

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**February 2, 2012**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, February 2, 2012, at 1:30 p.m., in the Planning Department Conference Room, 10<sup>th</sup> floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Shawn Farney, Chair; David Dennis; Vice Chair; Bob Aldrich; Darrell Downing; David Foster; Bill Johnson; John W. McKay, Jr. (Out @3:00 p.m.); M.S. Mitchell; Morrie Sheets; Don Sherman (In @1:34 p.m.); and Debra Miller Stevens. Don Klausmeyer; Ron Marnell; and George Sherman were absent. Staff members present were: John Schlegel, Director; Dale Miller, Current Plans Manager; Bill Longnecker, Senior Planner; Derrick Slocum, Associate Planner; Sharon Dickgrafe, Assistant City Attorney; Robert Parnacott, Assistant County Counselor and Maryann Crockett, Recording Secretary

1. Approval of the January 5, 2012 meeting minutes.

**MOTION:** To approve the January 5, 2012 meeting minutes, as amended.

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (10-0).

Approval of the January 19, 2012 meeting minutes.

**MOTION:** To approve the January 19, 2012 meeting minutes.

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (9-0-1). **MILLER STEVENS** – 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** – There were no Vacation Items.

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**PUBLIC HEARING ITEMS**

4. **Case No.: ZON2011-43 and CON2011-40** – Larry Rowe (Owner/Applicant); Robert Kaplan (Agent) request a City zone change from SF-5 Single-family Residential to LC Limited Commercial for expansion of an existing Recreational Vehicle Park and City Conditional Use for a Recreational Vehicle Park in LC Limited Commercial zoning on property described as:

The West 400 feet of the Southeast Quarter of the Southeast Quarter except the South 50 feet for road and except the South 200 feet thereof, Section 22, Township 27, Range 2 West of the 6th P.M., Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-family Residential (“SF-5”) to LC Limited Commercial (“LC”) with a Conditional Use for a Recreational Vehicle Campground on

an 11.6-acre un-platted site; the site is located north of West Maple and west of 151<sup>st</sup> Street West. The south 200 feet of the site was re-zoned to LC in 1969, a Recreational Vehicle Campground existed on the site prior to that rezoning. The existing Recreational Vehicle Campground extends north on the site onto land currently zoned SF-5.

The attached site plan from the applicant demonstrates a total of 48 existing camping spaces, and 37 additional spaces in future phases. The site plan also demonstrates the existing office/store building, a pet walking area, and an RV storage area on the north end of the property. Under the Unified Zoning Code (UZC), Self-storage Warehousing (indoor storage) requires a separate Conditional Use Permit, and a Vehicle Storage Yard is not permitted in LC zoning; the first zoning district permitting a Vehicle Storage Yard would be the GC General Commercial (“GC”) district. The submitted site plan also shows two cabins on the south portion of the site along Maple Street. The cabins do not appear to be placed on foundations; they sit on the south property line, violating the UZC front setback requirement of 20 feet in LC zoning. The site has existing hedgerow vegetation along the north, east and west property lines, with some tree vegetation on the south property line along Maple.

The application area is within the City of Wichita but with unincorporated land abutting the site to the north, east, and west. All property north, east and west of the site is zoned RR Rural Residential (“RR”). Properties north and west of the site are used for agriculture with no residences; the property east of the site is developed with a single-family residence (approximately 60 feet west of the application area) and accessory buildings. Lots south of the site, across Maple, are in the City of Wichita, zoned SF-5, and developed with single-family residences. SF-5 zoned urban-density subdivisions exist north and south of Maple approximately one-half mile east of this site. Additional suburban size residential lots exist on the south side of Maple west of the site. Approximately three-fourths of a mile to the west is a mobile home park on the north side of Maple, further west is the City of Goddard.

**CASE HISTORY:** The application area is un-platted. The site was developed with a Recreational Vehicle Campground prior to 1969, when the south 200 feet of the property was re-zoned to LC.

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agriculture
SOUTH:	SF-5	Single-family residences
EAST:	RR	Single-family Residence, agriculture
WEST:	RR	Agriculture

**PUBLIC SERVICES:** The subject property has frontage along West Maple, a two-lane paved minor arterial with a 50-foot half-width right-of-way (ROW) at this location. Traffic counts are not available this far west on Maple. The 2030 Transportation Plan shows this portion of Maple remaining a two lane paved minor arterial. A city sewer line extends over 400 feet into this site. City water exists on the south side of Maple, although this site is not connected to City water.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the *Comprehensive Plan* identifies the site as appropriate for “Urban Residential” use, and completely surrounded by the Wichita 2030 Urban Growth Area. The Commercial Locational Guidelines of the *Comprehensive Plan* recommend that commercial sites be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion; they also recommend site design features that limit noise, lighting and other aspects that may adversely affect residential use.

The UZC permits Recreational Vehicle Campgrounds in LC zoning with a Conditional Use. The applicant's re-zoning request will result in a total of 11.6 acres of LC zoned property; the UZC requires a Community Unit Plan (CUP), or a Protective Overlay (PO) in lieu of a CUP, for the development of 6 or more acres in LC zoning. LC zoning would require screening from the surrounding residential zoning, compatibility setbacks of 25 feet from the abutting residential zoning, and a landscape plan conforming to the Landscape Code. The UZC would require paved parking areas and drives on this site.

The UZC definition of "Recreational Vehicle Campground" is "...the use of land designed for occupancy by Recreational Vehicles for temporary or transient living purposes, including the use of camping spaces for tents." The definition of a "Recreational Vehicle" is "...a unit designed as temporary living quarters for recreational, camping or travel use that has a body width not exceeding eight feet and a body length not exceeding 40 feet. Units may have their own power, or designed to be drawn or mounted on a Motor Vehicle. Recreational Vehicle shall include motor homes, travel trailers, truck campers, camping trailers, converted buses, houseboats or other similar units as determined by the Zoning Administrator. A Recreational Vehicle may or may not include individual toilet and bath."

