and it carried (9-1). **DENNIS** – No.

PILAND said the principal use of the property is storage. He said that is why he and the Patterson's are spending their hard earned money to take the matter to appeal because they don't think this was done right the first time. He asked are they right; of course they are; will they win; they hope so. He asked the Commission to look at the big picture and postpone a decision until after the court case is settled.

MARILYN GARRISON, 1940 WEST 37TH COURT said she lives north right off of 37th Street which is a 2-lane street. She said they have no access to go north because the area is bound by I-235. She said there is no access to go west because of the interstate and then the river so it really is a “bound in” neighborhood and that needs to be understood. She said it’s not like they can go down to the next intersection to leave the area. She said if this company needs to own this property and the neighbors can’t get this reversed a new road needs to be constructed west of I-235 for this use. She said 12 years ago they petitioned and had signs posted so no trucks would go on 37th Street and there are signs posted, but it is okay to have 250 buses on the road. She mentioned damage to the homes along 37th. She said this is not good for the people as a whole; it is not fair that they should pay the price for the company’s desires. She said the company is trying to do something undercut because there is plenty of commercial property in the area. She concluded by saying that they would not like the Commission to move forward until they find out if they can get this appealed.

ANDREA CAVGALAR, 3702 N. COOLIDGE said she is a resident of Sherwood Glen and also a real estate agent and she can definitely say that this facility has affected property values in the area. She mentioned detriment to property values, safety issues, and the cost to the City to repair the road because of the bus use.

ALDRICH asked if she could provide a figure as far as a percentage of how the property valuation has gone down.

CAVGALAR said she did not bring a Current Market Analysis with her but that she could forward that to him later this afternoon.

TROY HAGERMAN, 3885 NORTH FRIAR LANE said this whole deal has obviously been botched from the beginning. He said it has created much traffic in the area, but that is not what the neighbors are here for. He said he would like to talk about how messed up and bad this was to begin with. He mentioned that Mr. Hughes said if the parking wasn’t allowed the applicant would have to move the buses every 72 hours. He said he did not think they will move them every 72 hours so it would be just one more road block to maybe make them move. He said if they do stay and have to move the buses he thinks it is great because it is going to cost them more money and make them mad. He said a comment was made that it will save traffic; but he reiterated that he doesn’t think they will move the buses. He said he has been to a lot of MAPC meetings and he noticed the Commission usually votes for the developer; they hardly ever vote for the little residential guy so he doesn’t expect anything different here either. He said he believes there have been a lot of good reasons given here today why this should not be done and you can’t complain when it doesn’t go your way if you didn’t say anything.

GARY BISHOP, 3835 NORTH ATHENIAN AVENUE said the aerial and maps of the area are a little deceptive because it shows the land as not populated. He said the village along 37th Street to the southwest is affected a lot more than what has been depicted here.

PATRICK HUGHES, AGENT FOR THE APPLICANT said sand pits, cell towers, halfway houses, packing plants, solid waste disposal facilities, and wind turbines are all controversial land uses that affect real people. He said these types of operations are hard to locate but the function of taking kids to school is essential; never the less, it has impacts. He said First Student is at the location and they are committed. He said it is where the facility is operating and will continue to operate. He said the question is whether the buses need to move and drive out onto Seneca St. every 72 hours. He said if the

application is denied or if the Court of Appeals overturns the decision that will not change the fact that the buses will be running from this location. It will just mean the buses will be running more. He said the question is does First Student need to drive 140 buses every 3 days during the summer or leave them where they are.

ALDRICH asked in the event this application is denied, did his client have a legal alternative site for parking.

HUGHES said no.

SHERMAN asked if the Planning Commission approves the application and the court overturns the previous case so the operation can no longer continue at the present location, will that open a door so they can continue the operation at the present location.

KELLY RUNDELL, DEPUTY CITY ATTORNEY explained that the court case was only about the accessory uses such as the parking. She said the operation of running the buses day-in and day-out could continue; that is not in the court case.

SHERMAN asked if the court case regarding parking applied to the parcel the Commission was looking at today or just the parcel to the north.

RUNDELL responded that the court case involved the parcel to the north; however, that interpretation would also apply to this piece of property.

SHERMAN clarified so if the Planning Commission approved storage as a use, could the court case overturn that ruling.

RUNDELL said the Planning Commission's action would not be overturned by the court case. She said what could happen is that if the Planning Commission approves the request the applicant could store the buses on this parcel but not the parcel to the north.

MITCHELL commented that since action to approve or disapprove the amendment will do nothing to change the mistakes that permitted the use, he suggested deferring the item until the court decides the issue.

