

**METROPOLITAN AREA PLANNING COMMISSION**

**MINUTES**

**March 1, 2012**

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held on Thursday, March 1, 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; Don Klausmeyer; John W. McKay, Jr.; M.S. Mitchell; Morrie Sheets; George Sherman and Debra Miller Stevens. Don Sherman and Ron Marnell 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

1. Approval of the February 2, 2012 meeting minutes.

**MOTION:** To approve the February 2, 2012 meeting minutes, as amended.

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (10-0-2). **KLAUSMEYER** and **G. SHERMAN** – Abstained.

Approval of the February 16, 2012 meeting minutes.

**MOTION:** To approve the February 16, 2012 meeting minutes, as amended.

**MCKAY** moved, **MITCHELL** seconded the motion, and it carried (10-0-2). **DENNIS** and **SHEETS** – Abstained.

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2. **CONSIDERATION OF SUBDIVISION COMMITTEE RECOMMENDATIONS**

- 2-1. **SUB2011-00048: ONE-STEP FINAL PLAT - LAKESIDE AT THE MOORINGS ADDITION,** located south of 45th Street North (extended), on the west side of Meridian.

NOTE: This is a replat of the Moorings South Addition. A portion of the site has been approved for a zone change (ZON 2010-00028) from SF-5 Single-family Residential to LC Limited Commercial and OW Office Warehouse. The Lakeside at the Moorings Commercial Community Unit Plan (CUP 2010-00016, DP-323) was also approved for this site.

**STAFF COMMENTS:**

- A. City of Wichita Public Works and Utilities Department advises that Lots 1, 2, 3 and 21 have access to water and sewer. The applicant needs to extend water (transmission and distribution) and sewer (main and lateral) to serve all other lots being platted. In addition to vacating the 25-foot aqueduct easement (raw water line), the applicant shall guarantee the removal of the pipeline within this plat and cap/plug the remaining pipe to City specifications. Such guarantee shall not be provided through the use of a petition.

- B. If improvements are guaranteed by petition(s), a notarized certificate listing the petition(s) shall be submitted to the Planning Department for recording.
- C. City Stormwater Management has approved the drainage plan subject to the following conditions:
1. A conceptual stormwater sewer should be shown on the drainage plan between Lots 17 and 19, to drain Lot 18, sized to be determined based on site-specific development plan.
  2. A conceptual stormwater sewer should be shown on the drainage plan between Lots 5 and 7, to drain Lot 6, sized to be determined based on site-specific development plan.
  3. A stormwater sewer should be shown on the drainage plan extending from the existing storm system in Meridian Avenue east of Lot 3 to the north to serve Lot 21, size to be determined on the plan and shown in a 20-foot drainage easement.
  4. Runoff from Lot 1 should have the flow arrows redrawn to drain to Reserve E, so the runoff can be treated for water quality before discharging to the public.
  5. A narrative needs to be included that Lots 21, 2 and 3 do not need to provide water quality treatment, since the rest of the development is treating more than 80% TSS.
  6. A note needs to be included in the plan that a shallow flat ditch graded to drain from Reserve F to the existing K-96 right-of-way along the east fence line of the flood control right-of-way shall be excavated for emergency overflow. If this basin will not percolate well, a permanent ditch is needed to drain the developed runoff to flood control structure #5252-0020.
- D. In accordance with the CUP, Traffic Engineering has required a signalization guarantee.
- E. In accordance with the CUP approval, a cross-lot circulation agreement is needed to assure internal vehicular movement between the lots.
- F. The plat proposes one street opening and two openings along Meridian. Traffic Engineering has approved the access controls.
- G. The applicant shall guarantee the paving of the proposed street to the business/industrial street standard. The guarantee shall also provide for sidewalks and also the paving of Cobblestone.
- H. Provisions shall be made for ownership and maintenance of the proposed reserves. The applicant shall either form a lot owners' association prior to recording the plat or shall submit a covenant stating when the association will be formed, when the reserves will be deeded to the association and who is to own and maintain the reserves prior to the association taking over those responsibilities.
- I. For those reserves being platted for drainage purposes, the required covenant that provides for ownership and maintenance of the reserves, shall grant to the appropriate governing body the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- J. A note shall be placed on the final plat, indicating that this Addition is subject to the conditions of the Lakeside at the Moorings Commercial Community Unit Plan (CUP 2010-00016, DP-323).
- K. This property is within a zone identified by the City Engineer's office as likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Building with specially engineered foundations or with the lowest floor opening above groundwater is recommended, and

owners seeking building permits on this property will be similarly advised. More detailed information on recorded groundwater elevations in the vicinity of this property is available in the City Engineers' office.