**RECOMMENDATION:** This request is to expand a land use that existed prior to zoning in this area. Several surrounding neighbors contacted staff with concerns regarding the existing Recreational Vehicle Campground, and concerns with the proposed zone change. Surrounding neighbors voiced concerns that the Recreational Vehicle Campground could be used for semi-permanent housing, and not temporary camping. Surrounding neighbors are also concerned that permitted commercial development on this site could affect future development of their properties.

As mentioned in this report, the UZC requires a CUP, or PO in lieu of a CUP, on LC zoned development of 6 or more acres. The proposed Conditional Use Conditions, along with a required PO, should reinforce the standards of the UZC and Landscape Code and mitigate negative effects on surrounding properties. A platting requirement will ensure continuous utility easements, adequate stormwater planning, and adequate traffic access planning in this area; these requirements will promote and not hamper harmonious development of surrounding properties.

Based upon the information available prior to the public hearings, planning staff recommends that the request for a change in zoning to LC Limited Commercial ("LC") be APPROVED, subject to platting within one year, and subject to the following Protective Overlay conditions:

1. Land uses on the site shall be limited to those permitted in the SF-5 Single-family Residential ("SF-5") zoning district, and Recreational Vehicle Campground only.
2. The site shall be platted and developed in conformance with all codes, policies, and regulations, including but not limited to zoning, building, health, landscape, subdivision, and access management codes, policies, and regulations.
3. Signage on the site shall be limited to signage permitted in the NR Neighborhood Retail ("NR") zoning district.

And, based upon the information available prior to the public hearings, planning staff recommends that the request for a Conditional Use for a Recreational Vehicle Campground be APPROVED, subject to platting within one year and subject to the following Conditions:

1. A revised site plan shall be submitted, for Planning Staff approval, within 60 days of the Conditional Use approval. The site plan shall conform to all UZC requirements for the LC Limited Commercial (“LC”) zoning district to include land uses, building setbacks, compatibility setbacks, screening, and paved parking and drive aisles. Camping spaces do not require paving, but must not be placed in the 25-foot compatibility setback where abutting residential zoning.
2. The applicant shall submit a landscape plan, for Planning Staff approval, conforming to the Landscape Code. The landscape plan shall meet screening requirements along the south property line, except for drive aisle openings. Landscaping may be used in lieu of a screening fence along the north, east, and west property lines.
3. This site shall be developed and maintained in accordance with the approved site plan and landscape plan, and in conformance with all City ordinances, including but not limited to: zoning, sign, subdivision, building, fire, health codes and licensing requirements.
4. All required site improvements shall be complete within one year of the Conditional Use approval, unless such time is extended by the MAPC.
5. Signage on the site shall be limited to signage permitted in the NR Neighborhood Retail (“NR”) zoning district.
6. Retail sales on the site shall be accessory to the Recreational Vehicle Campground, and only for those customers temporarily staying in the campground.
7. All lights shall be shielded to reflect or direct light away from adjacent properties.
8. No sound projecting devices or loudspeakers shall be used so as to be heard outside of a building.
9. The total number of Recreational Vehicle Campers on this site shall not exceed 70 at any one time.
10. Use of this site shall conform to the UZC requirements and definitions for a “Recreational Vehicle Campground”, and a “Recreational Vehicle.” Temporary camping at this site shall not exceed 30 days by any one person or by any one Recreational Vehicle.
11. 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 the Unified Zoning Code, may, with the concurrence of the Planning Director, declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** All property north, east and west of the site is zoned RR. Properties north and west of the site are used for agriculture with no residences; the property east of the site is developed with a single-family residence (approximately 60 feet west of the application area) and accessory buildings. Lots south of the site, across Maple, are in the City of Wichita, zoned SF-5, and developed with single-family residences. SF-5 zoned urban-density subdivisions exist north and south of Maple, approximately one-half mile east of this site. Additional suburban size residential lots exist on the south side of Maple west of the site. Approximately three-fourths of a mile to the west is a mobile home park on the north side of Maple, further west is the City of Goddard.
2. **The suitability of the subject property for the uses to which it has been restricted:** The majority of the subject property is zoned SF-5 and could be developed with residences. The zoning on the site does not permit the continued expansion of a Recreational Vehicle Campground. The LC zoned portion of the site could be used for permitted commercial uses, but

requires the requested Conditional Use to permit expansion of the Recreational Vehicle Campground.

3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Permitted land uses under the requested LC zoning will be more intense than those permitted under the current residential zoning on the majority of the site. However, the standards of the UZC, the Landscape Ordinance, and the proposed conditions should limit noise, lighting, and other activity from adversely impacting the nearby single-family residential areas. If the site is developed in conformance with current platting, drainage and traffic access policies, the proposed development should have no affect on the development of nearby property.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the *Comprehensive Plan* identifies the site as appropriate for “Urban Residential” use, and completely surrounded by the Wichita 2030 Urban Growth Area. The Commercial Locational Guidelines of the *Comprehensive Plan* recommend that commercial sites be located adjacent to arterial streets or major thoroughfares that provide needed ingress and egress in order to avoid traffic congestion; they also recommend site design features that limit noise, lighting and other aspects that may adversely affect residential use.
5. **Impact of the proposed development on community facilities:** Expansion and increased use of this Recreational Vehicle Campground Provided will increase traffic on this portion of Maple, and could increase demand on local law enforcement, fire, and EMS personnel. If platting, drainage and traffic access policies are met, community facilities should not be significantly impacted by the proposed development expansion.

**JESS MCNEELY**, Planning staff provided the Staff Report.

**COMMISSIONERS ALDRICH, DOWNEY, FARNEY, MITCHELL, and SHEETS** expressed that they had ex parte communication on this item.