MOTION: To defer the case and let the court decide the issues that the Commission cannot address today.

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

ALDRICH referred to a letter from the Zoning Administrator dated December, 2010 item #4 and asked if the landscape plan has been approved by Planning Staff.

LONGNECKER said yes, the landscape and masonry screen wall has been approved and has been erected.

ALDRICH asked if the site is within compliance with the paving of the parking lot as it sits right now.

LONGNECKER responded yes.

DENNIS said he respects Commissioner Mitchell's opinion; however, he believes deferring the issue "kicks the can down the road" and the Planning Commission will be hearing the matter again once the court makes a decision which he doesn't believe resolves anything. He said he would just as soon resolve the issue at this point and if the court overrules the decision they can worry about it at that point in time. He said he worries about the way the request is written in that it appears that an unlimited number of vehicles can be stored at the site. He said this problem isn't going to go away whether the Commission solves this today or not. He said the problem has been long-standing and while he understands the concerns of the homeowners in the area; the majority of the discussion today was about traffic in and out of the location and that is not what the Commission is here to decide today. He said they are present to decide whether to amend the CUP to permit storage of vehicles.

SUBSTITUTE MOTION: To approve the application using the language suggested by the applicant with the addition of the phrase "a maximum of 140 operable school buses."

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

DIRECTOR SCHLEGEL clarified that Commissioner Dennis was using the language presented by the agent Mr. Hughes in addition adding the phrase "a maximum of 140 operable school buses."

DENNIS said that was correct.

SHERMAN said he would support the motion, but asked why not constrict it to the secured area for bus parking only.

DENNIS said he would be willing to amend the motion to say only the secured area.

JOHNSON said the motion second agreed to the amendment.

SHERMAN said he has felt from the beginning that the main issue is the use that is occurring at the site and the traffic problems. He said; however, that it is probably premature to make that decision. He said he can't imagine any court upholding the use and saying that this is not storage. He said if the case had gone through all its appeals and they were sure they could store the buses there then he would say let's approve the storage in that back part of the south parcel.

ALDRICH mentioned the Commission's history of approving applications while looking at property rights and appropriate land use. He said part of that criteria is does the requested use have a detrimental effect on other properties or property owners. He said in his opinion this operation does have a major detrimental effect on properties and that there are other issues such as safety and traffic that he feels Traffic Engineering needs to look at such as signalization to control the intersection at Seneca and 37th Streets. He said that may alleviate some of issues for residents in the area. He said he does not believe this operation makes a good neighbor. He said he does not believe the Commission is looking at individual rights and property rights, in his opinion. He said he supported the deferral and said if there was no further discussion, he requested that the vote on the original motion be called.

CHAIR FARNEY called the vote on the substitute motion.

SUBSTITUTE MOTION: To approve the application using the language suggested by the applicant which states *“to add as permitted uses (in addition to and not in substitution of the parking use currently permitted) the parking and storage of operable school buses while not in use, including during nights, weekends, holiday breaks, teacher in-service days, and summer breaks; and including storage of such buses in a space-efficient configuration during summer breaks, as opposed to a typical parking configuration”* with the addition of a maximum of 140 buses and narrow the parking area down to the secured area shown on the aerial.

DENNIS moved, **JOHNSON** seconded the motion, and it failed (6-4). **ALDRICH, FARNEY, FOSTER, MILLER STEVENS, MITCHELL, SHERMAN** – No.

The **ORIGINAL MOTION** to defer the item until after the court case is decided passed (7-3). **DOWNING, FOSTER, JOHNSON** - No.

ALDRICH clarified that until the court hearing is decided, operations at the facility will continue as normal.

DIRECTOR SCHLEGEL responded yes, they will not be allowed to store buses on the property referred to in the application.

8. **Case No.: CUP2011-46** - Dora L. Young (owner/applicant) Southwestern Remodeling, c/o Chad Bryan (agent) request a City amendment to CUP DP-119 to reduce the CUP's rear setback on property described as:

Northbrook Meadow 2nd Addition, Lot 3, blk 1, lot 2, blk 1, lot blk 1.