- L. The applicant needs to request a CUP adjustment as the original CUP parcel boundaries and access controls do not correspond with the area being platted.
- M. A CUP Certificate shall be submitted to MAPD prior to City Council consideration, identifying the approved CUP and its special conditions for development on this property.
- N. GIS has approved the plat's street names.
- O. A block number or letter shall be denoted on the face of the plat.
- P. "Lots, a Block, Reserves and Streets" shall be referenced in the plat's text.
- Q. Extra commas shall be deleted between the Lots specified in the Minimum Building Pad Elevation table.
- R. The applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- S. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- T. The applicant shall install or guarantee the installation of all utilities and facilities that are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- U. The Register of Deeds requires all names to be printed beneath the signatures on the plat and any associated documents.
- V. Prior to development of the plat, the applicant is advised to meet with the United States Postal Service Growth Management Coordinator (Phone: 316-946-4556) in order to receive mail delivery without delay, avoid unnecessary expense and determine the type of delivery and the tentative mailbox locations.
- W. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- X. The owner of the subdivision should note that any construction that results in earthwork activities that will disturb one (1) acre or more of ground cover requires a Federal/State National Pollutant

Discharge Elimination System Stormwater Discharge Permit from the Kansas Department of Health and Environment in Topeka. Also, for projects located within the City of Wichita, erosion and sediment control devices must be used on ALL projects. For projects outside of the City of Wichita, but within the Wichita metropolitan area, the owner should contact the appropriate governmental jurisdiction concerning erosion and sediment control device requirements.

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

Z. Westar Energy has requested additional easements. Westar has existing facilities in the area being replatted that may be abandoned and de-energized. Removal may be required along with cost involved that would be at the applicant's expense. A street light pole that is located along Meridian may need to be relocated, as it appears to be in conflict with the new opening for Bachman Cir. Reed Holbrook, Senior Customer Service Rep, should be contacted at 261-6360 about the possible cost for any removal and relocation as well as coordinating the work.

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

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

**ALDRICH** moved, **KLAUSMEYER** seconded the motion, and it carried (12-0).

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**3. PUBLIC HEARING – VACATION ITEMS**

**3-1. VAC2012-03: City request to vacate a portion of a platted easement**, generally located east of Maize Road, north of 21st Street North, south of Crestline Street, and at the end of Crestline Court.

**APPLICANT/AGENT:** Richard & Cherry Gillespie (owner)

**LEGAL DESCRIPTION:** Generally described as vacating the south 5 feet of the platted 20-foot wide utility easement running parallel to the south (rear) lot line of Lot 51, Block 4, Chadsworth 2<sup>nd</sup> Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located east of Maize Road, north of 21st Street North, south of Crestline Street, and at the end of Crestline Court (WCC #V)

**REASON FOR REQUEST:** Want to build a wall

**CURRENT ZONING:** The site and abutting northern and eastern properties are zoned SF-5 Single-Family Residential ("SF-5"). Abutting western and adjacent southern properties are zoned LC Limited Commercial ("LC") and GO General Office ("GO").

The applicant's propose to vacate the south 5 feet of the described 20-foot wide, platted utility easement. The applicants want to build a wall along their south property line, to help buffer the site from the impact of vehicular traffic on the abutting 21<sup>st</sup> Street North. Per the City's GeoZone there are no manholes, sewer lines, water lines or stormwater equipment located in the described platted utility easement. Westar request the applicants call their Construction Service Representative, prior to construction. The Chadsworth 2<sup>nd</sup> Addition was recorded with the Register of Deeds February 6, 1992.

NOTE: The 2011 areal indicates a wall may have been built into the 20-foot wide, platted utility easement on the abutting, eastern residence; Lot 52, Block 4, Chadsworth 2<sup>nd</sup> Addition. This wall is an encroachment into the platted easement and must be removed or apply for vacation of the 20-foot platted utility easement. The wall appears to be an extension of the wall located on Reserve C, Chadsworth 2<sup>nd</sup> Addition. Reserve C, as well as Reserve A in the Chadsworth 2<sup>nd</sup> Addition, has 5-foot wide wall easements running parallel to their south side and 21<sup>st</sup> Street North.