**SHERMAN** (In @ 1:34 p.m.)

**ALDRICH** clarified that if the zoning request was approved that would limit the stay of a person or recreational vehicle to a 30 day period or less.

**MCNEELY** said that was one of the conditions of the Conditional Use. He said the Unified Zoning Code (UZC) states that the Planning Commission can approve Conditional Use requests to insure compatibility with the surrounding areas. He said the UZC gives the definition of a recreational vehicle (rv) campground as temporary camping but nowhere in the Code does it define what temporary is. He said staff felt 30 days was a reasonable number; however, he added that the agent for the applicant may request up to 90 days to accommodate a grandparent who comes to town to visit grandchildren over the summer break.

**ALDRICH** remarked that there appears to be several recreational vehicles on site that have been there longer than 60, 90 or even 120 days because some of them have permanent siding. He asked if there were any UZC violations or any Code enforcement done on the site.

**MCNEELY** said staff checked Tidemark (the City's database system) which was established in 2001 and they didn't see any complaints on the property since that date.

**DOWNING** clarified that the proposed 25-foot setback along the east and west property lines will preclude parking spaces along those property lines.

**MCNEELY** said that was correct that the 25-foot setback will eliminate parking along the east and west property lines.

**MITCHELL** asked about paving for the site.

**MCNEELY** responded that the UZC requires paving of parking areas and drive aisles. He said the camping sites were not required to be paved.

**FARNEY** asked how staff arrived at the 70 vehicles figure.

**MCNEELY** said staff felt that some number limit was needed. He said 48 spaces currently exist and that there were 85 on the proposed site plan; however, that included spaces along the east/west property lines within the compatibility setback.

**FARNEY** asked if the City Fire Department had input at this time or did that happen at platting.

**MCNEELY** said that would happen at the platting stage.

**JOHNSON** clarified that the recreational vehicle storage will be completely eliminated.

**MCNEELY** explained that storage is not a permitted use now and would not be allowed under their current request for Limited Commercial (LC) zoning.

**BOB KAPLAN, 1600 EPIC CENTER AGENT FOR THE APPLICANT** stated that the campground has been at this location a very, very long time and was formerly a KOA campground for many years. He said he was currently researching the non-conforming status of the site because this use may be a lawful non-conforming use. He said Maple Street in this area is actually the old US 54 Highway. He said this site was operated as a campground since well before 1969 when the UZC was established. He added that this was an unincorporated area of the County that was annexed sometime in the early 1990's. In addition, he said when the County first adopted zoning, unincorporated areas were treated differently and that may precede zoning for this area. He said then there would be no restrictions or conditions and if that is the case, then this would be a lawful non-conforming use that doesn't require a conditional use or zoning. He said the applicant expanded the number of spaces at the site in 1981. He said the applicant has owned the property for 30 years and sold it under contract; however, the contract purchaser defaulted. He said the applicant understands that vehicle storage is not allowed and that the vehicles will have to be removed.

**KAPLAN** briefly reviewed the conditions as follows: #1 he requested that paving of the parking and drive aisles be required as the phases of expansion occur; he conceded to items 2, 3, 4, 5, 6, and 7 and said they accept the restrictions to 70 rv's and removal of the rv's in the compatibility setback. He said their big issue is what is considered temporary. He said there are many reasons people that need to be in the City but are not permanent residents. He gave several examples such as family circumstances,

people using their rv temporarily until they find a permanent residence, or whose home has been damaged or is being remodeled, people working on contracts with Wichita industries such as specialized contractors or consultants who could be in the City for up to 5 months but not here permanently. He said they don't know what the definition of temporary is and don't see any downside or prejudice to extend that time up to 270 days. He said they will accept whatever the Planning Commission believes is appropriate and will take what they can get, but they believe there are legitimate reasons to use the rv's for more than 30 days.

**KAPLAN** concluded by saying that they have been a good neighbor and have never had a complaint in 30 years. He said when the subdivision across the street had water problems they were allowed to use the showers and restrooms at the park. In addition, he said they have filled propane bottles for the neighborhood from their propane tank. He mentioned that he was surprised that there had been ex parte communication regarding the request and said apparently some people have concerns which he will hear at this meeting. He asked the Commission not to make a decision predicated on the fact that people think this will become some kind of trailer park. He said the applicant will meet all required conditions and added that they would; however, like to have retail sales so they can sell propane to the neighbors and campers.

**MITCHELL** asked what City, County and State regulations governed the sale of propane.

**KAPLAN** said they don't know what regulations control sale of propane, but they will comply with the law.

**MITCHELL** said if this request is approved, he wanted to get an answer to his question.

**KAPLAN** said he would do that.

**KEVIN O'BRIEN, 15414 W. MAPLE, GODDARD, KS** said he just brought 30 protest petitions to the City Clerk's Office which represent 100% of the owners on the ownership list and 23 other concerned neighbors. He said he owns the 28 acres on the east side of the applicant's property. He said they sold 12 acres and that is how the camp came about 33 years ago. He said since the KOA franchise ended, the property has been in a steady state of decline. He mentioned discovery of a meth lab on the property. He also mentioned complete strangers trespassing on his property and related an incident when he was awakened at 3:30 a.m. by his dog barking and spoke to a stranger walking in his driveway from the camp who was out walking his dog who threatened him. He said there was a gas pump when the site was used as a campground so he believes there are 2 - 2,000 gallon gasoline tanks on the property. He referred to his comments in a letter dated January 25 which were attached to the Staff Report. He also mentioned that he was shocked to find out that Planning Staff completed the report prior to having visited the property. He said the property owner has willfully ignored zoning laws. He asked that the Commission require the applicant to cease operation on all non-conforming land uses on the site. He referred to aerial photographs of the site dated 1980, 2003 and 2011 which clearly showed how the nonconforming use has progressed and continues to creep and grow.