BACKGROUND: Per VAC2011-00026: The applicant proposes to vacate the east 7 feet of the platted 30-foot rear yard setback on the MF-18 Multi-family Residential (“MF-18”) zoned Lot 3, Block 1, Northbrook Meadows 2nd Addition, of Parcel 7 of CUP DP-119, the Northfork Community Unit Plan. The Unified Zoning Code’s (UZC) minimum rear yard setback for the MF-18 zoning district is 20 feet. The applicant is requesting a reduction of the rear yard setback to 23 feet. Provision #17 of CUP DP-119 states that, “Front, rear, and side yard setbacks from arterial streets shall not be less than 30 feet.” DP-119 was approved in 1981. The current UZC (approved 1996, Sec.III-C.2.a.1) states for CUP’s that, “All Main Buildings or Structures shall be set back at least 35 feet from all Street Right-of-Way lines or Alleys.” DP-119’s 30-foot setback from Woodlawn, an arterial street, is 5 feet less than the current 35-foot standard. Per the UZC, the MAPC or the Governing Body may modify or waive the setback requirements as part of an amendment of the CUP, as directed in Art.III, Sec.III-2(d) of the UZC. This is the first requested reduction of the CUP’s/platted setbacks that run parallel to the CUP’s street frontage. A condition of approval for VAC2011-00026 is that the applicant shall apply for an amendment to DP-119, to reduce DP-119’s rear yard setback for Parcel 7’s Lot 3, Block 1, Northbrook Meadow 2nd Addition.

The MF-18 zoned subject property is developed as a single-family residence. All abutting and adjacent northern, southern, and eastern properties are zoned MF-18 Multi-family Residential (“MF-18”), are developed as single-family residences and are located within the CUP DP-119 overlay. Adjacent western (across Woodlawn) properties are located in the City of Bel Aire.

The property is a member of the Northbrook Homeowners Association, which provided a letter approving the request; see attached letter. There have been no protest to VAC2011-00026 and staff has received no calls protesting the proposed amendment.

CASE HISTORY: CUP DP-119 the Northfork Community Unit Plan was approved in 1981. The Northbrook Meadow 2nd Addition was recorded with the Register of Deeds December 26, 1990. VAC2011-00026 was approved by the MAPC November 17, 2011.

RECOMMENDATION: Based on these factors, plus the information available prior to the public hearing, staff recommends the request for the amendment to reduce the rear setback of the described property within DP-119 be **APPROVED** subject to the following conditions:

1. Reduce the east 7 feet of DP-119's 30-foot rear setback on Parcel 7's Lot 3, Block 1, Northbrook Meadow 2nd Addition, only where there is an encroachment by the proposed 14-foot x 10-foot room addition to the single-family residence. Provide Planning with a legal description of the approved vacated portion of the setback on a Word document via e-mail.
2. VAC2011-00026 must be approved by the Governing Body. If VAC2011-00026 is denied by the Governing Body, the amendment to DP-119 will be null and void.

BILL LONGNECKER, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **FOSTER** seconded the motion, and it carried (11-0).

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9. **Case No.: CON2011-39** - Tabernacle Baptist Church, c/o LaTonia Andrews (Owner/Applicant) request City Conditional Use request for a Day Care, General on property zoned SF-5 Single-Family Residential on property described as:

All of lots 22 thru 48, Block 5, Westmoreland Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking Conditional Use approval to permit a "day care, general" on 0.76 acres located at 1817 N. Volutsia, on the northeast corner of 17th Street North and Volutsia Avenue. Currently, the subject site is developed with an active church, an associated 81-space parking lot and an accessory building. The property is zoned SF-5 Single-family Residential ("SF-5"). It is the applicant's intention to operate a latch-key program for after school and a day care during the summer months with up to forty children, Monday through Friday, 7:30 a.m. to 5:30 p.m. The applicant intends to use the site as it is currently developed. The site has direct access to Estelle Avenue and Volutsia Avenue.

Per the *Wichita-Sedgwick County Unified Zoning Code* ("UZC"), a "day care, general" is permitted in the SF-5 district only by Conditional Use approval. The UZC defines a "day care, general" as a day care center that provides care, protection and supervision for more than ten individuals at any one time, including those under the supervision or custody of employees, or a day care center for ten or fewer individuals at any one time that is not operated as a home occupation. The conditions for a day care, general in the in the SF-5 zoning district, per Art III, Sec III-D 6.i of the UZC are: (a) Day care centers shall comply with all applicable state regulations; (b) When located in the residence of the care provider

in a residential zoning district, day care centers shall comply with the general home occupation standards of Sec IV-E-3; (c) Outdoor play shall be limited to the hours of 7:30 a.m. to 6:30 p.m., if located within 100 feet of a lot containing a dwelling unit, and; (d) Provisions of parking spaces in Art IV, Sec IV-A, 4 may be provided by shared parking when the day care is located within an existing church or place of worship, however the day care shall provide convenient off-street loading facilities as required.