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

- 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 February 9, 2012, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the described portion of the platted utility easement 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 utilities with any needed project plans for the relocation of utilities for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to the case going to City Council for final action.
- (2) Vacate the south 5-feet of the platted 20-foot wide utility easement and replace it with a dedication of a 5-foot wall easement. If approved by utilities, the wall easement will be for the construction and maintenance of private screening walls and fences and utility main lines and service lines are allowed to cross this easement.
- (3) As needed provide Planning with a dedication of an additional 5 feet of utility easement on the north side of the platted 20-foot wide utility easement, with original signatures to go with the

Vacation Order for recording with the Register of Deeds. This must be provided prior to the case going to City Council for final action.

- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Prior to construction contact Westar's Construction Service Representative, Becky Thompson, at 316-261-6320.
- (6) Prior to construction provide plans to Stormwater showing drainage holes in the wall.
- (7) 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 utilities with any needed project plans for the relocation of utilities for review and approval. Relocation/reconstruction of all utilities made necessary by this vacation shall be to City Standards and shall be the responsibility and at the expense of the applicants. Provide an approved project number to Planning prior to the case going to City Council for final action.
- (2) Vacate the south 5-feet of the platted 20-foot wide utility easement and replace it with a dedication of a 5-foot wall easement. If approved by utilities, the wall easement will be for the construction and maintenance of private screening walls and fences and utility main lines and service lines are allowed to cross this easement.
- (3) As needed provide Planning with a dedication of an additional 5 feet of utility easement on the north side of the platted 20-foot wide utility easement, with original signatures to go with the Vacation Order for recording with the Register of Deeds. This must be provided prior to the case going to City Council for final action.
- (4) All improvements shall be according to City Standards and at the applicants' expense.
- (5) Prior to construction contact Westar's Construction Service Representative, Becky Thompson, at 316-261-6320.
- (6) Prior to construction provide plans to Stormwater showing drainage holes in the wall.
- (7) 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.

**KLAUSMEYER** moved, **JOHNSON** seconded the motion, and it carried (12-0).

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**3-2. VAC2012-04: City request to vacate a portion of platted access control,** generally located west of Maize Road on the north side of 21st Street North.

**APPLICANT/AGENT:** New Market Square, Ltd. (owner)

**LEGAL DESCRIPTION:** Generally described as vacating a 30-foot wide portion of platted complete access control to allow an additional drive onto 21<sup>st</sup> Street North onto portions of Lots 8 & 9, Block 1, New Market Square Addition, Wichita, Sedgwick County, Kansas

**LOCATION:** Generally located on the west Maize Road on the north side of 21<sup>st</sup> Street North (WCC #V)

**REASON FOR REQUEST:** Access for drive through restaurant

**CURRENT ZONING:** The site and abutting northern and eastern properties are zoned LC Limited Commercial (“LC”) and are under Protective Overlay PO-36. Adjacent southern properties are zoned LC, GC General Commercial (“GC”) and SF-5 Single-Family Residential (“SF-5”); portions are under Community Unit Plan CUP DP-184. Abutting western properties are zoned SF-5.

The applicant proposes one 30-foot wide drive along the site’s 21<sup>st</sup> Street North frontage. 21<sup>st</sup> is a four-lane arterial, with a center and outside turn lanes, plus a roll over curbed median at this located. There currently are two permitted joint access drives on either side of the proposed drive. The proposed drive would be located approximately midway between the permitted drives. The permitted drives are approximately 350 feet apart. The proposed drive does not meet the current Subdivision standard for a full movement drive (400 feet between drives) or right-in – right-out (200 feet between drives). Per the Subdivision Regulations, 10-104, Modification of Design Criteria, the MAPC may modify design criteria. In the past staff has recommended modified design criteria, which has been approved by the MAPC. The proposed drive lines up between two drives located south, across 21<sup>st</sup>. Per the City’s GeoZone, there is public sewer in area of the vacation request, but no public water. The Newmarket Square Addition was recorded with the Register of Deeds April 27, 1998.