**MOTION:** To give the speaker 2 more minutes.

**SHEETS** moved, **MITCHELL** seconded the motion, and it carried (11-0).

**O'BRIEN** referred to the Staff Report, page 2, and commented that he did not believe the attached site plan document meets the guidelines for a conditional use application. He said the long and short of it is this is an rv park in name only. He said this is actually a trailer park with over 85% of the inhabitants staying months not weeks. He mentioned that some residents had even installed skirting around their rv's. He also mentioned vehicle storage on the site. He concluded by requesting that the Commission rollback to the original zoning for this area.

**GREG CANNATA, 300 WIND ROWS LAKE DRIVE** said he has lived at his residence, which is directly south of the site, for 18 years. He said he didn't know the applicant was not supposed to have cabins on the site. He said people live in those cabins and hang out their laundry, etc. He said this is not a campground but transient housing. He said people from the site also roam the neighborhood. He related an incident where someone came up to him while he was working in his yard and how he couldn't get them to leave that they kept looking into his shop at all his tools, etc. He referred to the findings on page 5 of the Staff Report and specifically mentioned the possibility of increased demand on local law enforcement, Fire and EMS personnel. He said other issues include noise and lighting. He also asked who would enforce any conditions and make sure the owner complies. He said for example the owner has cared nothing about complying or any of the rules up to this point. He said he didn't know it was his job to complain and thought the City just sent inspectors out to find violations. He said Mr. O'Brien made a complaint and nothing has been done. He said they want to protect their rights. He also mentioned that his taxes have been reduced twice because of what is going on across the street. He concluded by asking how the conditions would be enforced and said this use was not compatible with the neighborhood. He said in the 18 years he has lived in the neighborhood he has never used the restrooms or bought propane.

**DARREN OWEN, 2603 STRATFORD ROAD, LAWRENCE, KS** said his family owns 40 acres to the north of the site where he has grown up since 1975. He said when the KOA franchise owned the campground, they were a good neighbor and kept the property up and did not expand it to where it is today. He said sale of the property was grandfathered and since the new owners have taken over the operation he has been offended by their disregard of the zoning requirements and the different things the land has been used for currently. He questioned why the new owner has been allowed to operate outside of zoning laws and against current codes and regulations. He referred to a slide presentation of the current conditions at the campground which included campers on the west side of the property which have been setting for extended periods of time. He referred to one camper that had brought in extra propane storage tanks. He also referred to multiple expired registrations on campers being stored in addition to junk cars and boats. He mentioned that some of the vehicles have not moved for 10 years or more and are becoming imbedded in the soil after having sat so long. He commented that this storage is creating an environmental problem in the area and mentioned vermin and rats living in the storage spaces chewing on hoses and wires in addition to the dripping gas, oil and anti-freeze causing ground water contamination and fire hazards. He said there is over 228 acres of prime development land in the area. He said his family's home sits on one of the highest points in Sedgwick County with an outstanding view of Wichita.

**MOTION:** To give the speaker 2 more minutes.

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

**OWEN** said this would be an ideal location for development of upper end single-family homes with this view. He said property owners are doing some plotting and land planning on their own right now. He

said he didn't see how the Planning Commission can approve this 11 acre site at the detriment of 228 acres of prime real estate. He said this site is being used for long term residences and although the attorney mentioned that the applicant will comply in phases, he doesn't see how that will fly. He concluded by saying that the applicant has a history of non-compliance to zoning codes and laws. He further commented that any reputable company who has an employee in town would put the employee up in a hotel on the company's dime and not the employee's dime. He ended by saying he didn't see how this fits into the 2030 Land Use Plan with residential development slated for the area. He also mentioned new schools in Goddard. He said he didn't see how this proposal was in the scope of good planning.

**BILL MCKINLEY, 304 WIND ROWS LAKE DRIVE** referred to a slide presentation of the site as it exists today specifically referring to the units being stored. He also referred to a slide of the view as residents exit the neighborhood every day; a view of the park entrance; the cabins located in the right-of-way; and a view of the first loop which is the only approved LC zoning area by the A-frame. He said the rest of the park is in other zoning. He also referred to pictures of a concrete rubble pile, gravel compost brush piles in the area and debris and construction materials that breed all kinds of stuff. He showed a picture of a dump site and dog walking area and added that the campers also take pets around the neighborhood. He referred to campers with existing skirting and the dozens of trailers, boats and cars stored in the back of the site with tags, without tags, with expired tags and with numerous tags from different states. He recommended that zoning be postponed until the applicant conforms to the zoning that is there today and shows some good faith in doing what he should do. He said he did not believe it was appropriate to allow rezoning to a size almost 6 times the size of the current site. He also mentioned that as a professional engineer he believes there are mistakes in the site plan which refers to the south 230 feet of the section, including the 30 foot right-of-way. He said he believes the notification area was too small and that every residence to the south is affected and should have been notified rather than just the 4 residents that got the public hearing notice.