Property surrounding the subject site to the north, east and west is zoned SF-5, and is developed with single-family residences to the north and west and a high school to the east. Property south of the subject site, across 17th Street, is zoned TF-3 Two-family Residential (“TF-3”) and is developed with single-family residences.

CASE HISTORY: The property is platted as Lots 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46 and 48, Block 5, Westmoreland Addition, recorded March 22, 1910. There was one other case on this site, BZA2005-00037, that was an adjustment to allow a LED sign for the church.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Residential
SOUTH:	TF-3	Residential
EAST:	SF-5	High School
WEST:	SF-5	Residential

PUBLIC SERVICES: The subject property has frontage along north Volutsia Avenue (east side of property), a two-lane, paved local street without traffic counts. South of the subject site is east 17th Street, a four-lane, paved arterial street with the average daily trips (ADT’s) of 22,000 at its intersection with north Hillside Avenue, a quarter mile east of the subject site. Public water and sewer service are currently available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. In addition to the uses permitted by right in the SF-5 district, a “day care, general” with up to forty children, Monday through Friday, 7:30 a.m. to 5:30 p.m. is permitted.
2. All applicable requirements of Art III, Sec III-D.6.i of the Unified Zoning Code shall be met.
3. The “day care, general” shall be operated in general conformance with the approved site plan.
4. The “day care, general” shall be developed and operated in compliance with all federal, state, and local rules and regulations.

5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Conditional Use, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the Conditional Use is null and void.

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

1. **The zoning, uses and character of the neighborhood:** Property surrounding the subject site to the north, east and west is zoned SF-5, and is developed with single-family residences to the north and west and a high school to the east. Property south of the subject site, across 17th Street, is zoned TF-3 Two-family Residential ("TF-3") and is developed with single-family residences.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site is zoned SF-5, which is a district primarily limited to low density residential uses and a few compatible nonresidential uses such as churches, parks or schools. The site is developed with a church, which is permitted in the SF-5 district as a use by right. The site could continue to be used as currently zoned and developed; however, the addition of a day care can be considered an appropriate use to extend the daily use of an existing church beyond typical Sunday and Wednesday night activity, and potentially to provide child care for nearby residents.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** The site has 0.76 acres. The number of children proposed for the site and the hours and days of operation minimize potential impacts.
4. **Relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant:** Approval of the request would provide additional day care choice for nearby residents. Denial of the application would presumably result in a loss of revenue for the church.
5. **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 appropriate for "Urban Residential" use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes: single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
6. **Impact of the proposed development on community facilities:** Traffic will increase; however, the amount should be no different than during regular church hours and should not negatively impact 17th Street. All other community facilities are in place to serve the proposed use.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, FOSTER seconded the motion, and it carried (11-0).

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10. **Case No.: PUD2011-05** - Camp Hyde, Inc. (owner); and MKEC Engineering Consultants, c/o Brian Lindebak (agent) request a County Planned Unit Development (PUD #36) on property described as:

The Northwest Quarter of Section 3, Township 29 South, Range 3 West of the 6th P.M., EXCEPT the East 38 rods thereof, Sedgwick County, Kansas.

BACKGROUND: The applicant proposes PUD #36 Camp Hyde Planned Unit Development (“PUD”), generally located east of South 263 Street West and south of West 71st Street South. Current zoning on this property is RR Rural Residential (“RR”). Camp Hyde has existed at this location prior to zoning regulations in the county; several buildings, stables, and a pond exist on the site. In addition to the proposed PUD, the applicant is in the process of platting the property.

The proposed PUD is 119 acres with one parcel and one floodway reserve for Clearwater Creek, see the attached PUD document. On Parcel 1, the applicant proposes 35% building coverage, 35-foot arterial street setbacks, 15-foot interior setbacks, all uses permitted in the RR district and the following permitted uses: overnight cabins, group residences, multi-family housing, bed and breakfast, hotel, RV park, church, memorial facility, community assembly, auditorium, amphitheater, arts and crafts center, camp lodge/conference center allowing event rentals, day care general, school, storage buildings, retail convenience store for guests, ATM, gift shop, restaurant and dining hall, general retail, museum/library, outdoor and indoor recreation for sports and activities, swimming pool, animal care general, and outdoor storage of camp equipment. Proposed parking is to be gravel, light poles are limited to 30 feet and 15 feet within 200 feet of residential use, and screening is to be per the Unified Zoning Code. Proposed signage is limited to two pole, monument, or pylon signs per arterial frontage, with an incorporated arch sign permitted on the north property line. No signs are to exceed 150 square feet in size or 20 feet in height, and no flashing, moving, or billboard signs are permitted. Portable and pennant signs are allowed for events only.