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

B. 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 February 9, 2012, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the described portion of the platted 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) Per the approval of the traffic Engineer, vacate the platted complete access control along the site's 21<sup>st</sup> Street North frontage to allow (1) right-in – right-out joint access drive. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to 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.
- (3) Provide/dedicate cross lot access to abutting lots within PO-36. This must be provided to Planning prior to the case going to Council for final action.
- (4) Provide Lot Splits to Planning, which reflect any reconfigured lots. Adjust PO-36 to reflect the reconfigured lots.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including;  
(a) the construction of the new drive from the site onto 21<sup>st</sup> Street North, and (b) the continuation of the curb and gutter and side walk. Provide Public Works with a guarantee (approved project/plans) 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 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) Per the approval of the traffic Engineer, vacate the platted complete access control along the site's 21<sup>st</sup> Street North frontage to allow (1) right-in – right-out joint access drive. Provide Planning Staff with a legal description of the approved vacated portion of the complete access control on a Word document, via e-mail, to be used on the Vacation Order and Vacation Petition. This must be provided to Planning prior to the case going to 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.
- (3) Provide/dedicate cross lot access to abutting lots within PO-36. This must be provided to Planning prior to the case going to Council for final action.
- (4) Provide Lot Splits to Planning, which reflect any reconfigured lots. Adjust PO-36 to reflect the reconfigured lots.
- (5) All improvements shall be according to City Standards and at the applicant's expense, including; (a) the construction of the new drive from the site onto 21<sup>st</sup> Street North, and (b) the continuation of the curb and gutter and side walk. Provide Public Works with a guarantee (approved project/plans) 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 Council for final action.

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

**KLAUSMEYER** moved, **JOHNSON** seconded the motion, and it carried (12-0).

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**PUBLIC HEARINGS**

4. **Case No.: ZON2012-03** - New Market Square, LTD (owner) requests an Amendment #2 to Protective Overlay #36 to eliminate the prohibition on drive through restaurant.

Lot 9, Block 1, Newmarket Square Addition to Wichita, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is proposing to amend a protective overlay provision for Parcel 9 of the NewMarket Square development. The proposed amendment to P-O #36 would remove the exclusion of drive-in/drive-through restaurants. Currently, the previously amended protective overlay (ZON2002-00046) allows "All uses permitted in the "LC" Zoning District except taverns, nightclubs in the City, and adult entertainment as defined by City Code, car washes and drive-in/drive-through restaurants and except residential uses. No overhead doors shall be permitted on the west or south faces of any building on the parcel." All other provisions including: Net Area, Maximum Building Coverage, Maximum Gross Area, Maximum Building Height and Maximum Number of Buildings will remain unchanged.

When the original protective overlay was approved in 1999, the uses in Parcel 9 restrict the uses to those allowed in the GO General Office (“GO”) zone district even though the property is zoned LC. This restriction did not allow the parcel to be developed with retail uses, restaurants, and other similar commercial uses.

The area to the north, east and south is zoned LC and is developed with commercial uses. Wal-Mart is located directly to the north, a bank is located directly to the east and a large furniture store is located directly to the south, across 21<sup>st</sup> Street. The adjacent property to the west is zoned SF-5 and is developed with a church. All other property to the west is large lot residential on the north side of 21<sup>st</sup> Street and a smaller lot, higher density residential subdivision south of 21<sup>st</sup> Street.

**CASE HISTORY:** P-O #36 was approved as part of SCZ-0703 (January 24, 1996) and amended in 2002 (ZON2002-00046) to add LC uses to the site. The property is platted as Lot 9, Block 1, New Market Square Addition, recorded April 27, 1998.

**ADJACENT ZONING AND LAND USE:**

NORTH:	LC	Wal-Mart, New Market Square
EAST:	LC	Bank, vacant, Walgreens
SOUTH:	LC	Furniture store, greenhouse, office, bank
WEST:	SF-5	Church

**PUBLIC SERVICES:** Transportation access is from the private access drive abutting the parcel on the west that has access to 21<sup>st</sup> Street North, a six-lane arterial street. Existing traffic counts for traffic on 21<sup>st</sup> Street North is 29,434 average daily trips. All other normal municipal services are available to the site.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide Map shows the subject parcel classified as “regional commercial” which encompasses major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The requested protective overlay amendment is in conformance with the land use map/plan.

**RECOMMENDATION:** The proposed amendment would allow drive-in/drive-through restaurant uses on Parcel 9, the western-most parcel of the New Market development, but still restricts the intensity of use by eliminating taverns, adult entertainment, and car washes. It would also continue to prohibit overhead doors facing residential and church uses on the south and west. Based on these factors and information available prior to the public hearing, Staff recommends the application be APPROVED subject to the following protective overlay provisions:

Parcel 9

Proposed Uses - All uses permitted in the “LC” Zoning District except taverns, night clubs in the City, and adult entertainment as defined by City Code, car washes and except residential uses. No overhead doors shall be permitted on the west or south faces of any building on the parcel.