**JOHN PIKE, 1002 SHADYWAY, WICHITA, KS** said he and his sister own 160 acres lying immediately to the west of the site. He said his father was born in a house that used to sit on the property. He said the property is farmed by a farmer in area but they consider it development property. He said he believes the Planning Commission needs to give considerable thought about future development in the area. He mentioned the new school on 167<sup>th</sup> Street, Auburn Hills Golf Course to the east and the housing development that is located there. He also mentioned that he believes the area will eventually get a northwest bypass which will change the character of the area and lead to more development that will make this property extremely valuable. He said the Kansas Department of Transportation (KDOT) indicates there will be no exit onto Maple Street which will not enhance access to the rv park. He said he has yet to hear a reason why the park needs to be expanded. He mentioned that they have never made any complaints against the park but when he drove through it last week he was surprised at the number of abandoned vehicles being stored to the north including motor homes, boats, trucks, cars, etc. which even the applicant admits is non-conforming and promises to remove them. He said the applicant has had ample opportunity to do that up to now. He said he is concerned that while the agent for the applicant says this will not turn into a trailer park, the applicant's main objection to the conditions is the definition of temporary which they would like to change from 30 days to 270 days. He said if this is not going to turn into long-term transient housing why is the applicant talking about ¾ a year being considered temporary. He mentioned the definition of rv referenced in the Staff Report and said he didn't see anything in the definition about out-of-town consultants living temporarily in rv's. He concluded by stating that basically this was "spot zoning" in the middle of residential zoning. He said expanding this spot zoning is not at all compatible with the surrounding

property in the area. He said the number of residents speaking at this meeting on how the site is currently run and how it will be run in the future he believes speaks volumes. He said he hoped the Commission will not end up recommending approval; however, if they do he requested that no camping within 25 feet of the adjacent property lines be enforced and mentioned generator noise that might be experienced by homes on either side of the hedgerow. He concluded by saying that it was critical that the abandoned vehicle storage area be eliminated.

**KAPLAN** said the applicant Mr. Rowe believed he had a lawful non-conforming use. He said whether he does or not, they do not know yet. He said there are other agencies to deal with complaints and the Planning Commission needs to be concerned with the zoning and conditional use request. He said he is currently researching whether or not the existence of the rv campground preceded any zoning restrictions within the unincorporated area. He said he believed County zoning was adopted sometime in the 1950's and that it became applicable to different sections of the unincorporated areas at different times. He said people have talked about violation of the zoning code which they do not know if it applies; however, he said his client would like to bring the site under the zoning code and under a conditional use and they will comply with those conditions. He added that they have no objection to deferral of the case.

**MOTION:** To give the speaker 1 additional minute.

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

**KAPLAN** said the issue is whether they have a non-conforming use and if that is the case, there are no controls. He said he will fight to document that the park was there prior to the County Code back in the 1950's when Maple Street was US 54 Highway. He said he thought the better idea was to let the applicant have the conditional use with whatever conditions the Commission believes are appropriate that way there are controls. He added that the City Office of Central Inspection (OCI) is complaint driven because they don't have time to investigate to see if everyone is in compliance with the UZC. He said they have not had any complaints in 30 years and added that between 1993-2001 the property was under different ownership and that is when the expansion occurred.

**JOHNSON** asked about tags on rv's.

**SHARON DICKGRAFE, ASSISTANT CITY ATTORNEY** she said under City Code if a vehicle did not have a valid tag and registration it would be considered an inoperable vehicle. She said if an rv is stored for more than 48 hours on private property not properly tagged it is considered an inoperable vehicle and is subject to be towed.

**JOHNSON** asked if the applicant could keep legal vehicles parked at the site.

**DICKGRAFE** mentioned that there are other licensing requirements for rv camps; however, the term temporary is not defined in those regulations either. She said the Commission could require that all vehicles be properly licensed or have current registrations and tags as a condition.

**SHERMAN** asked how many temporary "30 days" can an rv have and gave an example of someone leaving the campground for 48 hours and coming back.

**MCNEELY** said that was a good question and said after all the complaints and calls he has received from surrounding property owners he understands their concerns regarding trying to put a number on “temporary”. He said the proposed recommendation for 30 days was for any 1 vehicle or 1 person but he sees how someone could do an “end run” and leave for 48 hours and come right back.

**SHERMAN** asked legal if the Commission could put a definition on the time such as 30 days within a calendar year.

**DICKGRAFE** said the Commission could put that definition; however, she added that rv’s are allowed in mobile home parks for up to 30 days or the self-contained rv’s are allowed in mobile home parks not to exceed 180 days. She said the Commission could do a set number of consecutive days but mentioned enforceability issues. She said the goal is not to have long-term vehicles parked on the site. She said the language is difficult to draft.

**SHERMAN** said his concern was the time it took someone to come back and start the clock all over again.

**ALDRICH** said he had several concerns. He mentioned that the south 200 feet was zoned LC in 1969 and that the site has continuously grown into a major problem that is just getting worse and worse. He said there are definite Code violations but unless someone complains things don’t get corrected. He said he believes the Code issues are germane because they do have an immediate and direct impact on the surrounding property owners and their property rights. He said this has become a permanent situation and that he is not supportive of the request.

**MILLER STEVENS** clarified that the initial frontage area is zoned LC and asked if the Commission does not approve this application can the owner continue with the temporary rv’s in that front part.

**MCNEELY** referred to the zoning map and commented that it has not yet been established if this is a legal non-conforming use or not. He referred to the south 200 feet which was rezoned in 1969 for the existing rv park. He said under the current UZC an rv park is not permitted in LC zoning; that the conditional use is required along with the LC zoning. He said if the zoning is not granted on the SF-5 portion, then the applicant must establish whether they had an rv park on the portion before zoning existed in this part of the County. He said the same rule applies to the LC portion because it requires a conditional use. He said if the Commission does not approve the zone change and conditional use, he assumes the applicant will seek legal non-conforming use rights and establish how much of the property those rights exist on.