The surrounding area is all zoned RR and mostly used for agriculture. Residences exist immediately north of the site, across 71st Street South, and immediately west of the site, across 263rd Street West. Several other residences exist within a half-mile of the site to the south, east, and west.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	RR	Agriculture, single-family residential
EAST:	RR	Agriculture, single-family residential
SOUTH:	RR	Agriculture, single-family residential
WEST:	RR	Agriculture, single-family residential

PUBLIC SERVICES: 71st Street South and 263rd Street West are both paved, two-lane section-line roads with a 40-foot half-width right-of-way at the application area. Both of these streets are classified as Rural Major Collectors. The 2030 Transportation Plan identifies both of these roads as remaining in the current two-lane configuration. On-site water and sewer are available at the site.

CONFORMANCE TO PLANS/POLICIES: The "2030 Wichita Functional Land Use Guide," of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as "Rural" and not within any small city growth areas.

RECOMMENDATION: Camp Hyde has existed on this site for many years without any apparent negative effects on surrounding property owners. This PUD allows a variety of land uses and development controls customized for this unique site. Paved section-line road access to the site is adequate and should not detract from surrounding property owners' use of those roads. Based on these comments and information available prior to the public hearing, Staff recommends that PUD #36 be **APPROVED** subject to platting within one year and subject to the following conditions:

1. Development shall be in substantial conformance with the PUD plan and all conditions and requirements as shown on the PUD.
2. General Provision #3.A. shall be amended to include the following: "All residential development shall be limited to the SF-20 density on the overall site"; and, "All retail and restaurant uses shall be Camp Hyde accessory uses for guest and visitor use only."
3. General Provision #8 shall be amended to state: "Signs: As permitted under the current Sedgwick County Sign Code. Additionally the following conditions shall apply:"
4. General Provision #13 shall be added to the PUD stating "All building and development on this property shall conform to all applicable codes to include but not limited to zoning, building, health, and fire codes."
5. If the Zoning Administrator finds that there is a violation of any of the conditions of the Planned Unit Development, the Zoning Administrator, in addition to enforcing the other remedies set forth in Article VIII of the Unified Zoning Code, may, with the concurrence of the Planning Director, declare that the PUD is null and void.
6. Any major changes in this development plan shall be submitted to the Planning Commission and to the Governing Body for their consideration.
7. The transfer of title of all or any portion of the land included within the Planned Unit Development does not constitute a termination of the plan or any portion thereof, but said plan shall run with the land and be binding upon the present owners, their successors and assigns, unless amended.
8. Prior to publishing the resolution establishing the PUD zone change, the applicant(s) shall record a document with the Register of Deeds indicating that this tract (referenced as PUD #36) includes special conditions for development on this property.
9. The applicant shall submit 4 revised copies of the PUD to the Metropolitan Area Planning Department within 60 days after approval of this case by the Governing Body, or the request shall be considered denied and closed.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Camp Hyde has existed at this location prior to zoning regulations in the county; several buildings, stables, and a pond exist on the site. The surrounding area is all zoned RR and mostly used for agriculture. Residences exist immediately north of the site, across 71st Street South, and immediately west of the site, across 263rd Street West. Several other residences exist within a half-mile of the site to the south, east, and west.

2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed with residential or agricultural uses under the current RR zoning. However, the mix of recreational and assembly uses on the site will be best managed through a PUD.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Camp Hyde has existed on this site for many years without any apparent negative effects on surrounding property owners. This PUD allows a variety of land uses and development controls customized for this unique site. The recommended conditions will ensure that the level of development, lighting, signage, and screening will ensure continued compatibility with surrounding property owners.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The “2030 Wichita Functional Land Use Guide,” of the *Wichita-Sedgwick County Comprehensive Plan* identifies this site as “Rural” and not within any small city growth areas.
5. Impact of the proposed development on community facilities: Increased development on this site will increase traffic on the adjacent roads; these roads will be able to accommodate increased traffic. Also, increased development on this site could increase the need for emergency services in this lightly populated portion of the county.

JESS MCNEELY, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

MCKAY moved, **FOSTER** seconded the motion, and it carried (11-0).

NON-PUBLIC HEARING ITEMS

The Metropolitan Area Planning Commission adjourned at 3:55 p.m.

State of Kansas)
Sedgwick County) ^{ss}

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 _____, 2011.

(SEAL)

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