Net Area – 0.94 acres + or -; or 41,080 sq. ft.  
Maximum Building Coverage – 30 % or 12, 324 square feet  
Maximum Gross Area – 30 % or 12, 324 square feet  
Maximum Building Height – 35 feet  
Maximum Number of Buildings – 2

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The area to the north, east and south is zoned LC and is developed with commercial uses. Wal-Mart is located directly to the north, a bank is located directly to the east and a large furniture store is located directly to the south, across 21<sup>st</sup> Street. The adjacent property to the west is zoned SF-5 and is developed with a church. All other property to the west is large lot residential on the north side of 21<sup>st</sup> Street and a smaller lot, higher density residential subdivision south of 21<sup>st</sup> Street.
2. The suitability of the subject property for the uses to which it has been restricted: The property is suitable for use in conformance with the protective overlay restrictions currently in effect.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Allowing “LC” type uses would increase the likelihood that the parcel is developed with a bank, retail or restaurant or other “LC” use rather than being restricted to offices. This would be an increase in intensity and the property most affected would be the adjacent church.
4. Length of time the property has remained vacant as zoned: The property has been vacant and available for development for fourteen years since the platting was completed.
5. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The 2030 Wichita Functional Land Use Guide Map shows the subject parcel classified as “regional commercial” which encompasses major destination areas (centers and corridors) containing concentrations of commercial, office, and personal service uses that have predominately regional market areas and high volumes of retail traffic. These areas are located in close proximity to major arterials or freeways. The range of uses includes major retail malls, major automobile dealerships and big box retail outlets with a regional market draw. Regional Commercial areas may also include higher density residential housing and uses typically found in Local Commercial areas. The requested change is in conformance with the Comprehensive Plan.
6. Impact of the proposed development on community facilities: The proposed changes should not impact traffic, particularly since direct access is via the private drive already in existence or by cross-lot access to the abutting commercial tract to the east.

**DERRICK SLOCUM**, Planning Staff presented the Staff Report.

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

**DOWNING** moved, **SHEETS** seconded the motion, and it carried (12-0).

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5. **Case No.: CON2012-05** – Viper Associates, LLC (owner) and MKEC Engineering Consultants, c/o Brian Lindebak request a County Conditional Use request for an Accessory Apartment on property zoned “RR” Rural Residential.

The South half of the Northwest quarter of Section 4, Township 28 South, Range 3 West of the 6th Principal Meridian, Sedgwick County, Kansas.

**BACKGROUND:** The applicant is requesting a Conditional Use to allow an accessory apartment at 27629 West 23<sup>rd</sup> Street South. The approximately 80-acre tract is zoned RR Rural Residential (“RR”). Because the proposed additional/separate structure will contain a kitchen, a bathroom and sleeping quarters, it is classified as a dwelling unit (Unified Zoning Code, “UZC”, Art. II, Sec. II-B. 4.j), and thus requires Conditional Use approval for an accessory apartment in the RR zoning district (Art III., Sec III.-D).

The Unified Zoning Code (“UZC”) permits an accessory apartment as a Conditional Use in the RR zoning district, with the following four supplementary use requirements (UZC, Art. III, Sec. III-D. 6.a):

- (a) A maximum of one accessory apartment may be allowed on the same lot as a single-family dwelling.
- (b) The appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the neighborhood.
- (c) The accessory apartment shall remain accessory to and under the same ownership as the principal single-family dwelling, including that it shall not be subdivided or sold as a condominium.
- (d) The water and sewer service provided to the accessory structure shall not be provided as a separate service from the main dwelling.

The applicant’s site plan shows the proposed accessory apartment located behind (south) a small pond and the 1,982-square foot primary residence, which was built in 2000. The proposed accessory apartment will be located on top of a proposed garage. In order to be considered an accessory residential structure, the requested apartment must have less square footage than the principal structure, as well as meet the already noted UZC’s Supplementary Use Requirements.

North of the site is a 1,316-square foot single-family residence (1956). This residence shares a drive to 26<sup>th</sup> Street South with the site’s existing residence and the proposed accessory apartment. All of the existing (and the proposed accessory apartment) single-family residences are located on the east side of Pole Cat Creek, which prevents access onto 279<sup>th</sup> Street West. The site is located about a mile southeast of Garden Plain, in an RR zoned rural area. The area’s properties are used for crops or pasture, with scattered farmsteads and single-family residences.

**CASE HISTORY:** The site is located within the Garden Plain Area of Zoning Influence and will go before the Garden Plain Planning Commission before consideration by the MAPC; UZC Art. V, Sec. V-B. 4.d

**ADJACENT ZONING AND LAND USE:**

NORTH:	RR	Agricultural land
SOUTH:	RR	Agricultural land, farmsteads, single-family residences
EAST:	RR	Agricultural land
WEST:	RR	Agricultural land

**PUBLIC SERVICES:** Geozone shows no public water or sewer. The site is located outside all Rural Water Districts. The site’s size, 80-acres, is large enough for a sewer lagoon or a septic system. 279<sup>th</sup> Street West is a dirt and gravel Afton Township road, while the dirt and gravel 26<sup>th</sup> Street South is either an Afton Township Road or a Garden Plain Township Road. There appears to be no change to the current status of these two roads.