**MOTION:** To deny the zoning and conditional use request.

**DOWNING** moved, **MCKAY** seconded the motion, and it carried (10-1). **JOHNSON** – No.

- 5. **Case No.: ZON2011-44** – Zacharia Taylor (applicant/owner) requests a City zone change from SF-5 Single-Family Residential to B Multi-Family Residential, on property described as:

Lots 18 and 19, except the East 100 feet thereof, Block 1, Martinson's 9th Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant requests a zone change from SF-5 Single-Family Residential (“SF-5”) to B Multi-Family Residential (“B”) on the west 65 feet of Lots 18 and 19, Martinson’s 9<sup>th</sup> Addition. Lots 18 and 19 have two single-family residences, built in 1920 and 1940. The applicant bought both residences in 2006, and had lived in the back residence until mid-2011, when he sold it with the eastern 5,000-square feet of the two lots, leaving the front residence with a lot area of 3,250 square feet. Subsequently, the applicant moved to Garden Plain and attempted to sell the front, smaller residence. At that time, the applicant found that the lending institutions would not finance the sale because the 3,250-square foot subject site did not, and does not meet the SF-5’s zoning district’s 5,000-square foot minimum lot size. An Administrative Adjustment only allows a 10 percent reduction of a zoning district’s minimum lot area, which (no matter how Lots 18 and 19 were divided) does not bring the subject site into compliance. The B Multi-Family (“B”) zoning district requires a minimum 2,500-square foot lot area for a single-family residence, thus the application. The applicant’s other course of action would be to request a variance. The east 5,000-square foot portion (site of the second residence) of the lots does not have frontage, therefore access, onto St. Claire, but does have access from the abutting north – south unpaved alley. Subdivision standards require primary access to a street, while an alley is considered secondary access. There is a drive from St. Claire to a detached double garage located between the two residences, but it is clearly shown to be part of the back/east residence’s property; dedicating the drive as an access easement for the back/east residence would provide primary access. Because the two single-family residences sharing Lots 18 and 19 have separate ownership, a Conditional Use for an Accessory Apartment is not possible.

The site is located south of Douglas Avenue, on the east side of St. Claire Avenue, in an older (1920s-1930s), single-family residential neighborhood. Properties located north of the site is zoned mostly SF-5, with some TF-3 Two-Family Residential (“TF-3”) and a patch of LC Limited Commercial (“LC”) zoning located along or in close proximity to Douglas Avenue. The SF-5 and TF-3 zoned properties are overwhelmingly developed as single-family residences, with a few duplexes. The LC zoned properties are developed as single-family and a small retail strip, which includes a vacant bar site. Properties located south, east and west of the site are zoned mostly SF-5, with scattered TF-3 and B zoned lots inserted randomly. Development is almost entirely single-family residential, although there is a triplex (nonconforming as the zoning is TF-3) and a duplex located east of the subject site, across an alley. The area within 250 feet of the site has at least 11 other sites, where lots have been subdivided by sale (not by lot split or replat) resulting in similar substandard lot areas for those single-family residences. However, it appears that all or most of these other lots subdivided by sale have primary access to a public street.

**CASE HISTORY:** The Martinson’s 9<sup>th</sup> Addition (Lots 18 and 19) was recorded with the Sedgwick County Register of Deeds July 12, 1919. The site is located in the Delano Plan, which was adopted in 2001. Prior to the adoption of the Delano Plan the site was TF-3, after the adoption of the Plan the site was rezoned to SF-5. The TF-3 zoning requires a 3,500-square foot minimum lot area for a single-family residence. An Administrative Adjustment reduces that by 10%, resulting in a 3,150-square foot lot.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5, TF-3, LC	Single-family residences, duplex, partially occupied retail strip (vacant bar)
SOUTH:	SF-5, TF-3	Single-family residences
EAST:	SF-5, B, TF-3	Single-family residences, triplex, duplex
WEST:	SF-5, TF-3	Single-family residences

**PUBLIC SERVICES:** The subject site is located on St. Claire Avenue, a paved, two-lane residential street. The 2030 Transportation Plan shows no change to this portion of St. Claire. All 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. The proposed B zoning for the subject site is not at odds with the 2030 Plan. There are existing B zoned single-family residences in the area,

including one located east of the subject site across an alley. The way the subject site's lots have been subdivided by sale is not out of character with the area. As noted earlier, the area within 250 feet of the site has at least 11 other sites where lots have been subdivided by sale, resulting in similar substandard lot area for multiple single-family residences. It is possible that, sometime in the future, these properties may be applying for a similar zoning to come into compliance with minimum lot area for a single-family residence or applying for a variance.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the requested B Multi-Family Residential zoning be **APPROVED**, with the following provisions of a Protective Overlay:

- (1) Permitted uses are only those permitted as a use by right in the SF-5 district.
- (2) Dedication of a joint access easement to provide primary access to St. Claire for both the subject, west, single-family residence and the east single-family residence.

This recommendation is based on the following findings:

- (1) **The zoning, uses and character of the neighborhood:** The site is located south of Douglas Avenue, on the east side of St. Claire Avenue, in an older (1920s-1930s), single-family residential neighborhood. Properties located north of the site are zoned mostly SF-5, with some TF-3 Two-Family Residential ("TF-3") and a patch of LC Limited Commercial ("LC") zoning located along or in close proximity to Douglas Avenue. The SF-5 and TF-3 zoned properties are overwhelmingly developed as single-family residences, with a few duplexes. The LC zoned properties are developed as single-family and a small retail strip, which includes a vacant bar site. Properties located south, east and west of the site are zoned mostly SF-5, with scattered TF-3 and B zoned lots inserted randomly. Development is almost entirely single-family residential, although there is a triplex (nonconforming as the zoning is TF-3) and a duplex located east of the subject site, across an alley. The area within 250 feet of the site has at least 11 other sites, where lots have been subdivided by sale, resulting in similar substandard lot area for single-family residences. However it appears that all or most of these other lots subdivided by sale have primary access to a street.
- (2) **The suitability of the subject property for the uses to which it has been restricted:** The SF-5 zoning district requires a 5,000 minimum lot area, which can be reduced by 10% with an Administrative Adjustment. An adjustment will not bring the subject site, the west portion of Lots 18 and 19 (Martinson's 9<sup>th</sup> Addition) subdivided by sale into compliance with the SF-5's minimum lot area. Another non-conforming feature brought about by subdividing the lots by sale, is the lack of primary access to a street for the east residence. The current development of the lots with two single-family residences cannot work without a zone change or a variance.
- (3) **Extent to which removal of the restrictions will detrimentally affect nearby property:** As noted earlier, the area within 250 feet of the site has at least 11 other sites, where lots have been subdivided by sale, resulting in similar substandard lot area for single-family residences. It is possible that, sometime in the future, these properties may be applying for a similar zoning to come into compliance with minimum lot area for a single-family residence or applying for a variance.
- (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* (2030 Plan) designates this area as appropriate for "Urban Residential" development. The Urban Residential category includes all housing types found in the municipality. The proposed B zoning for the subject site is not at odds with the 2030 Plan, although the request is intended to bring into compliance the minimum lot area for a single-family residence in an area with multiple noncompliant minimum lot area for single-family residences. There are existing B zoned single-family residences in the area, including one located east of the subject site across an alley.