**CONFORMANCE TO PLANS/POLICIES:** The “2030 Wichita Functional Land Use Guide of the Comprehensive Plan” identifies the area as “Rural.” This category encompasses land outside the 2030 urban growth area of Wichita and the small cities of Sedgwick County. The category’s intended uses are agricultural, rural based uses that are no more offensive than those agricultural uses commonly found in the county and predominately larger lot residential exurban subdivisions with provisions for individual or community water and sewer services.

The site’s current RR zoning is generally compatible with the Rural category of the Land Use Plan. The UZC permits an accessory apartment as a Conditional Use in the RR zoning district, with four supplementary use requirements. As proposed the accessory apartment appears to meet those requirements. The UZC does not prevent an accessory apartment from being rented out to anyone.

**RECOMMENDATION:** Based upon information available prior to the public hearing, Staff recommends that the request be APPROVED subject to the following conditions being completed within a year:

1. The accessory apartment shall be subject to all requirements of Art III, Sec III-D 6.a. and Art. III, Sec. III-D. 7. E of the Unified Zoning Code; including the appearance of the accessory apartment shall be compatible with the primary residence (stick frame) and shall not be larger in floor area than the principal structure.
2. Provide a revised site plan that includes the location of the sewer system and any and all easements.
3. Dedicate a joint access easement.
4. The applicant shall obtain all applicable permits, including but not limited to building, health, and zoning.
5. The accessory apartment shall be completed and occupied within a year of approval by the appropriate governing body.
6. 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 VII hereof, 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: North of the site is a 1,316-sqaure foot single-family residence (1956). This residence shares a drive to 26th Street South with the site’s

existing residence and the proposed accessory apartment. All of the existing (and the proposed accessory apartment) single-family residences are located on the east side of Pole Cat Creek, which prevents access onto 279th Street West. The site is located about a mile southeast of Garden Plain, in an RR zoned rural area. The area's properties are used for crops or pasture, with scattered farmsteads and single-family residences.

2. The suitability of the subject property for the uses to which it has been restricted: The site's current use as a single-family residence is appropriate for its RR zoning and the area. Accessory apartments are allowed as a Conditional Use in RR zoning provided the applicant and the site meet the UZC's four supplementary use requirements and the golden rules standards. The application and the site appear to meet these criteria.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: This appears to be the first accessory apartment in the area. The Conditional Use requirement that the appearance of an accessory apartment shall be compatible with the main dwelling and with the character of the area should help maintain a consistent look with the area's current housing stock and minimize any detrimental effects to the area.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The "2030 Wichita Functional Land Use Guide of the Comprehensive Plan" identifies the area as "Rural." This category encompasses land outside the 2030 urban growth area of Wichita and the small cities of Sedgwick County. The category's intended uses are agricultural, rural based uses that are no more offensive than those agricultural uses commonly found in the county and predominately larger lot residential exurban subdivisions with provisions for individual or community water and sewer services.

The site's current RR zoning is generally compatible with the Rural category of the Land Use Plan. The UZC permits an accessory apartment as a Conditional Use in the RR zoning district, with four supplementary use requirements. As proposed the accessory apartment appears to meet those requirements. The UZC does not prevent an accessory apartment from being rented out to anyone.

5. Impact of the proposed development on community facilities: The applicants' request should have a minimal impact on community facilities. An increase in traffic will be minimal.

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

**FOSTER** referred to the site plan and specifically the term "structures" plural when the approval was for one structure only. He said he believes that needs to be updated and revised. He also asked if the septic tank and lateral field referred to in the site plan were existing or proposed.

**LONGNECKER** responded that the sewage is existing. He also mentioned that the site plan should refer to an "accessory apartment" singular.

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

**JOHNSON** moved, **MCKAY** seconded the motion, and it carried (12-0).

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**JOHNSON** recused himself from item **CON2012-06**.

6. **Case No.: CON2012-06** - the Islamic Society of Wichita, Inc. (Owner/Applicant) c/o Ronnie Farhat (Agent) request a City Conditional Use request for a Daycare, General in TF-3 Two Family Residential zoning.

**BACKGROUND:** The applicant requests a Conditional Use to permit a “Day Care, General” on 8.4 acres located south of 34<sup>th</sup> Street North and 800 feet east of Woodlawn Avenue (6655 E. 34<sup>th</sup> Street North). The application area is developed with a religious facility on the western third of the site; the remainder of the site is vacant. The site currently provides a limited duration preschool by right, the applicant now intends to operate a full-day childcare program. The applicant intends to use the site as it is currently developed, see the attached site plan.

The property is zoned TF-3 Two-family Residential (“TF-3”). Per the *Wichita-Sedgwick County Unified Zoning Code* (UZC), a Day Care, General is permitted in the TF-3 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. The applicable conditions for a Day Care, General as a Conditional Use, per Art. III, Sec. III-D 6.i of the UZC are: day care centers shall comply with all applicable state regulations; 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 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, and the day care shall provide convenient off-street loading spaces equivalent to one space per ten students.

Property north of the subject site is zoned MF-29 Multi-Family Residential (“MF-29”) and is developed with a religious facility. Northeast of the site is an SF-5 Single-family Residential (“SF-5”) zoned subdivision. South of the site, across K-96, is the GC General Commercial (“GC”) zoned YMCA North Branch. East of the site is an MF-29 zoned apartment complex, and west of the site is LC Limited Commercial (“LC”) zoned vacant commercial property.

**CASE HISTORY:** The property was platted as Lot 1, Block 2, Killarney West Residential Addition in 1990. Zoning adjustments on this site permitted parking within the front building setback.

**ADJACENT ZONING AND LAND USE:**

NORTH:	MF-29, SF-5	Church or place of worship, single-family residences
SOUTH:	GC	YMCA
EAST:	MF-29	Multi-family residential
WEST:	LC	Vacant

**PUBLIC SERVICES:** The site has three access points along East 34<sup>th</sup> Street North, a two-lane urban collector with a 70-foot right-of-way. Public water and sewer service are available at the subject property.

**CONFORMANCE TO PLANS/POLICIES:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the western portion of the site as appropriate for “Major Institutional” uses, reflecting the current land use, and the remainder of 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. 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 TF-3 district, a Day Care, General is permitted.
2. All applicable requirements of Art III, Sec III-D.6.i of the Unified Zoning Code shall be met.
3. The site shall be developed 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 licensing, ordinances 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 north of the subject site is zoned MF-29 and is developed with a religious facility. Northeast of the site is an SF-5 zoned subdivision. South of the site, across K-96, is the GC zoned YMCA North Branch. East of the site is an MF-29 zoned apartment complex, and west of the site is LC zoned vacant commercial property.
2. The suitability of the subject property for the uses to which it has been restricted: The site is zoned TF-3, which is a district primarily limited to low density residential uses and a few compatible non-residential uses such as religious institutions, parks or schools. The site is developed with a religious institution, which is permitted in the TF-3 district 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 along with an existing religious institution.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site currently operates a limited-hour preschool without negative impacts on surrounding properties. The proposed conditions and minimum code requirements should minimize potential impacts.
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 western portion of the site as appropriate for "Major Institutional" uses, reflecting the current land use, and the remainder of 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. Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
5. Impact of the proposed development on community facilities: Traffic for the drop-off and pick-up of children could increase beyond current the current traffic generated by the existing preschool. However, 34<sup>th</sup> Street North is an urban collector at this location, and the site has

adequate drop-off queuing space to prevent impacting traffic flow on 34<sup>th</sup> Street North. All other community facilities are in place to serve the proposed use.

**JESS MCNEELY** Planning Staff presented the Staff Report.

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

**DOWNING** moved, **SHEETS** seconded the motion, and it carried (11-0-1).

**JOHNSON** – Abstained.

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**NON-PUBLIC HEARING ITEMS**

7. **Case No.: Urban Village Concept in Delano Neighborhood Plan.**

**DAVE BARBER**, Planning Staff presented a brief overview of the Delano Neighborhood Revitalization Plan adopted March, 2001. He reviewed the Plan Vision Statement and commented that the plan had 8 objectives. The definition of the Urban Village Redevelopment Concept was reviewed, which included possible architecture and potential uses for the area. Zoning for that area was left intact and the Overlay District and design guidelines were approved in April 2003. Plan Implementation Actions and Initiatives were also reviewed, some of which were completed and some of which were unfunded in the current Capital Improvement Program (CIP). Compatibilities between the Mixed-Use Urban Village Redevelopment Concept and Project Downtown Plan were also reviewed along with staff's assessment that the Urban Village Redevelopment Concept is still a relevant element of the Delano Neighborhood Revitalization Plan.