- (5) **Impact of the proposed development on community facilities:** Lots 18 and 19, the Martinson 9<sup>th</sup> Addition have developed with two single-family residences since 1940, so impact on community facilities will remain the same.

**BILL LONGNECKER**, Planning staff provided the Staff Report.

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

**MILLER STEVENS** moved, **MCKAY** seconded the motion, and it carried (10-0).

6. **Case No.: ZON2011-45** – BATC, LLC c/o: Tim Chadd (Owner/Applicant) requests a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as:

85 Feet Strip, Adjacent East 1/2 Acres of Lot 28 and East 1/2 Acre Lot 28, Except the East 30 Feet for Street; Knight Acres Addition, Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is seeking TF-3 Two-family Residential (“TF-3”) zoning for a 0.92-acre platted property, a portion of which is currently developed with an unoccupied single-family residence. The site is currently zoned SF-5 Single-family Residential (“SF-5”), and is located on the southwest corner of St. Louis Avenue and Joann Street. The applicant proposes to develop the site with duplex development. The *Unified Zoning Code* (UZC) defines a duplex as...“the use of a lot for two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing property would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however it is possible to replat or lot split the existing 0.92-acre (or 40,075 sq. ft.) lot into six 6,679 sq. ft. lots that could allow six duplex structures (3,000 sq. ft. minimum lot area per dwelling unit for duplex or 6,000 sq. ft. per duplex).

One factor that will reduce the number of units discussed above is the need for the City to obtain a dedication of right-of-way from the applicant or property owner. Currently, a standard width residential street, Joann, exists adjacent to the east side of the application area; however, staff cannot find a record of a dedication for the west-half of the Joann abutting the application area. Staff recommends that the applicant dedicate the 30-foot for the right-of-way to equal the 60-foot right-of-way for Joann Street. The 30-foot reduction would eliminate 6,870 sq. ft. from the subject site, thus reducing the total area from 40,075 sq. ft. to 33,205 sq. ft. The dedication would reduce the number of lots and duplexes by one, thus allowing the applicant to possibly create five 6,641 sq. ft. lots that could allow five duplex structures. Even as currently zoned, the property could be lot split into more than one single-family lot (5,000 sq. ft. minimum lot area for single-family in SF-5).

Property immediately surrounding the site to the north, south, east and west is zoned SF-5. The development to the west and east of the subject site is single-family residences, while south of the subject site are more residences and a church facility. Property north of the subject site, across St. Louis Avenue, currently serves as a public utility developed with communication towers.

**CASE HISTORY:** The property is platted as 85 Feet Strip, Adjacent East 1/2 Acres of Lot 28 and East 1/2 Acre Lot 28, Except the East 30 Feet for Street; Knight Acres Addition, which was recorded December 20, 1918.

**ADJACENT ZONING AND LAND USE:**

NORTH:	SF-5	Vacant/Wireless Communication Equipment
SOUTH:	SF-5	Single-family Residence and church
EAST:	SF-5	Single-family Residence
WEST:	SF-5	Single-family Residence

**PUBLIC SERVICES:** The subject property has frontage along Saint Louis Avenue (north side of property), a two-lane, paved, local street without traffic counts. Along the east side of the property runs Joann Street, a two-lane, paved, local street without traffic counts. As currently configured, the west 30 feet of the street protrudes into the east 30 feet of the applicant's property. The applicant will be asked to dedicate the east 30 feet of the subject property in order to establish the existing 60 foot right of way for Joann Street. 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 the information available prior to the public hearings, planning staff recommends that the request be **APPROVED**, subject to the dedication of the east 30 feet of Lot 28 for road right of way.

This recommendation is based on the following findings:

- The zoning, uses and character of the neighborhood:** Property immediately surrounding the site to the north, south, east and west is zoned SF-5. The development to the west and east of the subject site is single-family residences, while south of the subject site are more residences and a church facility. Property north of the subject site, across St. Louis Avenue, currently serves as a public utility developed with communication towers.
- The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with multiple single-family residences use under the current zoning.
- Extent to which removal of the restrictions will detrimentally affect nearby property:** Approval of the request would double the density at which the site could be developed as currently zoned. The impact on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences.
- 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.

- 4. Impact of the proposed development on community facilities:** Traffic on the existing residential street could increase as a result of the proposed development. The site currently has one curb cut for access to Joann Street and one other curb cut on West Saint Louis Avenue, a local street.

**DERRICK SLOCUM**, Planning staff provided the Staff Report.

**ALDRICH** asked if the applicant would tear down the existing dwelling.

**SLOCUM** said the applicant will tear down the existing structure; do a lot split into 3 lots and construct 3 duplex structures with a total of 6 units.