**ALDRICH** asked staff to delineate the boundaries of the Urban Village Plan and the exempted areas of the Delano Overlay District.

**BARBER** referred to the map and said with some minor differences basically they are one in the same.

**MITCHELL** commented that it has been 10 years since the Plan was adopted and although there has been redevelopment in the area, he doesn't know where and it hasn't been extensive in his estimation. He has seen no move by the City to accumulate property that he is aware of. There is no reason to keep such a far out of date plan in the CIP. There are businesses operating in that area now that will have to be cleared out to properly redevelop.

**BARBER** said the City has acquired property subsequent to adoption of the Plan and he referred to the downtown central library site, formerly Watkins, Inc.

**MITCHELL** asked if the property purchase was predicated on this Plan.

**BARBER** said he did not know because he was not involved with the acquisition of the property.

**DIRECTOR SCHLEGEL** asked **COMMISSIONER MITCHELL** where he wanted to go with this project because it was part of the adopted Delano Neighborhood Revitalization Plan. He believes that the project is incorporated into the CIP intentionally. He asked if **COMMISSIONER MITCHELL** wanted to amend the Delano Plan and take the Urban Village idea out.

**MITCHELL** responded if that is the only way to get it out of the CIP, then the answer is yes.

**DIRECTOR SCHLEGEL** clarified that **COMMISSIONER MITCHELL** wanted the Planning Commission to take action to recommend that the project be removed from the CIP. The project is currently listed as an unfunded project and he is not sure if it is the desire of the City Council to remove it entirely from the CIP.

**MITCHELL** questioned whether the City Council even knows the project is in the CIP.

**DIRECTOR SCHLEGEL** commented that the City Council does review the CIP.

**MITCHELL** said if all that is needed is a motion to remove the project, he will make it; however, he asked if the matter needed further study.

**DIRECTOR SCHLEGEL** said staff is not keen on revising the Delano Neighborhood Revitalization Plan because it will take a considerable amount of time and effort and staff has their plate full right now.

**MITCHELL** said if revising the Delano Neighborhood Revitalization Plan will hold back work on the new Comprehensive Plan, he feels the Comprehensive Plan should take precedence.

**DIRECTOR SCHLEGEL** said revising the Delano Neighborhood Revitalization Plan would delay work on the Comprehensive Plan.

**MITCHELL** said he will take no action or make any recommendation at this time and see if the updated Comprehensive Plan will lead to any changes in the Delano Plan.

**ALDRICH** asked how many other neighborhood plan projects require CIP monies but are unfunded and in the same situation as this project. He wondered whether there should be some sort of mechanism that if the plan or project is unfunded after so many years it becomes “dead in the water”.

**DIRECTOR SCHLEGEL** said he did not know off the top of his head how many projects recommended in neighborhood plans were unfunded in the CIP, and said staff would have to do an inventory. Quite a few have gone unfunded because neighborhoods generally have “bigger appetites” than budgets allow. Many projects are included in the CIP as unfunded, and as opportunities come along and money is freed up in the CIP or a grant opportunity comes along, projects can then get funding. As far as the second question is concerned, adding a “sunset clause” to projects and neighborhood plans would be up to the neighborhood. Staff does not go back and revisit whether or not a project is needed in the neighborhood on a regular basis. It would be a very time consuming process to revisit every plan that has been done.

**ALDRICH** mentioned financial resources and whether it made any difference whether the projects remained the same or were removed.

**DIRECTOR SCHLEGEL** commented that the City is currently going through the process of reviewing and amending the CIP budget. Usually more needs are identified than there is budget and some projects considered needed don't necessarily make the funding list. However, that doesn't mean that projects should be given up because there may be future funding opportunities. Many CIP projects are included at the request of City Council members. Planning staff's role is to make sure that projects identified in adopted neighborhood plans are at least considered in the CIP.

**MILLER STEVENS** asked for clarification between the terms “projects” and “plans” which are two different things.

**ALDRICH** said he was merely asking the question, are current neighborhood conditions making some unfunded projects obsolete? He commented that staff clean up the zoning code and other planning documents, so at what point do we need to look at plans or projects and clean them up and make sure they are still valid or relevant.

**MILLER STEVENS** said she feels that neighborhood plans should stay in place because it gives neighborhoods a framework to propose projects. She said realistically, projects could be taken out for some legitimate reason as long as the neighborhood approves. She did not think any neighborhood would be in favor of “sun setting” their plan.

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The Metropolitan Area Planning Commission adjourned at 1:55 p.m.

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

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

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

(SEAL)

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