**SHERYL CHADD, 2614 N. LAKERIDGE** said they would like permission to build 3 duplex structures on the site. She said they currently manage several duplexes and single-family homes in the area. She said they have no intention of allowing Section 8 Housing at the residences. She said the duplexes they are proposing are upscale with brick fronts and single car garages. She provided a picture of the proposed construction. She said the units are approximately 1,100 square feet, 3-bedroom, 2-bath and will rent for approximately \$700/\$750 a month. She said they are not going to cause the neighborhood to deteriorate. She said they are very hands on investors; that she takes care of leasing the units herself; that they require a minimum of a 1 year lease and run full criminal and financial background checks on any potential tenants. She said they plan on tearing down the current dilapidated farm house which has been vacant for a long time. She said they will install 6-foot privacy fences in each backyard to separate each rentable unit with its own privately fenced backyard.

**MITCHELL** asked if the applicant was going to replat or divide the lots.

**CHADD** said they had planned on doing a lot split.

**MITCHELL** asked if they do only a lot split how will they control the drainage systems and retention of runoff that is done with platting.

**SLOCUM** commented that the Commission could require platting.

**MILLER** mentioned that for building permits OCI requires a 4-corner drainage plan which would be covered with the lot split.

**MITCHELL** asked if that type of plan would include control of runoff, sediment and pollutants.

**MILLER** said he couldn't answer that.

**SLOCUM** mentioned that the applicant had agreed to a 30 foot right-of-way dedication so they could have the site platted at the same time as the dedication.

**MITCHELL** said he would like his question answered as far as a way to control those drainage items.

**SLOCUM** said the Commission could set that as a condition of approval.

**MCKAY** asked how many lots were involved.

**SLOCUM** said 2 lots.

**MCKAY** clarified that the 30-foot right-of-way will be dedicated by a separate instrument.

**SLOCUM** responded yes.

**MCKAY** said they need to plat.

**CHADD** said they would do whatever the Commission recommends.

**ALDRICH** asked if the applicant would consider reducing the number of units on the site down to 4.

**CHADD** said she would have to go back to the investment group with that proposal. She mentioned the investment that they will make in the property such as purchase; clearing the site; leveling the house and making the soil ready to be built on. She said she couldn't answer the question about reducing the number of units; that she was not qualified to make that decision here on her own.

**CHADD** referred to the aerial of the property specifically pointing out the lots directly to the east of the site and demonstrated how the new lot configuration will line up with the 3 lots across the street,

**MARK HILL, 347 JOANN** said he lived around the corner from the site. He said he has concerns about flooding issues and commented that the entire area flooded up until the City redid all the drains in the area. He said the area still doesn't drain real well. He said adding 6 more housing units will increase flooding issues in the neighborhood.

**MCKAY** (Out @3:00 p.m.)

**HILL** said rental properties are major headaches for neighbors because renters usually have a total disregard for the neighborhood. He said rental properties in a neighborhood bring down property values because renters don't put care into the homes the way owners do. He said if this is approved, 6 additional families will be renting in the neighborhood with 6 family's worth of kids. He said by putting 3 duplexes on this amount of land the kids won't have any place to play but in the street. He said he doesn't understand constructing family homes without any room for kids to play. He concluded by saying that he was greatly opposed to idea of that many rental properties in the neighborhood destroying the value of his property.

**LARRY GREEN, 3409 W. ST. LOUIS** said he lives 2 properties directly east of the site. He said these duplexes will have a negative effect on his property values. He said he has lived in this single-family neighborhood 18 years. He said changing the zoning to Two-Family Residential will affect his

and his neighbor's property values. He said he is also concerned about the additional runoff this construction will cause. He said there will be a lot of water runoff into the street.

**ANNETTE ULRICH, 3413 W. ST. LOUIS** said she lives next door to the property. She said she is concerned about the traffic on St. Louis because the cars move really fast. She said if the kids who live in the duplexes don't have a big enough yard to play in, they will play out in the street. She said she is also concerned about the flooding. She said there have been times when she couldn't get into her driveway because of the water backed up onto the street.

**BOB BREEDLOVE, 338 N. JOANN** said he lived south of the property and moved into the neighborhood 10 years ago. He said he liked the neighborhood because it was single family dwellings, quiet, and a real peaceful place to call home. He said he has a duplex next to him where the landlord lives in one half and rents the other half. He said he thought that would be great and that the property would be taken care of. He said he has had nothing but grief from that duplex. He said due to his own experience he would hate to see this zoning change happen and allow duplexes to ruin this single family neighborhood.

**SHIRLEY ABBEY, 3403 W. ST. LOUIS** said she lived 3 houses to the east of the site. She asked about changing the lot facings from north/south to east/west. She also asked if the 30-foot setback was measured from center of the street to where they can build. She said it doesn't seem like much room for a house and yard space in the back.

**MILLER** said the front setback is usually measured from the property line.

**ABBEY** said so then it is measured from the curb and asked if staff had specific measurements.

**MILLER** said the applicant will dedicate 30 feet on the street and from that point the building setback line will be measured.

**ABBEY** commented with the lot to the back and all that cement the water runoff will be pretty tremendous.

**CHADD** said she appreciates the neighborhood's concerns since it is a nice neighborhood and they want to keep it that way too. She said they are glad to hear from the surrounding home owners and want open communication because it behooves them to do that. She said they don't want the units to be a drainage issue either and they will do what will work best, either the lot split or replatting.

**FOSTER** asked how many rental properties the applicant currently oversees.

**CHADD** said they have 7 duplexes located in the area and 8-10 single family homes that they rent.

**ALDRICH** asked the applicant without the lot split or replatting, would they consider just one structure on the property with 2 units.

**CHADD** commented that goes back to **COMMISSIONER ALDRICH'S** earlier question regarding the number of duplexes on the property and said the answer is probably no.

**SHERMAN** asked about the number of duplexes and TF-3 Two-Family Residential zoning in the area.

